

The Social, Cultural and Legal Conditions for the Foundation of Religious Orders and Congregations in Germany

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Freedom of assembly is a relatively recent fundamental right.¹ For the longest period of history, the founding of religious institutions as well as their organisation, both internal and external, and their membership were subjected to strict controls by both church and state authorities. This greatly limited the religious communities' scope for movement and development. Periods in which they were given greater rights of self-determination gave way to periods in which they were gagged or even suppressed. We will focus on a number of such periods in the course of the last two hundred years.

The Situation after Secularisation

The *Reichsdeputationshauptschluss* of 25 February 1803² marked the end of the old *Reichskirche*. In §35 the dissolution of monasteries, abbeys and convents was allowed in order to compensate the nobles whose properties on the left bank of the Rhine had been ceded to Napoleonic France. The secularisation of convents for women was also allowed by §42, although only with the agreement of the diocesan bishop. §42 also laid down that rulers could do what they liked with the unconsolidated monasteries for men, that is, they could either dissolve them or allow them to continue. However, the continuing existence of religious houses was hindered by §42, which laid down that novices could only be admitted if the new owners of the religious houses agreed.

1 Cf. Tillmann, *Staat und Vereinigungsfreiheit im 19. Jahrhundert*.

2 Extracts of the text are printed in Huber and Huber, eds., *Staat und Kirche im 19. und 20. Jahrhundert*, I, 18-19. A bibliography on secularisation is available on the internet: <http://www.uni-stuttgart.de/hi/lg/projekte/projekte_einzelprojekt/Pfaffengold/Literatur/Saklit.html> (27/04/2004).

Even in the years before the *Reichsdeputationshauptschluss* and immediately following its promulgation, most religious houses in the old *Reich* were dissolved. An exception was made for some convents of women religious who were regarded as indispensable for the education of girls, and also for the majority of houses belonging to the mendicant orders. Within two decades the structure of the *Reichskirche* was destroyed and only remnants of the orders in Germany continued to exist.

Surviving under the Conditions of a State Church

Since the end of the Holy Roman Empire came very soon after the *Reichsdeputationshauptschluss*, the legal situation of the Catholic Church changed significantly in the first decade of the 19th century. Each sovereign was responsible for regulating the territory under his rule. This localisation had an effect on the circumstances of religious communities. The regulations introduced in the individual states largely reflected the *Allgemeines Landrecht*³ that was in force in Prussia by 1794. This meant that “tolerance for the different confessions was ensured. The prerogatives of the dominant confession, which were maintained at first, increasingly disappeared in favour of legal parity for the State Churches, which remained limited to the three main Churches”.⁴ However, the reverse side of confessional tolerance was the concept of a state church informed by the spirit of the Enlightenment. “The fundamental tenet of that theory was that the comprehensive authority of the State Church is based on the sovereignty of the absolute ruler of the State, so that the Church is no more than a dependent state institution”.⁵ In accordance with this approach, the legal framework gave the State extensive rights to intervene in the internal and external affairs of religious communities. So the first half of the 19th century is marked by “the opposition of the Church to state control with its persistent intrusion in the internal life of the Church and its right to self-determination”.⁶ A few examples can explicate how this was done in practice.

3 The text can be found in Hattenhauer and Bernert, eds., *Allgemeines Landrecht*.

4 Strätz, “Die Säkularisation”, 58.

5 *Ibid.*, 59.

6 Herr, “Die Säkularisation und ihre Folgen”, 383.

Prussia

In 1794 a general legal code (*Allgemeines Landrecht für die preussischen Staaten*) was published that has been described as the “most important and most comprehensive legal framework” of all the German territories.⁷ Formulated “on the basis of Protestant ecclesiastical law and eighteenth-century teaching on natural law”, it contained 1232 paragraphs dealing with religious communities.⁸ According to the fundamental principle of tolerance and confessional parity, the three confessions - Lutheran, Calvinist and Catholic - were recognised and enjoyed certain privileges. However, in return the State demanded sovereign rights over the Churches in all their external affairs (*ius circa sacra*).

Almost three hundred paragraphs in section 12 of Part ii, Chapter X1 deal with religious communities, which are defined as follows in §939: “Abbeys, convents and orders are understood as those religious communities whose members are mainly concerned with religious practices other than the pastorate”.⁹ The regulations place a central significance on approval by the State. Although religious communities were in general subject to the control of the Bishop, it was necessary to obtain prior State agreement in the case of an exemption (§942). The Statutes had to be confirmed by the State (§947). Put briefly: “In general the State possesses the same rights over them as over Church societies”. (§949) When superiors were elected “the *Landesherr* (sovereign) is entitled to direct the elections by appointing commissioners” (§982). Before the election of the religious superiors could be confirmed, it was necessary to obtain the permission of the *Landesherr* (§ 1009), who could also object to the candidate and enforce a new election (§1011). The “Principles of the Territorial System”¹⁰ become evident in the limitations imposed upon foreign higher superiors: once they had made an appointment, “the approbation of the State has to be obtained before the chosen subject can be confirmed and accept the office” (§1062). “Visitations of local convents may not be undertaken by foreign superiors of the Order without the express permission of the State” (§1063). The State’s duties to care for its citizens was all-embracing. “No subject of the King, whether male or female, may be accepted into a convent without the prior knowledge and permission of the State” (§1161). The lowest age limit for taking vows was 21 years for women,

7 Huber and Huber, eds., *Staat und Kirche*, I, 1.

8 Landau, “Das Kirchenrecht”, 146.

9 This and the following quotations are taken from Hattenhauer and Bernert, eds., *Allgemeines Landrecht*.

10 Landau, “Das Kirchenrecht”, 148.

and 25 years for men (§1162). What seem like restrictive regulations on the taking of vows and the ownership of property in religious life actually highlight a very modern aspect, namely respect for the rights of the individual member. The right claimed by the State to supervise religious communities and their members laid far greater emphasis on the individual than did the internal laws of those communities, or the Canon Law which regulated them, and it also took possible conflicts into account.

The significance of the *Allgemeines Landrecht* is to be found in the fact that the church law it codified "only finally lost its legal validity - with the exception of some marginal aspects - with the Weimar Constitution of 1919".¹¹ The *Allgemeines Landrecht* was valid until 1918 in the original Prussian territories, as well as in the Catholic province of Westphalia and in some parts of the Rhineland on the right bank of the Rhine.¹² So its effects were felt on admissions to religious communities in the 19th century.

The emphasis on the good of the State promoted the secularisation enforced in Prussia in 1810. King Friedrich Wilhelm III wanted to pay off the debts of the State, as well as create pensions for monks and nuns, and provide endowments for parishes, schools and charitable institutions. He argued as follows: "In this matter we have not merely had the example of almost all States and the general *Zeitgeist* in mind, but we are also convinced that we are acting far more in accordance with justice when we use those goods according to the above-mentioned conditions to save the State than if we were to draw more strongly from the fortunes of our loyal subjects for this purpose".¹³ From 1817 the responsibility for the Churches in Prussia lay with the "Ministry of Culture and Medical Matters". A subsection was responsible for church life. This Ministry - which, in the words of Altenstein (1770-1840), the Prussian Minister of Culture, was responsible for the correct care of the Evangelical Church ("with love") and the Catholic Church ("out of duty") - first of all carried out the belated secularisation of the religious houses that had not yet been closed in Hessen-Darmstadt, in the former Electorate of Cologne, and in Westphalia. Between 1816-1834 most of the houses of the mendicant orders in Westphalia were closed, leaving only five Franciscan convents¹⁴, which were forbidden to accept new members. Nevertheless, according to the provisions of the *Allge-*

11 Ibid., 150.

12 Cf. Huber and Huber, eds., *Staat und Kirche*, I, 2, Anm. 1.

13 Edict on the finances of the state and the new arrangements for levies etc., of 27 October 1810, quoted from Fleckenstein, "Neubeginn oder Restauration?", 34.

14 Cf. Häger, *Klöster nach dem Kulturkampf*, 56.

meines Landrecht, the existence of convents and religious communities in Prussia was possible in principle.

Bavaria

In Bavaria the secularisation of religious houses took place more rapidly and radically than in any other of the German *Länder* (Principalities). The situation of religious communities was determined by the Concordat with the Holy See of 5 June 1817. With regard to religious communities it stated: "Article VII. In view of the benefits already given by the religious orders to the Church and the State and which they could still bring in the future, and to prove the goodwill of your sovereign towards the Holy See, His Royal Majesty will, following consultation with the Holy See, allow the restoration of some convents of religious orders for both sexes, either for the instruction of young people in religion and the sciences, or to assist in the pastorate, or to nurse the sick, and will provide suitable endowments for them".¹⁵

Under the first Bavarian King, Max Joseph, the government did not meet this obligation. In 1825 Ludwig I came to the throne. During his studies in Landshut he had got to know Johann Michael Sailer, and had been given "essential directives both for his understanding of the State as well as his personal piety".¹⁶ Ludwig's main interest was in the Middle Ages, so in this regard he had affinities with the Romantics. The revival of the religious houses met with difficulties, because the ancient estates were occupied by new owners. However, the King wanted to promote the Benedictine way of life at all costs; a decree by the Ministry of the Interior of 20 November 1836 offers a reason for this that owes much to the Romantic Movement: "The Benedictine Order has been called upon by His Majesty the King to set to work once again, because of the often-repeated conviction that this Order, which has contributed so greatly to Germany civilisation and to which political tendencies are so foreign, will meet the wishes and needs of His Majesty's loyal subjects in an exemplary way".¹⁷

In 1830 Metten was the first religious house to be occupied; by opening a *Gymnasium* (grammar school) in 1837 its future, which had been endangered from the beginning by its very small endowment, was secured. It was

15 Huber and Huber, eds., *Staat und Kirche*, I, 174.

16 Holzfurtner, "Katholische Restauration", 132.

17 Huber and Huber, eds., *Staat und Kirche*, I, 471-472.

followed in 1834 by St Stephan in Augsburg, from which Ottobeuren was again occupied. Scheyern, the ancient Wittelsbach family seat, was purchased by the King in 1837 and received monks from Metten in 1838. Ludwig continued this work of revival at Weltenburg, which was at first also subject to Metten, as well as at St Boniface in Munich, for which the King personally had built the convent buildings and the church. This work was completed by the revival of the Benedictine monasteries of St Walburg in Eichstätt (1835) and Frauenchiemsee (1837), and the Cistercian monasteries of Seligenthal near Landshut and Oberschönenfeld. The way these houses were revived still affects the conditions of ownership today. "To the extent that the monasteries were in private ownership, they were normally transferred to the ownership of a restored monastery. However, the State usually kept the buildings and grounds that were in its possession. For example, the entire grounds of Ottobeuren, with the exception of the farm building, is still state-owned; however, the monks do not need to pay rent for the use of the buildings".¹⁸

King Ludwig I did not promote the Benedictines only. During his reign those "orders and congregations for men that had existed before secularisation were re-established".¹⁹ In addition to convents for Benedictine and Cistercian nuns and Loreto Sisters, "twenty-six individual convents or congregations were revived or newly established which were almost exclusively engaged in the tasks of education and nursing".²⁰ So the circumstances of the religious communities in Bavaria in the second third of the 19th century differed essentially from those in other German states. The principle of a state church was not departed from in any way. Yet a King who was a friend and promoter of religious communities made it possible for them to develop in a way that was impossible in any other part of Germany before 1848.

Württemberg

This becomes evident when we look at the south-western part of Germany, where the restrictions of the principle of a State Church could be enforced more fully than anywhere else. Württemberg became a Kingdom in 1806 and immediately set up a "Religious Council" for the Catholic Church which had two lay and one clerical councillor. This was re-named the "Catholic Church Council" in 1816 and had two lay and two clerical councillors. It had to care for

18 Renner, "Die Restauration des Benediktiner- und Zisterzienserordens", 742.

19 Rummel, "Die nichtmonastischen Ordensgenossenschaften", 763.

20 Ibid., 798-799.

everything relating to the Church.²¹ At first there was no room in this system for religious communities. A few religious houses served as central and doomed convents for the monks and nuns that were not cared for in any way. Württemberg's critical attitude to religious communities found expression in a legal framework drawn up in 1816 by Bendikt Maria Werkmeister (1745-1823), a Church councillor and former Benedictine monk from Neresheim, who attempted to lay down the following: "The Bishop may dissolve religious vows with the prior knowledge of the State" (§VI, Art. 14). "No religious house for monks, least of all for Jesuits, may be introduced" (§X).²²

However, in the event no express ban on religious houses or communities was pronounced, but in the Constitution of 25 September 1819 no mention was made of them either. In §72 the King was given "sovereign rights to protect and monitor" the churches as a whole. At the Ninth Meeting of the Frankfurt Assembly (3 April 1818), which deliberated on an agreement between the various states of south-western Germany on practical questions relating to their dealings with the churches, the bishops were granted the right to return secular and regular clergy to the lay state. The governments agreed "that none of them would be obliged to preserve, restore or erect religious houses, and in particular, that no Jesuits would be granted admission".²³ These provisions - with the exception of the clause relating to the Jesuits - were taken up into the "Principles of Agreement regulating the relationship of the Catholic Church with the German Confederation" (30 April 1818), and were qualified by a ban on the exemption of persons or associations. In the following decades, religious houses played no role in Württemberg, because the "placet" that had to be obtained from Rome had first to be sanctioned by the State and such a concession was not granted by the administration of Württemberg. The extent to which the structures of the State Church had become a mind set in the space of a few years is shown by the first attempt to introduce the Sisters of Mercy in Württemberg. The applications were presented quite naturally both to the Chancery and the State Church Council - and were rejected. It was only after the 1848 Revolution, with the introduction of the right to freedom of assembly, that the foundation of new congregations became possible in Württemberg.

21 Cf. Lobmiller, *Der Staat und das katholische Ordenswesen*, 10-12.

22 Ibid., 19-20.

23 Ibid., 45-46.

New Opportunities Following the 1848-1849 Revolution

The incentive for founding Church associations came from without. The successes of large-scale Catholic organisations in Ireland (Daniel O'Connell's "Catholic Association"), France, Belgium and the Netherlands had an effect also on Germany. When Archbishop Droste-Vischering of Cologne was arrested in 1837 in the wake of the controversy over mixed marriages, the publication of Joseph Goerres' "Athanasius" gave rise to a revolt against the principle of a State Church. The freedom of Catholics in a Protestant State was at stake. The aim was emancipation, which had to find expression in the creation of suitable structures.

As early as the 1840s, charitable associations were started, as well as missionary and educational bodies. The disturbances of March 1848 opened the way for the large-scale foundation of church associations, such as the "Pius Association" which aimed in particular for religious freedom. They spread rapidly and fifty such associations were started in Württemberg, 120 in Westphalia, 140 in Silesia. Nineteen were founded in Cologne parishes.

This renewed religious motivation of Catholics went hand in hand with social changes. In what later became the German *Reich*, a legal framework was created in the first third of the 19th century which made industrialisation possible. The introduction of the right to start an enterprise (*Gewerbefreiheit*) (1810/11-1845) increased competition and led to an extension of working hours and an increase in the employment of women and children. Free competition was fostered by the foundation of the German *Zollverein* in 1833, which united 23 million people in a unified customs and trading zone. The chief catalyst for industrialisation was the building of railways and the use of steam engines made it possible to mechanise the work process increasingly. However, the worker had to bear the consequences. The working hours of children under nine years of age were limited in Prussia to no more than ten hours only from 1839. These circumstances led to the organisation of mainly young women and girls into more definite structures.²⁴ Their motivation, as Relinde Meiwes has discovered in the Aachen foundation of Clara Fey, was "not just their religious orientation, but also the experience of increasing impoverishment".²⁵

24 In Prussia alone seven congregations were founded between 1841-1848, and fifteen between 1849 and 1863. Cf. Meiwes, "Arbeiterinnen des Herrn", 76.

25 *Ibid.*, 50.

After the accession of the romantically minded King Friedrich Wilhelm IV (1840), who was friendly towards the Catholic Church, it became possible to create organisations like church associations, and these became the first step towards the formation of religious communities. The accession of King Friedrich Wilhelm IV marked a change in attitude on the part of the Prussian government to the Catholic Church. He made contact between the bishops and Rome possible. In 1841 a special section for Catholic cults was set up in the Ministry of Culture.²⁶ The orders profited from the new orientation in Prussian church politics and in 1843 they were allowed to accept novices again. In 1848 a Franciscan religious house was opened in Werl, which the Capuchins had left in 1835.²⁷

However, the opportunity to safeguard these changes constitutionally only arose following the 1848 Revolution. After the March uprisings the King of Prussia agreed that a Constitution should be drawn up. As early as May 1848 delegates were elected in Berlin and Frankfurt for the Constitutional National Assemblies. The bishops, priests and laypeople elected to these Assemblies took as their goal the ending of the restrictions of the State Church. The aim of the Catholic Club in the Frankfurt National Assembly was “the abolition of the State ‘placet’ for Church decrees, the abandonment of State influence on elections for ecclesiastical office and in particular the election of bishops, the abolition of the State right of patronage from the time of secularisation, the return of free contact *ab abusu* between the bishops and the Papacy, and - the most important demand of the religious orders and congregations - the specific guarantee of the right of association for all religious corporations”.²⁸ A special language regulation in the Prussian *Allgemeines Landrecht* made it possible for religious communities to find a solution: By “religious societies” was meant not merely the various confessions, but also regularly established associations existing within a particular confession. So all the demands of the confessions could also be applied to religious communities and orders.

At the Frankfurt National Assembly the question of religious communities was raised on 24 August 1848. Despite a drive by the Catholic delegates, Article III, §12 of the Fundamental Constitution (in the final version of 28 March 1849 this is §145) kept the following formulation: “Each German citizen can practice his religion in public and in private without limitation. Crimes and offences

26 Cf. Häger, *Klöster nach dem Kulturkampf*, 61.

27 *Ibid.*, 57.

28 Murphy, *Der Wiederaufbau der Gesellschaft Jesu*, 41-42.

committed in the exercise of this freedom are punishable by law".²⁹ Under the leadership of August Reichensperger, the Catholics aimed at the abolition of any laws of exclusion. So they also objected to an additional clause which banished "the orders of the Jesuits, Liguorians and Redemptorists permanently from the territories of the German Reich".³⁰ Although Reichensperger and General von Radowitz initially wanted to exclude the admission of the Jesuits on tactical grounds, they opposed "the infringement of any religious community's general freedom of religion and association by constitutional exclusion".³¹

A good month later, on 6 October 1848, the Mainz *Katholikentag* discussed the Frankfurt debate. It addressed a warning to the National Assembly about its attitude to religious communities as an example of how badly informed the politicians were on conditions within the Church. They had not noticed that the "Liguorians" and the "Redemptorists" were one and the same community. It is worthy of note that the *Katholikentag* took the treatment of religious communities as a test case for freedom and tolerance, and condemned attitudes that were subject to a clear verdict within the Church at that time: "The question is not whether it is in the interests of the Church to summon specific religious associations to this or that region or place, but concerns the unilateral exclusion of existing bodies, which have been approved by the Church, from rights granted without limitation to all, even the most deprived. (...) We are reassured only by the hope that the august Assembly in its second ballot on this matter will completely omit this exception, which is totally in conflict with the spirit of genuine freedom and tolerance, and will create for itself and the Catholic Church an amendment in keeping with the great dignity of both".³²

The first meeting of German bishops from 22 October to 16 November 1848 in Würzburg also spoke in favour of the re-admission of religious communities. They should be able to enjoy the newly won freedom of association. In addition, the Redemptorists and Jesuits were seen as the main protagonists of missions among the people, although the bishops did not formulate a separate resolution on this subject. However, the bishops broadly interpreted the field of activity of the religious communities: "The many and varied forms

29 Huber and Huber, eds., *Staat und Kirche*, II, 33; cf. also Pastor, ed., *August Reichensperger*, 255-256.

30 Pastor, *August Reichensperger*, 256.

31 August Reichensperger in *Kölnische Volkszeitung*, 29. Dezember 1893, quoted from Pastor, ed., *August Reichensperger*, 257, Anm. 1.

32 Huber and Huber, eds., *Staat und Kirche*, II, 14.

of spiritual associations for men and women that have appeared throughout the centuries are one of the signs of the flourishing life of the Catholic Church and are closely united with the essence of its cult. With the agreement of their spiritual shepherds, they have united through vows or pious promises, so that by means of increased striving for Christian perfection, and under certain norms and rules proper to their association and activity, they may serve all the spiritual and physical works of mercy in teaching, care of the poor and sick, etc. At the same time their actions and activities are accompanied by serving God through prayer, meditation and self-abnegating obedience. The Archbishops and Bishops at their gathering demand the same measure of freedom and association for such associations that are granted by the Constitution of the State to all its citizens".³³

During the discussions on the role of the Church in general and the religious communities in particular, various opinions were aired. On the one hand, a new self-awareness of their Catholic identity became evident, which was no longer ready to accept any restriction on church activities. On the other hand, "a new spiritual movement independent of the Churches and confessions had begun to form, which was informed by a liberal middle-class mentality, and which did not think much of the Churches or the confessions, because their attitude no longer seemed to be in line with modern, scientific thinking. This new movement, in contrast to the Churches, offered extremely sceptical arguments. In the political field the new movement, which often had anti-clerical features, wanted to organise society so as to be independent of the Churches and completely free from any form of religious confession".³⁴ This trend was still unable to call upon a majority for the debate in the Frankfurt "Paulskirche". However, twenty-five years later, after the foundation of the Reich, its representatives were able to start a new, and this time successful, attempt to win the day.

In the fundamental rights, which were proclaimed on 27 December 1848 by the National Assembly, and which were incorporated into the Constitution of the Reich on 28 March 1849, none of the restrictions on church associations and societies was mentioned. The constitutional documents of the confederate states also adopted this approach. Within a few years the religious communities again set to work. The Jesuits, Lazarists and Redemptorists conducted missions for the general public, above all in the Rhineland. Congregations for women were also able to receive recognition from the

33 Collectio Lacensis V 1122a, quoted from Murphy, *Der Wiederaufbau der Gesellschaft Jesu*, 45.
34 Ribhegge, "Staat und Kirche", 175.

bishops and the State. Otto Pfülf describes this process in relation to the foundation established by Franziska Schervier in Aachen: "In the same year (1851, JS) on 2 July, the Archbishop confirmed 'the pious charitable society of virgins in the city of Aachen, renowned under the name of the Poor Sisters of St Francis, which has already grown to 30 members, and intends to put into practise the works of mercy'. The decree of the Archbishop called this society one of the 'flowers of re-awakened Church life' and praised the wonderful activities these virgins had developed since 4 October 1845. In the open hospital in Aachen they had charge of the housekeeping; in most of the parishes of this city they serve a kitchen for the poor and the sick; in Jülich they have served in the hospital for the frail elderly since June 1850; during the cholera epidemic they also nursed in other towns. Calls are being made from all sides for foundations of these Sisters. Now they have become a proper religious congregation; on 12 August 1851 they celebrated the first clothing ceremony and in the following year they opened their novitiate. When the King granted corporate rights to the young society on 16 September 1853, they had already spread widely".³⁵

Nevertheless, despite the hopeful signs of development within religious communities, a new source of annoyance was already evident.³⁶ On 25 February 1851, the Prussian *Oberpräsident* was asked to grant citizenship only very reluctantly to "foreign" missionary preachers. The changed administrative practice was introduced a year later through a number of decrees, which were named the "Raumer Decrees" after their main initiator, the Prussian Minister for Culture, von Raumer. In the first decree of 22 May 1852, the *Oberpräsident* was called upon to carefully monitor the activities of foreign clergy, or such who had studied outside Germany and been ordained.³⁷ The second decree of the same date was designed to make the police aware of possible disturbances of public order during popular missions; in Catholic parishes situated in purely Protestant regions, no popular mission could take place.³⁸ On 16 July 1852, in response to an actual application, attendance at the *Germanicum* and other theological educational institutions led by the Jesuits was forbidden. The administrative authorities were asked not to approve of foundations made by former students of such institutions in Prussia.³⁹ Protests by the Catholic party in the Prussian parliament led to a more moderate inter-

35 Pfülf, *Cardinal von Geissel*, 46.

36 Cf. Murphy, *Der Wiederaufbau*, 128-145.

37 Huber and Huber, eds., *Staat und Kirche*, II, 70-71.

38 *Ibid.*, 71-72.

39 *Ibid.*, 72.

pretation and from 1858 the “Raumer Decrees” were no longer enforced. So F. Schuppe was able to come to the following judgement in 1868: “In Prussia the secular authorities are not allowed to intervene in the internal affairs of these associations, nor may any force be applied to the observation of the vows. On the basis of the Constitution these societies can form and establish foundations anywhere without any permission. The constitutional provisions with regard to dowries, the acceptance of people into the religious life, etc. are not enforced. However, the actions of the superiors with regard to property and possessions are always subject to the approval of the Bishop, in the same way as for all religious institutions, with the exception of certain unimportant current transactions”.⁴⁰

The Kulturkampf as a Turning Point

After a relatively brief period in which religious communities were able to develop freely, there followed a period of restrictions. The catalyst was the tensions caused by the results of the First Vatican Council. The steps taken within the Church with regard to the professors who had joined the Old Catholic Church, in particular those from the Bonn Theological Faculty, caused Chancellor Otto von Bismarck to change his politics. With a view to separating church and state, he dissolved the Catholic section in the Prussian Ministry of Culture on 8 July 1871. Following the call of the parliamentarian and doctor Rudolf Virchow, who described the controversies with the Catholic Church as a *Kulturkampf* (a fight for German culture or civilisation), the governments of Prussia and the Reich issued a series of restrictive laws between 1871 and 1875 which also affected religious communities.

The first step was to secularise the schools, in particular the teaching in primary schools. A decree by the Minister of Culture, Falk, on 15 June 1872, laid down “that members of a religious congregation or a religious order shall in future not be admitted or confirmed as teachers in government primary schools”.⁴¹ As a result, about a thousand members of religious communities, mostly teaching sisters, lost their jobs. Although it was possible that the decree could not be reconciled with Article 4 of the Prussian Constitution, the motion of the Centre Party in Parliament was not dealt with. In line with the decree of 15 June 1872, which severely limited the school situation in the

40 Schuppe, *Das Wesen und die Rechtsverhältnisse der neueren religiösen Frauengenossenschaften*, 135-136, quoted from Meiwes, “*Arbeiterinnen des Herrn*”, 70-71.

41 Quoted from Huber and Huber, eds., *Staat und Kirche*, II, 544.

country, a further decree of 4 July 1872 forbade the formation of religious associations for school children at grammar schools and similar higher education institutions.

Finally, steps were taken against the Jesuits. On 4 July 1872 a law (*Reichsgesetz*) was passed which banished the "Order of the Society of Jesus and related orders or congregations similar to the Society" (§1) from the German Reich within six months. The members could be expelled, or, if they were German citizens, they could be sent to stay at a defined location. An administrative regulation of 5 July 1872 "forbade members of the Order from carrying out religious activity in churches and schools, or conducting missions, and set the time in which houses of the Order were to be dissolved at six months".⁴² Barely a year later it was decided that besides the Jesuits, the Redemptorists and Lazarists, the Congregation of Priests of the Holy Spirit and the Society of the Sacred Heart of Jesus also fell under this prohibition by the coalition.

Religious communities were indirectly affected by the first of the May Laws of 11 May 1873. This laid down that before a spiritual office could be filled, the person concerned had to complete his studies at a German *Gymnasium*, undertake a three-year study of theology at a German university, and pass a *Kultorexamen* (an examination in philosophy, history and German literature) to prove his general knowledge. This made in-house education in most religious communities almost impossible.

Material for further controversy with the orders, in whose defence the German Bishops had drawn up the "Fulda Memorial on the State of the Church in the German Reich" on 20 September 1872⁴³, was provided with the

42 Müllejans, *Klöster im Kulturkampf*, 30.

43 „The conventual life and the effectiveness of the orders and religious societies are founded on the nature of the Catholic Church. To forbid them is to destroy the integrity of the Catholic Church. It is said that the orders do not form part of the essential organism of the Catholic Church and that it could exist also without the convents. This is an ambiguous and, in the way it is meant, also an untrue statement. The orders do not form part of the hierarchy, and their suppression will not immediately cause the destruction of the Church. However, it is a teaching of the Catholic faith that the observation of the evangelical counsels belongs to the state of Christian perfection, and that a number of people are called by God to this state. So the prohibition of conventual life is nothing else than a partial prohibition of the free exercise of the Catholic faith. In addition, prayer, the example and the manifold work of the orders and religious societies forms part of the health and completion of Catholic life. It is obviously a severe moral constraint if one wants to measure the life and needs of the Catholic Church by the principles and outlook of other confessions or any other rationalistic view“. Quoted from Huber and Huber, eds., *Staat und Kirche*, II, 569.

“official publication about the orders and congregations in Prussia”⁴⁴ by the Berlin ecclesiastical lawyer, Paul Hinschius (1835-1898).⁴⁵ His criticism of the orders was directed against their dependence on the Bishops and foreign superiors. He believed he could discern ultramontane and “Jesuitical” tendencies. Although he praised the charitable commitment of religious communities greatly, he nevertheless regarded the influence of the religious as detrimental to the pastorate and school teaching. His main point of attack, however, was the opinion that the Prussian practice since 1850 with regard to admitting orders and congregations was unconstitutional. Article 15 in the Prussian Constitution of 31 January 1850, which granted churches and religious communities the right to order their own affairs, as well as the right to create corporations as enshrined in Article 13⁴⁶, had not expressly abrogated the law in force until then. Hinschius stipulated that new orders, congregations and foundations should be required to apply for State approval, that their members should be subject to constant control and should be independent of foreign superiors; furthermore, their members should be denied “permission to enter a convent before the 25th year, discretion in granting corporation rights, and should be excluded from active and passive rights to vote, as well as from political office”.⁴⁷

Hinschius’ initiative may also be discerned in the official justification for the draft of the law concerning convents which called for “rapid intervention” on the part of the State: “The State Government considers it its duty to prevent, as rapidly and thoroughly as possible, the numerous members who have surrendered their wills utterly to the direction of the Curia and the episcopate from being used to influence the masses of the Catholic population, who are everywhere available to them, in a way that is inimical to the State. In addition, it must be kept in mind that because the power of the superiors in the societies concerned is more or less unlimited, so that the members are nothing but willing instruments in their hands, there is serious danger at the present stage of the conflict between the State and the Catholic clergy, that the apparatus in the orders and congregations, which is unconditionally at the disposal of the leaders of the present movement, could and would be used to fight the State”.⁴⁸

44 Gatz, *Kirche und Krankenpflege*, 581.

45 Hinschius, *Die Orden und Kongregationen der katholischen Kirche in Preußen*; a short version: id., “Die Orden und Kongregationen”.

46 Cf. the text in Huber and Huber, eds., *Staat und Kirche*, II, 37.

47 Gatz, *Kirche und Krankenpflege*, 583.

48 Quoted from *ibid.*, 586.

Although the debate in the Prussian parliament included words of praise for the sisters, the verdict of Rudolf Virchow won the day despite all the liberal reservations: "The modern way of life of the orders, from the time when they began to serve the Jesuit spirit, is absolutely incompatible with the culture, whose leaders we consider ourselves to be".⁴⁹ So the law concerning convents⁵⁰ was passed in the lower house of parliament on 10 May 1875 with 243 votes for and 80 against it. On 25 May it passed the upper house with 66 votes for and 24 against it, and on 31 May 1875 it became valid. This law laid down in §1: "All orders and congregations similar to the orders in the Catholic Church are (...) excluded from the territories of the Prussian monarchy." New foundations could not be established and existing foundations had to be closed within six months. An exception was made only for those foundations that exclusively served the sick (§2), but they were subjected to State control (§3). Erwin Gatz sums up the Convent Law as follows: "The draft law was justified by the danger posed to the State by orders and congregations. Of course, the judgement of cultural Protestantism about the conventual way of life was made the foundation for a State prohibition. The draft then touched upon the feelings of the Catholic population more strongly than other measures, because the activity of the congregations was most closely interwoven with the life of the Church and society as a whole".⁵¹

The immediate consequence of the *Kulturkampf* was the expulsion and emigration of the congregations from Prussia. They moved in particular to the Belgian and Dutch borders, and built representative houses of their communities there.⁵² From there they were able to work illegally in the German Reich. Another reaction was to emigrate to foreign countries and a number of communities established new foundations mainly in the USA. Relinde Meiwes notes the proliferation in the areas of work of the remaining nursing congregations: "In summary it is possible to say that the congregations for women were able to extend the fields of their activity, despite the *Kulturkampf*, both in quantity and in quality. In addition, as an indirect result of the *Kulturkampf* their work became far more differentiated and precise, in particular following their experiences of exile in foreign countries. The spread of many congregations throughout the world led to their being able to act more surely and competently in Germany. The *Kulturkampf*, seen from the Church's point of view, also served as a rhetorical means by which to organize political Catholi-

49 Quoted from *ibid.*, 587-588.

50 Text in Huber and Huber, eds., *Staat und Kirche*, II, 659.

51 Gatz, *Kirche und Krankenpflege*, 587.

52 Cf. Müllejans, *Klöster im Kulturkampf*; Schenkelberg, *Studie über die Bauaufgabe und Architektur von Klosterbauten*.

cism, so the actual effects were less than is often stated. From the State's point of view, its goal of excluding the orders and congregations from the school system was met. It is even possible to go so far as to say that the State's goals were reversed. The *Kulturkampf* acted like a clearing station for the work of the women's congregations, from which they got going with new strength. In a similar way to Catholic societies, the congregations for women expanded only after the *Kulturkampf*, although the essential conditions for this expansion had already been laid".⁵³

New Admissions after the Kulturkampf

It was not just in Prussia that a *Kulturkampf* was fought against the Catholic Church and religious communities in particular. The Jesuit Law, as a law of the Reich, was also introduced in Bavaria.⁵⁴ On 2 April 1872 public teaching activity and the conduct of missions by members of religious communities was forbidden in Baden.⁵⁵ In the Grand-Duchy of Hessen a law containing restrictive regulations for religious communities was also passed on 23 April 1875, but nursing communities were given the freedom to establish new foundations.⁵⁶

In Prussia the government looked for ways to come to an agreement with the Catholic Church after the death of Pius IX and at the start of the pontificate of Leo XIII. In the first *Milderungsgesetz* (Law of Mitigation) of 14 July 1880, women's nursing communities were granted the freedom to conduct pre-school classes.⁵⁷ This and the two succeeding laws prepared the ground for the laws of 1886/1887, which made peace with the Catholic Church. However, the laws regulating convents were not formally rescinded. Nevertheless, Article 13 of the law of 21 May 1886 granted permission for a wide range of charitable, caring, educational and school activities "exclusively to orders and communities similar to the orders that are engaged in nursing and already

53 Meiwes, "Arbeiterinnen des Herrn", 309.

54 Cf. Huber and Huber, eds., *Staat und Kirche*, II, 712-716.

55 Cf. *ibid.*, 730-731.

56 Cf. *ibid.*, 758-759.

57 Article 6 of the law (14 July 1880): "The Minister of the Interior and Church Affairs is empowered to allow the establishment of foundations of institutions that already exist in the territories of the Prussian monarchy and are exclusively engaged in nursing. He may also allow, subject to cancellation, existing societies of women exclusively engaged in nursing to undertake the care and instruction of pre-school children". Quoted from Huber and Huber, eds., *Staat und Kirche*, II, 819.

exist in the German kingdom".⁵⁸ The regulations of Article 3, which foresaw the possibility of erecting minor seminaries, proved important for the future. The restrictions concerning the acceptance of new members were removed by ministerial order on 27 January 1887. Adult German citizens were allowed to enter orders and congregations and did not need special permission from the competent Minister. "The second Peace Law of 28 April 1887 finally allowed all orders, and congregations similar to the orders, to exist once more in Prussia, if they helped with the pastorate, Christian charity, teaching and educating young girls, running senior schools for girls and similar educational institutions, or if they led a contemplative life. The only exclusion remained for elementary schools. The societies were allowed to re-establish high schools for girls. The requirement of state approval for setting up a new foundation remained in force".⁵⁹

Paragraph 3 of the Second Freedom Law became the loophole through which a number of congregations acquired recognition in Germany in the two-and-a-half decades before the outbreak of World War I. It stated: "The Minister of the Interior and Church Affairs is empowered to allow the foundation of houses for existing and re-admitted orders and congregations engaged in educating missionaries to serve in foreign countries".⁶⁰ In order to serve the needs of the German colonies, the Missionaries of the Sacred Heart, the Pallottines, the Steyler Missionaries, the Capuchins, the Oblates, the White Fathers, the Marist Teaching Brothers and the Missionaries of the Holy Family were admitted and worked very successfully. Both parties had an interest in their doing so. The communities were hoped to receive vocations from Germany. State bodies increasingly recognised "that missionary communities that were at home in Germany, and hence made up of German citizens, were necessary if German culture was to be successfully extended in the colonies and protectorates under the administration of the German Reich".⁶¹ Nevertheless, the process of accreditation could still take a number of years.

This was particularly true with regard to the acceptance of the Redemptorists and the Jesuits. Ludwig Windthorst's application in the Reichstag for the abrogation of the law against the Jesuits (3 December 1890) was blown up into a fundamental question for the confessions. After a number of attempts, an executive order was obtained on 18 July 1894 according to which the law

58 Quoted from *ibid.*, 869. The law seems to take as its starting point the implicit acknowledgement that the orders had continued to exist underground.

59 Gatz, *Kirche und Krankenpflege*, 594.

60 Quoted from Huber and Huber, eds., *Staat und Kirche*, II, 884.

61 Häger, *Klöster nach dem Kulturkampf*, 353.

against the Jesuits was no longer to be applied to the Redemptorists and Holy Ghost Fathers.⁶² Only in March 1904 were the laws banning the Jesuits and restricting their residence rights repealed. Bavaria tried in 1911/1912 to extend the pastoral activity of Jesuits who were working secretly. A decree of 11 March 1912 by the Bavarian Minister of the Interior and Culture stated that “in future the Reich law of 4 July 1872, and the corresponding administrative regulations concerning the members of the Order of the Society of Jesus, and the religious societies that have been declared related to this Order, are not to be applied either to their so-called conferences or to priestly actions intended to assist temporarily in the pastorate dependent on competent parish offices.”⁶³ However, it was only the political “peace” in Germany during the First World War that made possible the repeal of the law against the Jesuits, the last relic of the *Kulturkampf*. The degree to which the controversies about the admission of the Jesuits were influenced by the polemic between the confessions is shown by the immediate reaction of the Central Presidency of the Evangelical Union. The change in the law was interpreted as granting “greater freedom to manoeuvre to the arch-enemy of Protestantism”, and as taking advantage of a national time of need to achieve private ends. “The Jesuit Order has not changed its principles, which endanger the State, and even during the war it has not stopped its pugnacious tactics towards Protestantism.”⁶⁴

The Juridical Framework in the 20th century

The 20th century on the whole saw - with interruptions - favourable conditions created for the orders and religious communities. The chaos of the revolution at the end of the Reich gave rise to the demand on various sides for a total separation between church and state⁶⁵, which met

62 On these events see Huber and Huber, eds., *Staat und Kirche*, III, 352-353 and the following documents.

63 Quoted from *ibid.*, 479. On the whole controversy about the Bavarian Jesuit Decree, see Häger, “Preußen und der Bayerische Jesuitenerlaß”.

64 Quoted from Huber and Huber, eds., *Staat und Kirche*, III, 503.

65 Cf. The call of the government in Saxony to the people of Saxony on 18 November 1918, in Huber and Huber, eds., *Staat und Kirche*, IV, 8. See also the Memorial Edition to Alfred Dieterich by the Prussian Ministry of Culture of November 1918, where it calls for the following: “Sharper surveillance of the activity of the Catholic Church, in particular that of the orders. The complete exclusion of the Jesuit Order from the Reich, in order to preserve peace between the confessions in view of the demands of the Roman Church (...) The capital of the churches, parishes and orders, in as far as this is excessive and goes beyond the scope of the needs of the parishes concerned, can also, in view of the tremendous need for money in the Reich and the Confederacy of States, be confiscated”. Huber and Huber, eds., *Staat und Kirche*, IV, 12-13.

with the sharp opposition of the Prussian Bishops.⁶⁶ In the Constitution of the Weimer Republic of 11 August 1919, the decisive article 124 in the liberal law of association granted equal treatment to the Churches and their societies: "All Germans have the right to form societies and associations that are not contrary to the laws of the State. The right cannot be limited by preventive measures. The same regulations apply to religious societies and communities".⁶⁷

This regulation restored the freedom of religious communities in principle. It was the line followed by the State laws in the German democracies of the 20th century. Religious communities were dealt with according to the law of associations, and some were even given the status of public corporations. Article 15 of the *Reichskonkordat* expressly underlined that no special regulations were to apply to them.⁶⁸ The foreign exchange court cases conducted against members of religious communities during the Nazi regime, and the dissolution of convents, have to be seen as painful episodes, not as a change of mentality. It remains to be seen whether this will continue to be the case. In recent years, for example, there has been a gradual orientation of the laws governing societies towards models in which religious communities have great difficulty finding a place for themselves.

66 Cf. The Pastoral Letters of the Prussian Archbishops and Bishops of 20 December 1918. With reference to the orders they wrote: „People unmercifully take the property and the livelihood from the religious communities, which spend themselves with the greatest selflessness for the common good in the service of the poor, the sick, the children, - the religious communities most dear to us, the orders for men and women. (...). And then the properties of our Catholic orders and congregations! A hundred years ago they took everything from our orders, which they had acquired in the most just way through work and endowments. And now they want to proceed to new injustices through the separation of church and state. We ask you: What do you believe is to be achieved by this in the entire Prussian State? What else than the few properties and simple buildings of orders which place all their powers at the service of God, the education of young people, the care and nursing of the sick, the crippled, blind, orphaned, insane, mentally retarded, briefly, in the care and nursing of the poorest of the poor? All their properties in the Prussian State have been acquired in the last decades through the kind endowments of the faithful, through the goods contributed by their members, through the thrifty, indeed poor way of life of the occupants of religious houses. It would be crass ingratitude and blatant injustice if the State were to rob the most abandoned and poor members of the home and care provided by their greatest benefactors". Huber and Huber, eds., *Staat und Kirche*, IV, 28-30.

67 Quoted from *ibid.*, 128.

68 "With regard to their foundation, establishment, the number and - excluding Article 15,§2 - qualities of their members, their activity in the pastorate, in teaching, in nursing and charitable works, in the ordering of their affairs and the administration of their possessions, orders and religious societies are subject to no special limitations by the State". Huber and Huber, eds., *Staat und Kirche*, IV, 508. The limitation of Article 15,§2 refers to the division into provinces, so that as far as possible the competent religious superiors for Germany should also be German citizens.