

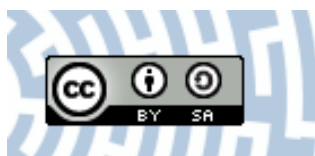


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Title: Der Rang und die grundlegende Bedeutung des Kirchenrechts im Verständnis der evangelischen und katholischen Kirche - recenzja

Author: Andrzej Pastwa

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Dietmar Konrad: *Der Rang und die grundlegende Bedeutung des Kirchenrechts im Verständnis der evangelischen und katholischen Kirche.*

Jus Ecclesiasticum. Beiträge zum evangelischen Kirchenrecht und zum Staatskirchenrecht.

Bd. 93. Mohr Siebeck. Tübingen 2010, 516 pp.

As a rule, a promising title is something that helps an extensive monograph to fight its way to the prospective audience. Such is the case of the discussed book by Dietmar Konrad. However, with a single reservation: the author of *Der Rang und die grundlegende Bedeutung des Kirchenrechts im Verständnis der evangelischen und katholischen Kirche* (The Status and the Fundamental Meaning of the Church Law in the Understanding of the Protestant and the Catholic Church) (doctoral dissertation, the Faculty of Law, Ruprecht Karl University of Heidelberg; supervisor: Professor Jörg Winter) made sure that the reader is also favourably surprised with the book's content.

The monograph's back cover conveys information that Dietmar Konrad concentrates on "possibilities and limits of the development of an ecumenical church law." A glance at the table of contents (*Inhaltsübersicht* preceding *Inhaltsverzeichnis*) leaves no room for doubt. What testifies to the real value of this monograph is a well-thought-out and executed with an expert-like flourish, idea of a triptych: *Katholisches Kirchenrecht* — *Evangelisches Kirchenrecht* — *Ökumenisches Kirchenrecht* (which — for the reason emphasized at the beginning — should be indicated in the (sub) title!). Even if the purpose announced in the Introduction is to verify/falsify the thesis by the Protestant Church in Germany (EKD), promulgated in a well-known document from 2001: *Kirchengemeinschaft nach evange-*

lischem Verstandnis, that the special status of church law in the Catholic Church represents an obstacle for ecumenism (p. 1), the very structure of the work, together with the 116 pages long Part Three: “Ecumenical Church Law,” and, concluding this part (and in a way the entire work, since there is no overall conclusion), Concluding remarks (in subsequent subtitles: “A. Existenz eines Ökumenisches Kirchenverfassungsrechts nur de lege ferenda”; “B. Gemeinsames Einheitsverständnis als Basis eines ökumenischen Kirchenrechts”; “C. Rechtliche Begleitung des ökumenischen Dialogs”; “D. Ansatzpunkte für ein sich herausbildendes Ökumenisches Kirchenrecht” renders the author’s aim to go beyond the self-defined borders the best way. In short, the author’s conclusion is optimistic, and at the same time not devoid of realism (be it in affirming the different ecclesiological bases of both denominations) delineation of the possibilities of overcoming impasse in ecumenical dialogue — with a substantial role the ecumenical church law has to act (“insgesamt kann für ein ökumenisches Kirchenrecht eine verhalten positive Prognose erstellt werden” — p. 475). Indeed, one has to notice that in the background the author skillfully and relatively promptly debunks the EKD’s thesis (hence the return to the question “Rang des Kirchenrechts als Hindernis für die Ökumene?” in the last point of the monograph is artificial and unnecessary — pp. 475–476). What reinforces a noticeable methodological order of the discourse is an assumption realized consistently throughout the entire work: Rank and significance of the Church law cannot be considered separate from the ecclesiological profile/constitution of the respective Church (p. 2).

Faithful to this assumption, in Part One, the author states that since in the canon law reformed in the spirit of Second Vatican Council (p. 16) defining the Church as *Communio* was to be of key importance (here the author accurately quotes the famous speech by Paul VI to the International Congress of Canon Law in Milan, on September 17, 1973), it is worth throwing a light on the present-day progress in realization of this directive. First and foremost, the ecumenical opening by the fathers of the Vatican II, the symbol of which is the famous change of *est* into *subsistit in* in ecclesiological formula of the constitution *Lumen Gentium*: “This Church, constituted and organized in this world as a society, subsists in the Catholic Church” (LG 8,2), marks a starting point of deepened analysis of *communion* model functioning in the *Ecclesia catholica* (1. *Gemeinschaft der Gläubigen*, 2. *Hierarchische Gemeinschaft*, 3. *Gemeinschaft der Teilkirchen*), endowed with the ordinance of the issue: The communion with the ecclesial Communities separated from the Catholic Church? (pp. 17–39). Then, in the chapter committed to rank and significance of the canon law, the author investigating Klaus Mörsdorf (“der Mörsdorfische Ansatz von der rechtlichen Struktur von Wort und Sakrament”) and

his student's idea indicates the Word of God, the Sacrament and also the charisma (in the service of the first two, as their necessary complement) — so the sources of giving shape to that *una realitas complexa* (LG 8,1), which is the *Communio*-Church in its two complementary dimensions: *communio fidelium* (anthropological plane) and *communio ecclesiarum/communio hierarchica* (structural plane). It is precisely towards those two dimensions of Church *communio* that the reader's attention is directed in the last chapter of the part in question, when — after revealing the meaning of *ius divinum* as well as similarities and differences between the canon law and state law — the author focuses on the issue of the reception of council ecclesiology and Catholic understanding of the Church in Code of Canon Law. Critical remarks in this section of the work are not scarce (let us add: they are conceptualized on the basis of reliable, state-of-the-art bibliography). For instance, in the same vein as the author previously accurately itemized some ideological “tilt” of the very Klaus Mörsdorf's theory towards *communio hierarchica* (p. 58), establishing that not only did the Vatican Council put emphasis on apostolic succession, infallibility and particular meaning of the Magisterium, but also stressed “the whole peoples' supernatural discernment in matters of faith” (LG 12,1), the current analyses are recapitulated by the author in the following words: “[...] a normalization of the *sensus fidelium* as the source of divine revelation is lacking” (p. 96; powerful statement which cannot be softened by the previous remark: “das Kirchenrecht muss im Hinblick auf den *sensus fidelium* [...] auch dem hohen Stellenwert von Gewohnheitsrecht gerecht werden” — p. 64). Other critical comments, such as ascertainment that the Code decreased the ecumenical mission of the whole Church and its members to the activity of Catholic authorities (pp. 148—149), or the remark focusing on nonexistence of a separate chapter committed to ecumenism in the Code of Canon Law (the so-called “local ecumenism” did not find its place in the regulations concerning: the parish (cc. 515—552), the homily (cc. 762—772), the catechesis (cc. 773—780) or religious instruction (c. 804), are at least partially contrasted with an optimistic hypothesis that c. 844 of the Code of Canon Law can be perceived as “evolutionary norm,” which conveys a chance for ecumenism within the scope of mixed marriages (“Es ist daher davon auszugehen, dass bei einem weiteren Fortschreiten des ökumenischen Dialogs, eine wechselseitige Eucharistiegemeinschaft zwischen katholischen und evangelischen Christen durch c. 844 § 4 nicht verhindert wird” — p. 170).

While the Canon Law of the Catholic Church is a substantial part of its constitution, the relation between the Church and the church law is in the Evangelical understanding much more complicated — the author emphasizes already at the beginning of Part Two (p. 175). Detailed anal-

yses of the concept of the Church (*Kirchenbegriff*) in Lutheran *ecclesiology* and reformed *ecclesiology*, together with rendering disparities in those approaches (*Vergleich lutherisches und reformiertes Kirchenverständnis*), prove that in the first chapter. At the end of the chapter — together with a slightly too short comparative depiction of the Catholic approaches (“Vergleich evangelisches und katholisches Kirchenverständnis”) — in the concept of “Church of the Word” a specific note of Evangelical ecclesiology is presented (*Die evangelische Kirche ist hingegen eine Kirche des Wortes, Kirche liegt bereits dann, aber auch nur dann vor, wenn die Wortverkündigung beziehungsweise die Verwaltung der Sakramente, die auch besondere Formen des Wortes Gottes sind, in ordnungsgemäßer Weise erfolgt* — pp. 217—218). Consequently, as the author demonstrates in the second chapter, emphasizing the response character of Church law — mainly based on the Barmen Theological Declaration (1933), but also taking into consideration works of such authors as: Johannes Heckel, Erik Wolf and Hans Dombois — is just *antwortendes Kirchenrecht*. Indeed, the contemporary interpretation of 3rd and 6th thesis of Barmen on the relationship of the evangelical message (*Botschaft*) and order (*Ordnung*), entirely reveals the ancillary function of the law in relation to confession of faith, proclaiming the word and administering the sacraments (*bekennendes Kirchenrecht*) — which, however, should not be confused with the sacralization (*Botschaft = Ordnung*) of church law (“das Kirchenrecht ist immer nur insofern “bekennendes Kirchenrecht”, als es “antwortendes Kirchenrecht” ist und eine menschliche Antwort auf die Verkündigung und das Bekenntnis des Glaubens darstellt” — p. 242). In the third chapter, the author — differentiating between three basic Constitution of the Protestant Church types: the Evangelical-Lutheran Church of Bavaria (*episkopal-konsistoriale Kirchenverfassung*), the Evangelical Reformed Church (*presbyterial-synodale Kirchenverfassung*), Evangelical Church in Baden (*konsistorial-synodale Kirchenverfassung*) — analyses practical conclusions stemming from recently formulated paradigms of ecclesiology and the Church law in such areas as: church leadership and communities (*Amt*), preaching and *sacramental law* (*Amtshandlungen*), and finally, fundamental rights (*Grundrechte*).

The climactic, and as it was previously noted, final part of the monograph begins with a pertinent delineation of three research planes, correlated with the three versions of understanding of the notion of “ecumenical church law” (*Ökumenisches Kirchenrecht*). Having conducted the analyses of interecclesiastical Catholic regulations concerning the relations with the Protestant Church and parallel Evangelical regulations, the author competently explores the remaining two research planes: (1) a question whether in the face of dissimilar ecclesiology it is possible

to establish a common ecumenical law, connecting two churches, and then he focuses on the issue of *ius commune universale* (that is the issue of common legal principle, being the result of interchurch agreements, and located within four areas: Church's Evangelizing Mission, Baptism, Eucharist and Ministry) — as a common basis and a source of the ecumenical church law; (2) the role of the following agreements: the Lima Declaration of 1982 and the Joint Declaration on the Doctrine of Justification of 1999 (*Lehrkonsense und deren kirchenrechtliche Verbindlichkeit*), as well as the Charta Oecumenica of 2001 (*Kirchenrechtliche Selbstverpflichtungen*). As to the latter, the author, for instance, regards ecumenical wedding rite of 1971: *Gemeinsame kirchliche Trauung. Formular C*, developed by the Evangelical Church in Baden and the Archdiocese of Freiburg, as a good sign of future agreements of the Churches of both denominations. Two other areas of possible and necessary agreements are: an ecumenical religious instruction (*ökumenischer Religionsunterricht*) and an ecumenical labour law (*ökumenisches Arbeitsrecht*).

What distinguishes this monograph, let us repeat it once again, is an “ecumenical” optimism which is not devoid of realism. The justification for those inspirations, but also for new ones can be — according to the Evangelical author (p. 393) — derived from the words of John Paul II: “[...] the quest for Christian unity is not a matter of choice or expediency, but a duty which springs from the very nature of the Christian community” (*Ut unum sint*, no. 49,2).

Andrzej Pastwa