

WORKING DRAFT

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**THE PRINCIPLE OF SUBSIDIARITY
AND THE ROLE OF FAITH-BASED CHARITIES IN GERMANY**

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The Role of Faith-Based Organizations in the Social Welfare System

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I. Introduction and Definitions

When addressing the audience after receiving one of Germany's most prestigious literary awards, Juergen Habermas centred his remarks around religion (Habermas 2001). While professing his own agnosticism, he made a strong case for positively rethinking of the religious dimension of individual life and society. That this appeal should have come from one of the country's leading sociologists, not previously known for his advocacy of faith, was all the more astounding as German society in general is seen as steadily moving away from a religious base. This indeed was true for West Germany, although the established Christian Churches* had, as will be shown in this paper, enjoyed a privileged status unrivalled in most other countries in Europe and North America, as much as for East Germany, where the Churches had lived through 40 years of suppression, as a result of which less than half of the population today are baptized and far less profess active adherence to a church. All over Germany today, the number of citizens who formally leave their Church each year is considerable, and even within the Muslim community (predominantly of Turkish origin), only approx. 25% are active members of a religious community. The only faith group with considerable relative growth rates is the Jewish community, which over the last ten years has grown from approx. 25,000 to approx. 100,000 due to the influx of migrants from Russia and other Eastern European countries. And although it is well remembered that the Protestant Church largely was the focus point of and provided the logistical base to the civil rights activities in East Germany in the 1980s, this has certainly not lead to a wide acceptance of the Church as a transmitter of faith and religious principles. Regular Church attendance is universally very low, and the religious dimension of individual life is not actively professed by the majority of citizens, and probably by an even smaller percentage of the intellectual elite.

Now religion and faith can obviously not be taken as synonyms for established Churches, much as these would wish this to be so. But the paradox remains that while in Germany an active profession of faith may be seen as exceptionally rare, the role of the Churches in providing services to the community is an exceptionally large one. This is due to an historical development to be assessed. The intriguing question is whether the Churches, none of whom have even ventured to be accepted as catalysts of the new search for religion as exemplified by such an unlikely candidate as Habermas, would have found it easier to actively respond were they not so closely intertwined with a state controlled establishment. On

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* The Established Churches in Germany are the Lutheran, the Calvinist and the Roman Catholic Churches. The Lutheran and the Calvinist have in some parts of Germany formally merged and are generally seen as "the" Protestant Church. Approx. 60% of formal members of a Christian Church are Protestant in this sense, while 40% are Roman Catholics. Other Christian denominations, if they exist at all, have very small memberships.

the other hand, it is not unthinkable that the state might believe it to be politically convenient to reduce the importance of the Churches as service providers to somewhere near their scope as religious congregations. The alliance between Churches and State will be the central theme of this paper.

There is an additional caveat: there do exist and always have existed charitable activities based on faith and religion and yet not or only marginally connected to a Church hierarchy. This is of course true for many a philanthropic initiative undertaken by an individual believer of whatever faith. But indeed, to name just one other example, there is now a case of a faith based charitable body, Donum Vitae, set up by the Catholic lay organisation, in opposition to the bishops, after they, by papal command had terminated the activities of Church affiliated organisations as part of the government funded and organized system of pre-abortion counselling. This paper will, however, have to concentrate on those aspects of faith-based charities undertaken by or with the blessing of a Church as such. Furthermore, it will have to rely on findings on the Christian Churches and thus inherently on Christian beliefs.

II. Early History

In early Christianity, the question whether charitable activity was or was not an integral part of the teaching of Christ, was much debated, but since about the 5th century it has become a firm doctrine that active works of charity were at least a potential, possibly even the only way to final salvation (Lobkowitz 1967, 68-74). From this time, the necessity and the right of a Christian to perform charitable tasks was increasingly established, while increasingly, the Church was seen as an organizer of such tasks. By the 15th century if not before, it was positively expected of the Church to organize charity, be it because individuals had endowed the Church with that specific aim, be it because by common consent this was the Church's due rather than the ruler's. Indeed, in continental Europe, we do not find government above a local level engaged in active charity, nor do we have evidence of government action in favour of charity comparable to Queen Elizabeth I of England's Act of 1601. On the other side, beside a fair amount of civic action in the towns, we find a plethora of examples of religious orders and congregations as well as bishops and local clergy actively promoting hospitals, alms houses, orphanages etc. Lay people's initiative was commonly channelled through the Church, and even if not, a religious invocation is a standard opening to a foundation deed or similar document. By the 18th century, monasteries had in many parts of Germany taken on a quasi-governmental role even where they were not as was often the case, the temporal rulers. Health care, education, financial services, care for the poor, the destitute, the widows to be in the hands of a branch of the Church was commonplace.

In those parts of Germany that adopted the reformation in the 16th century, much of this came to an end due to secularisation of church property. Interestingly, under the principle of *cuius regio eius religio* it was the temporal power that decided on the subjects' denomination, thus also determining the balance between government and Church charitable activity. Whilst the catholic side tended to preserve a greater degree of Church independence, the Lutheran tradition of a state church tended to blend government and Church action into an unseparable web of authority perceived by the ordinary citizen as

one. It is worth remembering that the agnostic King Frederic II of Prussia's decision to build a catholic church in protestant Berlin in the 1750s caused an uproar, although his great grandfather had embarked on the road to religious tolerance back in 1685 when he issued a decree to that effect. The first protestant religious service in catholic Bavaria, on the other hand, only took place in 1802. It is therefore certainly fair to state that up to the end of the 18th century, a close knit relationship between Church and state existed which among other features provided for a division of labour to the effect that the Church was largely responsible for all things charitable.

III. The Formation of Faith-Based Organizations in the 19th Century

The French Revolution and Napoeon's attempt to conquer Europe put an end to the *ancien régime*. The great majority of independent political entities in Germany vanished from the map, new states were created, and church property was confiscated in a big way by the temporal powers. Of course this did not happen out of the blue. In Germany, too, intellectuals had been clamouring for fundamental societal changes, and the Catholic Church in particular had been the object of protest, contempt, and derision long before 1800. Most certainly, the Churches had failed to see the signs of unrest, and those of the beginning industrial revolution, the restructuring of the economy, and the enormous growth in population, all of which led to widespread poverty (Kaiser 2001, 32). So it was by its own shortcomings as well as by the the turn of history that the Churches lost considerable influence as well as a large part of their resources and subsequently their ability to perform as in the past. Yet, since Germany did not witness a revolution as in France, many institutions remained, and services to the needy provided by the Churches continued to cover a considerable part of the total.

It is therefore not altogether surprising that after 1815, when a strongly conservative political order was restored to continental Europe, the Churches on one hand were looked upon as natural partners of government, while they on the other hand realized that they would have to address the issues of modern society to regain influence and power. All through the 19th century we find government ascertaining its supremacy in all matters of welfare while making use of Church based institutions to actually provide the necessary services, whereas we see the Churches building up new strength through their involvement in social welfare rather than in temporal power.

There is however another trend not to be overlooked. The age of enlightenment had among many other issues promoted the formation of associative bodies thus instigating the formation of a new civil society, and while the original associations in the 18th century most definitely had an anti-ecclesiastical as well as anti-governmental ring, faith based associations became increasingly popular in the 19th (Kaiser 2001, 33), in the wake of a Christian awakening movement that swept across Europe after 1815. Indeed, lay charitable associations were more often than not started by Christians who felt their own Church was not responding adequately to the needs of the people. Protest within the Church thus became a driving force in setting up new charities. Traditional organizations such as religious orders continuing to follow their vocation thus remaining a powerful contributor at a local level, Church hierarchies wishing to regain

an influential position in society, and a modern lay movement acting in protest to this hierarchy while striving to fulfil their individual religious obligation thus became three very diverse driving forces united in establishing a very substantial part of the welfare system of the country. One example among many others is the formation of affiliated associations of the Sovereign Military Order of Malta, founded in 1099, originally composed exclusively of men who had taken the vows of poverty, chastity, and obedience, and very nearly extinct after being expelled from Malta. The two first of these were founded in Germany in the 1850s and 1860s by married Catholic laymen wishing to pursue the old ideals of this Order in a modern form by building and managing hospitals.

Finally, the common goal of fighting Napoleon had created an urge for unification throughout Germany that was to grow into a powerful movement. It was in this spirit, too, that in 1848, a protestant layman, Johann Hinrich Wichern, in a speech to Church dignitaries and lay enthusiasts in Wittenberg suggested that a national organisation of Protestant welfare be created. Within three years, *Innere Mission* had been founded as the umbrella organisation destined to comprise any charitable organization based on the Protestant faith. Its Members were in fact most heterogeneous. Yet, *Innere Mission* was soon to become the most influential Protestant group outside the actual hierarchy (Kaiser 2001, 42), a group that considered itself from the start as being at least as near to the state as to the Church.

The Roman Catholic Church took a further 50 years and a bitter battle over other issues with predominantly Protestant Prussia, the most powerful of the German states, to establish the same kind of structure. It was not until 1897 that the *Charitasverband* (sic) *fuer das katholische Deutschland* was founded, known today as *Deutscher Caritasverband*, or simply as *Caritas* (Ebertz 2001, 24). Lorenz Werthmann, the leading figure, expressly wished to create an organization that would match the Protestant counterpart in every way including public attention. Nevertheless, Caritas was created on a far more corporatist model involving traditional institutions, religious orders, parishes, and lay membership organizations. This corresponded as much to the spirit of Catholicism as to the general change of opinion concerning civic action at the end of the 19th century. On the other hand, Catholic social reformers like Bishop Wilhelm Emanuel von Ketteler had long before paved the way to fundamentally rethinking the position of Church based charity (Hilpert 1997, 84). Subsequently, Catholic charity insisted to a much larger degree on being independent from the state, and indeed, political lay associations closely affiliated to the Catholic Church had preceded those interested in welfare. It is quite possible that being a minority contributed to this attitude, but it is certainly not coincidental that the principle of subsidiarity was developed within the Catholic rather than within the Protestant domain. Furthermore, it is probably fair to say that while Protestant charities would underline their role within their structure of society, Catholics would more readily point to the legitimacy of Church action in view of giving each member of the community the chance to perform his or her charitable obligations.

IV. The Welfare State and the Principle of Subsidiarity

The development of Church affiliated structures, beside answering needs and preferences does not unnaturally responded also to developments of society as undertaken by the government. From the late 16th century on, French political theory had held that the state stood alone as holder of authority and power, and increasingly as provider of services. In the 1st half of the 19th century, German philosophers like Hegel adopted this general view while allowing for other elements of society to act as long as they acknowledged the supremacy of the state. While this view was contested at the time, it did grow roots in German political thinking so that to this day the authority of the state is questioned to a far lesser degree than elsewhere.

The position of the Churches under these circumstances was a particularly questionable one. While, on one hand, the modern state of the 19th century firmly believed in religious tolerance and more firmly still in the religious foundations of any authority, thus singling out the Churches as highly important intermediaries, on the other hand their practical work was regarded with some suspicion in as much as it gave autonomous power to bodies outside government control. The whole of the 19th century is thus marked by debates on the role of the Church, with elements of hostility becoming apparent on the left of the political spectrum as the working man (and his intellectual advocates) came to believe, rightly or wrongly that the Churches were devoting very little or no attention to his specific needs (Sachsse 2000, 82-86). It was not until 1891 that Pope Leo XIII published his encyclical *Rerum Novarum*, thus throwing the door open to a debate on the modern issues of society, on new forms of poverty, and the Church's responsibility.

So it is not surprising that German governments to a varying degree, and after unification in 1871 the German government were prone to advocate state supremacy in all matters while still conceding to nongovernmental actors a considerable role in the actual management of welfare institutions – and to the Churches a special role in administering to the religious needs of the people. Indeed, the government concentrated on regulatory measures including social security and pension systems. This contrasts quite sharply to the field of education, where the state insisted on a state organized school system, and the arts, the major arts institutions having been traditionally state owned anyway. In setting up this pattern, the Churches were the obviously strongest contractors and partners, but not the only ones. From the trade union movement, after having overcome some basic mistrust of nongovernmental welfare provision, there arose a network of workers' welfare organizations that eventually formed a national umbrella, too. And the Red Cross movement attracted those parts of society that for whatever reason felt disinclined to engage in Church based activities, including a great number of active Christians (Sachsse 2000, 82-83).

By the time the principle of subsidiarity was formally stated in Pope Pius XI' encyclical *Quadragesimo Anno*, published in 1931 to mark the 40th anniversary of *Rerum Novarum*, the German post World War I republic had adopted the principle of the welfare state, and it is neither coincidental that *Quadragesimo Anno* was largely written by a German Jesuit, Oswald von Nell-Breuning, nor that it primarily answered an important question in a German context. Both the Catholic and the Protestant

welfare organizations had by this time become large enterprises and important government contractors. Though, in theory, the principle of subsidiarity implied an universal principle of priorities in dealing with any societal issue and at any level of organization, in practical terms it was a compromise between governmental supremacy (which the Church was forced to acknowledge) and nongovernmental – to read Church based – action (on which government at the time depended for executing its welfare programmes) (Hilpert 2001, 86). The principle in fact served to theoretize and thus preserve a status quo. And it should certainly not be overlooked that the principle of subsidiarity neither, in the framework of German constitutional theory, applies to fields of governmental intervention outside social welfare, health and related subjects, nor do the big national welfare networks readily apply it within their own organization. On the contrary, a number of governmental and self made administrative mechanisms have ensured an increasing centralization of decision making and actual execution of programmes.

One other important element also deserves to be mentioned. While Protestant Innere Mission started as a lay movement and saw a competing organization being started by the hierarchy after World War II, with which it eventually merged in the 1960s, Catholic Caritas from the start encompassed the laity as well as the hierarchy, following Catholic doctrine of obedience. Whether and to what extent the obligation to follow one's Church's teachings actually applies to the individual's charitable activities and to the constitutional right to democratic procedures in a membership organization recognized and even subsidized by or contracting with the government, has never been formally resolved. In practice, government has treated the welfare organizations, be they Church affiliated or not as business partners, and while imposing abundant regulations on programmes, accounting, wage levels, fee structure etc. has tended not to interfere with their governance and decision making principles.

In this context, it is important too to mention that the established Churches enjoy a singularly privileged position under the German constitution that differs widely from that of the Churches in the U.S. (Adloff 2002, 65–78). Based on the theoretical assumption that religion as such does not fall under the responsibilities of the state (a big difference to 19th century beliefs), but that on the other hand it was important for government to protect the exercise of faith, the Churches were granted the status of public bodies with the right to organize their own affairs without state intervention. In addition, church tax, collected by the state as an obligatory addition to income tax for anybody who has not formally left the Church, has become the main source of funding for the Churches. So while a state Church does not formally exist, the position of the Churches is certainly more intertwined with the state than elsewhere.

V. Service Provision, Charity, and Civil Society

By the 1960s, the welfare system in Germany had reached a state of organizational perfection unrivalled in German history and possibly in most other countries. Appropriate legislation had ensured that the umbrella organizations had a special role to play that followed a highly corporatist model. Government agencies would now channel most contacts and contracts through these central welfare

organizations so that all other service providers were forced to become affiliated to one of them. Even the right to accept tax deductible donations was tied to membership in one of the central organizations. Among these, the Church based ones are the largest, Caritas (with its affiliates) in fact being the largest non governmental employer in the country*. Church tax, a part of which goes to these umbrella organizations, has helped preserve this position. It is however important to point out that approx. 85% of the funding comes from government sources, be it by contractual obligation or in form of grants.

In terms of employment, turnover, service provision etc. the record of the welfare organizations in general, and of the Church based ones in particular, is indeed impressive. In numbers, they constitute the backbone of Germany's not-for-profit sector (Salamon et al. 1999, 99-118). But by the general public, they are hardly recognized as autonomous, let alone as exercises in religion. So it is no wonder that some of the new initiatives that emerged in the 1970s not wanting to become involved with the traditional corporatist welfare system, had a religious background. On the other hand, trade unions took both Caritas and Diakonisches Werk - Innere Mission to court for their refusal to permit union activities of any kind on the grounds of constitutional church autonomy, arguing that this could not apply to the welfare organizations who were in fact government agencies. In the end, a number of changes were made, one of them being the introduction of a particular wage system rather than the government one, and some compromises were reached regarding shop stewards.

Furthermore, it cannot be overlooked that the sheer size and the increasingly complicated decision making processes have on occasion prevented the Churches from engaging in new forms of charity and/or responding to new challenges. It should be added, however, that countless volunteers and professionals continue to devotedly perform an array of particularly tedious tasks each day. An issue of particular importance arose when the European Union took the view that tax exemption for service providers constituted a violation of European regulations on fair competition, arguing e.g. that services provided by forprofit and notforprofit hospitals were no different while forprofit hospitals were disadvantaged by their taxability. This line of thought has recently been taken up in a different manner by analysts of the organizations who found that the gap between pseudo-commercial service provision and voluntary (possibly faith based) community work had become so wide that the organization would have to decide on one or the other. These analyses were brought about also by stories of gross mismanagement due to volunteer attitudes trying to provide adequate governance for what in fact are large business concerns.

* The 6 main central welfare organizations are: *Deutscher Caritasverband* (Catholic), *Diakonisches Werk-Innere Mission* (Protestant), *Zentralwohlfahrtsstelle der Juden in Deutschland* (Jewish), *Deutsches Rotes Kreuz* (German Red Cross), *Arbeiterwohlfahrt* (The Workers' Organization), *Deutscher Paritaetischer Wohlfahrtsverband* (created specifically to comprise all those organizations that cannot or will not join any of the others)

A further source of problems were the changing attitudes with professionals and volunteers. The debate on the legality of abortion is just one example of devout Catholics finding it impossible to follow their Church's teachings. And many of the most active Christians increasingly regarded the large government orientated and basically doctrinal structures of their organization as incompatible with their own appreciation of modern Christianity. On the other hand, conservative Christians were highly suspicious of the possible deviations from doctrine that the practitioners in the field believed they should pursue.

And finally, long term contractual commitments in recent years have tended to correspond less and less to modern attitudes in voluntary action. Civil Society organizations today are most successful by the spontaneity and emotional involvement they carry, as well as the advocacy for the underprivileged. This may correspond easily to refinding an individual approach to the religious dimension of life as argued by Habermas, and far less easily to making ends meet in a large bureaucracy. The right to be charitable today is seen as an individual right, intertwined with civil liberties, with civil society, with a potentially anti-governmental act of solidarity (Enquete Kommission... 2002, 109-124), and less as the right of the organized Church in confronting the State. In a sense, the principle of subsidiarity is seen more as a universal principle today than it was when it was first developed.

So, faith based charities to mean those governed by the Churches are at a crossroads (Ottvad/Wahl/Miegel 2000). While no one seriously advocates that the Churches should pull out of service provision altogether, let alone at short notice, questions are being asked what difference it really makes whether the service is provided by a forprofit entrepreneur or a church-affiliated notforprofit organization. Does the patient (the client?!) realize who is looking after him, does he or she appreciate a specific faith-based attitude if there is one? Should on the other hand Church organizations burden themselves with businesses possibly not at the core of their purpose? And while neither contracting partners nor clients would seriously object to the Churches pursuing their core mission through their charitable activities, the unanswered question is: Do they?

It seems that neither of the established Church hierarchies have yet embarked on a journey of seriously reviewing their position (Strachwitz 2002, 124), but it may be supposed that if they wish to be become agents of civil society and, perhaps even more importantly, be involved in the reawakening of basic religious sentiment, their involvement with activities that today could be, possibly should be performed by others and their involvement with the government of the day, will necessitate most careful scrutiny.

Notes

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