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Protestant Churches, Digitalization, and the Law in Switzerland and Germany: Perspectives and Challenges

Abstract: The relationship between the church and the law has been a subject of profound debate for centuries. The advent of digital technologies has presented a resurgence of interest in this contentious relationship, prompting a re-examination of its nuances. This article delves into this matter by focusing on the Protestant churches in Germany and Switzerland, with the Catholic church as a comparative reference. Secular laws, such as those governing copyright and data protection, increasingly influence church activities. While Germany's Protestant churches benefit from greater legal autonomy, Switzerland faces challenges due to cantonal legal pluralism. The situation in ecclesiastical law itself is distinct. The erosion of physical presence has given rise to fundamental discussions, particularly concerning communion and baptism. However, legal regulation of practices such as digital communion has been limited, leading to uncertainty. The expansion of social media has also prompted a renewed examination of institutional responsibility for the proclamation of the Christian message, often resulting in regulation through *soft law*. The gradual decline in the significance of physical space as a meaningful dimension of church organization, driven by the cross-border effects of digital communication, is likely to be reflected in the elevation of personal congregations.

Die Beziehung zwischen Kirche und Recht ist seit Jahrhunderten Gegenstand intensiver Debatten. Die Digitalisierung kirchlichen Wirkens ist dazu geeignet, dieses spannungsreiche Miteinander einmal mehr plastisch werden zu lassen. Dieser Artikel untersucht diese Thematik, indem er den Schwerpunkt auf die evangelischen Amtskirchen in Deutschland und der Schweiz legt und das katholische Kirchenrecht als Vergleichsreferenz heranzieht. Säkularrechtliche Vorgaben, wie das Urheber- und Datenschutzrecht, nehmen zunehmend Einfluss auf kirchliche Aktivitäten. Während die evangelischen Kirchen in Deutschland von einer größeren rechtlichen Autonomie profitieren, steht die Schweiz vor Herausforderungen durch die kantonale Rechtsvielfalt. Die Erosion physischer Präsenz hat zu sehr grundsätzlichen Diskussionen insbesondere im Blick auf Abendmahl und Taufe geführt. Wie es scheint, sind aber Praktiken wie das digitale Abendmahl nur selten auch einer rechtlichen Regelung zugeführt worden, so dass ein Stück Erwartungsunsicherheit eingetreten ist. Die Ausweitung von Social Media

hat zudem bewirkt, dass die Frage nach der institutionellen Verantwortung für die Verkündigung der christlichen Botschaft neu gestellt und vielfach durch „Soft Law“ geregelt worden ist. Der schleichende Bedeutungsverlust des physikalischen Raums als Sinndimension kirchlicher Organisation aufgrund der grenzüberschreitenden Effekte digitaler Kommunikation schließlich wird sich vermutlich in der Aufwertung von Personalgemeinden abbilden.

1 Introduction

Since the late 19th century, the formula “church and law” has come to represent an intricate relationship, particularly within the Protestant context, with regard to the law of the church itself – that is to say, what can be characterized as the religious law of Christian associations (for a description of religious rights as the law of a specific religion, see Bottoni, Ferrari, and Sandberg 2019, 2; differentiating Pahud de Mortanges 2022, 106–109 and Michaels 2022, 19–20). One of the most influential positions in this discourse stems from Rudolph Sohm (1841–1917), who argued that “The law of the church is contradictory to the very nature of the church” (Sohm [1892] 2016, 1, 7; see Thier 2020, for a discussion of this concept). This assertion continues to serve as the foundation for a fundamental debate concerning the significance of legal normativity for the work of the church (Germann 2016; Honecker 2008, 177; Moxter 2011, 113; Schwab 2024). The positions within the discourse on church law diverge somewhat. The fundamental necessity of law for the church has been emphatically emphasized by the Roman Catholic Church, for example in the constitution *Sacrae Disciplinae leges*, under which the *Codex Iuris Canonici* of the Catholic Church was promulgated in 1983. As John Paul II articulated with remarkable clarity, “founded on the juridical-legislative heritage of Revelation and Tradition,” the Code (and consequently, canon law) serves as “an indispensable instrument to ensure order both in individual and social life, and also in the Church’s activity itself” (John Paul II 1983). However, against this backdrop, the question of whether or not canon law should be analyzed solely with the means of theology has been repeatedly raised (survey in Graulich 2020; in-depth Luf 2015). Here, too, the Church’s view of the law is somewhat ambivalent.

Considering these ambiguities, the progression of digitalization presents a distinctive challenge for the two predominant Christian denominations. Their global engagement constitutes a pivotal aspect of their identity, a feature that is particularly salient within the Roman Catholic Church (Schmidt 1998) and the Protestant official churches in Germany (Klostermann 2000). Digitalization has profoundly altered the landscape of church activities, primarily by facilitating

digital presence through online meeting spaces and, in the near future, by artificial intelligence. New spheres and dynamics of social communication have emerged in the context of social media, and the importance of territorial boundaries has diminished. In response to these shifts, churches have been compelled to depend on legal instruments that define the norms of their operations. This is exemplified by the establishment of protocols for church proclamation. The need for such resources becomes even more clear when grappling with the effects of digitalization on religious authority (on this phenomenon in general, see Hope Cheong 2023, also Campbell 2023) and the structure of church leadership in the context of digital communication and digitalized church processes. However, it is precisely in such scenarios that the theological identity of church action and church institutions must be continuously balanced with the need for universally binding regulations.

This is particularly salient in scenarios where church activities are conducted with resources that fall within the purview of secular legal norms. The integration of church activity into the secular legal system is a theological imperative. Secular law serves as the enabling order for ecclesiastical action, as articulated by international and constitutional law. This is because secular law is also the enabling order for ecclesiastical action, as the guarantees of religious freedom under international and constitutional law (see for example Art. 9 ECHR, Art. 15 para. 4 BV, Art. 140 GG in conjunction with Art. 137 WRV) clearly demonstrate.

Our analysis centers on Germany and Switzerland, with a particular focus on the legal frameworks and practices of Protestant churches. These are examined within the context of their respective ecclesiastical and legal structures. In this regard, the Catholic Church serves as a valuable comparative framework, offering a nuanced perspective through its distinct theological and legal traditions. Employing a predominantly hermeneutic methodology, our research also integrates insights from empirical findings generated by other sub-projects within the URPP. These include, for example, the CONTOC study, explorations of the dynamics of religious actors in digital spaces (P6), spatial-semantic analyses (P2), and analyses of issues related to the public sphere (P12). Insights from these projects have contributed to refining our understanding of key dynamics within the broader research context.

On the one hand, we investigate the challenges of secular law for the digital work of the church. However, we did not want to limit ourselves to analyzing the secular legal situation; rather, we also, importantly, examine whether – and if so, how – church institutions have reacted to such legal challenges (see 2, below). This has led us to a connected field of investigation in which we explore whether and by what means church institutions are reorganizing themselves in the era of digitalization using the tools of ecclesiastical law. It is precisely here that the question of whether, and to what extent, changes in church institutional identity

can also be identified in ecclesiastical law becomes critical (see 3, below). In the final section, future research perspectives shall be addressed (see 4, below).

2 Church Action, Digitalization, and Secular Law Regimes: The Laws of Copyright and of Data Protection as Examples

Copyright, although its origins predate the electronic age, has gained increasing significance in the digital era (Schimana 2009). Due to its close relationship with art and culture, this area of law also has significance for churches (von Gierke 2009, 241; Kröber 2008). Copyright law functions as the property system of the information society, ensuring that creators' rights are protected (Peukert 2023, 2).

The digitalization of church activities has resulted in the exacerbation of existing tensions between church activities and copyright protection norms. A notable example of this tension is the case of a pastor in Switzerland who downloaded an image from the internet and displayed it during his sermon. Consequently, he was ordered to pay damages (Müller 2019). Beyond such individual cases, which underscore the efficacy of official copyright-law training programs for Church personnel (see, for instance, RKZ, EKS 2023), digitization-based copyright concerns emerge most acutely in the context of digital church services. This phenomenon has been particularly pronounced since the advent of the pandemic, during which churches were compelled to transition to digital worship services (see Özgü, Schlag, and Thier 2024, 169–170 for a detailed analysis of this shift in Switzerland). The management of music within the context of copyright law is another salient concern. In Germany, religious institutions found themselves able to rely on well-established regulatory frameworks, exemplified by § 52 (2) UrhG. This regulation, grounded in constitutional law (BVerfG 1978), strikes a balance between individual property rights and public interest in the performance of music. Artists and songwriters must grant permission for the use of their work, in return receiving compensation, which is collected through collecting societies (see Dreier, Schulze, Raue, and Specht-Riemenschneider 2022, § 52 N 11). § 19a UrhG ensures the validity of this regulatory mechanism, granting a statutory but chargeable license, in the context of the digital distribution of church music as well (Dreier, Schulze, Raue, and Specht-Riemenschneider 2022, § 19a N 6 with further references). The EKD has therefore concluded a flat-rate agreement with GEMA in the interests of legal certainty (GEMA-EKD 2024).

The situation is somewhat different in Switzerland. Originally, the right to perform “musical work(s) with lyrics” free of charge was in effect (Art. 32 para. 1 URG). However, the legislator has since removed this privilege (Barrelet and Egl-off 2020, 149–150). The legal right to perform music in church now fundamentally depends on the consent of the rights holder as, unlike in Germany, there is no statutory license. In practice, therefore, collective agreements between SUISA, the collecting society responsible for music, and the two national church organizations, EKS and RKZ, dominate. In this way, licenses for church music are granted and also remunerated for all church levels (see RKZ, EKS 2023, 2–3). However, a notable distinction emerges concerning the financial burden of streamed church services in the Protestant Reformed Churches. While the EKS assumes financial responsibility for these services, the RKZ 2023 has opted against this approach. Instead, copyright responsibility is allocated to the parishes, given the – apparently – relatively limited number of streamed services (15%), leading to the determination of an absence of necessity for a comprehensive contractual solution (RKZ 2023, 1). This exemplifies the way copyright regulation mechanisms exert an indirect influence on religious institutions in the context of digitalization. The financial obligation to remunerate under copyright law for digitalized church services necessitates an examination of the allocation of financial resources within the church’s organizational structure, which can potentially have a negative impact on the local church level.

However, the digital activities of religious institutions, including the use of communication platforms such as WhatsApp for confirmation classes, are subject to regulations pertaining to the protection of personal data. The management of such groups, therefore, becomes a complex endeavor, as the utilization of online tools, such as scheduling platforms, could potentially result in legal challenges (Datenschutzbeauftragte des Kantons Zürich 2020, 27). These challenges not only burden the daily operations of the church but also have the potential to harm its public image if fundamental rights are perceived as not being adequately respected. Data protection regimes for EU member states are also determined by the European General Data Protection Regulation 2016, which aligns with the religious friendliness of European law (as perceived from a church perspective, Schnabel 2014). This is reflected in Article 17 TFEU (Kraus 2015; Hatzinger 2016) and in Article 91 GDPR, which grants churches the prerogative to establish their own autonomous regulations (Ziekow 2016, 970–971). This has resulted in the enactment of corresponding church legislation in Germany (Hoeren 2018; Özgü, Schlag, and Thier 2024, 172; Ziekow 2024, 46–50), which also determines the legal practice of church jurisdiction (Gerjets 2023). In terms of content, this legislation accords significant weight to the church’s interests in data, particularly within the Protestant sector (Neumann 2023; Neumann 2025, 5–6; Ziekow 2016). However,

a plurality of legal rules has emerged, particularly given the application of secular data protection laws (Neumann 2024, 32). This has led to a new imperative for regulatory coordination among the official churches, despite their ability to operate within a sphere of legal autonomy.

The situation in Switzerland is more complex since Swiss churches are fundamentally subject to state data protection laws (Pahud de Mortanges et al. 1999). On the one hand, the cantons have, in principle, issued their own data protection regulations for their bodies and thus also for the national churches created under public law (Rudin 2023, 2–4). On the other hand, the federal data protection law also applies to actors organized under private law (Art. 2 para. 1 lit. a FADP) and thus has an effect on churches that are organized as associations under private law (overview in Winzeler 2015, N. 15–18). In summary, while certain regional churches, such as the Zurich Church, have promulgated their own regulations, there is currently a lack of overarching guidelines (Kirchliches Datenschutz-Reglement 2000). This reflects the legal diversity, stemming from cantonal authority in religious and data protection law, as well as the comparatively lower level of church autonomy in Switzerland compared to Germany.

A comparison of the approaches adopted by Protestant churches in Germany and Switzerland to address the challenges posed by secular copyright and data protection law reveals two distinct regulatory paths. In Germany, church autonomy is more pronounced in the context of data protection law, and the Protestant official church utilizes this autonomy extensively. Conversely, in Switzerland, secular legislators have largely abstained from enacting specific data protection laws for religious institutions. This has led to a plurality of secular data protection regimes, which poses significant challenges for church actors, particularly given the cantonal diversity. Notably, the EKS has thus far refrained from even preliminary proposals for a common position of the cantonal national church.

A parallel approach by the Protestant churches in both countries can be seen in the area of copyright law. By concluding collective agreements with the collecting societies and implementing them centrally, EKS and EKD have continued a long-standing tradition of regulation, a practice facilitated by the fact that both countries' secular copyright regimes are structured as federal law, which simplifies national regulation.

3 Digitalization of Ecclesiastical Promulgation and Administration of Sacraments: Challenges for Ecclesiastical Law

According to their theological self-understanding, the proclamation of the Christian message and the administration of the sacraments are considered fundamental tasks of the Church. The physical presence of believers is particularly significant in the context of worship, as it is regarded as the “source of the life of the congregation and testimony in the world,” as outlined in Article 31, paragraph 2, sentence 2 of the Zurich Church Order (KO ZH 2009). This tenet remains relevant for baptism and the Holy Communion, despite the possibility of these rites being observed outside the context of church services. The advent of the COVID-19 pandemic and the concomitant necessity to engage with church members in a digital milieu has led to a re-evaluation of this foundational principle.

Notably, the official stance of the Roman Catholic Church has historically been averse to the notion of digital participation in the administration of sacraments (Hierold 1991). With the advent of the Internet, this position was unequivocally affirmed by the declaration: “There are no sacraments on the Internet” (Pontifical Council for Social Communications 2002, Nr. 9). Even in the aftermath of the pandemic, this resolution remains unchanged. Efforts to replicate sacred rituals or communal practices in virtual spaces have been explicitly rejected, with particular emphasis on the theological and symbolic importance of physical presence and communal gathering. The Church has notably criticized practices such as “sharing a meal through a screen,” underscoring the indispensability of in-person interaction (Dicastery for Communication 2023, Nr. 61).

The EKD (2010, 76) underscores the importance of gathering feedback from online services, observing that numerous participants still feel personally addressed and included in the worship experience, despite the broadcast originating from an unfamiliar location. While the immediate experience of community may be diminished, this is rarely perceived as a hindrance. Instead, a *communio mediatis*, or mediated participation, has emerged as means of establishing a shared spiritual connection that resonates with numerous viewers, thereby providing a sense of belonging, even if it cannot fully substitute for personal community. This inclination might also underlie the EKD’s swift adoption of digital proclamation during the COVID-19 pandemic (EKD 2021, 87–88), thereby reaffirming a prevalent practice (Özgü, Schlag, and Thier 2024, 167–169).

However, this shift has given rise to numerous fundamental questions that extend beyond the purview of church law. This is particularly evident in the ongoing discourse surrounding the feasibility of digitally facilitated Holy Commu-

nion and the question of whether digital presence can substitute for physical presence (Schrodt 2021; van Oorschot 2022; Wüthrich 2024). The question of the digital performance of ceremonies in general has also emerged as a point of discussion (Jacobs 2023, 174–179). In terms of church law, these issues appear to fall within a gray area, even if regulatory conflicts have arisen in some cases (Jacobs, *op. cit.*). In some instances, orders of digital worship have been adapted, as evidenced by the example of Württemberg: In 2022, the Ordinance on Holy Communion was amended with the addition of a new rule (Evangelische Landeskirche in Württemberg [1995] 2022, § 4[5]) that expressly authorized the “celebration of Holy Communion without the simultaneous presence of the officiant and any or all participants of the celebration of Holy Communion in one room” so long as “the officiant of the celebration of Holy Communion is connected to all participants by means of simultaneous, two-way transmission of sound and vision using suitable technical aids.” Concurrently, this regulation empowered the High Church Council to promulgate a corresponding “order of service,” which was subsequently issued in 2023 (Evangelische Landeskirche in Württemberg 2023). Often, regulations emerge that leave the decision regarding the form of the Lord’s Supper – and, consequently, its digital form – in the hands of parish authorities (see Art. 51 para. 4 KO ZH: The decision on the “form” of Holy Communion is made by the church administration in agreement with the parish office). These rules, however, are not always clearly structured, creating room for maneuver, which regional church authorities sometimes fill by creating their own manuals (see Zentrum Verkündigung der EKHN 2021). These manuals often represent a form of *soft law*, understood as non-binding recommendations or guidelines that influence practice and behavior within an institutional framework (for a detailed discussion on the definition and function of soft law, see Müller and Uhlmann 2024, 12–15). Such decentralization of the power to set norms for church services corresponds to an institutional understanding of churchliness in which the congregation is the central figure. However, in the context of Communion, a central act of worship in Protestant churches, this approach is accompanied by a degree of ambiguity regarding expectations. This ambiguity would be, at least from our point of view, better addressed through the application of legal norms. In view of the fundamental importance of the Lord’s Supper as a sacrament of the official Christian churches, it seems to us essential that the law establishes a framework of certainty in this area. It could even be argued that such questions are an example of those on which church lawmakers should not refrain from taking a stand. However, the related question of whether there may be an obligation for the church to legislate because of the special importance of regulatory issues is beyond the scope of this article.

In ecclesiastical law, the sacrament of baptism necessitates the physical presence of the baptizand as well as the actual pouring of water, both of which constitute essential and non-negotiable elements of its valid administration (e.g. Art. 34 para. 1 KO BE). Consequently, a baptism conducted exclusively in a virtual environment – such as within the metaverse – is, according to current ecclesiastical norms, legally dubious (on the non-transferability of baptismal elements into the digital, Jacobs 2023, 174–175; also see Art. 35 para. 2 KO BE: “There are no substitute acts for baptism”). At present, there is no indication of any legislative developments that would suggest a departure from this position. However, a hybrid form of baptism – in which the essential elements of the sacrament, namely the physical presence of the baptized and the ritual act of pouring water, are observed on site while other participants join remotely through digital means – does not raise immediate legal concerns. The question of the legal validity and evidentiary weight of digital testimony by the godparent presents an interesting legal issue but will not be addressed in detail here.

Overall, however, no conclusive findings can yet be identified. This underscores a salient challenge inherent in church law: determining the permissibility of digital presence in relation to sacraments such as Holy Communion and baptism. Ecclesiastical law, by its very nature, can only address such matters in a regulatory capacity. It is, however, imperative for the church to establish a definitive stance on these issues, particularly through the medium of ecclesiastical law, to ensure clarity for its members.

A similar challenge has emerged in the context of public teaching and preaching. The proliferation of social media platforms has led to instances of church members, such as influential content creators, who, despite not having a formal calling as preachers, disseminate religious messages in public. This has given rise to a tension between the institutional responsibility of the official churches and the principles of the priesthood of all believers (Laube 2024). This tension has become the focus of regulatory guidelines (Özgü, Schlag, and Thier 2024, 185). These developments suggest that the digital transformation of church preaching will, at least in the medium term, reignite questions regarding the design and functions of church leadership.

It appears that digitalization is also increasingly affecting the organization of church membership. Until now, physical space has been a significant dimension of the organizational structure of Protestant churches, as the place of residence is typically the point of reference for church membership and the associated rights and obligations. These regulatory principles have been codified in the territorial principle and parochial system of ecclesiastical law (Rausch 2020, 2021b). The introduction of digital technologies has gradually eroded the traditional links between physical space and these organizational frameworks. Consequently, the

comparatively recent institutional arrangement of the “personal congregation” (Hübner 2020) may well assume increasing significance (Özgü, Schlag, and Thier 2024, 181–184).

4 Future Research

It has become evident that the digital activities of the Protestant church are being significantly influenced by the rapid evolution of legal developments. A notable consolidation of the legal framework, particularly in the domains of data protection and copyright law, has been observed. However, the plurality of legal norms has, at times, resulted in suboptimal outcomes. Conversely, the realm of ecclesiastical law is undergoing a period of transition, as evidenced by the emergence of digital communion celebrations. This phenomenon suggests a need for legal regulation, which may be attributable to the ongoing clarification of theological issues. This, in turn, highlights the interdependence of church law with fundamental theological decisions. From this perspective, the conflict between church and state, as previously discussed, may not be as evident in practice as it appears from a legal-theological distance. Another issue that has not been thoroughly examined is the increasing role of digital communication platforms and the availability of digital infrastructures in the context of law. At a time when the question of the “state’s responsibility for infrastructure” (Hermes 1998) is being extended to the field of digital communication, and when, at the same time, the resources of the church are shrinking dramatically in some cases, questions concerning the relationship between state and church may also arise anew. It will be necessary to examine whether the state’s responsibility for infrastructure could have a special quality, specifically with regard to the church. This is particularly salient in the context of the impending realization of the long-discussed replacement of state contributions to the church in Germany (Gienke and Landwehrs 2024). It is conceivable that legislation could facilitate digital engagement by religious institutions from the outset. However, it is also imperative to explore the legal framework governing digital religious activity in other religions with comprehensive normative frameworks. To this end, the religious rights of Judaism and Islam will be examined in subsequent phases of the study.

In the examination of the official Christian churches and their legal framework in Germany and Switzerland, the question will be posed as to whether – and, if so, which – regulatory requirements are necessitated by the use of AI. AI is increasingly shaping the digital execution of religious practices, ranging from the automated processing of sacred texts to the establishment of virtual religious

communities. This prompts pressing legal and ethical inquiries: What are the implications of employing AI in religious activities? Our research will explore the potential of AI to facilitate religious practices, such as through the provision of customized spiritual guidance. Additionally, it will examine the implications of AI's potential to act as a religious authority, and the challenges that may arise from its perception as such. This question ties in with our previous research on the effects of digitalization on churches, but also opens up a new perspective that we believe will become very important for the church sector in the years to come.

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