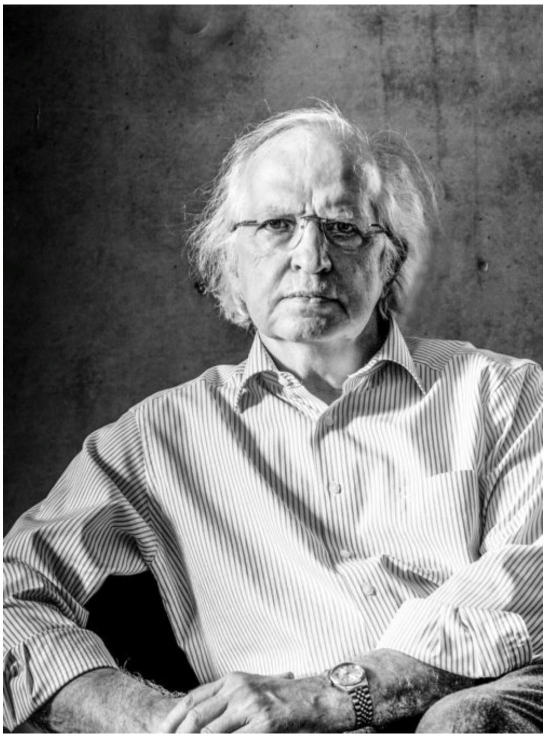
Empty churches – full coffers.



Where state and church are closely intertwined financially and institutionally, a billion-euro business emerges. The story of a lucrative symbiosis.

by Carsten Frerk

The history of the Christian Church in its full scope begins with the decree 'Cunctos populus' (378 AD), by which Emperor Theodosius declared the Trinitarian form of Christianity to be the junior partner in the exclusive state church. All other denominations were banned. The Bishop of Rome secured a Papal States – central Italy – partly through forgeries ('Constantine's Donations').

By 800 at the latest (the coronation of Charlemagne in Rome), the question of power was raised: who is in the 'pole position', the Emperor or the Pope? The answer is simple if one considers the oil paintings of this event: the Pope stands, the Emperor kneels (before him). Thus began the centuries-long power struggle between Church and State over the claim to leadership; notable events include the Investiture Controversy (1076–1122), Henry IV (1077), right up to the Imperial Deputation Main Resolution (1803), in which the last 20 Caesaro-papists among the bishops and abbots (as secular *and* religious leaders) were deposed.

This seemed to settle the question of power. Unexpectedly, however, (in 1806) the Habsburg Emperor Francis II abdicated and the Holy Roman Empire of the German Nations became history. In this vacuum, several German territorial princes now proclaimed kingdoms, be it in Bavaria, Saxony, etc. However, they had reckoned without the Church, for the enthronement of a king requires a bishop to perform the anointing. The Church was thus back in the picture, and through concordats (in Bavaria in 1817) and other treaties, the legal status of the Church and its financing continued to be organised. This would actually have become obsolete with the revolution of 1918–19 and the Weimar Republic in 1919 – a democratic republic requires no religious legitimisation ('By the grace of God'), but is based on popular sovereignty – and accordingly, the articles on the institutional separation of church and state and on financial separation were formulated in the constitution.

However, this ‘democratic spring’ came to an end with the second Reichstag election in 1923: hyperinflation set other priorities. The churches by no means cowered, but organised themselves (Protestant) within the völkisch German Nationalists and (Catholic) within the Centre Party. Both, alongside others, acted as the gravediggers of democracy by enabling the National Socialists to seize power – the German Nationalists as defectors and the Centre Party by approving the Enabling Act, which legally established the National Socialists. As a thank-you, there was the Reich Concordat of 1933, a win-win situation: the Nazi regime was recognised internationally and the Catholic Church received far-reaching privileges that remain legally valid in Germany to this day.

With the claim that ‘democracy shall be restored under the Christian ethos’, an institutionalised Christian lobbying movement comprising Catholic and Protestant lobbying offices at federal and state level was established, starting with the Parliamentary Council (1948/49), an institutionalised Christian lobbying system emerged, comprising Catholic and Protestant lobbying offices at federal and state level, to which draft legislation was and is submitted at every stage of the legislative process, i.e. from the very first drafts onwards. ‘The Church blesses him who goes forth to serve her,’ as Goethe writes in ‘Faust II’ – and there is little to add to that even today.

Adoption of the Weimar Church Articles

One of the great achievements of this ecclesiastical lobbying was that, whilst the Weimar Church Articles were adopted via Article 140 of the West German Basic Law, the fundamental definition of the relationship between state and church – namely that state laws take precedence over religious precepts – was ‘forgotten’. In terms of religious policy, this is the difference between ‘Weimar’ and ‘Bonn/Berlin’. Whereas in the Weimar Republic the churches had been largely on an equal legal footing with all other organisations – no special rights under labour law, no corporate privileges, no indication of religious affiliation on income tax cards – this removal of the primacy of state laws over church precepts opened the door to the creation of a legal sphere belonging to the church alongside the state.

The provision of Article 138, paragraph 1 of the Weimar Constitution – incorporated into the German Basic Law via Article 140 – merely states that religious communities shall organise their own affairs without the involvement of the secular state, as is also the case for any other association in accordance with its statutes, be it pigeon fanciers’ or sports clubs. This wording has now been expanded by state church law – which is dominated by church lawyers – into a right of self-determination for the churches, to the effect that the churches themselves determine what constitutes their own affairs. This right of self-determination for the churches, which is decoupled from civil law, has been and continues to be recognised by the German state. This is most evident in the handling of sex offenders in clerical garb, whose acts are not automatically investigated by state authorities as offences subject to public prosecution, but are defined as a matter for the Church itself. They are, for the most part, subject only to ecclesiastical jurisdiction, with a report to the Congregation for the Doctrine of the Faith in Rome where appropriate.

The state thus accepts, for instance, that under canon law[1]a priest who sexually abuses under-16s has not been punished with excommunication since 1983, and that the Pope, in his 2018 Christmas address, actually appealed (!) to the perpetrators of abuse to face the secular authorities and prepare themselves for God's judgement. In other words: the German state accepts that the Church protects ordained offenders within its own ranks – a principle more commonly associated with the Mafia, yet one not recognised by the state. The Church's own labour law, the so-called Third Way[2], is another major issue in which the state permits the Church to disregard the fundamental rights of its citizens.

Church tax exemptions

Cui bono? This is a crucial question not only in criminal cases. It is also pertinent to the question of the relationship between state and church. As early as 312 AD, Emperor Constantine (following his Edict of Toleration in 310 AD) decreed that Christian priests and the Church were exempt from paying taxes. This still applies to the Churches today. Whilst Microsoft or Amazon in Europe seek out 'tax havens' to pay as little as possible, the churches can remain in the country, as they are exempt from all taxes.

Charlemagne is known as 'Charlemagne' the Emperor. Not only because of his 'sword mission' ('Those who do not believe will have to believe in it'), but also because he introduced the tithe to finance the nobility and the churches. In the Middle Ages, the emperors enacted amortisation laws prohibiting the Church from appropriating further property, as this withdrew it from the economic cycle and rendered it a 'dead hand' (a mort). On this subject, once again from Goethe's Faust: 'The Church has a good appetite, has devoured whole countries, and yet has never overeaten; the Church alone, my dear ladies, can digest ill-gotten gains.'

In the National Assembly of 1918–19, the end of the state church was proclaimed and the principle 'Free Church in a free state' was formulated. To enable the Church's financial independence, a uniform church tax was introduced across the Reich, for the calculation of which the civil tax registers of church members were made available. From the mid-1920s onwards, the churches made use of the option to have this church tax collected by the state, for which they paid an administrative fee. It is a tax on past income, as it can only be levied as a surcharge on income tax once the state tax has been calculated.

With the inclusion of religious affiliation on wage tax cards from 1934 onwards – a 'thank you' from the National Socialists for consenting to the Reich Concordat of 1933? – the retrospective tax becomes a current tax, calculated at the same time as wages are paid and the corresponding wage tax is assessed.

This unconstitutional entry – for according to the Constitution, no one is obliged to disclose their religious affiliation – was retained even after the Second World War, when other Nazi decrees were repealed. The state's collection of funds for non-state organisations is – across the whole of Germany – a unique phenomenon under financial constitutional law and highly efficient. The state sees itself as contractually bound to collect these funds and is endeavouring to close even the last remaining 'tax loopholes'. This is the case with the church capital gains tax (2014), where it is no longer left to church members to decide whether they can claim their interest and capital gains for tax purposes and 'cheat', but rather the banks automatically calculate and pay the church capital gains tax for church members among their customers.

Revenues of the churches and their associated bodies

In 2017, the churches collected a total of around 12.6 billion euros in church taxes (church tax on wage and income tax, church property tax, church capital gains tax, etc.). Is this amount of church tax revenue in Germany 'a lot'? This can be answered comparatively by converting the church tax revenue of the Catholic dioceses per capita of church members in three countries. In Germany, the figure is around 6.43 billion euros for 23,311,000 Catholic church members; in Austria, 460 million euros for 5,110,000 members; and in Switzerland (2013), around 1 billion CHF[3] (= 815 million euros) for 3,065,000 members. This amounts to per capita for the Catholic Church: Germany = 276 euros, Switzerland = 266 euros and Austria = 90 euros. The close alignment of Swiss Catholics with Germany is also confirmed by the Secretary General of the Roman Catholic Central Conference of Switzerland, Daniel Kosch, who writes: 'The Catholic Church has considerable resources in Switzerland. Overall, it is a wealthy Church – but the resources are very unevenly distributed."[4] The range (in 2007) extends from CHF 601 in the canton of Zug to CHF 37 in the canton of Geneva. Furthermore, some cantons in Switzerland have a system that is unique worldwide: the obligation for legal entities, i.e. commercial enterprises, to pay church tax.[5]

Furthermore, the major churches do not have to cover the costs of collection and enforcement themselves, which, as experience in Austria has shown, can account for up to 20 per cent of the total revenue from contributions. For Germany, this would mean administrative costs of up to around 2.5 billion euros for the two major churches, for which the state charges around 400 million euros for its collection services. This represents a saving of around 2.1 billion euros for the churches. With additional income such as capital gains and interest, fees and other sources, the two major churches thus generate around 20 billion euros annually.

With the introduction of the principle of subsidiarity into the Social Code – whereby the state should step back if smaller social organisations can take on tasks – the churches in Germany (1961) seized the opportunity to expand Caritas and Diakonie into nationwide large-scale enterprises: around 1.5 million employees generate an annual turnover of around 45 billion euros – of which, however, the churches themselves finance just under 2 per cent.

The term 'economy within the sphere of the churches' refers to a multitude of enterprises – 'Christian robes from the cradle to the grave' – which are subject to the direct control of the churches: banks, construction firms, printing works, holiday organisations, film companies, press agencies, radio stations, housing associations, foundations, publishing houses, insurance companies, wineries, newspapers and more generate an annual turnover of around 50 billion euros. Provided the profits are transferred to the churches, they remain tax-free.

In Germany, 'privatisation of profits and socialisation of costs' means that a further 20 billion euros or so from general tax revenue is spent on church institutions and for the benefit of church members: for nurseries and denominational schools, religious education, theological faculties, the tax deduction of church tax paid against income tax due, costs of heritage conservation, church development aid, state contributions towards bishops' salaries and subsidies for parish priests' salaries, and much more. All in all, an annual turnover of around 130 billion euros is generated within the church sector. This corresponds to the domestic turnover of the entire German automotive industry.

Symbiosis of Church and State

All of this is grounded in state church law, often regulated by contract, and is therefore legal. Whether it is still legitimate remains to be seen. 'Church people are chiefs without Indians,' Swiss pastor Paul Bernhard Rothen was quoted as saying in 2015[6] . The faithful, as church members are still called, no longer go to church and are increasingly turning away from the faith and the church, even in their hearts. Yet as long as the principle of 'empty churches, full coffers' holds true – and forecasts point to a further rise in revenue from church taxes – this is, for the time being, of relatively little interest. The assets of the two churches (capital assets, land and secular property, foundations, etc.) are estimated at around 400 billion euros.

The whole structure is a perfect symbiosis of church and state – with two state churches and a failure to comply with constitutional mandates. The Weimar Constitution had stipulated the cessation of state subsidies. This year, 2019, marks the 100th anniversary of the non-compliance with this constitutional mandate, which one might celebrate or lament, depending on one's perspective.

If one asks what this successful symbiosis with the state is based on for the churches, Senior Church Councillor Hermann Kalinna, who served as deputy representative of the EKD Council in Bonn from 1977 to 1994 – that is, for 17 years – once summed it up as follows: 'However, the state and the church are too complex institutional structures for their contacts and relationships to be summed up in a single term. The complex system of state-church law and the unwritten rules of conduct are a given. Mastery of both is important so that the state-church relationship does not slip out of the control of the church leadership.' He did not express this behind closed doors; rather, it is recorded – for anyone to read in any major library – in the 'Handbook of State Church Law of the Federal Republic of Germany'. Control by the church leadership? Goethe replies (1811): 'The church is in eternal conflict with the state, which refuses to grant it supremacy.'

In 2011, I was personally present when Jürgen Schmude, a former SPD Federal Minister and long-standing President of the Synod of the Evangelical Church in Germany, delivered his concluding remarks as the keynote speaker before the working group 'Christians in the SPD' at the symposium in Berlin's Reichstag building entitled 'Do we need a new balance in the relationship between state and church?': "If the party were only to begin considering questioning the tried-and-tested relationship between state and church, it would backfire on the party before it even reached the churches."

Full stop. A perfect business idea for the churches, certainly. But institutional and financial separation of church and state looks rather different.

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[1] The Codex Iuris Canonici (CIC, Latin for Code of Canon Law) is the code of canon law of the Roman Catholic Church for the Latin Church.

[2] An independent collective labour contract law that regulates the foundations of the collective bargaining system in a manner deviating from the applicable collective bargaining law.

[3] 'According to a conservative estimate by the business magazine <Eco> of Swiss Radio and Television, the annual income of the Catholic Church in Switzerland amounts to almost 1 billion Swiss francs; the revenue comes mainly from church taxes; the assets of the Catholic parishes in Switzerland are estimated at more than 1.5 billion Swiss francs or 1.37 billion euros (as of March 2013).' www.srf.ch/news/wirtschaft/katholische-kirche-in-der-schweiz-ein-billion-franc-enterprise

[4] Daniel Kosch: Public funding of the Catholic Church in Switzerland. Figures, contexts and future prospects. Zurich: Schulthess, 2013. www.rkz.ch/fileadmin/user_upload/Dokumente/4._Kirche_und_Geld/4.3_Referate_Artikel/4.3.20120914_Kirchenfinanzierung_CH_d.pdf

[5] Seewww.stadt-zuerich.ch/fd/de/index/steuern/juristische_personen/kirchensteuer.html

[6] 'Tages-Anzeiger' of 22 April 2015, p. 4.

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