



The Concordat with the Third Reich

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THE CONCORDAT WITH THE THIRD REICH

When the Concordat¹ between the Holy See and the German Reich under Hitler was concluded on July 20, 1933,² the event was acclaimed as marking the end of the long Church-State struggles in Germany, as heralding a new epoch in German history.³ The newly established Nazi government had succeeded in five months' negotiations⁴ with the Vatican where its predecessors, including several headed by Catholic Chancellors, had failed for fourteen years. With the consequent exchange of the documents of ratification at Vatican City on September 10, 1933, both parties to the Concordat had reason to believe that they had gained greatly by its conclusion. The Roman Catholic Church, on the one hand, beheld its rights and influence in the Third Reich safeguarded by means of a solemn and formal convention of an international character; while the Nazi government, on the other, saw itself gaining an invaluable hold on the allegiance of 20,000,000

¹ The following abbreviations are used throughout the article:

R. M. V. = *Rhein-Mainische Volkszeitung* (a leading Catholic daily of Leftist tendencies, published in Frankfurt-on-Main)

Sch. Z. = *Schönere Zukunft* (a conservative, rather anti-democratic Catholic weekly, published in Vienna)

A. A. S. = *Acta Apostolicae Sedis*

N. Y. T. = *New York Times*

Mason (I) = John Brown Mason, "The Catholic Church and Hitlerism," *Ecclesiastical Review*, Apr., 1933

Mason (II) = same, "The Catholic Church in Hitler Germany," *ibid.*, Oct., 1933

² *A. A. S.* 25 (1933), pp. 389 f.; for the text of the Concordats with the German Reich and *Länder*, pertinent Church and State documents, and a brief intro. and bibl. cf. Jos. Wenner, *Reichskonkordat und Länderkonkordate*, Paderborn, 1934; the English translation used here was furnished by the N. C. W. C. News Service.

³ Cf. Hitler's decree on the occasion of the initialing of the Concordat, *N. Y. T.*, July 9, 1933.

⁴ Vice-Chancellor F. von Papen, a Papal Chamberlain, was Hitler's representative in these negotiations; Msgr. L. Kaas, retired Centrist leader, had also "intensively assisted" while in Rome; cf. *N. Y. T.*, July 21, and *Märkische Volkszeitung* (a Berlin Catholic daily), June 28, 1933.

Catholic citizens⁵ most of whom had previously adopted a suspicious and generally hostile attitude towards it.⁶

To understand the historical setting of the Concordat with Germany a few data and facts may be recalled. No Concordat had been concluded with the German Reich since a century before Protestantism, or the reign of Pope Eugene IV. At the beginning of the nineteenth century, the idea of a Reich Concordat was revived but did not materialize because of the machinations of Napoleon who feared a strengthening by it of the German Imperial power.⁷ Under the German Empire founded in 1871 the conclusion of a Concordat by the Reich was legally impossible as its constitution left the regulation of church matters to the various constituent *Länder*.⁸ The constitution of Weimar (1919) finally offered the long sought opportunity in its Article 10.⁹ In 1921-22 a draft for a Reich Concordat was actually prepared by the German government but it never went beyond the stage of preliminary discussions. The Socialist and Liberalistic parties in the *Reichstag* did not make the concessions without which it had no sufficient importance for the Catholic Church. Several Concordats were concluded, however, with individual German *Länder*, *viz.*

⁵ Cf. Hitler in his decree (cf. n. 3): "It appears to me that through the conclusion of the Concordat . . . sufficient guarantees have been given that Reich citizens of the Roman Catholic faith will henceforth put themselves unconditionally in the service of the new National Socialist State": *N. Y. T.*, July 9, 1933. Cf. A. Van Hove, "Le Concordat entre le Saint-Siège et le Reich allemand", *Nouvelle Revue Théologique* (Louvain), Febr., 1934, p. 162: "Du point de vue de la réglementation de la situation juridique de l'Eglise, le concordat du Reich est un des plus favorables à l'Eglise, parmi les concordats récentes, après le concordat d'Italie."

⁶ For warnings by the German Bishops against parts of the Nazi party program, cf. *Mason* (I), pp. 385-95, and (II), pp. 392-93.

⁷ Cf. Msgr. Joh. Messner (Vienna), "Der deutsche Katholizismus nach dem Reichskonkordat," *Sch. Z.*, Aug. 13, 1933, p. 1100; Egon Schneider, "Zum Abschluss des deutschen Reichskonkordats," *Märkische Volkszeitung*, July 18, 1933.

⁸ Erwin Lange-Ronneberg, *Die Konkordate. Ihre Geschichte, ihre Rechtsnatur und ihr Abschluss nach der Reichsverfassung vom 11. August 1919*. Paderborn, 1929, pp. 145-46; A. M. Koeniger, *Die neuen deutschen Konkordate und Kirchenverträge*. Bonn and Cologne, 1932, p. 150 n. 1 c.

⁹ Messner, *loc. cit.*; Koeniger, *op. cit.*, pp. 150-51, n. 1 c and d.

with Bavaria (1924), Prussia (1929), and Baden (1932)¹⁰ which were adopted and ratified only after serious and often bitter struggles between various political parties and newspapers.¹¹ As their provisions were not uniform and as they did not apply at all to such States as Württemberg, Saxony, Thuringia, etc., there were strong reasons left for the conclusion of a Concordat applicable to the whole Reich.¹² The present study aims to examine certain provisions of the Reich Concordat which affect most the Church-State relationship, *viz.*, those dealing with Catholic education and organizations, priests in politics, the appointment of bishops, papal and episcopal liberty of communication, and the settlement of disputes arising over provisions of the Concordat.

Catholic Education. Education counts among the most important of the *res mixtae* which are subject to regulation by agreement between Catholic Church and State. Since, and during the nineteenth century, schools have been dealt with in most of the Concordats concluded though references to general education are not nearly so frequent in the Concordats of this period as are references to seminaries. In an Allocution of November 21, 1921, Pope Benedict XV declared it the purpose of the Church in future Concordats to guard against the dangers arising out of lay or neutral schools.¹³ We find, consequently, that only one Concordat

¹⁰ Its ratification on March 11, 1933, was the last "state act" of the government of Baden, led by the Centre and soon to be deposed by the Hitler government; cf. *Sch. Z.*, Apr. 2, 1933. The National Socialists and Communists voted unanimously against the Concordats with Baden and Prussia; cf. E. Föhr, *Das Konkordat zwischen dem Hl. Stuhle und dem Freistaat Baden*, p. 10, and Koeniger, *op. cit.*, p. 153, n. 3.

¹¹ Messner, *loc. cit.*; Schneider, *op. cit.*

¹² Art. 2 of the Concordat provides that the Concordats with the German *Länder* "remain in force and the rights and liberties of the Catholic Church which they recognize remain unchanged in the territory of these respective states . . . the dispositions contained in the present Concordat . . . are obligatory also for the said three states with respect to matters not regulated in their respective Concordats, or which complete the dispositions already established." The meaning of the article will be greatly influenced by the constitutional reorganization of the Reich still in process. For an analysis of all provisions of the Concordat from the theological point of view, cf. Van Hove, *loc. cit.*

¹³ Doyle, J. J., *Education in Recent Constitutions and Concordats*. Washington, D. C., 1933, pp. 93, 97, 103-104.

since the World War has failed to treat the subject of religious education of Catholic children.¹⁴

In Germany, Catholics have fought a long, difficult, and often bitterly disputed struggle for what they considered their rights in educational matters under the Weimar constitution.¹⁵ The differences of opinion, interests, and principles between the Centrist and other political parties made the inclusion of the school question in the Concordat with Prussia impossible.¹⁶ The Concordats with Bavaria and Baden contained educational provisions¹⁷ apparently satisfactory to the Catholic Church, considering the given conditions, but it is noteworthy that the latter Concordat was adopted in the Diet of Baden by the close vote of 44 to 42, with two of its opponents being unavoidably absent.¹⁸

The Reich Concordat deals with educational matters in its Articles 21-25. Lack of space forbids quotations and detailed comment on these provisions. However, Father Joseph Schröteler, S. J., an eminent student of Catholic education, has made a careful comparison¹⁹ of them with the Catholic "school ideal" as laid down in the Codex Juris Canonici (can. 1372-83) and the encyclical on education by Pius XI, "Divini illius magistri."²⁰ Fr. Schröteler comes to the conclusion that in the Reich Concordat "the great fundamental demands of the Catholic school ideal . . . have been fulfilled in its essential points. If these provisions will be complied with in the spirit of amicability and in the will to cooperation out of which grew the Reich Concordat, then one has to say with a joyful heart that the Concordat had laid the

¹⁴ That with Prussia, cf. n. 16.

¹⁵ Jos. Schröteler, S. J., "Das katholische Schulideal und die Bestimmungen des Reichskonkordats," *Stimmen der Zeit*, Dec., 1933.

¹⁶ There was no parliamentary majority for a Concordat including the school question; cf. exchange of notes between the Papal Nuncio and the Prussian Premier in Wenner, *op. cit.*, pp. 54-56, and A. A. S. 21 (1929), pp. 536 f.

¹⁷ Koeniger, *op. cit.*, pp. 212-24, n. 124-146; Föhr, *op. cit.*, pp. 46-49; A. Missong, "Das neue badische Konkordat," *Sch. Z.*, Dec. 4, 1932.

¹⁸ Föhr, *op. cit.*, p. 10.

¹⁹ Schröteler, *loc. cit.*

²⁰ Of Dec. 31, 1929 ("Christian Education of Youth").

legal basis for a real and permanent school peace in German lands.”²¹ (Italics by the present writer.)

The letter of the educational provisions of the Reich Concordat appears, therefore, in its essential points, satisfactory to the Catholic Church. However, the final criterion of their value to the Church will be their interpretation in the Reich School Law (Reichsschulgesetz) now in preparation,²² the pertinent decrees of the government,²³ and their application by the school authorities. Concerning this point Fr. Schröteler does not make a prophecy.

A few points should be called to mind in this connection. The “Obligatory Directions” (*Verbindliche Richtlinien*) for schools, *e. g.*, issued by Dr. Frick, Reich Secretary of the Interior, begin: “The *supreme task of the school* is the education of youth for the service of folkdom and state in the *National Socialist spirit*”²⁴ (italics by the present writer). Previously, Premier Goering had said in the Prussian government declaration of May 19, 1933, that the new teachers’ colleges will do their share in bringing near to youth “the spirit of the national and National Socialist revolution,”²⁵ and Herr Schemm, the Bavarian Minister of Education, declared a few days later: “We put our schools on the Christian foundation, in which connection the differences in the Christian creeds are for us absolutely without significance.”²⁶ These and other expressions of leading men in the National Socialist gov-

²¹ Schröteler, *loc. cit.*, p. 154.

²² *R. M. V.*, Sept. 5, 1933.

²³ “The ‘German greeting’—raised right arm and the words ‘Heil Hitler!’—is now made compulsory in all schools of Germany by a decree of Dr. Frick, Reich Minister of the Interior. In schools in Catholic sections, where the greeting has heretofore been ‘Praised be Jesus Christ,’ with the response, ‘In eternity, amen,’ the ‘German greeting’ must precede it at the opening of school and follow it at the end”: *N. Y. T.*, Jan. 14, 1934; cf. also announcement at the Archbishop’s House in Freiburg i. B., *R. M. V.*, Aug. 27, 1933.—The list of “patriotic” books issued by the Prussian Department of Education as suited for school libraries lists in the second place Alfred Rosenberg’s *Der Mythos des 20. Jahrhunderts* (now on the Index). Cf. *N. Y. T.*, Nov. 26, 1933; *R. M. V.*, Oct. 10, 1933.

²⁴ *R. M. V.*, Dec. 21, 1933.

²⁵ According to *Sch. Z.*, July 16, 1933, p. 1010.

²⁶ *Ibid.*, as quoted from *Völkischer Beobachter*, May 31, 1933.

ernment, holders of high offices directly concerned with education, must be compared with their actions, a task, largely, of the future. They indicate a strong trend and constitute a potential danger to the school ideals held by the Catholic Church and embodied, to a large extent, in the school articles of the Reich Concordat. It is also recalled that certain manifestations of the National Socialist spirit with which German youth is to be imbued in the schools have in the past been condemned by the German Catholic bishops as heresies,²⁷—a condemnation which has not been revoked.²⁸ A synthesis of traditional Catholic teaching and the National Socialist spirit will, therefore, be a difficult task.

Catholic Organizations. Catholic organizations have flourished in Germany for decades. At the time of Hitler's ascent to power their membership included many hundred thousand men, women, and youth²⁹ who were organized along various lines—purely religious, or cultural, charitable, professional, social, or athletic. In their well-known episcopal letter of June 11, 1933,³⁰ the German Bishops discussed at some length the place of Catholic organizations in the life of the Church and insisted on their continued and unrestricted existence.³¹ Previously Chancellor Hitler had written to Cardinal Bertram (Breslau) that Catholic associations were to remain unmolested if they would not oppose the new régime.³² But two weeks after the publication of the episcopal letter seven Catholic organizations, including several large ones, were suppressed in Prussia, eight in Baden, and twenty in Württemberg.³³

In view of the fact that, on the one hand, Catholic organizations are obviously of prime importance for the work of the Catho-

²⁷ Cf. *Mason (I)*, pp. 385-95 and *(II)*, pp. 381-82.

²⁸ Cf. *Mason (II)*, pp. 392-93.

²⁹ The Catholic youth organizations alone counted 1,500,000 members; cf. Bavarian episcopal letter, *R. M. V.*, May 7, 1933.

³⁰ Cf. *Mason (II)*.

³¹ *Ibid.*, pp. 398-400.

³² *Sch. Z.*, June 4 and 11, 1933.

³³ In Prussia as "religious auxiliary organizations of the Center Party" which, in ways "inimical to the state," had endeavored to prevent the "coordination" of Catholics into the new Germany, cf. *R. M. V.*, July 2, 4, and 7, 1933, and *Mason (II)*, pp. 383-84.

lic Church, and on the other, the Nazi government wants all Germans to belong to Nazi or at least Nazi-controlled and directed (so-called "coordinated") organizations, Article 31 of the Reich Concordat is of the greatest interest and importance. Its provisions definitely recognize Catholic organizations and divide them into two main groups: 1) those which have "exclusively religious, cultural, and charitable aims" and "which as such depend upon ecclesiastical authority" and 2) those which, in addition, have "other aims as well," including those of a social and professional nature. The associations in the first group are left free and unhampered by the State. While the associations in the second group may eventually be joined to state-controlled organizations of a corresponding nature, they may continue their aims in the usual way—provided they do not become involved in politics (*i. e.*, other than Nazi politics)³⁴—and membership in them is not to result in "legal detriments in school and state." The government undertakes to protect the institutions and activities of both groups of Catholic associations.³⁵

The list of permitted Catholic organizations was to be established by agreement between the hierarchy and the government but, apparently, has not so far become definite.³⁶ A number of Catholic associations were sacrificed outright by the Church,³⁷ *e. g.*, the large *Volksverein für das katholische Deutschland*³⁸ which had been one of the most active and able foes of Communism and Socialism, as well as National Socialism.³⁹

³⁴ The *Arbeitsgemeinschaft katholischer Deutschen*, under its "Leader", Franz von Papen (*cf. n. 4*) aims to "deepen and increase" the cooperation of Catholics with National Socialism: *cf. R. M. V.*, Oct. 4 and 24, 1933.

³⁵ *Cf.* announcement of the leaders of the Catholic youth organizations and the "principles of execution" (*Auslegungsgrundsätze*) of the Reich government, *R. M. V.*, Oct. 17, 1933.

³⁶ The organization of the *Catholic Action* is still in a state of flux; *cf.* the directions of the Fulda Conference of Bishops, *R. M. V.*, Oct. 22 and 28, 1933; *Sch. Z.*, Nov. 12, 1933, and Jan. 21, 1934.

³⁷ Messner, *op. cit.*, p. 1101.

³⁸ *R. M. V.*, July 19, 1933.

³⁹ *Cf. e. g.*, *Mason (I)*, p. 385, n. 1. Former Chancellor and one-time candidate for President, Wilhelm Marx, and former Reich ministers Rev. Dr. H. Brauns and A. Stegerwald (Reich Secretaries of Labor, 1920-28 and 1930-32,

An official government interpretation of various provisions of the Reich Concordat, issued on July 22, 1933, said of the Catholic associations in group two: "They will have to take special care to avoid any semblance even of party-political or labor-union activities."⁴⁰ All these Catholic groups, especially if they are of a professional nature, are therefore under the constant threat of dissolution. This is especially true as the Nazis, like the Italian Fascists, are anxious to include in their fold all the youth and workers of the country.

However, the crucial point lies in the problem of the Catholic youth organizations⁴¹ as both Catholic Church and Nazi State realize that the future belongs to him who wins and holds the youth of the country. Hitler aims to "unify" the German youth in the *Hitler Youth* organization and his wish is being carried out.⁴² Contrary to earlier affirmations, the occupational youth organizations, the non-Catholic sport associations, and the entire *Evangelical Youth* have been fused with the *Hitler Youth*, under pressure from above.⁴³ Catholic societies, including youth organizations, have been harrassed⁴⁴ and handicapped in their activities which often have been limited to lectures, hymn singing, and church services. Nazi organizations have monopolized the wearing of uniforms, parades, and martial music which are so dear and important to German youth.⁴⁵ Recently even Vice-Chancellor

respectively) and other Centrist leaders are under arrest, on charges of fraudulent management of the *Volksverein*; *R. M. V.*, Nov. 14; A. P. dispatch in *St. Louis Post-Dispatch*, Nov. 13, 1933. Professor F. Dessauer, Reichstag member, has been acquitted of the same charge, *N. Y. T.*, Dec. 16, 1933.

⁴⁰ *Märkische Volkszeitung*, July 23, 1933.

⁴¹ Cf., e. g., "Nazi State Fights Catholic Church to Curb its Power," dispatch in *N. Y. T.*, Feb. 12, 1934.

⁴² *N. Y. T.*, Dec. 22, 1933.

⁴³ *R. M. V.*, Dec. 22 and 23; *N. Y. T.*, Dec. 21 and 22, 1933.

⁴⁴ Cardinal Bertram warned Catholic Workers' Associations not to dissolve themselves "as this, unfortunately, has happened already in some places under pressure from the outside," *R. M. V.*, Sept. 15, 1933.

⁴⁵ Cf. e. g., *R. M. V.*, Sept. 3, 1933; Jan. 24, 1934. The *Hitler Youth* may wear their uniforms in school, members of confessional organizations are forbidden to do so: cf. the Obligatory Directions for Schools issued by the Reich Secretary of Interior, *R. M. V.*, Dec. 21, 1933.

von Papen denied⁴⁶ that the Catholic Church needs Catholic sports associations for Catholic youth, a claim made very strongly in the episcopal letter of June 11, 1933. Efforts are frequently made by Nazis and Nazi organizations (in Bavaria, *e. g.*, by teachers and local groups of the *Hitler Youth*) to induce young Catholics to quit their confessional organizations. Fears are aroused in them that non-membership in the *Hitler Youth* means material and professional disadvantages in later life.⁴⁷ In vain have ecclesiastical authorities protested against such methods.⁴⁸

Shortly after the conclusion of the Reich Concordat, the *Reich Youth Leader*, Baldur von Schirach, forbade boy and girl members of the *Hitler Youth* to belong also to confessional organizations as the latter "do not limit themselves to their proper church tasks."⁴⁹ In spite of the repeated efforts of Catholic youth organizations⁵⁰ this prohibition has not been lifted or mitigated. In fact, Herr von Schirach declared in December, 1933, that beside the *Hitler Youth* no other youth organizations in Germany had any longer a right to exist, and that it was unbearable that under the motto of some kind of church interests, organizations were still standing aside. In January, 1934, he spoke in a similar vein.⁵¹ Such words are, of course, in direct opposition to the provisions of Article 31 of the Reich Concordat. It should be noted that they were expressed by the appointed "Youth Leader of the German Reich" who heads all associations of German youth, both male and female, Nazi and non-Nazi.⁵²

It is no wonder, therefore, that in addressing a group of members of the German Catholic Young Men's Association, Pope Pius

⁴⁶ In his Gleiwitz (Silesia) speech, broadcast throughout Germany, cf. *R. M. V.*, Jan. 16; *N. Y. T.*, Jan. 15, 1934.

⁴⁷ Cf. *N. Y. T.*, Dec. 2; *Sch. Z.*, June 11; *R. M. V.*, Oct. 13 and 17, 1933.

⁴⁸ *E. g.*, the Bishop of Limburg (Rhineland), *R. M. V.*, Oct. 4; *N. Y. T.*, Nov. 23, 1933. The Bishop of Augsburg (Bavaria) complained in the fall of 1933 that, contrary to practice in Northern Germany, all meetings of Catholic associations were *still* prohibited, cf. *Sch. Z.*, Oct. 8, 1933.

⁴⁹ *R. M. V.* and *N. Y. T.*, July 30, 1933.

⁵⁰ *R. M. V.*, Oct. 17, 1933.

⁵¹ *R. M. V.*, Jan. 25, 26, and 27; *Sch. Z.*, Jan. 4, 1934,

⁵² *R. M. V.*, June 18, 1933.

declared that he was "deeply worried and truly anxious over the German youth, and that also he had fears concerning religion in Germany."⁵³

Priests in Politics. The Catholic Center in Germany was one of the strongest opponents of Hitlerism⁵⁴ and was the last political party to succumb to the new political order in Germany. One of its mainstays had always been the Catholic clergy as the Center had "made it its aim and purpose to obtain by constitutional means the repeal of obnoxious and oppressive laws and to protect the Church in the same way against future attacks."⁵⁵ It was, indeed, its main *raison d'être*.

Many priests had become leaders of national, regional, and other Center organizations⁵⁶ and members of various legislative bodies.⁵⁷ Others were editors of Centrist newspapers, and many made campaign speeches. When Hitler set out to smash the Center party, he did not forget the rôle played in it by the clergy. He insisted that the Vatican forbid German "ecclesiastics and religious" to belong to political parties and to engage in political activities,⁵⁸ by "reason of the present particular circumstances of Germany" and because the Reich Concordat "safeguards the rights and liberties of the Catholic Church in the Reich and in the States."⁵⁹ The Reich government undertook to see to it that

⁵³ *N. Y. T.*, Oct. 29; *R. M. V.*, Nov. 2; *Sch. Z.*, Nov. 11, 1933; similarly, Cardinal Pacelli, Papal Secretary of State, cf. *R. M. V.*, Nov. 17, 1933.

⁵⁴ It made consistent use "in campaign appeals of the incompatibility of Catholicism and National Socialism as attested to by the Catholic hierarchy . . . when other parties crumbled . . . the Center preserved its strength or even increased it", cf. *Mason (I)*, pp. 395-401.

⁵⁵ Cf. John Brown Mason, "How the Center Party Votes" (should read: How German Catholics Vote), *Commonweal*, Oct. 8, 1930.

⁵⁶ *E. g.*, Msgr. L. Kaas (German Reich), Canon J. Leicht (Bavaria), Prelate E. Föhr (Baden).

⁵⁷ Since 1919, an average of 8-10 priests were members of the *Reichstag*, cf. various *Reichstagshandbücher* (corresponding to American Congressional Directories).

⁵⁸ The *Osservatore Romano* stated that the Reich Concordat does not prevent priests from becoming "independent" members of parliament, according to Messner, *op. cit.*

⁵⁹ Article 32. In return Hitler ordered the release of priests arrested for political reasons, cf. A. P. dispatch in *St. Louis Post-Dispatch*, July 10, 1933.

similar provisions would be applied to the clergy of non-Catholic confessions.

All parties other than the National Socialist party are now outlawed in Germany, but the Nazis still complain about the "political activities" of priests,⁶⁰ including some bishops. Among them Cardinal Faulhaber of Munich seems to have aroused their ire more than others.⁶¹ They have considered it necessary to arrest about 200 priests within a year⁶² though only a few have actually been brought to trial. Sentences have been imposed upon them, running from one to eight months in jail, for such offenses as making insulting remarks about Hitler or Dr. Goebbels, words from the pulpit regarded as offensive to the Nazis, or exhorting parishioners not to decorate their houses on Corpus Christi with "pagan symbols and crooked crosses."⁶³

Appointment of Bishops. Because of the position and influence of Catholic bishops many governments have always been anxious to have a share in their appointment, especially in countries where there was frequent danger of friction between Church and State. The Catholic Church has agreed in a number of Concordats to grant State governments varying degrees of influence in this matter. Article 14 of the Reich Concordat provides that "before releasing Bulls of nomination of archbishops, bishops or coadjutors . . . , the name of the person chosen shall be made known to the Reichsstatthalter [representative of the federal government] of the respective state so as to assure that there are no objections to him of a general political character." While the State is not granted a right to veto an appointment to any of these offices, it may be assumed that for the sake of the continued cooperation between Church and State the former will take the

⁶⁰ Herr H. Schemm, Bavarian Minister of Education, declared: "The government is well aware that the Nazi state still has numerous enemies in economic life, in the confessional and elsewhere. I will not rest until these malcontents are destroyed, root and branch", cf. *N. Y. T.*, Jan. 24, 1934.

⁶¹ Cf., e. g., Bavarian Minister Esser, *R. M. V.*, Jan. 28, 1934.

⁶² Cf. dispatch "Nazi State Fights Catholic Church to Curb its Power," *N. Y. T.*, Feb. 12, 1934.

⁶³ *R. M. V.*, Nov. 28, Dec. 1, 2, 3, 5, 17, 1933; Jan. 10, 25, 26, 1934; *N. Y. T.*, Dec. 3, 4, 16, 1933; Jan. 3, 1934.

objections of the State into very careful consideration.⁶⁴ In practice, it may at times become difficult to differentiate between the objections of a "general political" and a "party-political" character.

Before bishops take possession of their dioceses, they must take an oath of allegiance and respect to the government. The Nazi State, like Mussolini's government,⁶⁵ thereby seeks to forestall opposition on the part of the hierarchy and its lower clergy to actions of the government. A bishop is a citizen of the State and as such morally obligated to give allegiance to its legal government. But the bishop is also a high Church official who exercises power which is not of Caesar. As such he has a distinctive, additional kind of responsibility which may bring him into open opposition to certain governmental measures, in obedience to what he considers divine law.

Liberty of Ecclesiastical Communication. The Reich Concordat provides specifically, in its Article 4, that both the Holy See and the diocesan authorities shall enjoy "the full liberty of communicating and corresponding" with the various ecclesiastical and lay members of the Catholic Church in Germany. The instructions, ordinances, pastoral letters, etc. of the ecclesiastical authorities "in the field of their competence (Article 1, Paragraph 2)"⁶⁶ shall "be published freely and brought to the knowledge of the faithful in the forms used heretofore." There is no provision like, or similar to it, in the Concordats previously concluded with the democratic governments of various German *Länder*, but there is one to the same effect in the Concordat with Mussolini's Italy (Article 2). The reasons are obvious. Both papal and episcopal public pronouncements and private corre-

⁶⁴ Two Bishops (Berlin and Münster) have been appointed since the conclusion of the Reich Concordat. Apparently, both the Vatican and the Prussian Premier Goering originally favored other men for Berlin, cf. *N. Y. T.*, Nov. 7, 1933.

⁶⁵ Cf. Article 19 of the Concordat with Italy.

⁶⁶ The German Reich "recognizes the right of the Catholic Church, within the limits of the general laws in force, to regulate and to administer freely her own affairs and to proclaim, in the field of her competence, laws and ordinances binding upon her members."

spondence may be of a nature, on occasion, which is not wholly pleasing to the governmental authorities; therefore, they have to be specifically safeguarded by the provisions of a solemn Concordat. Even then they are not absolutely certain of reaching their destination and serving their purpose. The eight bishops of Bavaria, *e. g.*, issued a pronouncement to their diocesans shortly before, and regarding, the popular plebiscite of November 12, 1933. Its nature was greatly displeasing to the Nazi authorities⁶⁷ and it was not allowed, therefore, to "be published freely," in fact not at all, in the Catholic newspapers⁶⁸ which had been one of "the forms used heretofore." While Catholic newspapers are "free" to print articles of a polemic nature against editorials in the *Osservatore Romano*,⁶⁹ one of them was suppressed for four weeks because it discussed, or reputedly because of the way in which it discussed, the Papal encyclical "Casti connubii" in connection with the German sterilization law.⁷⁰

These few samples show a violation of the spirit, if not the letter of Article 4 of the Reich Concordat. They give an indication of how necessary it was to have a provision of this nature included in this Concordat and they remind one of the fact that it was unnecessary in other Concordats.

Settlement of Disputes. In the past disputes over the interpretation and application of the provisions of Concordats have been frequent. Article 33 of the Reich Concordat provides for the settlement of such divergences that "the Holy See and the German Reich shall proceed, with mutual consent, to an amicable solution." This provision is similar to those in other Concordats.⁷¹ It provides for a *compositio amicabile* directly between the two parties to the Concordat. This is the way in which the Vatican and Italy, *e. g.*, finally came to an agreement concerning the *Catholic Action*.⁷² While Article 33 refers only to a diver-

⁶⁷ The Bavarian Premier Siebert declared that it had caused him "deep pain", *R. M. V.*, Nov. 21, 1933.

⁶⁸ Cf. *Sch. Z.*, Nov. 26, 1933, and Jan. 4, 1934.

⁶⁹ *E. g.*, *R. M. V.*, July 2 and 30, 1933; *Märkische Volkszeitung*, July 30, 1933.

⁷⁰ *Märkische Volkszeitung*, Aug. 6, 1933.

⁷¹ *E. g.*, Bavaria, Prussia, Italy, and Baden.

⁷² Koeniger, *op. cit.*, pp. 179-80, n. 41.

gence on the "interpretation or application" of a disposition of the Reich Concordat, it may be logically deduced that the examination and determination of the facts underlying a dispute is also provided for.⁷³ Negotiations of this nature have been going on between the Vatican and the German government for some time.⁷⁴

No provision is made in the Reich Concordat for its termination.⁷⁵ Like most Concordats, it is intended to be permanent unless it should be replaced partly or entirely by mutual agreement between the parties to it. Most authorities hold that Concordats are "conventions of a quasi-international legal character," and that as such they are subject to the general rules of international law, such as *pacta sunt servanda* and *rebus sic stantibus*.⁷⁶ It would appear possible, therefore, for one party to denounce the Concordat because of non-fulfilment by the other party and to consider itself no longer bound by it, in case the friendly negotiations provided for in Article 33 should lead to no satisfactory result.⁷⁷

That the new National Socialist government in Germany, headed by Adolf Hitler, was able to conclude a Reich Concordat and to do it at such an early date constituted a political success for it of the first order. The reason has, at times, been ascribed to a common fear of both the Catholic Church and the National Socialists that "Bolshevism" would yet flood Europe and that a common front against it was necessary.⁷⁸ It has been hard for many non-German political observers to find substantial evidence of the existence of such a menace in the Germany of 1933; and this allegation does not explain the fact that the Austrian Roman Catholic Bishops have called upon their flocks to support, as

⁷³ *Ibid.*

⁷⁴ *N. Y. T.*, Nov. 10, Dec. 12 and 14; also editorial by Edwin L. James, "German Yuletide Finds Christians Facing Nazis," *ibid.*, Feb. 14, 1934.

⁷⁵ Nor in the Concordats with Bavaria, Prussia, and Baden; there is one in the Concordat with Latvia (1922), *A. A. S.*, 14, pp. 577 f.

⁷⁶ Cf. Lange-Ronneberg, *op. cit.*, pp. 125, 134; for a detailed discussion of divergent views, cf. his Ch. III.

⁷⁷ Cf. also Koeniger, *op. cit.*, p. 156, n. 13 and p. 180, n. 41 b.

⁷⁸ *E. g.*, Messner, *op. cit.*, p. 1100.

Catholics, the Dollfuss government, particularly against the growing danger of Hitler's National Socialism and its religious-political errors.⁷⁹

It appears likely to the present writer that the Catholic Church, when concluding the Reich Concordat, had become convinced that the Third Reich had come to stay and that, therefore, the Catholic Church might gain much by making peace with it—both for the sake of the assured free practice of the Catholic religion in Germany and for the damming up of various forces hostile to it.⁸⁰ These influences which were detrimental both to the Catholic Church in particular and to the Christian Churches in Germany in general, were to be sought in victorious and often "pagan"⁸¹ National Socialist circles more than in the defeated atheistic Communist party.

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⁷⁹ *N. Y. T.*, Dec. 23, 1933; also Jos. Eberle, "Ein Hirtenbrief des österreichischen Episkopats," *Sch. Z.*, Jan. 14, 1934.

⁸⁰ Cf. *Mason (I)*, pp. 387-94, and *(II)*, p. 394, n. 29: "Fr. F. Muckermann, S. J., editor of the *Gral*, writes in its May number, according to *Sch. Z.*, July 2, 1933, p. 964: "There are in National Socialism 'strong forces which are not deterred from a conquest of the independence of the churches. . . . One may only hope that the word of the Leader [Hitler] is strong enough to keep these forces within the right bounds. . . . National Socialism will have to understand clearly that a subordination of the Catholic Church under the state would direct the Catholic population into the sharpest opposition and that consequently the hoped-for national unity would suffer the gravest shocks. The declarations of Adolf Hitler have had a calming effect; but . . . several other, also notable, voices have caused a certain alarm"; also, *ibid.*, pp. 402-403.

⁸¹ Cf. Van Hove, *loc. cit.*, p. 159: "De la part de Hitler, la conclusion du concordat était de bonne politique. Elle était un moyen de rallier au régime nouveau les catholiques . . . Les catholiques de leur côté devaient craindre le pire de la part d'hommes décidés, appuyés par la grande majorité de la population. . . ." Cf. (by an anonymous priest), "Wir wollen keinen Kulturkampf," *Sch. Z.*, Jan. 28, 1934; also numerous items in press dispatches from Germany; and the joint episcopal letter of the Austrian Bishops of Dec. 23, 1933 (cf. n. 79) which was answered by Vice-Chancellor von Papen in his Gleiwitz speech with the claim that the Third Reich under Hitler is "the first state in the world in which the sublime principles of the Popes [as laid down in *Rerum Novarum* and *Quadragesimo anno*] are not only recognized but, what is much more valuable, are put into practice." He admitted, however, that there are "some shadows in the picture." Cf. *R. M. V.*, Jan. 16, 1934; *N. Y. T.*, Jan. 15, 1934.