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Reconsidering The Church's Constitution

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As a member of the Merger Commission ¹, I was asked to write this article to answer the question: "In light of the experience of the Evangelical Lutheran Church in Canada (ELCIC), where do you think the Commission could have improved its Constitution?"

With the advantage of hindsight it is never difficult to see where improvements could have been made. It is one thing to sit around a table, as the Merger Commission did, to plan a church. It is quite another thing to see a church in action. Nonetheless, I would like to begin by saying that I do believe that the Merger Commission did many things that were right. For example, since the ELCIC came into being in 1985, it has lost only a handful of congregations and most of these were already considering leaving their church before the merger. If one studies the history of church mergers, it is evident that most of them have resulted in the loss of many more congregations. The Merger Commission can take satisfaction from doing many things right.

Recent events have displayed a major weakness in the way in which the ELCIC was constituted. The May 1994 issue of *Canada Lutheran*, the national magazine of the ELCIC, reported that, because of financial reasons, the National Council of the ELCIC had to make severe cuts to programs. The positions of the Executive directors of the Divisions for Church and Society and World Mission were eliminated. A cutback in funds for the division boards means that they will meet only once a year. These actions cannot but result in a serious decline in the programs and mission of the ELCIC.

In large part, this situation results from the failure of the Merger Commission to constitute a strong national church.

The synods obviously have more power than the national church. One might even argue that we built five churches rather than one. Ted Jacobson, President of the Evangelical Lutheran Church of Canada², argued again and again in the Merger Commission that we needed to build a strong national church. The response to him was that we wanted to build a strong church at every level—national, synodical and congregational. But the national church has not proved to be strong.

There are several reasons for this. The Merger Commission set up five Synods. The size of ELCIC's membership makes this unrealistic. Synod offices are expensive to run and the small constituency of the ELCIC cannot afford five of them. If there had been fewer Synods, many of the functions performed by Synods could be handled by the Conferences³. This would be less expensive since Conferences do not operate with full-time employees. Other churches have operated successfully on this basis. At one point the Commission seriously considered having only two Synods, one in the East and one in the West. In light of history, this idea has considerable merit.

The Commission also decided that the flow of financial funds should go from congregations to Synods to the National Church. This has resulted in Synods cutting back on the funds sent to the National Church in order to preserve synodical programs. The same issue of *Canada Lutheran* reported that during the years 1986 to 1992 congregational income increased by 27%, synodical income increased by 9% while the income sent to the National Church decreased by 5%. Control of finances results in power and thus the Synods are more powerful than the National Church.

Faced with the cutbacks to the National Church, Bishop Telmor Sartison (the national Bishop), expressed the seriousness of the problem. He said, "It comes down to the issue of mission and ministry. Are we a people in mission? Are we sent and going?"

When the Merger Commission was designing the ELCIC it would have been easy to reduce the number of Synods but today that will be very difficult to do. Once a Synod has come into being inevitably it is motivated to defend its own turf. The same issue of *Canada Lutheran* that reported the financial cutbacks also reported that the Manitoba-Northwestern Ontario

Synod voted down a proposal that would only have *explored* the implications of a merger with the Saskatchewan Synod. A similar attitude can be expected from the other Synods.

Another problem has to do with the bishops. The Commission desired to have bishops serve as "pastors to the pastors". This was an important reason for naming them "bishops" rather than "presidents". The term "bishop", it was argued, is an ecclesiastical term whereas "president" is a secular term. The term "bishop" was to signify the pastoral nature of the office.

Inasmuch as the bishops play an important role in the calling of pastors, there was an obvious problem. Would pastors be ready to bring their problems to a person who has considerable power over where they may be called, or even whether they will be called at all?

But the Constitution made it even more difficult for bishops to act as pastors to pastors. The problem is in III:12 of the Bylaws. Items a-f outline the normal procedure for discipline of an ordained minister. The Synod bishop shall, upon learning of reasons for discipline, "investigate such matters, counsel with the minister and seek to remove any cause for complaint". If counselling fails, the bishop may appoint an investigating committee. The bishop is to be a member of the investigating committee. This committee decides whether or not there should be a disciplinary committee which may call for censure and admonition by the bishop or by the Synod council or suspension or removal from the clergy roster.

This procedure gives a central role to the bishop in matters of discipline. The bishop is named as the one to investigate charges, and to both appoint and serve on the investigating committee. Can pastors see as their pastor one who has such powers of disciplinary action?

Section 12 h makes matters even worse. It allows the bishop to suspend the pastor before the charges are investigated or handled by the investigating and disciplinary committees. It names certain situations under which this procedure may be followed: "obvious heresy or flagrant immorality, or if the accused shall have admitted guilt or absconded".

These seem fairly logical. But the item goes on to say, "If the circumstances are such that, in the opinion of the bishop

of the synod, the church would suffer injury if the accused continued to exercise the office of the ordained ministry during the progress of the disciplinary procedure, the bishop may immediately suspend the accused..." This provision gives the bishop the absolute power to act unilaterally and suspend a pastor. Later, there will be a disciplinary hearing, but when such action has been taken by the bishop, there is an obvious implication of guilt already established. The pastor is likely to feel it is a matter of "We shall give you a fair trial and then you will be hanged". The bishops themselves should be reluctant to see this article retained. Action under it leaves the bishop open to legal action. If indeed the situation is this serious, surely some committee should be able to act and bear the responsibility for it. However, the presence of this power in the hands of the bishop makes it most unlikely that pastors will confide in the bishop as their pastor when they have serious problems.

In practice bishops have often acted as pastors to pastors. But where this has occurred, it has been in spite of the constitutional powers given to bishops. And it is certain that the constitutional powers have kept many other pastors from turning to a bishop for pastoral help.

If we had wanted the bishops to be administrators and disciplinarians, then the constitution makes some sense although it should not have given such autocratic powers to bishops. This would, of course, fit in with the historic meaning of the term "bishop". But if that is what we wanted we should not have talked so much about the bishops as pastors to the pastors.

When the Merger Commission was meeting, we were not as sensitive to individual rights as we are today. As a result, the constitution does not protect the rights of an accused pastor in a satisfactory manner.

There are problems with the investigating and disciplinary committees in the Constitution. The investigating committee is appointed by the bishop. The disciplinary committee is appointed by the Synod Council and the bishop of the Church. In secular law the accused, through his or her lawyer, has the right to veto certain suggested jurors. Our Constitution does not give the accused pastor any right to challenge the appointment of the committee members who act as the jury in the case.

In the case of the investigating committee, the bishop acts both to bring the charges and to appoint those who will hear them. And the bishop is a member of the investigating committee. This is a conflict of interest. The bishop acts as the prosecuting attorney and also serves on the jury. Inasmuch as the disciplinary committee is chosen by the Synod Council and the bishop of the Church, there is less obvious conflict of interest. But in both cases the accused ought to have a right to challenge appointees that may have reason to be biased towards the accused.

It might be argued that in a Christian church such biases are out of place. They are. But, as Luther saw so clearly, the Christian is always at one and the same time both justified and sinful. An accused pastor certainly should have the same right as an accused person in a secular court has to reject any appointee whom he or she believes would be biased.

The Lutheran Confessions give a central place to the congregations. The church is defined in the Augsburg Confession as "the assembly of all believers among whom the Gospel is preached in its purity and the holy sacraments are administered according to the Gospel".⁴ This means that the congregation is the primary form of the church's existence because it is the place where normally believers assemble for the preaching of the Gospel and the administration of the sacraments. There are also practical reasons for the primacy of the congregation. All other levels of the church are supported, financially and otherwise, by the congregations. Therefore, one of the major concerns of the Reformers was that the congregation should have the right to call its pastor(s).⁵ Ordination of pastors should come only after the call.

The Constitution of the ELCIC is basically in keeping with this but at some points there are problems. Article VI section 1 affirms the power of the congregations to call pastors but it adds "after consulting with the bishop of the synod". This creates questions as to authority. What the Merger Commission had in mind was that the bishop's office is a clearing house for calls. It is aware of which pastors might be open to a call and it is aware of the abilities of pastors and the need of congregations. In most cases, the congregation is happy to have such help.

Nonetheless, as written, the Constitution can be interpreted to mean that the bishop gives the congregation the permission to call. This would be contrary to the Confessions which clearly affirm that it is not the bishop but God who gives the congregation the right to call. I was a member of a congregation of the American Lutheran Church that decided to set up its own search committee to find a pastor. The district president was deeply offended at not having first been consulted. But the ALC constitution did not prohibit the action of the congregation. Would this be permissible under the ELCIC Constitution?

Recently I spoke with a layperson who was deeply concerned about the call procedure in his congregation. The Call Committee met with the bishop and one candidate was selected. The congregation was given only the option of voting yes or not to the selected pastor. The layperson said, "In the former USSR the Communist Party selected candidates and the people could only vote yes or no. We called this an example of undemocratic and dictatorial action. What do we call it when the same thing occurs in the Lutheran church?" Obviously, if we are to preserve the Reformers' concern that the congregation has the right to call its pastor, the congregation must have a greater opportunity to make the decision.

The March, 1994 issue of *Canada Lutheran* had an article about unemployed pastors. Letters to later issues indicate that this is not an isolated problem. Why are these pastors unemployed? The ELCIC has a great many vacant parishes. If more congregations took the initiative to search out pastors for call would it relieve this situation?

The ELCIC Constitution makes it clear that ordination depends upon a person having received a call which, in most cases, comes from a congregation. However, the disciplinary process for pastors does not give the congregation any right to be involved in the disciplinary process. This is a serious limitation upon the power of the congregation.

I know of a congregation that was deeply angered when the bishop (acting under article III section 12, h. of the Bylaws described above) suspended a pastor without any consultation with the congregation. When members of the congregation asked to whom they could appeal the action, they were told that they could not appeal it. The congregation was split as

a result and some members left not only the congregation but also the ELCIC.

In practice, as this case demonstrates, a congregation is angered when its chosen pastor is removed without it having any way of being involved in the decision. It feels that it has been bypassed by dictatorial action. It is particularly offended to find that it has no recourse of appeal and does not even know why its pastor is suspended.

When I was a member of Trinity Lutheran Church in Skokie, Illinois, the pastor was accused of heresy. Dr. Frederick Schiotz, President of the ALC, came to our congregation. He called a meeting of the congregation's board, open to interested members of the congregation. He explained fully the nature of the charges and their gravity. He explained how they would be investigated and allowed the congregation to express opinions. The congregation felt good about the process and knew that it was consulted and involved. The pastor was cleared of the charges but even if he had been removed by disciplinary action, the congregation would have felt that it had been done fairly and that they had been consulted. This contrasts sharply with what has happened under the ELCIC's Constitution.

The Bylaws should be amended so that the congregation is given a part to play in the discipline of the pastor that it has called. In many cases, perhaps most, the congregation will be involved in disciplinary action inasmuch as the charges will have come from the congregation in the first place. However, the Constitution allows, even in such cases, for the disciplinary process to go forward without the congregation being further involved. For both theological reasons and for practical reasons, the congregation ought to have the constitutional right to be involved in disciplinary procedures of pastors whom it has called.

The flow of financial funds, as described above, is a limitation on the power of the congregation. Some congregations, I know, would prefer to send funds to both the synod and to the national church. Many people in the congregations today are dismayed to see world missions and social concerns deprived of their executive directors. Such people would like to decide what proportion of their funds should go to the National Church rather than leaving the division of the funds to

the Synod. This seems to be a serious limitation on the power of the congregations.

It was often said in the Merger Commission that it was not writing the Constitution in stone. It could always be changed by the Church. That is often easier said than done. The ELCIC has made some changes in the Constitution but mostly they have amounted to tinkering rather than to major surgery. Has the time come for major surgery?

NOTES

- ¹ The Commission responsible for the formation of the Evangelical Lutheran Church In Canada.
- ² The ELCIC was formed in 1985 through the merger of the Canadian sections of two North American Lutheran Churches, the Lutheran Church in America and the American Lutheran Church. The Canadian section of the latter had already acted to become an autonomous Canadian Church in 1960, naming itself the Evangelical Lutheran Church of Canada.
- ³ Geographical units in the ELCIC are called Synods. The five Synods are British Columbia, Alberta and the Territories, Saskatchewan, Manitoba and Northwestern Ontario, and Eastern (which extends from Thunder Bay, Ontario to Halifax, Nova Scotia). Each Synod is divided into a number of Conferences.
- ⁴ *The Book of Concord*, edited and translated by Theodore G. Tappert (Philadelphia: Muhlenberg Press, 1959) 32.
- ⁵ E.g., *Ibid.* 331-332.