4 Switzerland: No Religious Peace without Public Arrangements
—or, Why the Catholic Church in Switzerland has to adopt Provisions from Swiss Democracy, as Exemplified by the Canton of Zurich

Florian Schmid and Indrani Das Schmid

Abstract By using the example of the Catholic Church in the Canton of Zurich, this chapter describes the legal basis and the schedule of responsibilities in Swiss ecclesiastical law. The first part of the chapter retraces the historical development of the four religious wars that the country experienced and how they gave light to the religious peace on which the current ecclesiastical law system is based. The second part of the chapter explains the current schedule of responsibilities and the division of powers between the federal and the cantonal level. It then proceeds to outline the process of recognition of the Catholic Church in the Canton of Zurich. For some centuries, the Reformation repressed the Catholic Church in the public sphere. It was only in 1963 that cantonal legislation would finally allow for its recognition as a *Landeskirche*. This went along with the introduction of a legislative body (the synod), an executive body (the synod council), and a judiciary body (the recourse commission)—structures that are unknown in Catholic ecclesiology. Correspondingly, the Catholic *Landeskirche's* leadership has had a hard time to accept these structures. We conclude that the current system nevertheless has to be preserved, since it supports consensus democracy—also through the elements therein taken from direct democracy. Consensus democracy alone is able to preserve the equilibrium between different ethnic and religious groups in Switzerland.

4.1 Switzerland Today: A Christian Identity and a Secularized State

Although the Swiss Federal Constitution opens with the words "In the name of God the Almighty" (Bundesverfassung 1999: 1) and the first verse of the Swiss

national anthem—the so-called "Swiss Psalm"—is steeped in Christian symbols, Swiss religion policy in reality hardly plays a role at all on the federal level. No more than two articles of the Federal Constitution deal with religious questions: art. 15 introduces freedom of belief and conscience while art. 72 establishes the relationship between church and state on the federal level. These two articles reflect two different developments: on the one hand, the guarantee of individual freedom of religion and, on the other, public arrangements targeted at preserving religious peace (Rhinow 2000: 16). However, the religious peace that has developed in Switzerland is not actually as given as it might seem from an outside perspective.

4.2   Peace between Denominations—Switzerland's Conflict-Ridden Past

Over centuries, Switzerland has been involved in numerous internal conflicts between Catholics and Protestants that have resulted in several armed confrontations. These circumstances can be traced back to the 16th century, when the cantons of central Switzerland—Luzern, Schwyz, Unterwalden, Uri, and Zug—were deeply Catholic and conservative, while the cantons of Bern, Geneva, and Zurich were already influenced by Calvin's and Zwingli's Reformation. In 1529 and 1531, the Kappel Wars broke out because of the irreconcilability of these two opposing theological views. These battles were intended to resolve the question of the denomination to which Switzerland should belong (Meyer 2009). While the first Kappel War could have been avoided by diplomatic negotiations, in 1531 the Catholics won out against the Reformed troops. This war resulted in the so-called *Landfrieden*. This kind of peaceful agreement had already existed in the Middle Ages, being implemented to curb feuding and violent crimes. With the Reformation and the development of partisanship according to denomination, the *Landfrieden* acquired a new quality and importance (Bächthold 2010).

All in all, Switzerland would witness four wars between Catholics and Protestants in the Early Modern era (1529, 1531, 1656, and 1712)—they all resulted in a *Landfrieden*. These peace treaties supplemented and modified the legal status established by the *Bundesbriefe* (contracts establishing relations between Swiss cantons) and were of central importance for the development of Swiss history from the Reformation up until the revolution of 1848 (Bächthold 2010). They could also be understood as the first measures belonging to the constitutional state by which Switzerland influenced religion policy in its cantons.

Despite the intervention of the Swiss federal state in religion policy by way of the *Landfrieden* alliances, the denominational conflicts between progressive and conservative cantons persisted. This was exacerbated even further by events in

1841 and 1843, triggered by the so-called "Aargau conflict" over convents. In 1835 the Great Council of the Canton of Aargau subordinated all convents to public administration. Shortly before this, the government had prohibited the acceptance of novices into convents and denominational schools (Pfyl 2000). It was only in 1843 that the Great Council would agree to reestablish four convents. After this measure, it declared the conflict on convents to be solved. However, this was not actually the case, as became clear in the question of how to deal with the Jesuit order: while the progressive forces wanted to prohibit it, the Catholic Conservative forces supported it. Eventually, the seven Catholic Conservative cantons of Fribourg, Luzern, Schwyz, Unterwalden, Uri, Wallis, and Zug came to perceive their values and independence as being in danger, and so united in an alliance for the protection of Catholicism and cantonal sovereignty. However, the country's liberal forces viewed this construction as a separatist alliance that had to be fought against. In 1847 this crisis escalated into a civil war (Roca 2012), which was won after 25 days by the liberal forces. After the war, the hearing of the estates' representatives assigned the costs of battle to the Catholic Conservative and neutral cantons. These costs amounted to 6.18 million Swiss francs. However, in 1852 the cantons were exempted from having to pay the remaining 2.2 million Swiss francs (Roca 2012). This policy of including the losing side in the subsequent political process was continued in the following decades as well.

As a consequence of the 1847 civil war, some of the demands made by the Catholic Conservatives were included in the Federal Constitution of 1848 that created the modern Swiss federal state. Cantonal sovereignty was guaranteed by introducing the federal structure, of which not only the *Ständerat* (Council of States) and *Ständemehr* (the necessity of the agreement of a majority of cantons, in addition to a popular majority, in order for a mandatory referendum to be passed) are examples—the attribution of responsibility for schools and churches to the cantons is representative of this as well. An exception to accommodating the Catholic Conservatives' claims is the prohibition of the Jesuits, who were abolished as late as 1973. In addition to the vertical distribution of powers, a horizontal one was introduced as well: In 1891 Josef Zemp was elected as the first Catholic Conservative representative to the *Bundesrat* (Federal Council), which until that date had been dominated by the progressives. This resulted in a mutual recognition, a balance of power, and an accommodation between the two camps (Linder 2012: 3).

But these changes did not herald the end of all theological tensions. While the 1860s were marked by détente and by a weakening of the Conservatives, the latter regained their majority in all seven cantons by the beginning of the 1870s (Vattner 2014: 98). The Catholic Conservative forces merged these cantons

together with their refugium in the wood to a Catholic reservation and a place of resistance. This place, the canton authority and Catholic hierarchy gave shelter to Catholics against the dominant liberal and progressive forces (Altermatt 1972: 37–38). This territory included central Switzerland and the cantons of Appenzell Innerrhoden, Solothurn, and Wallis.

In contrast, on the federal level the Catholics lost ground against the liberal Protestants during the *Kulturkampf* (1847–early 1870s, Linder 1999: 16). They had to accommodate all of the Protestants' claims, such as the denominational neutrality of the state, the separation of church and state, and the renouncement of all privileges for the church—ranging from education to religious marriage (Linder 1999: 16). A further aspect of Protestant dominance was that the Catholics were not represented at all in the *Bundesrat* as a political force until 1891 (Klöthi 1999: 167). Political Catholicism reacted to this disadvantaged position by founding organizations such as the later *Christlichdemokratische Volkspartei* (CVP), Christian trade unions and newspapers such as the *Neue Zürcher Nachrichten*, and schools and other associations for different groups in society. This establishment of a Catholic counterculture was aimed at reconciling all social differences (Linder 1999: 17).

Swiss society was largely influenced by socioeconomic differences both before and after 1848. Despite this, the country's last civil war is usually depicted as having been one fought between denominations. This reading overlooks the fact that both sides instrumentalized religious feelings of belonging in order to promote their respective political claims and issues. As an example, the radical liberal faction did not fight for Protestantism, but for radical and liberal social progress. Under its denominational veneer, the civil war was thus really a conflict between tradition and modernity, between the countryside and the city, between the periphery and the center (Altermatt 1991: 136); Catholic anti-Modernism hence aimed to halt the onward march of Protestant radical modernity.

Due to the political structures established since 1848 in the Swiss Federal Constitution—such as the core political institutions or the principle of power sharing—these tensions between Catholics and Protestants have not resulted in any other armed conflicts since the civil war. The principle of power sharing applies both in the vertical and in the horizontal dimension. The vertical one designates the inclusion of former enemies into public affairs, for example by electing them to the *Bundesrat*; the horizontal one, meanwhile, designates what the federal structure of the Swiss state is. By the chosen structure of the *Ständerat*, the same voting rights are granted to the small Canton of Uri as they are to the large Canton of Zurich. This way, the small, rural, and Catholic cantons could acquire a disproportional influence and constituted a corrective force to the

mostly liberal *Nationalrat* right from the outset (Linder 2012: 3). In addition, most powers were anyway attributed to the cantons, such as the competence for religion policy. This granted large freedoms to the Catholic cantons and allowed them to adapt to the new era of the laicist state. All in all, we agree with Swiss political scientist Linder when he states (2012) that the sharing of political powers and the political inclusion of the Catholic Conservatives into the liberal state were the basis for the permanent settlement of the conflicts between denominations in the country.

4.3   Stability by a Dual Structure—The Canton of Zurich as an Example

The Federal Constitution dedicates, as noted, only two articles to religion policy: art. 15 to freedom of religion and conscience and art. 72 to the relations between church and state. This means that we cannot speak of the federal government being an actor in Swiss religion policy. This is due to the federal structure of the Constitution, which grants competence for the relation between church and state to the cantons instead (as per art. 72).

Most cantons regulate the relationship between church and state by granting a church official recognition as a *Landeskirche* with the status of a corporate body in public law (see Table 1). For instance, the Catholic Church was recognized as a *Landeskirche* in the Reformed Canton of Zurich as late as 1963. In addition, the cantons of Aargau, Appenzell Innerrhoden, Baselland, Bern, Glarus, Jura, Nidwalden, Obwalden, Schaffhausen, Tessin, Wallis, and Zurich all offer other religious communities the chance to be recognized as *Landeskirche*. In Zurich, the two Jewish communities *Israelitische Cultusgemeinde* (ICZ) and *Jüdische Liberale Gemeinde* (JLG) have made use of this opportunity.

All religious communities that do not have this kind of public recognition—such as Buddhist, Christian Evangelical, Hindu, or Muslim organizations—are subordinated instead to Swiss private law. This means they either have the status of an association or of a foundation.

As described above, all cantons hold competence for religion policy. Art. 130 of the *Zürcher Kantonsverfassung* (Cantonal Constitution of Zurich) states that the canton recognizes the following religious communities as autonomous corporate bodies in public law and, thus, as *Landeskirchen*: the Catholic Church, the Christian Catholic Church, and the Reformed Church. Within cantonal law, they act autonomously and on their own behalf (Zürcher Kantonsverfassung art. 130 para. 1 lit. a ff.). This means that they have the right to hold internal elections concerning their own affairs and in accordance with the democratic principles of

Table 1: The Recognition of Churches as Corporate Bodies in Public Law on the Cantonal Level

	Catholic	Christian Catholic	Jewish	Reformed
Aargau	X	X		X
Appenzell Ausserrhoden	X			X
Appenzell Innerrhoden	X			X
Basel-Land	X	X		X
Basel-Stadt	X	X	X	X
Bern	X	X	X	X
Fribourg	X		X	X
Geneva				
Glarus	X			X
Graubünden	X			X
Jura	X			X
Luzern	X	X		X
Neuenburg				
Nidwalden	X			X
Obwalden	X			X
Schaffhausen	X	X		X
Schwyz	X			X
Solothurn	X	X		X
St. Gallen	X	X	X	X
Tessin	X			X
Thurgau	X			X
Uri	X			X
Waadt	X			X
Zug	X			X
Zurich	X	X		X

Source: Authors' own compilation.

the constitutional state, which are laid down in a decree subordinated to the mandatory referendum (Zürcher Kantonsverfassung art. 130 a). Moreover, they have the right to levy taxes (Zürcher Kantonsverfassung art. 130 para. 3 lit. b).

These articles from the cantonal constitutions establish precise rules for the relationship between church and state on the cantonal level. The Canton of Zurich registers the members of the recognized churches in order to obtain a basis for administrative assistance, which is provided by the canton and the municipalities to these churches. Some examples are the distribution of church taxes or of pastoral positions. On the other hand, the recognized churches enjoy the right to levy taxes. Not only their members but in fact all legal persons resident in the Canton of Zurich have to pay church taxes. This even applies to those citizens

who are not members of any recognized *Landeskirche*, since the Canton of Zurich finances all *Landeskirchen* in part with their taxes. In addition, the canton supervises all church bodies (Zürcher Kantonsverfassung art. 130 lit. D. 5). Taken to an extreme, we could say that the Canton of Zurich mostly steers religion policy by tax policy.

In order to accurately assess the importance of the Catholic Church's recognition as a *Landeskirche* in the Canton of Zurich, we have to consider that it practically disappeared from the public sphere there after the Reformation. Only some 300 years after the Reformation would the first public Catholic mass be celebrated in Switzerland. In 1863 the cantonal parliament of Zurich passed the first legal bases concerning the running of the Catholic Church. But the definitive legal order establishing the dual structure of church and state was only created in 1963, as done by the canton's legislative body. On the one hand, they recognized the Catholic Church as a corporate body in public law and, on the other, the body's and the synod council's representatives entitlement to vote (which was then called *Zentralkommission*, "central commission") given that they are parts of the body. In 1983 this structure was further enforced by creating a legislative synod organ for the church on the cantonal level. In addition, a religious community that applies for recognition as a *Landeskirche* has to conform to the following democratic, organizational forms of the constitutional state, and to guarantee their upholding:

− a vote on the amount of the church tax

− election of the clergy

− passing and approval of the budget

− an active franchise for the election of ecclesiastical authorities (KiG 2007: 2A§5).

These principles correspond to the right to participation in direct democracy as guaranteed by the Swiss constitution. Although *Landeskirchen* are autonomous by principle, this only applies within the framework of cantonal law. By contrast, their organizational structure has to be established while still observing the democratic principles of the constitutional state (KiG 2007: 2A§5). This means that the cantonal council supervises the cantonal church bodies and that it takes note of their annual budgets (KiG 2007: 2A§5). To summarize, the state—or rather the canton—has overall responsibility for the supervision of the churches, also of the Catholic Church.

Table 2:   The Catholic Church's Structure in the Canton of Zurich

Church Bodies (Designation)	Church Bodies (Explanation)		Church Bodies in Public Law (Designation)	Church Bodies in Public Law (Explanation)
The Swiss Bishops Conference	6 dioceses 2 autonomous abbeys	Switzer-land	The Central Catholic Conference	Federation of all Cantonal Churches in Switzerland
Bishop	1 auxiliary bishop 4 vicar-generals chapters The Bishops Council The Priests Council Diocesan Council for Pastoral Care	Diocese of Chur	Biberbrugg Conference	Representatives of the Cantonal Churches in the Diocese of Chur (Glarus, Graubünden, Nidwalden, Obwalden, Schwyz, Uri, Zurich)
Vicar-general	Vicariate-general Chapter for Pastoral Care Cantonal Council for Pastoral Care	Canton of Zurich	Catholic body of public law	Cantonal Church of Zurich with the following bodies: Synod (legislative) Synod Council (executive) Appeals Committee (judiciary)
Priest	Vicar Congregation Chair Pastoral Assistent Staff for Pastoral Care Parish Council Council Foundation for the Congregation Church	Congregation	Church congregation	Church congregation in a city or region with the following bodies: church congregation parliament (legislative) church board (executive) audit committee (judiciary)

Source: Authors' compilation

The *Landeskirchen* have to observe the *Kantonsverfassung* not only in its vertical dimension but also in its horizontal one, by their bodies of public law. By creating the dual structure of church and state bodies of public law, the Swiss state interfered in the Catholic Church's organization. In practice, this means that

the synod or the synod council as church bodies of public law are not subordinated to the Holy See, but rather to the *Kantonsverfassung*.

In 2010 a reform of the *Kirchengesetz* (Law on the Church) required the establishment of an appeals committee. Since then, the synod has represented the legislative power, the synod council the executive power, and the appeals committee the judiciary power—so that the Swiss state's democratic structure is now represented on the cantonal level vis–à–vis the Catholic Church. All *Landeskirche* members holding the right to vote can be elected to these bodies of public law according to democratic principles. In addition to these opportunities, all citizens can influence religion policy by using elements from direct democracy such as a referendum. This means that the Swiss state legitimizes its activities in religion policy not only through the dual structure and constitution in place, but above all, through the presence of its main organ—the citizen entitled to vote.

4.4   Future Challenges

Today, the established relationship between church and state in Switzerland is challenged in many ways, and above all, by a changing demography. An ever-growing number of Muslim citizens raises the question of how the members of this religion can be integrated into the legal structures of Swiss public law. Since parties from the right like to defame these citizens as scapegoats for social ills, this question is extremely topical. Islam is thus demonized, and fears of losing one's identity are compensated for by initiating campaigns against this alleged Muslim threat. An example is the newly introduced and alarming art. 72 para. 3 of the Federal Constitution, which prohibits minarets. It can be doubted whether this article even holds up in international law. In any case, it should raise concerns that its initiators—above all the right-wing, populist *Schweizerische Volkspartei* (SVP)—interpret the changing of the Swiss population's demographic as indicative of a deeper conflict in society. The protests raised by the Muslim population in Switzerland were accordingly taken as proof of an alleged threat to the Christian faith.

What is actually happening, though, is rather a shifting of conflict cleavages: while some decades ago intra-Christian conflicts between Catholics and Protestants mainly afflicted Switzerland, today we witness instead the artificial escalation of the notion of a conflict between religions—that is, between Christianity and Islam. Independent of this development, the Muslim umbrella organization *Föderation der Islamischen Dachorganisationen in der Schweiz* (FIDS) commissioned in spring 2014 an expert investigation of whether Islam could officially be recognized as a *Landeskirche* in the Canton of Basel. Apart from the require-

ments laid down in constitutional law and that apply to all *Landeskirchen*, in the case of a positive result the article on minarets would have to be negotiated anew or discarded altogether. Thus, the result of a democratic referendum—the one on the article about minarets—contrasts with this Muslim organization's application to become a *Landeskirche* according to Swiss law. We have no doubts that this will lead to severe conflicts and disputes, and that the legal basis of coexistence in Swiss society will have to be defined in new ways.

Another challenge that will have to be faced is the need to soon reflect on a new definition of the *Landeskirchen's* status in public law, since a growing percentage of Swiss citizens are either leaving the churches or do not belong to a religious community at all. Demographic changes are further contributing to this shift in religious affiliations: most ecclesiastical authorities are overaged, although no figures for this currently exist that comply with academic standards. The reason for this is that most church congregations do not conduct any surveys among their authorities. This clearly represents a lack of knowledge, since both surveys and their evaluation would give a detailed picture of a church's situation. Probably, such initiatives have not yet been undertaken because many politicians in Swiss municipalities and cities began and conclude their political career as members of an ecclesiastical authority. This entanglement does not allow them to take a neutral stance, one that would encourage them to indulge in self-criticism. As background information, it should be noted all political offices in the country's municipalities and cities (apart from in the large ones of Basel, Bern, Geneva, Lausanne, and Zurich) are honorary. Only political offices above that of senior civil servant are paid a salary. A further challenge henceforth will be to reflect on the legitimacy of all legal persons being obliged to pay church taxes for legal persons, since only recognized *Landeskirchen* benefit from this money.

Another future challenge to be faced is the Catholic Church's current stance on the Swiss constitutional structures, which it clearly mistrust. For instance, when the 50th anniversary of the Catholic Church's recognition as a *Landeskirche* were celebrated in June 2013, the Bishop of Chur (to whose diocese Zurich belongs) stated that he was not pleased with the celebrations since the existing ecclesiastical law system contradicted the church's core structural nature (Mente 2006). Martin Graf, the senior civil servant of Zurich, answered this with the sharp criticism that apparently the protected worlds of Chur and Rome had remained stuck in the Middle Ages. He declared that he did not understand why Chur's church hierarchy could not perceive the benefits of the current ecclesiastical law system, as their predecessors had done in 1963. The government of the Canton of Zurich, in its role as an executive body, stated that it stood up for the existing structure in constitutional law within the framework of the neutrality

of the state, since it had brought religious peace to the country (Kanton Zürich, Medienkonferenz 2013). Bishop Vitus Huonder rejected this, however, as an "attack against freedom of religion" (Mente 2006).

4.5   Conclusion

If we observe the historical development of churches in Switzerland, we come to the realization that religious peace between them developed out of several armed conflicts and civil wars. Swiss society was deeply divided according to denomination up until the 1970s. This situation would only change with the introduction of nonpartisan structures in public law. The *Landeskirchen's* subordination to the Swiss constitution gives opportunities to participate in direct democracy. These elements are central pillars of Swiss consensus democracy, which has until now facilitated the peaceful coexistence of different ethnic and religious groups within the country's population. If consensus democracy was abolished, the power balance would only shift to the benefit of one single party—but certainly not to that of all groups. The Bishop of Chur and the Holy See have a hard time understanding this, since they value Roman Catholic canon law higher than the Swiss Federal Constitution. An implementation of their scale of values would only lead to undemocratic behavior and decisions though. In addition, this would create a dangerous precedent for other religious communities in Switzerland and thus jeopardize the peace between denominations there—a tolerance that had been so hard to attain prior to 1848.

4.6   Bibliography

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