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# Clarifying Present and Past: The Reichskonkordat and Drawing Lines between Church and State in the Adenauer Era

Mark Edward Ruff

Any first-year student of history quickly discovers that research into the past almost always involves a complex interplay between past and present. Interpretative lenses are shaped by ideological precepts, religious faiths, political allegiances, personal experiences – or by what many students are wont to dismiss cavalierly as «researcher bias». The choice of topics is dictated by fads, social pressure from advisors and colleagues, ongoing political controversies, or the need to prop up one’s identity through recourse to the past. While these observations may suffice to shatter faith in the possibility of attaining the elusive goal of «historical objectivity», they do little to illustrate the actual mechanics underlying this dialogue between past and present, particularly when the subject of historical investigation lies in the recent past, or what is referred to as *Zeitgeschichte* in the German-speaking world.<sup>1</sup> As simple as it is to postulate connections between past and present, it is considerably more difficult to reconstruct more precisely the actual relationships between historical output and the pressures and values influencing researchers. How do funding sources shape methodologies and conclusions? How do historical and political networks determine or shape historical output? What is the direct relationship between historical output and politics with its concomitant pressures and allegiances?

An case study is provided by research into what has been a particularly thorny area of historical inquiry – the relationship between the Roman Catholic Church and the National Socialist state. It goes without saying that this particular subspecialty into the history of Nazi Germany has been the launching pad for countless historical controversies, certainly far more than for the parallel history of German Protestantism under National Socialism.<sup>2</sup> With an eye to the often explosive

<sup>1</sup> Peter Novick, *That Noble Dream. The «Objectivity Question» and the American Historical Profession*, New York 1988.

<sup>2</sup> For overviews of this enormous literature, see Christian Schmidtman, *Fragestellungen der Gegenwart mit Vorgängen der Vergangenheit beantworten: Deutungen der Rolle von Kirchen*

debates which continue to erupt periodically, historians have just recently begun to analyze the networks undergirding professional historical research.<sup>3</sup> Taking shape already in the 1950s, these research networks decisively influenced the course of subsequent historical output and certainly contributed to the polarization that accompanied research on this subject.

It is easy to point to the ascent of the Christian Democratic Union and the backlash to its rise as one factor contributing to both the process of network formation and polarization. Certainly, some writing on this subject in a manner more friendly to the church – those whom Olaf Blaschke has aptly termed «historians loyal to the church» – cultivated close ties to the CDU.<sup>4</sup> But the catalyst for historical research in the 1950s was even more immediate. The ratification of the Basic Law in 1949 had failed to resolve several critical issues governing the relationship between church and state. In particular, it failed to provide a definitive resolution to the vexing problem of denominational schools (*Bekenntnisschulen*), which allowed Roman Catholic or Protestant schoolchildren to be educated (at least in theory) in classrooms with teachers and fellow pupils who were solely of the same confession.<sup>5</sup> For the next fifteen years, how best to demarcate lines of church and state thus became the subject of off and on political and constitutional wrangling. These debates witnessed a climax when a monumental case went before the Constitutional Court in 1956. This landmark case was initiated when the Adenauer regime appealed to the court to overturn a new school law passed by the state of Niedersachsen in 1954.<sup>6</sup> The law mandated that all school-children be taught in multi-confessional schools in which Protestants and Roman Catholics would be educated «without regard to their confessional affiliation».<sup>7</sup> As the drafters of Niedersachsen's school law were well aware, the

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und Katholiken in Nationalsozialismus und Krieg vom Kriegsende bis in die 1960er Jahre, in: Andreas Holzem/Christoph Holzappel (Hg.), *Zwischen Kriegs- und Diktaturerfahrung. Katholizismus und Protestantismus in der Nachkriegszeit*, Stuttgart 2005, 167–202; Joseph Bottum/David G. Dalin, *The Pius Wars. Responses to the Critics of Pope Pius XII*, Lanham 2004; Thomas Brechenmacher, *Das Reichskonkordat 1933. Forschungsstand, Kontroversen, Dokumente*, Paderborn 2007.

<sup>3</sup> Olaf Blaschke, *Geschichtsdeutung und Vergangenheitspolitik. Die Kommission für Zeitgeschichte und das Netzwerk kirchenloyaler Katholizismusforscher, 1945–2000*, in: Thomas Pittrof/Walter Schmitz (Hg.), *Freie Anerkennung übergeschichtlicher Bindungen. Katholische Geschichtswahrnehmung im deutschsprachigen Raum des 20. Jahrhunderts*, Freiburg 2009, 479–521. For an earlier work analyzing the process of network formation without recourse to a sociological vocabulary, see Rudolf Morsey, *Gründung und Gründer der Kommission für Zeitgeschichte, 1960–1962*, in: *Historisches Jahrbuch*, 115 (1995), 453–485.

<sup>4</sup> Blaschke, *Geschichtsdeutung und Vergangenheitspolitik* (wie Anm. 3).

<sup>5</sup> On the fact that many purely confessional schools did not always live up to their billing, see *Bekenntnisschule: Gesprengte Klassenzimmer*, in: *Der Spiegel* 19, 5 May 1954.

<sup>6</sup> For a summary of the school-conflict in the immediate postwar era and early Federal Republic, see Rudolf Hars, *Die Bildungsreformpolitik der Christlich-Demokratischen Union in den Jahren 1945 bis 1954. Ein Beitrag zum Problem des Konservatismus in der deutschen Bildungspolitik*, Frankfurt a. M. 1981.

<sup>7</sup> *NS-Schulen*, in: *Die Zeit*, 11 February 1954.

new law directly violated Article 23 of the Reichskonkordat signed in July, 1933 between the Vatican and Hitler's government. Article 23 explicitly guaranteed the existence of existing denominational schools and the right to create new ones should the parents request them.<sup>8</sup>

The burning issue in the court case thus became a legal question: did the Concordat remain legally valid even after the collapse of the government that had signed it? Answering this question meant significant legal and historical research. Working through such a multifaceted past meant creating scholarly networks and institutions. These research initiatives begun in the 1950s, moreover, did not come to a close once the defenders and opponents of the Concordat presented their historical findings to the Constitutional Court in Karlsruhe in June, 1956 and the court announced its decision in March, 1957. In an almost dialectical manner, the materials presented by both sides at Karlsruhe provided politicians, journalists and historians of a more critical ilk with the grist they needed to assail the church's role in both past and present. The rationales for holding on to the denominational schools and to the Concordat ultimately became part of the criticism of the church's past in 1933. Fearing that the past could be misrepresented and exploited by political and ideological forces hostile to the church, researchers «loyal to the church», in turn, doubled-down on their efforts to provide a more accurate account of the church's conduct during the waning years and months of the Weimar Republic.

This essay tells the story of how the question of the denominational schools, arguably the spiniest question of church-state relations left unresolved in the 1950s, helped jump-start research in the 1950s and 1960s about the Roman Catholic past under National Socialism. It will examine first how the Concordat emerged as a flash-point already in the late 1940s, triggering an initial wave of mostly legal research. It will then look at how the preparation for the hearings at Karlsruhe led to a second surge of research. Finally, it will look at how the wealth of historical information that had been exhumed inspired more hard-hitting and detailed research into the history of the Concordat and, more broadly, into the role of the church during the Nazi seizure of power. This essay will offer a thumbnail sketch of these developments, though it is admittedly not possible here to offer a full, comprehensive story of the struggles over the Reichskonkordat, efforts to re-countenancing the German public school system or the research into the Catholic past during the Nazi era.

The Reichskonkordat emerged as a hot-button issue in late 1948 and early 1949 because of the determination of the CDU to guarantee denominational schools for those German schoolchildren whose parents requested them. Enshrining this «right of the parents» in the new constitution emerged as a *sine qua non* for a number of influential Roman Catholic political leaders and bishops like

<sup>8</sup> <http://kulturserver-hessen.de/home/zeitzeichen/konkordat.htm> (24 July 2012).

Bishop Michael Keller of Münster.<sup>9</sup> These forceful advocates drew on powerfully rooted Roman Catholic tradition. In his neo-Thomistic encyclical, *Divini Illius Magistri* from 1929, Pope Pius XI had argued that the inalienable right of the parents to educate their children proceeded directly from God; it was the state's duty to protect this parental right.<sup>10</sup> For Cardinal Frings, the chairman of the Fulda Bishops Conference, including this right was a necessity; democracy was a system in which the state upheld the rights of the individual and communities granted by natural law, including the rights of the family over education.<sup>11</sup>

But these efforts to slip into the Basic Law a clause upholding the «right of the parents» met with the staunch, if predictable opposition of the SPD and FDP. Champions of denominational schools had a fallback option – insisting on the legal validity of this treaty from 1933. Yet for many reasons its legal status remained unclear. It had been signed only through the use of the Enabling Act, which was also set to expire should the government of the Third Reich be replaced. Since the government that had signed it had ceased to exist, the Allied authorities were loathe to take a conclusive position on this treaty, even if they agreed that it would remain «technically binding» for the foreseeable future.<sup>12</sup>

Political adversaries in the FDP and the SPD predictably took umbrage at attempts to make the «right of the parents» the law of the land through a recourse to the Concordat. Three prominent figures in these parties, in turn, raised troubling historical and legal questions that would eventually help spawn research into the past. On 6 January, 1949, Hermann Höpker-Aschoff, a jurist with a doctoral degree who would serve as the President of the Constitutional Court from 1951 until his death in 1954, published an article in *Die Zeit* attacking the Reichskonkordat. Described by Pacelli as one of «the most dogged opponents» of the school provision of the 1929 Prussian Concordat, the FDP politician and former DDP delegate deployed an argument that would become part of the standard arsenal of church criticism.<sup>13</sup> The Concordat, as the first in a series of international treaties, allowed the new National Socialist regime to gain international respect and consolidate its power at home.<sup>14</sup> The concordat, he added, had been signed

<sup>9</sup> Burkhard van Schewick, *Die katholische Kirche und die Entstehung der Verfassungen in Westdeutschland 1945–1980*, Mainz 1980; Annette Mertens (Hg.), *Westliche Besatzungszonen und Gründung der Bundesrepublik Deutschland 1948/1949*, Paderborn 2010, 16.

<sup>10</sup> <[www.vatican.va/holy\\_father/pius\\_xi/encyclicals/documents/hf\\_p-xi\\_enc\\_31121929\\_divini-illius-magistri\\_en.html](http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_31121929_divini-illius-magistri_en.html)> (24 July 2012).

<sup>11</sup> Historisches Archiv des Erzbistums Köln (HAEK), CR II, 16.10.4, Joseph Frings an Konrad Adenauer, 17 January 1949.

<sup>12</sup> HAEK, Kath. Büro I, 81, Education and Religious Affairs, Regulations of Allied Control Council, Title 8. Clemens Vollnhalls, *Das Reichskonkordat von 1933 als Konfliktfall im Alliierten Kontrollrat*, in: *Vierteljahrshefte für Zeitgeschichte*, 35 (1987), 677–706.

<sup>13</sup> For Pacelli's description, see Archiv des Erzbistums München und Freising (AEMF), NL Johannes Neuhäusler, N266, Abschrift, *Visitor Apostolicus*, Kronberg, den 13. Januar 1949, Nr. 1431/49, C. Rossi, Editore an Frings und Böhler.

<sup>14</sup> Bistumsarchiv Münster (BAM), A101–48, Aus «*Die Zeit*» Nr. 1 vom 6. January 1949, Bonn und die christlichen Kirchen.

«mit einer verbrecherischen Regierung». In the parliamentary council's steering committee, he stated: «das sogenannte Reichskonkordat von 1933 ist von einer Verbrecherbande abgeschlossen worden in der vorherigen Absicht, es nicht einzuhalten».<sup>15</sup>

But Höpker-Aschoff's invective paled in comparison to the devastating criticism hurled by the SPD delegate and Hessian Minister of Justice, Georg August Zinn, less than two weeks later. As a member of the drafting committee (Redaktionsausschuss), Zinn appeared before the parliamentary council on January 20, 1948 to give a report strongly arguing against including paragraphs from the Weimar constitution pertaining to the churches in the Basic Law. The Reichskonkordat, he opined, was no «Ruhmesblatt» for the church. Church leaders today were not even in compliance with all of its accords; in formally joining the CDU, no less than Cardinal Frings had violated its provision forbidding clerical involvement in politics. Highlighting the enthusiastic response to the signing of the Concordat, Zinn singled out the church for not having protested as strongly against the Nazi attacks even in the religious and political realm.<sup>16</sup> For him, the lesson was clear: «Man sollte diese Dinge der Vergangenheit angehören lassen und sollte es den Ländern überlassen, das Verhältnis der Kirche zum Staat in neuen Verträgen neu zu regeln.»

Zinn's criticisms caught the CDU-CSU delegates, six of eight of whom were Protestant, completely unaware, so much so that the chair was forced to adjourn the meeting abruptly.<sup>17</sup> Only one delegate, Johannes Brockmann from the reconstituted Center Party, had been able to muster up even a barebones rejoinder; he feebly underscored the resistance of Von Galen.<sup>18</sup> Zinn's allegations, which were picked up and repeated by others in the SPD, succeeded in cementing opposition by both Social Democrats and Liberals and torpedoing efforts to include the «right of the parents» into the new constitution.<sup>19</sup> Unwilling to jeopardize the new constitution, Adenauer urged the Cardinal to be satisfied with what had already been attained – a provision guaranteeing religious instruction in the schools in Article 7 of the Basic Law.<sup>20</sup>

<sup>15</sup> Archiv des Liberalismus (ADL), NL Thomas Dehler, N1-3086, Zeitungsausschnitt, Dehler befürwortet neuen Konkordatsabschluss (fdk), no date, but probably 1956. For an account of the Hauptausschuss des Parlamentarischen Rates, see Michael Feldkamp (Hg.), *Der Parlamentarischer Rat, 1948–1949*. Bd. 14, Hauptausschuß, München 2009.

<sup>16</sup> AEMF, NL Johannes Neuhäusler, N266, Dr. Jenuschat, Parlamentarischer Rat, Hauptausschuss, 46 Sitzung, Donnerstag, den 20. Januar 1949, 10 Uhr, Auszug.

<sup>17</sup> BAK, B122/2182. Fiche 2, Abschrift, Anlage 2, Zinn an die Redaktion der «Ruhr-Nachrichten», Dortmund, 1. April 1949.

<sup>18</sup> HAEK, CR II, 16.10.5, Fritz Stricker, Die Niederlage von Bonn! Münster, 12 March 1949.

<sup>19</sup> Burkhard van Schewick, *Die Katholische Kirche und die Entstehung der Verfassungen in Westdeutschland 1945–1950*, Mainz 1980, 118–127.

<sup>20</sup> HAEK, CR II, 16.10.5, Adenauer an Frings, 7 February 1949.

Though Adenauer's strategy forced the bishops, and Keller in particular, to back down, the larger struggle was scarcely over.<sup>21</sup> In an angry letter to the German bishops in early May that was excerpted in the Catholic press, Pope Pius XII rebuked the opposition in the FDP and the SPD as the «imitators of a broken state system», which «neben vielen anderen unrühmlichen Kennzeichen auch das der planmäßigen Mißachtung naturgegebener religiöser Rechte und offenkundiger Vertragsuntreue an seiner Stirne trug».<sup>22</sup> The ensuing public controversy may help explain the remarks of Thomas Dehler, the sharp-tongued future head of the FDP who had served as a delegate in the Parliamentary Council and had been present at one of the two meetings between Zinn and Adenauer.<sup>23</sup> In a speech delivered in Bayreuth on 11 July 1949 two months *after* the ratification of the Basic Law, he received a round of applause by taking on the myth of church resistance carefully cultivated by leading CDU politicians and clergy. «Es ist nicht so, dass die Kirchen, so wie sie es jetzt gerne hinstellen, die grossen Gegenspieler des Nationalsozialismus gewesen wären.»<sup>24</sup>

Dogging church leaders was the fact that the ratification of the Basic Law resolved neither the question of the concordat's validity nor the issue of the denominational schools. In keeping with pre-1933 tradition, the drafters of the new constitution created a federal system under which certain areas of authority, including educational and cultural policy, were reserved to the states, albeit with exceptions. Yet this deference to states' rights seemed to be contravened by Article 123 of the Basic Law, a back-door stratagem by Böhler and Süsterhenn to anchor the right to confessional schools in the new constitution.<sup>25</sup> To make Article 123 palatable to the SPD and the FDP in light of these circumstances, its drafters were forced to append several caveats. These treaties had to be «and continue to be valid under general principles of law». They could be replaced with new treaties or be terminated for other reasons. Its murkiest phrase, which stated that these treaties were valid «unter Vorbehalt aller Rechte und Einwendungen der Beteiligten», caused untold head-scratching, even for the church's A-team lawyers.<sup>26</sup> It was not clear whether these «Beteiligten» referred

<sup>21</sup> Van Schewick, *Kirche* (wie Anm. 19), 119–120, and Ludwig Volk, *Der Heilige Stuhl und Deutschland 1945–1949*, in: Dieter Albrecht (Hg.), *Katholische Kirche und Nationalsozialismus. Ausgewählte Aufsätze*, Mainz 1987, 144–174.

<sup>22</sup> Van Schewick, *Kirche* (wie Anm. 19), 124.

<sup>23</sup> Die Beitrittserklärung von Hessen vom 15. Juli 1955, in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte (Hg.), *Der Konkordatsprozeß. 1. Teilband*, München 1957, 125–126.

<sup>24</sup> ADL, NL Thomas Dehler, N1–41, Rede des Landesvorsitzenden der FDP, Dr. Dehler in Bayreuth, am 11. Juli 1949.

<sup>25</sup> Behind this effort were Böhler and Süsterhenn. Konrad Repgen, *Der Konkordatsstreit in den fünfziger Jahren. Von Bonn nach Karlsruhe (1949–1955/57)* in: *Kirchliche Zeitsgeschichte*, 3 (1990), 201–245, and in particular, 218–220.

<sup>26</sup> HAEK, Bestand Katholisches Büro Bonn I, 108, Stellungnahmen zum Reichskonkordat, Prof. Dr. Jur. Küchenhoff an Adolf Süsterhenn, 10 March 1949.

to the states, individual persons or to the federal government.<sup>27</sup> Some took this supreme example of legal gobbledygook to mean that the «Beteiligten» needed to submit a list of potential objections to the treaty, including their doubts that the Reichskonkordat had been legally concluded.<sup>28</sup> But to whom were these objections to be presented? It was clear to almost all, including Böhler and Süsterhenn, that the validity of the Reichskonkordat would eventually be decided by the courts.<sup>29</sup>

These unresolved legal issues and the embarrassing criticism coming from the mouths of Zinn, Dehler and Höpker-Aschoff led several Catholic political and ecclesiastical leaders to sound the call for legal and historical research into the past. From 1952 to 1954, several Catholic leaders worked to appropriate federal funds from the Interior Ministry to cull documentary materials on the Catholic past under National Socialism. According to Gustav Kafka in the Central Committee of German Catholics, it was the CDU politician, Heinrich Krone, who first suggested this initiative to Böhler.<sup>30</sup> In Kafka's account: «Dieser Auftrag ging auf eine von Herrn Dr. Krone an Exzellenz Böhler gerichtete Anregung zurück, dem Bemühen der SPD, den Widerstand gegen den Nationalsozialismus nahezu ausschließlich für sich zu reklamieren, durch entsprechendes Material entgegenzutreten.» Kafka did not specify the source of this braggadocio but it seems almost certain that it was Zinn's volley that had proved most lacerating. The academic charged with mounting this Catholic defense was the Silesian native, Bernhard Stasiewski.<sup>31</sup> He was given four years of funding by the Bundesinnenministerium, which he used between 1954 and 1958 to collect documents detailing the history of the church's relationship to National Socialism.<sup>32</sup>

But in general, Catholic political strategies invested their time and energy in legal research. Reckoning correctly that one or more of the states would openly violate the school clause of the Reichskonkordat, Böhler commissioned a series of legal opinions in 1949 and 1951 from a young jurist, Dr. Joseph Kaiser.<sup>33</sup> Kaiser's conclusions were straight-forward: concordats between the individual

<sup>27</sup> Gutachten von Professor Dr. Walter Schätzel (Bonn), Transformation, Partnerschaft und sonstige Probleme des Reichskonkordats von 1933, 7 May 1956, in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte (Hg.), *Der Konkordatsprozeß*, III Teilband, München 1958, 1094–1124.

<sup>28</sup> Ibid, 1108.

<sup>29</sup> Repgen, *Der Konkordatsstreit* (wie Anm. 25), 219.

<sup>30</sup> HAEK, Gen 22.13, 10, Gustav Kafka an Joseph Teusch, 11 March 1960.

<sup>31</sup> Hans-Otto Kleinmann (Hg.), *Tagebücher, Heinrich Krone*, Erster Band: 1945–1961, Düsseldorf 1995, 14 May 1954, 137.

<sup>32</sup> Privatbesitz Narzissa Stasiewski, NL Bernhard Stasiewski, Stasiewski an den Herrn Bundesminister des Innern, 18 February 1958.

<sup>33</sup> HAEK, Bestand Katholisches Büro Bonn I, 108, Wilhelm Böhler an Joseph Kaiser, 11 May, 1949, 81, Bedürfen Länderkonkordate der Zustimmung der Bundesregierung? Rechtsgutachten erstattet von Dr. Jur. Joseph H. Kaiser, Lehrbrauftragter an der Universität Tübingen, 16 May 1949, 108, Böhler an Kaiser, 24 September 1949, 108, Abschrift, Kaiser an Böhler, 26 October 1949. Repgen, *Der Konkordatsstreit* (wie Anm. 25), 226.

states and the Vatican did not require the approval of the federal government and the Reichskonkordat had been properly concluded. In February, 1952, Böhler was contacted by Herbert Groppe, a young law student working on a dissertation trying to sort out the thorny issues stemming from the «Bremen clause» and Article 123 of the Basic Law and seeking additional documentary materials on the question of the Reichskonkordat.<sup>34</sup> Groppe eventually received an assortment of twelve newspaper articles, the earlier legal opinions from Kaiser and transcripts of letters from Cardinal Frings from 1948.<sup>35</sup>

Triggering another wave of research was a school controversy that broke out in Baden-Württemberg in 1953. While drafting a new constitution, the government proposed a new school clause along the lines of those passed earlier in the Protestant states to the north and east. This step prompted the intervention of the papal nuncio to Germany, Aloysius Muench, and forced the government in Baden-Württemberg to modify the draft.<sup>36</sup> It attracted the attention of Ernst Deuerlein, a thirty-five year old historian, jurist and political speech-writer for the CSU. On the pages of the *Rheinischer Merkur* in July 1953, this Middle Franconian native and one-time activist in the Catholic youth movement took on the argument put forward by the FDP Minister President, Reinhold Maier, to attack the legitimacy of the Reichskonkordat.<sup>37</sup> Maier had insisted that «it never would have occurred to the chancellors Marx, Wirth or Brüning during their time in office to accept a concordat that Hitler concluded in 1933 merely to gain international respectability». Deuerlein argued instead that signing a concordat had, in fact, been a goal of the German ecclesia almost from the very outset of the Weimar Republic. This argument served as a fundamental premise for the history of the Reichskonkordat that he would present to the court in Karlsruhe in 1956.

Even at this early stage, these legal briefs and historical surveys made it clear that defending the concordat before West Germany's highest court was going to be an immense undertaking. It meant poring over treaties and constitutional articles from the Basic Law from 1949, the Reichskonkordat from 1933 and the concordats between Bavaria (1924), Prussia (1929) and Baden (1932). To determine the meaning of these texts, those preparing materials for the courts and for the court of public opinion had to wrestle with a variety of questions: What was the literal meaning of these texts? What was the legal basis for coming up with the original texts? What was the intent of the drafters in 1933 and 1949? What political compromises had informed the writing of the texts? These questions

<sup>34</sup> HAEK, Bestand Katholisches Büro Bonn I, 108, Herbert Groppe an Wosthoff, 17 February 1952, Groppe an Böhler, 7 March 1952.

<sup>35</sup> HAEK, Bestand Katholisches Büro Bonn I, 108, Groppe an Böhler, 8 December 1952, Anlage.

<sup>36</sup> Bundesarchiv Koblenz (BAK), B136/5543, Abschrift, Adenauer an Dr. Reinhold Maier, 1 October 1952.

<sup>37</sup> HAEK, Kath. Büro Bonn I, 93, Ernst Deuerlein, Das Reichskonkordat – eine Hitleridee? Der Vertrag mit dem Heiligen Stuhl war schon ein Ziel der Weimarer Republik, in: *Rheinischer Merkur*, 17 Juli 1953.

were given a new urgency, once Adenauer submitted a motion to the Constitutional Court on March 12, 1955, asking the court to declare Lower Saxony's school law null and void.<sup>38</sup> Three months later, the states of Bremen and Hessen, whose Prime Minister since 1950 not coincidentally had been Georg August Zinn, formally joined the side of Lower Saxony.

The federal government's appeal to the court unleashed a scholarly frenzy. No fewer than thirteen written statements arrived before the court from these four major parties. The federal government solicited no fewer than nine lengthy expert opinions, including Groppe's now completed dissertation. Hesse, Lower Saxony and Bremen submitted six expert opinions, of which one would be regarded as a «dangerous» game-changer.<sup>39</sup> In early 1956, the state of Hesse and most likely Georg August Zinn, solicited an expert opinion from Karl Dietrich Bracher, a thirty-four year-old rising star and author of a landmark study on the dissolution of the Weimar Republic.<sup>40</sup> Bracher focused on the ruinous transfer of power from the parliament to authoritarian leaders in the last years of Weimar. He argued that transitional figures like the Roman Catholic Center Party Chancellor, Heinrich Brüning, who had ruled from 1930 to 1932 had actually paved the way for the Nazi takeover in 1933. Rather than propping up democracy, Brüning's generous use of the emergency powers granted under Article 48 of the Weimar constitution permanently sullied the democratic order: Brüning had been a dupe of reactionary forces. His expert opinion, however, carried his analysis forward to July, 1933, treating the Reichskonkordat as the next pivotal stage in the process of democratic erosion. Bracher argued that the Reichskonkordat was made possible only by the passage of the Enabling Act on March 24, 1933. But he also noted that the elections from March 5, 1933, which enabled the passage of the Enabling Act, were anything but free elections.<sup>41</sup> The concordat's legal basis was questionable; this treaty, more importantly, played a major role in sanctioning the annihilation of democracy.

Bracher's expert opinion, which was rolled before the court in May, 1956, drew on documents from the German Foreign Ministry pertaining to the prehistory of the Reichskonkordat.<sup>42</sup> The Hessian government also drew upon official

<sup>38</sup> Repgen, *Der Konkordatsstreit* (wie Anm. 25).

<sup>39</sup> HAEK, Bestand Katholisches Büro Bonn I, 109, R. an Deuerlein, 12 May 1956.

<sup>40</sup> Karl Dietrich Bracher, *Die Auflösung der Weimarer Republik. Eine Studie zum Problem des Machtverfalls in der Demokratie*, Stuttgart 1955. For a description of the impact of Bracher's book, see Horst Möller, *Die Weimarer Republik in der zeitgeschichtlichen Perspektive der Bundesrepublik Deutschland während der fünfziger und frühen sechziger Jahre. Demokratische Tradition und NS-Ursachenforschung*, in: Ernst Schulz (Hg.), *Deutsche Geschichtswissenschaft nach dem Zweiten Weltkrieg (1945–1965)*, München 1989, 157–180, and in particular, 164–169.

<sup>41</sup> Das Gutachten von Priv-Doz. Dr. Karl Dietrich Bracher (Berlin) in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte, *Der Konkordatsprozeß. 3. Teilband*, München 1958, 947–992, and in particular, 969.

<sup>42</sup> George O Kent, *The German Foreign Ministry's Archives in Whaddon Hall, 1948–1958*, in: *The American Archivist*, 24 (1961), 43–54.

correspondence from 1933 as well as the full text of the Reichskonkordat and its secret supplement for its written submission to the court on April 30, 1956.<sup>43</sup> Those defending the government's position, however, missed the opportunity to make use of these documents.<sup>44</sup> Crunched for time, Ernst Deuerlein relied instead, at least in part, on archival materials that Böhler and his associates had been amassing.<sup>45</sup> Deuerlein had just been freed up from his day-job at the CSU in January, 1956, a belated sabbatical made possible only by a direct intervention by Böhler with Franz-Josef Strauss.<sup>46</sup> Deuerlein was the first to make extensive use of the papers of Rudolf Buttman, a high-ranking Nazi official in the Reich Interior Ministry who had taken part in the negotiations with the Vatican in 1933.<sup>47</sup> Deuerlein's investigative research dwelled extensively on the efforts to negotiate concordats that had begun already in 1920. He clearly hoped to demolish arguments that maintained that the Reichskonkordat had grown from a Nazi embryo. The Reichskonkordat's content, he argued, was essentially the same as that that had been brought up in the negotiations of the 1920s and early 1930s; its core principles were those of the Weimar Republic and not of the National Socialist era.<sup>48</sup>

Böhler and Süsterhenn mobilized the key pillars of the Catholic milieu – ancillary organizations, political networks, governmental ministries and the Catholic press. They sent out letters, held meetings and convened formal conferences.<sup>49</sup> Following up on suggestions made by Deuerlein and others, Böhler also decided to publish some of the legal briefs, or at least revised portions of them, with Catholic publishing houses in the months preceding the hearing in Karlsruhe.<sup>50</sup> The Federal Press Office in Bonn agreed to purchase and distribute

<sup>43</sup> BAK, B136/5848, Fiche 10, Kleine Anfrage zu Reichskonkordaten, Bonn (fdk) (no date), Kleine Anfrage 203 der Fraktion der FDP betr. Akten zum Reichskonkordat, Deutscher Bundestag, 2. Wahlperiode, 1953, 8 November 1955, Brentano an ADL, NL Dehler, N1–3086, Prof. Dr. Karl Bechert an Dehler. Der Schriftsatz der hessischen Landesregierung vom 30. April 1956, in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte, *Der Konkordatsprozeß*. 2. Teilband, München 1957, 587.

<sup>44</sup> Giese/Frhr. v.d. Heydte, *Der Konkordatsprozeß* (wie Anm. 41), 587–588.

<sup>45</sup> Die bayerische Staatsbibliothek (BSB), NL Ernst Deuerlein, Ana 463.I, 1, Morsey, Rudolf, Deuerlein an Rudolf Morsey, 20 November 1955.

<sup>46</sup> HAEK, Bestand Katholisches Büro I, 109, Kupper an Böhler, 5 January 1956, R. an Deuerlein, 5 January 1956

<sup>47</sup> HAEK, Bestand Katholisches Büro Bonn I, 95, Deuerlein an Süsterhenn, 31 March 1956.

<sup>48</sup> Catholic University Archives (CUA), Aloysius Muench Papers, 59, 8, In der Sicht der Geschichte, Beiträge zu Vorgeschichte, Abschluß und Vollzug des Reichskonkordats – Zu einem neuen Werk von Ernst Deuerlein, KNA-Sonderbeilage Reichskonkordat, May 1956.

<sup>49</sup> HAEK, Bestand Katholisches Büro Bonn I, 90, Konkordatstagung in Honnef, 12–14 April 1956, and H. H. Prälat Böhler, 16 March 1956.

<sup>50</sup> BSB, NL Ernst Deuerlein, Ana 463, I, I, Böhler, Wilhelm, Deuerlein an Böhler, 23 November 1955, Deuerlein an Böhler, 28 May 1956. See also HAEK, Bestand Katholisches Büro I, 95, Deuerlein an Böhler, 20 March 1956. Herbert Groppe, *Das Reichskonkordat vom 20. Juli 1933. Eine Studie zur staats- und völkerrechtlichen Bedeutung dieses Vertrages für die Bundesrepublik Deutschland*, Köln 1956.

six hundred copies of Deuerlein's book.<sup>51</sup> Copies were to be sent to many prominent CDU politicians, including Adenauer and Strauss, all Ministries of Culture, the bishops, prominent Catholic law professors, all diocesan newspapers and, not least, the judges on the Constitutional Court itself.<sup>52</sup> Deuerlein's book, *Das Reichskonkordat*, appeared in print at the start of June, 1956, little more than one month before the start of the hearings in Karlsruhe, courtesy of the Patmos Press, a Roman Catholic publishing company in Düsseldorf.<sup>53</sup>

But this book, which also included a supplementary booklet listing the germane primary source documents, was a rush-job. As even its author noted, it was rife with technical and printing errors.<sup>54</sup> Its scholarship was sloppy, a clutter of factual and interpretative errors.<sup>55</sup> Deuerlein had had little more than five months of full-time work to put together 381 pages. He also had approved a series of substantial cuts into the text just as it was going to press.<sup>56</sup> But more importantly, he wrote this work with an explicitly political purpose, one recognized as such by no less than one of the judges on the Constitutional Court.<sup>57</sup> «Ich würde mich freuen, wenn auch meine Arbeit ihren Teil zu einer glücklichen Entscheidung in Karlsruhe beitragen könnte», Deuerlein gushed in a letter to Böhler.<sup>58</sup> His work was also scooped by the Catholic wire services organization, the KNA, which sent out extensive special reports on the Reichskonkordat, including a detailed description of its prehistory derived almost exclusively from Deuerlein's work-in-progress.<sup>59</sup> Scarcely two weeks later and just days after the close of the hearings in Karlsruhe, *Der Spiegel* published an extensive multi-paged article on the history of the Reichskonkordat bearing the subtitle, «Geheime Freuden» – a reference to Hitler's jubilation at the benefits that this treaty brought to his regime.<sup>60</sup> In at least one location, the authors cut and pasted directly from Deuerlein's historical summary.<sup>61</sup>

<sup>51</sup> HAEK, Bestand Katholisches Büro Bonn I, 95, Forschbach an Adolf Süsterhenn, 29 March 1956.

<sup>52</sup> HAEK, Bestand Katholisches Büro Bonn I, 94, R. an Herrn Pribil, 26 May 1956. HAEK, Bestand Katholisches Büro Bonn, I,95, Böhler an Kupper, 24 May 1956.

<sup>53</sup> Ernst Deuerlein, *Das Reichskonkordat*, Düsseldorf 1956.

<sup>54</sup> BSB, NL Deuerlein, Ana 463.1.1 Rudolf Morsey, Deuerlein an Morsey, 30 May 1956.

<sup>55</sup> This was a point made by Rudolf Morsey already in his review from 1957. See Rudolf Morsey, in: *Theologische Revue*, 53 (1957), 19–23.

<sup>56</sup> Morsey, *Gründung und Gründer* (wie Anm. 3), 455, footnote 10.

<sup>57</sup> BSB, NL Deuerlein, Ana 463.I, i, Böhler, Wilhelm, Deuerlein an Böhler, 14 Juli 1956.

<sup>58</sup> BSB, NL Deuerlein, Ana 463.I, i, Böhler, Wilhelm, Deuerlein an Böhler, 14 Juli 1956.

<sup>59</sup> Catholic University Archives (CUA), NL Muench 37, Box 59, Folder 8, KNA Sonderbeilage, Überblick über die Geschichte des Reichskonkordats vom 21. Juli 1933, Mai 1958, 10–18.

<sup>60</sup> *Reichskonkordat: Geheime Freuden* in: *Der Spiegel*, 24, 13 June 1956.

<sup>61</sup> *Spiegel* (wie Anm. 60), wrote: «Am 30. April 1920 überreichte Diego von Bergen, bis dahin preußischer Gesandter beim Vatikan, dem Papst sein Beglaubigungsschreiben als Botschafter des Deutschen Reiches.» Deuerlein wrote: «Am 30. April 1920 überreichte der erste Botschafter des Deutschen Reiches beim Hl. Stuhl, Diego von Bergen, sein Beglaubigungsschreiben am...» (The KNA version was falsely transcribed from Deuerlein's book.)

The aftermath of the case bedeviled Böhler and company in ways that the intense lead-up and oral proceedings had not. For one, the court delivered a split verdict. It affirmed the validity of the Reichskonkordat but argued that the federal government could not legally force the states to uphold its school clause because the Basic Law had given the individual states sovereignty over education.<sup>62</sup> Catholic political leaders correctly anticipated that the questions of concordats would continue to be in the news as state government would attempt to negotiate concordats with the Vatican over the school question.<sup>63</sup> The Isar Verlag, moreover, was intent on publishing all of the motions, briefs, expert opinions, the transcripts of the oral arguments and the verdict. These materials comprised over 1800 total pages, and the press was forced to publish these materials piecemeal.<sup>64</sup> They appeared in twelve batches over the new two years, and were bundled into four separate bound volumes. The first, containing the motions by the government, appeared just before the trial itself. From the correspondence between Böhler and the editor, it was clear that the leader of the Catholic Office in Bonn was not at all thrilled with this set of publications.<sup>65</sup> It could not have escaped his notice that portions of it, including Bracher's expert opinion, the written submission from the state of Hesse from April 30 and significant exchanges in the oral testimony, evoked the «linkage thesis» («Junktimthese»), the claim that the Center party signed on the Enabling Act in exchange for a comprehensive Reichskonkordat guaranteeing confessional schools.<sup>66</sup> Böhler had been so troubled by this «linkage argument» already before the hearings that he sought

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Catholic University Archives, NL Muench 37, Box 59, Folder 8, KNA Sonderbeilage, Überblick über die Geschichte des Reichskonkordats vom 21. Juli 1933, Mai 1958, 11.

<sup>62</sup> Das Urteil des Bundesverfassungsgerichts vom 26. März 1957, in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte, *Der Konkordatsprozeß*. 4. Teilband, München 1958, 1685–1686.

<sup>63</sup> Wilhelm Böhler, *Zur Karlsruher Entscheidung über das Reichskonkordat*, in: *Echo der Zeit*, 7. April 1957, 7. Böhler, *Das Reichskonkordat ist gültig: Grundsätzliche Bemerkungen zum Urteil des Bundesverfassungsgerichts*, in: *Kölnische Rundschau*, 29 March 1957.

<sup>64</sup> HAEK, Bestand Katholisches Büro I, 109, Dr. Günter Olzog an Böhler, 20 May 1957. CR II 1.17a, 5, Olzog an Teusch, 13 September 1958.

<sup>65</sup> HAEK, Bestand Katholisches Büro I, 109, Allgemeine Korrespondenzen zur Konkordatsfrage, Böhler an Olzog, 1 June 1957. HAEK, CR II, 1.17a, 5, Kupper an Teusch, 8 October 1958.

<sup>66</sup> Der Schriftsatz der hessischen Landesregierung vom 30. April 1956 in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte, *Der Konkordatsprozeß*. 2. Teilband, München 1957, 609–610, Das Gutachten von Priv.-Doz. Dr. Karl Dietrich Bracher in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte, *Der Konkordatsprozeß*. 3. Teilband, München 1958, 984–985. For Staatssekretär Hallstein's rebuttal of this «linkage thesis», see Die wörtliche Niederschrift über die Verhandlung am 4., 5., 6., 7. und 8. Juni 1956 vor dem Bundesverfassungsgericht. 2. Verhandlungstag (5. Juni 1956), in: Friedrich Giese/Friedrich August Frhr. v.d. Heydte, *Der Konkordatsprozeß*. 3. Teilband, München 1958, 1281. For a summary of the linkage argument (Junktim-These), see Carsten Kretschmann, *Eine Partei für Pacelli? Die Scholder-Reppen-Debatte*, in: Brechenmacher, *Das Reichskonkordat 1933* (wie Anm. 2), 13–24, and especially, 19, and Konrad Repgen, *P. Robert Leiber SJ, der Kronzeuge für die vatikanische Politik beim Reichskonkordat 1933. Anmerkungen zu meiner Kontroverse mit Klaus Scholder, 1977–1979*, in: Brechenmacher, *Das Reichskonkordat 1933* (wie Anm. 2), 24–37.

out four respected former Center Party politicians, who assured him that it was not true.<sup>67</sup>

Böhler and his team presciently recognized that the allegations raised by Bracher were merely the opening act in a larger drama centered on the Catholic past during the pivotal era of transition between the last years of the Weimar Republic and the establishment of the National Socialist dictatorship.<sup>68</sup> As Deuerlein had pointed out to Böhler just days after the verdict, «(es) ist damit zu rechnen, dass die Diskussion im Sinne Brachers anhält»<sup>69</sup>. Georg Schreiber put it more even bluntly after the close of the proceedings in June, 1956: «Die These von Bracher muss zurückgewiesen werden.»<sup>70</sup> The alarm bells had started sounding already in May, 1956.<sup>71</sup> In the latest issue of its highly-regarded quarterly historical journal, the Institute for Contemporary History in Munich published an incisive six-page analysis of a document from 1933 that had surfaced during the trial proceedings.<sup>72</sup> Since it had long been assumed that the official documents of the Center Party had all been destroyed, this new document raised eyebrows.<sup>73</sup> It was a rough sketch of the minutes of the fateful Center Party meeting from the afternoon and early evening of March 23, 1933 in which the party arrived at its decision to sign on to the Enabling Act. Bemoaning this new publication, Deuerlein pointed out that that the SPD crown jurist, Adolf Arndt, had handed a copy of this document to the nine justices during the oral hearings and had made it available to the general public. He noted that the author of the article, Erich Matthias, had specifically used it to give credence to the linkage thesis.<sup>74</sup>

One of the leading assistants on the trial documents project was a thirty year old elementary-school teacher from the Ruhr, Hans Müller.<sup>75</sup> While working on the volumes of trial documents, Müller began exhuming newspaper and magazine clippings, letters and reports from diocesan archives in Münster, Aachen, Limburg, Paderborn and even Breslau for a large-scale critical documentary history of the relationship between the church and National Socialism from 1930 to 1935 that consumed more than four-hundred pages.<sup>76</sup> Seeing his duty as unco-

<sup>67</sup> HAEK, Bestand Katholisches Büro I, 109, Böhler an Helene Weber, Böhler an Georg Schreiber, Böhler an Franz Graf von Galen, Böhler an Joseph Joos, 3 May 1956.

<sup>68</sup> See HAEK, Kath. Büro Bonn I, Kupper an Morsey, 6 February 1957.

<sup>69</sup> BSB, NL Deuerlein, ANA 463, I, I, Böhler, Wilhelm, Deuerlein an Böhler, 1 April 1957.

<sup>70</sup> HAEK, Kath. Büro Bonn, I, Georg Schreiber an Böhler, 18 June 1956.

<sup>71</sup> HAEK, Bestand Katholisches Büro I, #109, Allgemeine Korrespondenzen zur Konkordatsfrage. Kupper an Böhler, 2 May 1956.

<sup>72</sup> Erich Matthias, Die Sitzung der Reichstagsfraktion des Zentrums am 23. März 1933, in: Vierteljahrsheft für Zeitgeschichte, 4 (1956), 302–307.

<sup>73</sup> Rudolf Morsey, Das Ende der Zentrumsparlei 1933, in: Brechenmacher, Das Reichskonkordat 1933 (wie Anm. 2), 41–42.

<sup>74</sup> HAEK, Bestand Katholisches Büro I, 95, Deuerlein an Anton Böhm, 19 July 1956. On Matthias's publication, see Morsey, Das Ende der Zentrumsparlei 1933 (wie Anm. 73).

<sup>75</sup> See the following two obituaries of Müller (1928–2005), <<http://www.mein-dortmund.de/professor-hans-mueller.pdf>> and <<http://www.mein-dortmund.de/professor-hans-mueller.html>> (24 July 2012).

<sup>76</sup> Archiv der Katholischen Akademie in Bayern (AKAB), BI/9, Hans Müller an Karl Forster, 14 April 1961. Hans Müller, Katholische Kirche und Nationalsozialismus, München 1963.

vering the errors of the immediate past, he came to a harsh conclusion: had the Nazi state not launched a war against the church, the church and the regime could have easily coexisted because of ideological affinities between the two institutions.<sup>77</sup> In 1960 and 1961, he attempted to publish documents pertaining to the Bishops' Declaration of March 28, 1933, which lifted restrictions on the entry of Roman Catholics into the Nazi party and its ancillary organizations. After two rejections, he chose to publish these in the *Werkhefte Katholischer Laien*, a low-budget publication of the Catholic left with poor layout, dismal fonts, cheap paper and a correspondingly dim reputation in the Roman Catholic mainstream.<sup>78</sup>

Though as of yet unaware of Müller's ambitions, those concerned with the likely new direction of historical debate began to meet together to promote and coordinate objective scholarship about the Reichskonkordat.<sup>79</sup> By the fall of 1956, a team of three – Deuerlein, Leo Just, a history professor at the University of Mainz and Alfons Kupper, who had been Böhler's leading associate on the concordat case and would soon author a series of articles on the Reichskonkordat in the highly-regarded Jesuit publication, *Stimmen der Zeit* – began to circulate blueprints for a new institute to research the history of German Catholicism.<sup>80</sup> Its title indicated that the focus was the 19<sup>th</sup> century, but its drafters were also clearly eyeing the year 1933. Its opening sentence cited «negotiations over church-state relations like concordat questions, school problems and Kirchenpolitik» as the impetus. In an early response to this draft, the future director of the Catholic Academy in Bavaria insisted that the chronological focus would have to be extended to the present.<sup>81</sup>

The so-called «Böhler circle» also expanded by early 1957 to include Rudolf Morsey, Bernhard Stasiewski, Conrad, Freund, and Hans Peters.<sup>82</sup> Though it met only twice, this semi-formal network began putting together lists of themes and

<sup>77</sup> Müller, *Katholische Kirche und Nationalsozialismus* (wie Anm. 76), 12.

<sup>78</sup> BAK, NL Böckenförde, #575, Morsey an Böckenförde, 16 August 1961. Hans Müller, *Zur Vorgeschichte der Kundgebung der Fuldaer Bischofskonferenz vom 28.3.1933* in: *Werkhefte katholischer Laien*, 15, August 1961, 258–264, and Hans Müller, *Zur Interpretation der Kundgebung der Fuldaer Bischofskonferenz vom 28.3.1933*, in: *Werkhefte katholischer Laien*, 16, May 1962, 196–200.

<sup>79</sup> NL Bernhard Stasiewski, Folder, *Katholische Kirche und Nationalsozialismus*, I–7, Böhler an Stasiewski, 6 February 1957, *Arbeitsplan für die Besprechung des Arbeitskreises Reichskonkordat am 22. February 1957 in Bonn*

<sup>80</sup> BSB, NL Deuerlein, Ana 463, I, i, Böhler, Wilhelm, Deuerlein an Böhler, 22 June 1956. Alfons Kupper, *Zur Geschichte des Reichskonkordats: Ein Beitrag zur Geschichte des Verhandlungsablaufs zwischen Ostern 1933 und der Ratifikation des Konkordats*, in: *Stimmen der Zeit*, 163 (1959), 278–302, and *Zur Geschichte des Reichskonkordats: Die Verhandlungsperiode bis zur Unterzeichnung (5.–20. Juli 1933)*, in: *Stimmen der Zeit*, 163 (1959), 354–375, and *Zur Geschichte des Reichskonkordats*, in: *Stimmen der Zeit*, 171 (1962), 25–50.

<sup>81</sup> KAB, A1/1, *Stellungnahme von Dr. Ibach zur Denkschrift Just, Deuerlein, Kupper*, 12 September 1956. On the Academy and Ibach's role, see Oliver M. Schütz, *Begegnung von Kirche und Welt. Die Gründung Katholischer Akademien in der Bundesrepublik Deutschland 1945–1975*, Paderborn 2004, 321–323.

<sup>82</sup> Morsey, *Gründung und Gründer der Kommission für Zeitgeschichte* (wie Anm. 3), 455–459.

projects for serious academic research.<sup>83</sup> All pertained to the Reichskonkordat – its prehistory, negotiations and conclusion – and required visits to church and state archives. Morsey drew up a chart detailing the usability and holdings of all of the diocesan archives, most of which had glaring deficiencies.<sup>84</sup> Böhler had clearly been frustrated by the limitations of the research produced in the frantic lead-up to Karlsruhe and the lack of personnel to carry out future work: «Wo sind unsere Professoren, die an Doktoranden solche oder ähnliche Themen vergeben?»<sup>85</sup> Böhler's complaint was well-justified. Since the 19<sup>th</sup> century, the historical profession in Germany had been overwhelmingly dominated by Protestants. Of the 85 chairs for history, six were exclusively reserved for Roman Catholic and the paltry remaining Catholic chairs tended to be dismissed as second-rate.<sup>86</sup>

Through his work in the Bonn-based *Commission for the History of Parliamentarianism and the Political Parties* then headed by his advisor, Rudolf Morsey had found an ongoing collaborator in Erich Matthias, a highly-regarded profiler of the collapse of Social Democracy in 1933 with close ties to the SPD.<sup>87</sup> Having already worked together on a joint edition of documents from 1917 and 1918, both achieved a milestone through their publication of their edited volume, *The End of the Parties: 1933*, a post-mortem of the Weimar political parties. Their autopsy, which included numerous appended documents, stemmed from the premise that the National Socialist victory, Hitler's own magnetism notwithstanding, was not inevitable. It resulted from fatal miscalculations, human weakness and, in some cases, a Pollyanna dismissal of the true danger lurking behind the Nazi masses.<sup>88</sup>

But it was a short article in the highly intellectual Jesuit journal, *Stimmen der Zeit*, that made waves nationally. This article never would have come to fruition without the help of Johannes Schauff a former Center Party politician whom

<sup>83</sup> Arbeitsplan für die Besprechung des Arbeitskreises Reichskonkordat am 22. Februar 1957 in Bonn (wie Anm. 79).

<sup>84</sup> Privatbesitz Rudolf Morsey, Report of Morsey, 22 February 1957.

<sup>85</sup> HAEK, Bestand Katholisches Büro Bonn I, 109, Entwurf, Böhler an Prof. Dr. Georg Schreiber, Münster. The final version was sent out on 6 July 1957.

<sup>86</sup> Wolfgang Weber, *Priester der Klio. Historisch-sozialwissenschaftliche Studien zur Herkunft und Karriere deutscher Historiker und zur Geschichte der Geschichtswissenschaft, 1800–1970*, Frankfurt a. M. 1984, 54, 83–93.

<sup>87</sup> Erich Matthias, *Der Untergang der Sozialdemokratie*, in: *Vierteljahrshefte für Zeitgeschichte*, 4 (1956), 179–226, 250–286. Rudolf Morsey/Erich Matthias (Hg.), *Der Interfraktionelle Ausschuß 1917/18*, Düsseldorf 1959; Rudolf Morsey/Erich Matthias (Hg.), *Die Regierung des Prinzen Max von Baden*, Düsseldorf 1962; Martin Schumacher, *Gründung und Gründer der Kommission für Geschichte des Parlamentarismus und der politischen Parteien*, in: Karl Dietrich Bracher/Paul Mikat/Konrad Repgen/Martin Schumacher/Hans-Peter Schwarz (Hg.), *Staat und Parteien: Festschrift für Rudolf Morsey zum 65. Geburtstag*, Berlin 1992, 1029–1054; Wolfgang Weber, *Biographisches Lexikon zur Geschichtswissenschaft in Deutschland, Österreich und der Schweiz. Die Lehrstuhlinhaber für Geschichte von den Anfängen des Faches bis 1970*, Frankfurt a. M. 1984, 397.

<sup>88</sup> Erich Matthias/Rudolf Morsey (Hg.), *Das Ende der Parteien. 1933*, Düsseldorf 1960.

Morsey met in 1958.<sup>89</sup> Intent on refuting the «linkage argument», Schauff passed on in June, 1960, fragmentary diary-like jottings from Ludwig Kaas from April 7–20, 1933 to Morsey, whom he had come to trust. Schauff had discovered these a few months before in a desk in Kaas' old house in Northern Italy, which he had purchased after Kaas's death.<sup>90</sup> Ending abruptly, these journal-like entries described Kaas's chance meeting with Franz von Papen on April 8 and the Center Party leaders' decision «out of inner conviction» to work constructively to help build and consolidate the new state.<sup>91</sup> *Der Spiegel* quickly seized on Morsey's findings.<sup>92</sup> Likening the Third Reich to a giant flypaper trap, it served up a sensational expose on the Reichskonkordat, proclaiming that it was not Papen but the gaunt priest Kaas who «die mißtrauischen Vatikan-Diplomaten auf den Leim des Dritten Reiches lockte».<sup>93</sup> Kaas had bowed to the «Emporkömmling Hitler», the reporters insisted. The Vatican harbored dark secrets, as the article's opening line – «hinter den verschlossenen Türen des vatikanischen Kongregationssaals» not so subtly suggested.

But it was a thirty-year-old Roman Catholic who had already earned a Ph.D. in law and was nearing completion of a second Ph.D. in history whose historical work would even more powerfully catalyze research into Catholic political and diplomatic conduct in 1933. For Ernst-Wolfgang Böckenförde, the future justice on the Constitutional Court, the reexamination of the past was drawn out of the need to redraw the proper lines between church and state. Already as a teenager, he was troubled by the attempts by leading Roman Catholics to establish natural law as the fundamental principle of the moral and legal order.<sup>94</sup> Could the acceptance of a constitution ultimately hinge on the inclusion of the «right of the parents», as Bishop Keller would have it? Böckenförde was equally perturbed by the bishops' highly politicized pastoral letters, which he encountered as a law student in Münster and which functioned as scarcely veiled voter directives.<sup>95</sup>

But Böckenförde also found a compelling counterpoint to Keller's unyielding stance. With a fresh graduate degree in law from Münster and now beginning a

<sup>89</sup> Dieter Marc Schneider, Johannes Schauff (1902–1990). Migration und «Stabilitas» im Zeitalter der Totalitarismen, München 2001, 190.

<sup>90</sup> Schneider, Johannes Schauff (wie Anm. 89), 192; Rudolf Morsey an Mark Ruff, 4 March 2012.

<sup>91</sup> Rudolf Morsey, Tagebuch 7.–20. April 1933, Ludwig Kaas: Aus dem Nachlass von Prälat Ludwig Kaas, in: Stimmen der Zeit, 166 (1960), 422–430.

<sup>92</sup> On Spiegel's church criticisms, see Nikolai Hannig, Die Religion der Öffentlichkeit. Kirche, Religion und Medien in der Bundesrepublik, 1945–1980, Göttingen 2010, and in particular, 234–239.

<sup>93</sup> Reichskonkordat: Hitler klatschte, in: Der Spiegel, 50, 7 December 1960.

<sup>94</sup> Ernst-Wolfgang Böckenförde, Der deutsche Katholizismus im Jahre 1933. Kirche und Demokratisches Ethos. Mit einem historiographischen Rückblick von Karl-Egon Lönne, Freiburg 1988, 9–10.

<sup>95</sup> Michael Keller, Neugestaltung der Arbeitswelt aus christlichem Geist. Ansprache auf der KAB-Tagung in Rheinhausen am 2. Juni 1957, in: Michael Keller, Iter para tutum, Münster 1961.

doctoral program in history in Munich under the direction of Professor Franz Schnabel, Böckenförde attended a speech by the renowned Adolf Arndt at the Technical University in München.<sup>96</sup> Less than one year after he had taken part in the oral exchanges in Karlsruhe, the crown jurist of the SPD delivered a richly nuanced benchmark address, one that anticipated the new course proclaimed in the Godesberger platform of 1958. Speaking out against the yawning ideological fissures in the German political landscape, Arndt urged that ideology and political mission be decoupled from each other.<sup>97</sup> Insisting that democratic socialism and Christianity could find grounds of compatibility, Arndt sought to allay all doubts about the genuine commitment of Social Democracy to a democratic ethos. Though not convinced by all of Arndt's arguments, Böckenförde described the lecture as having «reinforced» («bestärkt») his own resolve to work towards what became a fundamental goal – gaining the church's approval and recognition of a pluralistic society.<sup>98</sup> If Arndt's principles could be realized, Böckenförde wrote to Arndt, there would no longer be cause for the steady stream of electoral sermons and pastoral letters from the bishops – and for Catholics not to vote for the SPD, should they agree with its platform.<sup>99</sup>

Arndt's address came at a timely moment. In the wake of the school controversy in Lower Saxony and the hearings in Karlsruhe, Franz-Josef Schöningh gave Böckenförde the opportunity to put together a debut article rethinking the relationship between church and democracy. His article, which appeared in the October 1957 issue of the highly-respected magazine, *Hochland*, argued that the insistence of upholding teachings and principles derived from natural law reflected a larger indifference vis-à-vis the proper forms of government. Roman Catholics, he argued, could adapt to any form of state, be it democracy, monarchy or even dictatorships, so long as they were based on a Christian footing: decisive was only whether principles derived from natural law were likely to be upheld. To adopt a truly democratic ethos, the church needed to assume a new role, that of a lobby that sought to influence all political groups in a bid to disseminate religious and moral values. Published less than one month after the singular

<sup>96</sup> Christian Schmidtman, *Katholische Studierende 1945–1973. Ein Beitrag zur Kultur- und Sozialgeschichte der Bundesrepublik Deutschland*, Paderborn 2005, 465; Ernst-Wolfgang Böckenförde, *Begegnungen mit Adolf Arndt*, in: Claus Arndt (Hg.), *Adolf Arndt zum 90. Geburtstag*, Bonn 1995, 32–39.

<sup>97</sup> Dieter Gosewinkel, *Adolf Arndt. Die Wiederbegründung des Rechtsstaats aus dem Geist der Sozialdemokratie (1945–1961)*, Bonn 1991, bes. 559ff. The text of Adolf Arndt's speech can be found in: Karl Forster (Hg.), *Christentum und demokratischer Sozialismus*, München 1958, 103–132; Rudolf Uertz, *Annäherungen. Christliche Sozialethik und SPD*, in: *Historisch-Politische Mitteilungen*, 13 (2006), 93–120.

<sup>98</sup> Ernst-Wolfgang Böckenförde, *Kirche und Christlicher Glaube in den Herausforderungen der Zeit. Beiträge zur politisch-theologischen Verfassungsgeschichte, 1957–2002*, Münster 2004, 8.

<sup>99</sup> Archiv der Sozialen Demokratie (ASD), NL Adolf Arndt, Box 5, Mappe 13, Böckenförde an Arndt, 15 December 195, ASD, NL Peter Nellen, 6b, Abschrift, Böckenförde an Arndt, 28 December 1960,

electoral triumph of the CDU in the elections of September, 1957, Böckenförde's article was a criticism of what appeared to be the dominant feature of the political landscape of the Federal Republic – the tight links between Christian Democracy and the church.

This article served as a stepping stone for Böckenförde's future historical scholarship on German Catholicism in 1933 that sought to bring together past and present. The larger impetus, Böckenförde later admitted, were Morsey's co-edited volume, *Das Ende der Parteien*, and the polemics hurled in the spat over the concordat.<sup>100</sup> He soon began to probe all of the materials available at the time, including Morsey's recent publications, which also acknowledged the surge of enthusiasm as news of the Reichskonkordat spread in July 1933.<sup>101</sup> These findings took Böckenförde aback. He concluded that this upwelling of genuine enthusiasm for the Nazi movement in 1933 had been «repressed». He observed that all too many of the significant high-ranking church dignitaries, officials in prominent ancillary organizations and Roman Catholics intellectuals had boasted of their willingness to work with the new state.<sup>102</sup>

All of this led him to publish a sober reassessment of the conduct of Roman Catholic lay and clerical leaders in 1933 in early February, 1961 on the pages of *Hochland*.<sup>103</sup> Straddling twenty-four dense pages, his article, «Der deutsche Katholizismus im Jahre 1933: Eine kritische Betrachtung» took as its point of departure the troubling calls of a number of high-ranking and even illustrious Catholic clerics and laity to support and help build the new Nazi state. It provided an array of incriminating quotations from Franz von Papen, Ildefons Herwegen, Adolph Bertram, Joseph Lortz, Karl zu Löwenstein, and even Cardinals Michael Faulhaber, Conrad Gröber and Clemens von Galen.

To explain the susceptibility of these prominent German Catholics to the Nazi regime in 1933, Böckenförde pointed to mentalities deeply engrained in German Catholicism. Böckenförde argued that Hitler's promises to sign a Concordat proved to be a deadly temptation. Once he promised, however duplicitously, to help German Catholics realize goals that had been unattainable under the Weimar Republic such as state guarantees for confessional schools, the tepid Roman Catholic support for liberal democracy evaporated almost overnight. Rendering Catholic leaders – and particularly those determined to realize organic conceptions of state and society – even more susceptible to the siren-calls of Fascism in 1933 was the reality that Catholic political thought for more than two-hundred years lived from a principal antipathy towards the Enlightenment. For Böckenförde, this troubled history was cause for Roman Catholics to fundamentally rethink their political self-understanding. They had sought to assimilate into the Nazi political order; now in the postwar era, they exploited the principles of liberal

<sup>100</sup> Böckenförde, *Der deutsche Katholizismus im Jahre 1933* (wie Anm. 94), 12–13.

<sup>101</sup> Morsey, *Die Deutsche Zentrumspartei*, in: *Das Ende der Parteien* (wie Anm. 88), 405.

<sup>102</sup> Böckenförde, *Der deutsche Katholizismus im Jahre 1933* (wie Anm. 94), 13.

<sup>103</sup> Ernst-Wolfgang Böckenförde, *Der deutsche Katholizismus im Jahre 1933. Eine kritische Betrachtung*, in: *Hochland*, 53 (1961), 215–239.

democracy to realize desired ends derived from the teachings of natural law. As he concluded: «Oder kann man im Ernst sagen, daß die Positionen und politischen Prinzipien, die zu den Irrtümern des Jahres 1933 geführt haben, im deutschen Katholizismus von heute überwunden sind?»

To contemporaries, Böckenförde's article appeared as a watershed. In the words of the church historian Konrad Repgen, it hit like a bolt of lightning – even if Böckenförde had personally sent off-prints in advance to several of the German bishops with the assurance that his article was not a broadside against the church but the launch of a painful but necessary discussion.<sup>104</sup> It triggered a wave of commentary, some laudatory, some withering.<sup>105</sup> Hans Peters, the prominent Catholic jurist, one-time member of the Kreisauer Kreis and co-founder of the CDU in Berlin – launched a impassioned denunciation replete with personal attacks on the pages of the *Kölner and Bonner Rundschau*.<sup>106</sup> Böckenförde's one-sided attempt to denigrate the resistance of the Catholic faithful, Peters avowed, was to be «sharply condemned». Excoriating «Juristen, die als Historiker auftreten», Peters even placed quotation marks around the word «historian» when referring to his nemesis.

Why did Peters react so furiously to Böckenförde's critical reckoning with the Catholic past in 1933? For Hans Peters, natural law also provided a rock-solid foundation for resistance to National Socialism. Many of the CDU founders were driven by the conviction that the ideology of materialism and the force of secularization had paved the way for the German catastrophe of 1933.<sup>107</sup> It was the neglect of natural law – and not its overemphasis à la Böckenförde – that had led to ruin. What may also have spurred on his heated denunciation of the young academic was his own role in the fight over the Concordat in the 1950s. As a jurist, Peters had not only composed an expert opinion for the Constitutional Court in 1956 but had also had taken to the stand in Karlsruhe in defense of its legal validity.<sup>108</sup> In his article attacking Böckenförde, Peters maintained his defense of the need for this treaty, which provided a certain protection for the church. More surprisingly, he ventured a defense of the Enabling Act. «Die Annahme dieses

<sup>104</sup> BAK, NL Böckenförde, 575, Böckenförde an Döpfner, 18 Februar 1961; Böckenförde an Keller, 8. Februar 1961. For Repgen's quote, see Böckenförde, *Kirche und demokratisches Ethos* (wie Anm. 94), 14

<sup>105</sup> For a complete list, see Ernst-Wolfgang Böckenförde, *Der deutsche Katholizismus im Jahre 1933. Stellungnahme zu einer Diskussion*, in: *Hochland*, 54 (1962), 217–245, and in particular, footnote 1.

<sup>106</sup> Hans Peters, *Die Scheinwahrheit des Jahres 1933. Die katholischen Bischöfe nach der Machtergreifung des Nationalsozialismus*, in: *Kölnische Rundschau*, 26 March 1961, 11.

<sup>107</sup> Dorothee Buchhaas-Birkholz, *Gesetzgebung im Wiederaufbau. Schulgesetz in Nordrhein-Westfalen und Betriebsverfassungsgesetz. Eine vergleichende Untersuchung zum Einfluß von Parteien, Kirchen und Verbänden in Land und Bund, 1945–1952*, Düsseldorf 1985. Maria Mitchell, *Materialism and Secularism: CDU Politicians and National Socialism, 1945–1949*, in: *Journal of Modern History*, 67 (1995), 278–308.

<sup>108</sup> BAK, NL Hans Peters, N1220, #151, Plädoyer von Professor Peters.

Gesetzes nach festen Zusicherungen seitens der Regierung, aber auch die strikte Ablehnung erscheinen mir auch heute noch beide vertretbar.»<sup>109</sup>

The subsequent controversy catalyzed the founding of the *Kommission für Zeitgeschichte bei der katholischen Akademie in Bayern*, a Roman Catholic historical association charged with documenting and sifting through the charged historical terrain from the first half of the 20<sup>th</sup> century.<sup>110</sup> As Rudolf Morsey, one of its co-founders, later described, several initiatives, sponsors and researchers flowed together in this endeavor.<sup>111</sup> It brought together plans and ideas stemming from the Böhler Kreis, Johannes Schauff, Heinrich Krone and Rudolf Morsey. In consultation with Morsey, Johannes Schauff and Karl Forster, the director of the Catholic Academy in Bavaria, had been developing plans for an event to focus on the close of the Weimar era. This conference would ideally serve as a launching pad for institutionalized research into the Catholic past and counter the increasingly shrill criticism from Communist propagandists, professional church critics like Arvo Manhattan, Concordat opponents including Bracher and Arndt, and not least, the American Catholic sociologist Gordon Zahn, all of whom were mentioned by name in a draft from late 1960.<sup>112</sup> These plans coalesced in a closed-door forum, «Catholics and the Fate of the Weimar Republic» that was held in Würzburg on May 8–9, 1961. Schauff, Morsey and August Berning drew up a list of just under seventy participants, including representatives from the state parliament, Bavarian People's Party and Center Party delegates to the Reichstag – as well as clergy, historians, jurists, academics and politicians.<sup>113</sup>

The *Kommission für Zeitgeschichte* was constituted in the fall of 1962 after consultation with the *Zentralkomitee der deutschen Katholiken* and das *Katholische Büro in Bonn*. Its two boards consisted of a mélange of Catholic politicians, intellectuals, journalists and academics (and no bishops). Not a few had been involved in the concordat fight of the 1950s.<sup>114</sup> Its board of trustees (Kuratorium) included Hans Berger, the ambassador to Denmark who from his previous high-ranking position in the legal wing of the German Foreign Office had played a significant role in transmitting communications in the imbroglio over

<sup>109</sup> Peters, *Die Scheinwahrheit des Jahres 1933* (wie Anm. 105).

<sup>110</sup> See Morsey, *Gründung und Gründer* (wie Anm. 3), 454–457. Archiv des Instituts für Zeitgeschichte (AIFZ), NL Schauff, ED 346/24, Rundschreiben Forster, 26 July 1962.

<sup>111</sup> Schneider, Schauff (wie Anm. 89), 193–196 and Morsey, *Gründung und Gründer* (wie Anm. 3).

<sup>112</sup> NL Bernhard Stasiewski, Folder: KFZG, Vorschlag für eine Klausurtagung von Historikern und Politikern zum Thema «Kirche und Staat am Ausgang der Weimarer Zeit». This document does not include a date. It mentions the death of Pacelli «three years ago» but does not mention Böckenförde's article. Most likely, this was put together in January or early February 1961, or December 1960, should Schauff's math have been faulty. Mark Edward Ruff, *The Zeal of the Converts. Vergangenheitsbewältigung, Catholic Fault Lines and the Gordon Zahn Debate (1959–1962)*, in: David Luginbühl/Franziska Metzger/Thomas Metzger/Elke Pahud de Mortanges/Martina Scohin (Hg.), *Religiöse Grenzziehungen im öffentlichen Raum: Mechanismen und Strategien von Inklusion und Exklusion im 19. und 20. Jahrhundert*, Stuttgart 2012, 87–107.

<sup>113</sup> KAB, BI/9, List of participants. (No name, no title, no date).

<sup>114</sup> AIFZ, NL Schauff, ED 346/24, Rundschreiben Forster, 26 July 1962.

the concordat (Bevollmächtigter), Forster, Schauff, Peters, who undoubtedly had been chosen because of his position as the head of the venerable society of Catholic academics, the *Görres-Gesellschaft*, Joseph Ernst Fürst Függer von Glött, who was a CSU delegate, Prelate Bernhard Hannsler, who served as one of the directors of the *Zentralkomitee der deutschen Katholiken*, Wilhem Wissing, who had succeeded Böhler as head of the Catholic Office in Bonn, Bundesminister Fritz Schäffer, Joseph Fonk and not least, Karl Theodor Freiherr zu Guttenberg, a CSU politician. The academic board of directors included Dieter Albrecht, Clemens Bauer, Prof. Karl Bosl, Karl Buchheim, the co-founder of the CDU in Leipzig and professor of history in Munich, his son Hans Buchheim, Dieter Albrecht, Deuerlein, Gustav Gundlach SJ, Prof. Josef Höfer from Rome, Hubert Jedin, Paul Mikat, the Minister of Culture from Nordrhein-Westfalen, Morsey, Konrad Repgen, Otto Roegele, the noted Catholic journalist, Professor Max Spindler, Stasiewski and Bernhard Zittel.<sup>115</sup> The disproportionate representation of well-connected politicians and church officials no doubt stemmed, at least in part, from the paucity of Roman Catholic academics with the necessary expertise and pedigrees.

What this lengthy list makes clear is the politics of both past and present could easily intrude on the calling of writing history – but not in the obvious way. In spite of the relatively small initial number of professional historians represented in its boards, the *Kommission* would go on to produce more than 175 monographs and documentary editions distinguished by their methodological rigor, painstaking attention to detail, steadfast commitment to an ideal of objectivity and outstanding quality. But its choice of topics was often dictated by the currents of politics. In its early years, this meant a disproportionate focus on the Concordat and the events leading up to the fateful collapse of 1933.<sup>116</sup> With this network partially forged in the strife over the concordat in the mid-1950s, the tone from these political and ideological struggles frequently carried over into the new institution. As with any large group, such a politicized way of thinking – a binary division into «our side» and «the other side» and between friend and foe as well as a heightened sensitivity to criticism from ideological opponents – was more pronounced in some members and scarcely visible in others. As homoge-

<sup>115</sup> Morsey, *Gründung und Gründer* (wie Anm. 3), 48; Blaschke, *Geschichtsdeutung und Vergangenheitspolitik* (wie Anm. 3), 479–521.

<sup>116</sup> Approximately half of its documentary editions and monographs in its earliest years dealt with the period from 1930 to 1934. See Dieter Albrecht, *Der Notenwechsel zwischen dem Heiligen Stuhl und der deutschen Reichsregierung*, Bd I: *Von der Ratifizierung des Reichskonkordats bis zur Enzyklika «Mit brennender Sorge»*, Mainz 1965; Alfons Kupper, *Staatliche Akten über die Reichskonkordatsverhandlungen*, Mainz 1969; Ludwig Volk, *Der bayerische Episkopat und der Nationalsozialismus*, Mainz 1965; Bernhard Stasiewski, *Akten deutscher Bischöfe über die Lage der Kirche 1933–1945*, Bd I: 1933–1934, Mainz 1968; Rudolf Morsey, *Die Protokolle der Reichstagungsfraktion und des Fraktionsvorstandes der Deutschen Zentrumspartei, 1926–1933*, Mainz 1969; Ludwig Volk, *Kirchliche Akten über die Reichskonkordatsverhandlungen 1933*, Mainz 1969.

neous as it appeared to outsiders, this network always retained its diversity, even when attacks from the outside led to an outward closing of ranks.<sup>117</sup>

Nonetheless, it was the political and ideological conflicts over the lines between church and state in the early decade of the Federal Republic that proved decisive in launching historical investigations into the Roman Catholic past under National Socialism. Böckenförde's essay was but the latest in a storied line of criticism that dated back to the immediate postwar era and even back to 1933. These unresolved questions of church and state from the Weimar era lay neatly along the ideological fault lines of the early Federal Republic and, as such, played a critical role in propelling the Catholic past into the public eye. It is hardly surprising, then, that the historical networks built during and in the wake of the confrontations over the Concordat mirrored these fault lines, setting the stage for charged historical exchanges in the coming decades.

*Clarifying Present and Past: The Reichskonkordat and Drawing Lines between Church and State in the Adenauer Era*

This essay examines how the question of denominational schools (Bekenntnisschulen), arguably the spiniest question of church-state relations left unresolved in the 1950s, helped jump-start research in the 1950s and 1960s in the Federal Republic of Germany about the Roman Catholic past under National Socialism. It examines how the Concordat emerged as a flash-point already in the late 1940s, triggering an initial wave of mostly legal research. It then looks at how the preparation for the hearings at Karlsruhe led to a second surge of legal and historical research. Finally, it analyzes how the wealth of historical information that had been exhumed inspired more hard-hitting and detailed research into the history of the Concordat and, more broadly, of the role of the church during the Nazi seizure of power in 1933.

*Klärung von Gegenwart und Geschichte: Das Reichskonkordat und Grenzlinien zwischen Kirche und Staat in der Adenauer-Ära*

Der Beitrag untersucht, wie die in Bezug auf die Beziehungen zwischen Staat und Kirche sehr konflikträchtige und in den 1950er Jahren ungelöste Frage der Bekenntnisschule dazu beigetragen hat, die Forschungen über die katholische Kirche im Nationalsozialismus in den 1950er und 1960er Jahren innerhalb der Bundesrepublik Deutschland voranzubringen. Er untersucht, wie das Konkordat bereits am Ende der 1940er Jahre zu einem Brennpunkt wurde, sodass eine erste Welle von mehrheitlich rechtlichen Untersuchungen ausgelöst wurde. Danach sieht der Beitrag sich die Vorbereitungen für die Anhörungen in Karlsruhe an, die eine zweite Welle rechtswissenschaftlicher und historischer Forschung auslösten. Schlussendlich analysiert er, wie die Fülle der historisch aufgefundenen Informationen noch weitergehende durchschlagende und detaillierte Forschung in Sachen Konkordat inspirierte, und in einem weiteren Sinn die Rolle der katholischen Kirche bei der Machtübernahme der Nationalsozialisten 1933.

<sup>117</sup> For one example: For many years, Morsey was unwilling to rule out the possibility that Hitler and the Center Party Ludwig Kaas might have hammered out a deal in their secret meeting of 22 March 1933, the latter possibly offering votes for the Enabling Act in exchange for the Reichskonkordat. HAEK, Bestand Katholisches Büro Bonn I, 109, Abschrift, Morsey an Kupper, 3 June 1956.

*Clarifier le présent et le passé: le Reichskonkordat et les frontières entre l'Eglise et l'Etat à l'ère d'Adenauer*

Cet essai analyse la manière dont le sujet des écoles confessionnelles («Bekenntnisschulen»), une question des plus épineuses en ce qui concerne les relations entre Eglise et Etat et qui est demeurée non-résolue dans les années 1950, a contribué à faire démarrer la recherche dans les années 1950 et 1960 en République fédérale d'Allemagne à propos du passé de l'Eglise catholique romaine sous le national-socialisme. Il examine l'émergence du Concordat en tant que point d'ignition déjà vers la fin des années 1940, déclenchant une première vague de recherche en grande partie juridique. Il tourne ensuite son regard vers la préparation des audiences à Karlsruhe, qui a engendré une seconde vague de recherche juridique et historique. Enfin, cet article analyse la manière dont la richesse des informations historiques ayant fait surface a inspiré des recherches plus percutantes et détaillées sur l'histoire du Concordat et, de manière plus générale, sur le rôle de l'Eglise pendant la prise du pouvoir par les Nazis en 1933.

*Keywords – Schlüsselwörter – Mots clés*

Church-State relations – Beziehungen Staat-Kirche – relations entre Etat et Eglise; denominational schools – Bekenntnisschulen – écoles confessionnelles; dealing with the past – gestion du passé – Vergangenheitsbewältigung; Ernst-Wolfgang Böckenförde – Ernst-Wolfgang Böckenförde – Ernst-Wolfgang Böckenförde; Reichskonkordat – Reichskonkordat – Reichskonkordat; CDU; Politischer Katholizismus – Politischer Katholizismus – catholicisme politique.

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