

A SHORT HISTORY OF THE DISCIPLINE AND DISPUTE RESOLUTION SYSTEM OF THE LUTHERAN CHURCH—MISSOURI SYNOD

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Introduction

Political philosophy (a.k.a. political theory) has been occupied throughout its history with two perennial concerns.¹ The first is the restraint within a state of the chief executive, or monarch, so that his actions promote the common good instead of his private interests. The second is the administration of justice, so that offenses are properly punished, that conflicts between members of society are settled, and that due process is followed.

In the history of The Lutheran Church-Missouri Synod, the first concern of political philosophy was dealt with at its beginning, in the case of Bishop Martin Stephan. He was accused of using the financial goods and certain women of the Saxons for his private interests. This led the founders of the Missouri Synod to establish a constitution in which the chief executive of the church was restrained by the synodical convention, as well as by other checks and balances. This was paralleled at the congregational level, so that the pastors of congregations were restrained by their voters' assemblies, as well as by other checks and balances.²

The second concern of political philosophy, i.e., the area of justice, has often been an afterthought in the Missouri Synod. Even today, at the congregational level, it is rare to find a constitution and bylaws that give much help to a president or elders attempting to adjudicate a case within a congregation. But we have always had a justice system, of some sort, at the synodical level. My essay intends to review the history of this system, how the Missouri Synod has dealt with offenses against its doctrine and moral standards, and how it has settled conflicts when and where they occurred.

Pre-History: The Church Orders of Germany

The Germans have, as a rule, always been a “law and order” type of people. This is true in spite of the American perception of Germany, which was colored by our experience in the two World Wars. This was as true for the Lutherans in Germany as for any other Christians. Beginnings with visitations in the 1520s, Luther and his colleagues took up visitation of parishes and schools to set everything in order. In the course of time and experience, this resulted in a set of church ordinances [*Kirchenordnung*] in the Lutheran territories.

Last year Concordia Publishing House published in English translation the 1569 *Church Order* of Duke Julius of Braunschweig and Lüneburg,³ most of whose territory would later become part of the Kingdom of Hanover. This church order was co-authored by the confessors Martin Chemnitz and Jacob Andreae by request of the duke. In this church order, we can see how many Lutherans dealt with issues of discipline and dispute resolution in the earliest days of the Lutheran church.

The basic level of supervision was the “superintendent,” whose job was to visit every parish twice a year.⁴ He was responsible for anywhere from eight to twenty-five pastors,⁵ so he was the equivalent of our “circuit visitors” today. During his visit to a parish, the superintendent interviewed every pastor in a parish, the mayor of the town, and a few responsible laymen. The superintendent was given a list of questions which he was to ask these people and guide his investigations.⁶

Superintendents were themselves supervised by “general-superintendents,” who were responsible for two to five superintendents.⁷ Discipline was initiated by the pastor, and if his admonitions did not avail, the case went to the superintendent. If his admonition did not avail, it went higher up to the consistory, which was the final court that decided on excommunication.⁸ For more details about this form of Lutheran church governance, I encourage you to obtain and read through the *1569 Church Order* published by Concordia Publishing House.

LC-MS First Period (1847-1941) – Conventions and Ad Hoc Committees

In the synod’s first constitution of 1847, the synod president was given the responsibility of visiting in a three year period every congregation and pastor in order to review their doctrine, life, and performance of duties.⁹ He was to strictly follow detailed visitation “Instructions” that were adopted by the synod and published with the Constitution.¹⁰ As part of his visit, the president was to “effect a peaceable settlement” if there were differences between the pastor and congregation.¹¹ If there were other disputes between groups or individuals within a congregation, the president could also settle those cases, but only if all persons involved in the dispute requested arbitration.¹²

At the synodical convention, which was at first held annually, the synod president was to report on his visitation from the previous year.¹³ If there was a case of a pastor who had continued in “wrong doctrine or in an offensive life,” and that pastor had been reprimanded several times by the synod president, the congregation involved, and the ministerium, then the synod president was supposed to report this to the synodical convention. On the basis of this report, the convention was to reprimand the offending pastor, and if this reprimand failed, the pastor was to be expelled.

In 1854, a new constitution was adopted by the Missouri Synod. The primary change was the creation of districts, initially four in number. The synod president’s duties of visiting congregations and pastors, the reporting of erring pastors, and the settlement of disputes were all handed over to the district presidents. In those days and until the latter twentieth century, district presidents were full-time pastors, not full-time executives.

In the 1854 constitution, cases of erring pastors were to be reported by the district presidents to their district conventions, in the same manner in which the synod president had handled those cases under the previous constitution. The district conventions were to reprimand the erring and obstinate pastors, and expel them if there was no change in response to the reprimand.¹⁴ Urgent cases of dispute within congregations were to be settled by the district president or by an ad hoc committee appointed by him. If the matter was not urgent, the case was to be settled by the district convention.¹⁵

The synod president in the 1854 constitution had “the supervision over the doctrine, practice, and the respective administration” of all church-workers, all synod and district officers, the districts, the pastoral conferences, and the congregations of synod.¹⁶ But his supervision was severely limited to giving “advice, admonition, and reproof,” unless the affairs of the synod required his participation in a case AND he was expressly invested with such power. This meant that when someone, or some group, went awry, the synod president could only report the problem to the district president or district convention. Finally, the case could be brought to the synod convention if necessary,¹⁷ which convention was always understood to be a final court of appeal.¹⁸

How did this work out in practice? Vice-President Daniel Preus published an illuminating article in the Epiphany 2003 issue of *LOGIA* titled “Church Discipline in Early Missouri and Lutheran Identity.” It is now available as a free download on the *LOGIA* website,¹⁹ and I recommend that you read it. In summary, Preus states that:

Already by the 1870s, however, in view of the limited time available at the synodical and district conventions, investigations were handled mostly by committees. The final ruling, however, continued to be made by the synodical convention.²⁰

As to the process of discipline or arbitration, I assume that when C.F.W. Walther's *Pastoral Theology* was published in German in 1872 that its chapters on fraternal discipline, public repentance, and excommunication were used as a guide.²¹ For difficult cases, Walther referred²² the reader to the 1664 "Wittenberg Counsels"²³ and the 1623/1671 "Treasury of Counsels and Decisions" edited by Georg Dedekennus.²⁴ These books in Latin were collections of judicial decisions made by the orthodox Lutheran faculties for church discipline and dispute cases in the 16th and 17th century. In 1902, August L. Graebner published an essay in English about the use of evidence in church discipline,²⁵ which became part of John Fritz's *Pastoral Theology* in 1932.²⁶ Fritz's work was still being used at LC-MS seminaries and by LC-MS pastors through the late 1980s.

There were two controversial cases from this first period that tested the original justice system of the LC-MS. The first was the 1899 Trinity, Cincinnati, Ohio case. In that case, the two pastors of that church excommunicated a lay member for withdrawing his son from the German parochial school, so that the boy could improve his English in time for his high school education.²⁷ The layman appealed his excommunication to the district. The district president suspended the two pastors in 1903, and the district convention upheld the suspension. The congregation initially sided with the pastors, resigned from the Missouri Synod, and applied to the Wisconsin Synod for membership.

When Trinity, Cincinnati applied to the Wisconsin Synod for membership, it thereby involved the Synodical Conference in which both synods were members. The question was thus posed to the Synodical Conference whether a district, or even the synod itself, could overturn or interfere in a congregation's excommunication of its lay member. The actual case was resolved when, in 1911, Trinity, Cincinnati deposed its pastor and lifted its excommunication of the layman.²⁸ The theoretical issue was finally resolved by the Synodical Conference's 1932 "Thiensville Thesis" which states: "The discipline of a local congregation and the discipline of a synod cannot properly come into conflict with each other because the local congregation expels from the local congregation, not from the synod, and the synod from the synod, not from the local congregation."²⁹

The second controversial case in the first period was the case of missionary Adolph A. Brux. Upon his arrival in Bombay in 1924, Brux and his wife had attended evening vespers led by a Presbyterian in a Bombay missionary guest house.³⁰ His attendance at that worship service was challenged by a fellow missionary. Brux defended his action with an essay criticizing the LC-MS existing position on "prayer fellowship." The case then went to the LC-MS mission board for resolution.

When Brux returned to America in 1931 on furlough, he met with the mission board and some members of the Saint Louis seminary faculty. In 1932 both the mission board and faculty determined that Brux was in error in the matter of "prayer-fellowship" and that he could not return to the mission field. Brux protested the authority of the mission board, since he had originally been called by his district to serve as a missionary. The case then went to an ad hoc committee, whose recommendations were rejected by the mission board.

Brux published and circulated two treatises defending his theological position and his case.³¹ These treatises included charges by Brux against synod president Frederick Pfothner for his handling of the case. Brux appealed his case to the 1935 synodical convention, which appointed another ad hoc committee to review the case. This committee approved his returning to India, but demanded some apologies from him. Brux refused to apologize, and appealed to the synod convention again in 1938. By then he was already working at the Oriental Institute at the University of Chicago, so his return to India was a moot point.

The 1935 synod convention witnessed the non-election of President Pfothenauer and also the establishment of a Constitution Committee, part of whose purpose was to review the adjudicatory process of synod. In my opinion, Pfothenauer's legitimate involvement in the Brux case, the charges published by Brux against him, and the confusing committee process in that case led the synod to think that there could be a better way in dealing with such complicated cases. A new model for appeals was proposed by the Constitution Committee at the 1938 convention,³² which was finally adopted after some revision in 1941.

In summary, the first period saw the administration of cases by district presidents, with the decisions to expel or final decision in disputes being made by the district convention or synod convention. This entailed the use of ad hoc committees at the discretion of the district or synod presidents or by decision of the conventions.

LC-MS Second Period (1941-71) – Boards of Appeals

The 1941 convention created permanent Boards of Appeals for both the districts and synod. The intent was to avoid the pitfalls of the ad hoc committee system and to keep most adjudicatory matters out of the synod and district conventions. The 1941 proceedings state:

Synod and each District shall elect a Board of Appeals, that of Synod consisting of four clergymen and three laymen and that of District of not fewer than three clergymen and two laymen. Their term of office shall be six years. No member shall serve on this Board successively longer than two terms. No administrative or executive official of Synod or of any of its Districts shall be a member of a Board of Appeals.³³

The prohibition of synod and district officers from serving on Boards of Appeals was in keeping with the American principle of the separation of executive and judicial powers. It also spared synod and district officers from the type of backlash that President Pfothenauer had to endure due to his necessary and legitimate involvement in the Brux case.

The synodical president's powers in cases of adjudication or discipline changed significantly in 1941.³⁴ Before 1941, if the synod had an erring district president, the synodical president was to deal with him, and if that proved fruitless, he was to report it to the national convention. This process is still in place (see LC-MS Constitution Art. XI.B.2). Before 1941, the synodical convention would then take up the case and decide what to do with that district president.

In the revisions of 1941, nobody seemed to have noticed that the linkage between the two parts of the disciplinary process had been severed. The synod president may still deal with an erring district president and report him to the synod convention, but that convention no longer has a process for disciplining the errorist. It is like having policemen who can arrest, but having no judge to bring the criminals to trial. The essential part of the justice system is missing.

In the 1941 to 1971 bylaws, synod conventions could still review a case considered by the district or synod Board of Appeals by forming a "Committee of Review."³⁵ This committee, elected at the convention, was charged only with determining whether errors were made in procedure, and if so, the case was remanded back to the Synod Board of Appeals for correction.

In 1965, the synod convention gave to the district presidents the power to suspend a church-worker from his "duties and responsibilities of office" before a Board of Appeals had determined that he was guilty. This was a definite move toward an episcopal system and it did not sit well with the synod. The matter of restriction and suspension by district presidents was revised several times, in 1969, 1971, 1983, and 1986.³⁶

There was a well-known controversial case in the second period, namely, the case of Pastor Herman Otten against Concordia Seminary, Saint Louis for its refusal to certify him for the ordained ministry.³⁷ Pastor Otten was not certified to serve as an LC-MS ordained minister in Spring 1958. He appealed this decision to the seminary Board of Control that year, and then appealed to the Synod Board of Appeals, which had a tie-decision on Otten's case in November 1960.

Years later, this case was reviewed again by the LC-MS Commission on Appeals, which ruled in December 1984 that the tie-vote meant the seminary had not "met their stipulated burden of proof and Herman Otten shall be considered to be the prevailing party."³⁸ In spite of that 1984 ruling, Pastor Otten was never certified to be a minister by the Missouri Synod, though he served one of its congregations in New Haven, Missouri for his entire career.

LC-MS Third Period (1971-92) – Commissions on Adjudication and Appeals.

In 1971 the synod convention revised the Board of Appeals system.³⁹ Instead of two, it created three types of judicatories: District Commissions on Adjudication, the Synodical Commission on Adjudication, and the Synodical Commission on Appeals. The Synodical Commission on Adjudication was the venue for cases in which the synod, a district, or one of their agencies or employees was a party to a case. All members of these three commissions were to be elected by their respective convention, i.e., either district or synod. The adjudication boards consisted of four clergy and three laymen, at least two of which laymen were to be lawyers. The Commission on Appeals consisted of five clergy and four laymen, at least two of which were to be lawyers.

The 1941 prohibition of synodical and district officers and staff serving on these commissions was continued, with the exception of members of synodical seminaries and colleges. The possibility of the review of cases by the synod convention via its "Committee of Review" was eliminated in 1971. In other respects, the Commissions on Adjudication and Appeals operated in a similar manner as the previous Boards of Appeals. The differences between the two can be found by comparing the second period "General Rules Governing Boards of Appeals"⁴⁰ with the third period "Rules of Procedure."⁴¹

There was a well-known controversial set of cases in the third period, namely, the several cases pertaining to President Robert Preus' termination as President of Concordia Theological Seminary, Fort Wayne.⁴² Preus was terminated by the CTS Board of Regents under the specious rubrics of "honorable retirement."⁴³ The problem with this action was that "honorable retirement" was defined in the bylaws as taking place automatically at age 70 for the seminary president, but Preus was age 64. If the CTS Regents had terminated Preus for cause under the rubrics of "removal of office,"⁴⁴ he would have had recourse to the synod's adjudicatory system, but in this situation he had none.

After making a personal appeal for help to President Ralph Bohlmann, and receiving none, President Preus went to the civil courts in Allen County, Indiana, in the hope that the courts would require the LC-MS to follow its own bylaws. They did so, but the President and Vice-Presidents of the LC-MS countered with the suspension of Preus from the LC-MS clergy roster on the basis of his allegedly violating I Corinthians 6. Ultimately, in January and May 1992, the LC-MS Commission on Appeals ruled in Preus' favor, restored him to the clergy roster, and told the Fort Wayne Regents to return him to office as president at the seminary.⁴⁵

The Fort Wayne Regents refused to recognize the authority of the Commission on Appeals, so the case was settled by the 1992 synod convention through an ad hoc committee appointed by synod president Bohlmann. This committee let Preus keep the title of President for a year, but gave all presidential authority to another seminary officer who was already in place.⁴⁶ This ad hoc committee was also responsible for making the "opinions" of the Commission on Constitutional Matters and Commission on Theology and Church Relations binding on all adjudicatory and appeals cases through a resolution which it proposed to the convention.⁴⁷

LC-MS Fourth Period (1992-2004) – Dispute Resolution System

A committee, called the “Task Force on Conflict Resolution,” was appointed by President Bohlmann in January 1990 to review the entire system of adjudication and appeals. It should be observed that the Preus case was uppermost in the synod president’s mind at that time. The task force proposed a complete overhaul of the synod’s adjudicatory offices and procedures under the general principle of “conflict resolution,” which was adopted at the 1992 convention. The preamble gave the rationale for these radical changes:

[T]he process presented by the task force offers the Synod a new procedure for conflict resolution that: a. is thoroughly biblical; b. stresses the reconciliation of members within the family of God (encouraging a win-win rather than win-lose resolution of conflict); c. presents a positive witness to the secular community as to how Christians resolve their conflicts; d. provides for final resolution of disputes in a timely manner; e. is less costly in terms of money and time; f. discourages the secular approach of adversarial litigation; and g. requires a face-to-face meeting of the complainant and respondent in a spirit of Christian reconciliation.⁴⁸

Whether any of these statements are true, they were the “selling points” that convinced delegates to adopt the new system.

In the new dispute resolution system, the previous prohibition of synodical and district officers and staff from serving as officers in the system was removed, as was the limitation of holding multiple offices.⁴⁹ “Reconcilers,” who were really judges in many cases, were appointed in groups of four, with no more than two pastors. The requirement to have lawyers serving as adjudicatory officers, found in the previous period (1971-92), was eliminated. Dispute Resolution Panels at the synodical level were to include at least one pastor and one layman in a group of three. The selection of the “reconcilers” was to be done by the district Board of Directors, based on a list supplied by Circuit Counselors. The synodical dispute resolution panels were chosen from the total roster of reconcilers by casting lots.

There are many things that could be said about the problems inherent in this new system⁵⁰ and I think my co-presenters will be doing that today. I have only a few comments to make. First, there is confusion between dispute cases and expulsion cases in the bylaws from this period, which confusion was corrected to some degree in the 2004 revisions. Second, the term “reconciler” is deceptive. Although reconciliation is appropriate where no harm is done, restitution is also a Christian principle that needs to be observed where loss is suffered. Third, dispute resolution is a needed function and was part of the original LC-MS visitation by the synod president, and later by district presidents. I can only guess that it was made part of the adjudication system because district presidents were no longer involved in that area.

Fourth, CTCR and CCM rulings, which are absolutely binding on cases in the dispute resolution system, are rendered *ex parte*, without notice or hearing. This prevents these commissioners from understanding the full implications of what they are ruling on and, more importantly, denies to defendants and complainants a fundamental right of due process.⁵¹ The ACELC recently discovered this when a ruling was made against them by the CCM without their being notified.⁵² Finally, lawyers and any sort of adviser are prohibited from attending hearings, so that both complainants and defendants are left to their own devices in church court.⁵³ Those who are not knowledgeable in the law, whether civil or church law, could easily be taken advantage of by unscrupulous church officers or persons opposing them.

There was a well-known and controversial case in this fourth period, namely, the case in which Atlantic District President David Benke was charged with violating the LC-MS Constitution’s prohibition of syncretism⁵⁴ when he participated in an inter-faith worship service at Yankee Stadium.⁵⁵ Eighteen pastors and three congregations filed charges against Benke, and the charges were heard by LC-MS Vice-President Wallace Schulz. Schulz determined that Benke should be suspended. The case then went to a

Dispute Resolution Panel. The panel ruled on the basis of several binding *ex parte* rulings of the Commission on Constitution Matters. The panel concluded that Benke's suspension was lifted and he was to remain a pastor in good standing in the LC-MS. In this case, the Commission on Constitutional Matters made all the key decisions, acting as a veritable "supreme court" for the synod.

LC-MS Fifth Period (2004-present) – Dispute Resolution System and Hearing Panels

In my opinion, the dispute resolution system did not handle the Benke case well, and not just because of its outcome. I think that the synod president and his Blue Ribbon task force also came to the same conclusion, because they proposed another major revision to the adjudication system as soon as possible, to the 2004 convention.⁵⁶ Although it had a number of faults, the system introduced in 2004 was an improvement, because it separated cases that were disputes and that needed "reconciliation" from cases that were potential expulsions.

The 2004 revisions to the bylaws also provided for a modified system for judging expulsion cases involving district and synod officers and staff, for cases in which the synod president is a defendant, and for cases of sexual misconduct or criminal behavior. I have analyzed the 2004 system, as it presently exists in the 2013 Handbook, in a flow chart that is available at the website of "Brothers of John the Steadfast."⁵⁷

It is not unusual for LC-MS people to hear about an erring pastor, teacher, professor, or congregation and then to wonder why the synod president doesn't do anything about it. If the error happens at the parish level, involving a pastor, teacher, commissioned church-worker, or congregation, according to the Constitution the synod president can do *nothing* about it, other than to tell the district president to do something. The district president can, and has at times, ignored the synod president with impunity. This is the government that the Missouri Synod established in the 1854 revisions to our constitution, and it has remained so ever since. A recent ruling of the Commission on Constitutional Matters confirms this.⁵⁸

The synod president was also removed from supervision over the LC-MS universities and colleges in 1995, when they were reincorporated as the Concordia University System (CUS). Their faculty and presidents report to the CUS Board and its President. The synod president now only has disciplinary authority over synod officers, employees of the synod, districts, and district presidents (LC-MS Const. XI.B). But even with regard to these persons, the decision to discipline or expel is made by panels of district presidents and a reconciler (see LC-MS Bylaw 2.15.7.2, 2.15.8, and 2.15.9). The synod president is only a first-responder, he does not make final decisions in any of these cases.⁵⁹

In order to resolve the problem of the synod president's weak- to non-existent authority over erring district presidents, my congregation and others have memorialized the synod with the overture "To Support Proper Ecclesiastical Supervision in Synodical Districts."⁶⁰ This provides a process by which district presidents may be held accountable for their failure to exert doctrinal discipline and be removed from office, if and when the synodical president and the synodical convention both agree that this needs to be done. This will also prevent some districts from falling into the bad habit of doctrinal indifference.

Finally, a word needs to be said about how the synodical and congregational adjudication systems work out in the civil courts. There are three recent cases that pertain directly to the Lutheran Church-Missouri Synod, and so tell us how the civil courts may rule.

The first is the 1985 appeals case "Werling vs. Grace Evangelical Lutheran Church of River Forest."⁶¹ In this case, the civil courts admitted that they cannot determine whether the LC-MS is hierarchical or congregational. Therefore the civil court cannot defer to the decisions of the synod, its districts, or its church courts when synod attempts to rule over congregations.

The second case is the 2012 Supreme Court case “Hosanna-Tabor Evangelical Lutheran Church vs. EEOC.”⁶² In that case, which was considered a victory for religious freedom, the Court decided that a congregation’s right to choose its minister cannot be infringed upon by federal or state laws. Although a victory for the rights of congregations, it means that ministers of religion have little or no protection under federal or state laws when it comes to their employment, compensation, benefits, or similar matters.

The third case is the 2015 case “Hillenbrand vs. Christ Lutheran Church, Birch Run, Michigan.”⁶³ In this case, a pastor of a church who had served for seven years was terminated by his congregation. He appealed to the LC-MS Dispute Resolution Process, which ordered that the pastor should be reinstated until he received and accepted a call to another congregation, and that the congregation who terminated him should give him back pay and compensation for benefits costs and trial costs. The congregation responded by withdrawing its membership from the synod and did not reinstate their former pastor.

The civil court which heard the case determined that the LC-MS is congregation in its polity. This means that synod is advisory with respect to congregations, even in adjudication cases. The court also determined that the only remedy available to the synod in such cases is to revoke the membership of a congregation. Dispute Resolution Panels or any church court cannot tell congregations in the LC-MS whom or what they have to pay in damages or other forms of compensation. Furthermore, since the congregation had left the synod, the synod had no authority to bind the congregation under civil law.

I cannot advise you what these three civil court cases mean with respect to specific cases you or others might be involved in. I am not trained in the law and cannot advise in that area. I only bring these three cases to your attention, because attorney’s dealing with cases pertaining to the LC-MS and its members need to pay attention to these three cases and consider their precedential merits.

Conclusion

The LC-MS now has a better system for settling disputes and for dealing with offenses than it did in its fourth period (1992-2004). This is of little consolation to those pastors and other church-workers who were expelled from the synod, who were removed from their calls and livelihood, or who voluntarily left the synod because they were poorly treated in that period.

The present system has its own faults, as the recent case of Professor Matthew Becker demonstrated.⁶⁴ The Lutheran Concerns Association has offered an overture to the 2016 convention to appoint a new task force,⁶⁵ so that we may do better as a synod in treating our church-workers and in preserving the Gospel among us. I encourage you to support that overture to synod, through your delegates to our convention in Milwaukee in July 2016.

¹ On the history of political philosophy, I highly recommend: Leo Strauss and Joseph Cropsey, eds. *History of Political Philosophy*, 3rd ed. (Chicago: University of Chicago, 1987).

² The standard work on this subject is: Carl S. Munding, *Government in the Missouri Synod: The Genesis of Decentralized Government in the Missouri Synod* (Saint Louis: Concordia Publishing House, 1947). A more recent unpublished work, commissioned by the LC-MS, is: August Suelflow, *Synodical Survey Commission Reports: 1A, 1B, 2A, 2B, 2c, 3A, Charts*, several volumes (1962). Suelflow’s reports document how the LC-MS church government and its agencies were established and developed, up until 1960. One set of the reports are in the publicly accessible library bookshelves at Concordia Historical Institute. A scanned version of these reports is also held at the Institute, courtesy the labors of Rev. George Gude.

³ Martin Chemnitz and Jacob Andreae, *Church Order for Braunschweig-Wolfenbittel*, tr. Jacob Corzine, Matthew Harrison, and Andrew Smith (Saint Louis: Concordia Publishing House, 2015).

⁴ Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbittel*, 169.

⁵ Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbittel*, 180-181.

⁶ Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbittel*, 170-176.

⁷ Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbüttel*, 176-179.

⁸ Chemnitz and Andreae, *Church Order for Braunschweig-Wolfenbüttel*, 181-186.

⁹ William Gustav Polack, "Our First Synodical Constitution," *Concordia Historical Institute Quarterly* 16 no. 1 (April 1943): 16 [1847 LC-MS Constitution VI.A.7; hereafter "Const."].

¹⁰ Polack, "Our First Synodical Constitution," 16 [1847 Const. VI.A.13]; for the actual "Instructions," see C.S. Meyer, ed., *Moving Frontiers: Readings in the History of The Lutheran Church—Missouri Synod* (Saint Louis: Concordia Publishing House, 1964), 162-163.

¹¹ Meyer, *Moving Frontiers*, 162 (instruction #8).

¹² Polack, "Our First Synodical Constitution," 5 [1847 Const. IV.9].

¹³ Polack, "Our First Synodical Constitution," 6 [1847 Const. V.7].

¹⁴ Meyer, *Moving Frontiers*, 153 [1854 Const. V.A.7].

¹⁵ Meyer, *Moving Frontiers*, 154 [1854 Const. V.A.12].

¹⁶ Meyer, *Moving Frontiers*, 159 [1854 Const. VI.E.1-3].

¹⁷ Meyer, *Moving Frontiers*, 159 [1854 Const. VI.E.2].

¹⁸ Meyer, *Moving Frontiers*, 151 [1854 Const. IV.B].

¹⁹ See <http://www.logia.org/new-products/12-1-after-ten-years> ; accessed April 15, 2016.

²⁰ Daniel Preus, "Church Discipline in Early Missouri and Lutheran Identity," *LOGIA* 12 no. 1 (Epiphany 2003): 27-34. Back issues of LOGIA are available, some for free, others for a minimal fee at: www.logia.org ; accessed April 15, 2016.

²¹ C.F.W. Walther, *Pastoral Theology*, tr. John Drickamer (New Haven: Lutheran News, Inc., 1995), 238-253.

Concordia Publishing House has announced a new edition of this work to be released in 2017, which will include all of the quotations from the orthodox Lutheran theologians and casuists, which as a rule the Drickamer translation did not include. In many sections, the quotations from the orthodox Lutheran fathers and casuists are more valuable and more helpful than the summary statements offered by Walther in his work. Thus the new CPH edition of *Pastoral Theology* will become a necessary part of every LC-MS Lutheran pastor and church officer's library.

²² Walther, *Pastoral Theology*, 249.

²³ Johannes Meisner, ed., et.al., *Consilia Theologica Witebergensia, Das ist/Wittenbergische Geistliche Rathschläge Deß theuren Mannes Gottes/ D. Martini Lutheri, seiner Collegen, und treuen Nachfolger/ von dem heiligen Reformation-Anfang/ biß auff jetzige Zeit/ in dem Namen der gesampten Theologischen Facultät außgestellte Urtheil/ Bedencken/ und offentliche Schrifftten / In Vier Theilen/ Von Religion- Lehr- und Glaubens- Ministerial- und Kirchen- Moral- und Policey- Matrimonial- und Ehe-sachen/ Und allerhand darbey vorfallenden Casibus, Ordentlich zusammen gebracht/ Und zur Ehre Gottes ... abgefertiget/ Von Der Theologischen Facultät daseibsten* (Frankfurt am Main: Johann Andreas Endters und Wolfgang deß Jüngern Erben, 1664).

²⁴ Georg Dedekennus, *Thesaurus Consiliorum Et Decisionum, Das ist: Vornehmer Universitäten Hochlöblicher Collegien, wohlbestallter Consistorien auch sonst Hochgelahrter Theologen und Juristen Rath, Bedencken, Antwort, Belehrung ... in und von allerhand schweren Fällen und wichtigen Fragen, belangend so wohl Religions- Glaubens- Gewissens- ... und andere Sachen ... : Theils aus vielen Archivis erhalten; theils von ziemlichen Jahren biß daher auffgenommen ... Accessit Ad Universum Opus Appendix Nova* (Hamburg: Zechariah Hertels, 1671). On the works by J. Meisner and G. Dedekennus, as well as similar literature of Lutheran casuistry in the orthodox Lutheran period, see: Benjamin T. G. Mayes, *Counsel and Conscience: Lutheran Casuistry and Moral Reasoning after the Reformation* (Göttingen: Vandenhoeck und Ruprecht, 2011).

²⁵ August L. Graebner, "The Evidence in Church Discipline," *Theological Quarterly* 6 (1902): 216-231.

²⁶ John Fritz, *Pastoral Theology* (Saint Louis: Concordia Publishing House, 1932), 245-256.

²⁷ For details on the Cincinnati case, see Edward C. Fredrich, *The Wisconsin Synod Lutherans* (Milwaukee: Northwestern Publishing House, 1992), 107-109.

²⁸ Fredrich, *The Wisconsin Synod Lutherans*, 108.

²⁹ Fredrich, *The Wisconsin Synod Lutherans*, 183-184.

³⁰ For details on the Brux case, see Dean Lueking, *Mission in the Making: The Missionary Enterprise Among Missouri Synod Lutherans, 1846-1963* (Saint Louis: Concordia Publishing House, 1964), 270-276; Herbert M. Zorn, *Much Cause for Joy—and Some for Learning: A Report on 75 Years of Mission in India* (Malappuram, Kerala State,

India: M.E.L.I.M., 1970), 28, 31-32; Mark E. Braun, *A Tale of Two Synods: Events that Led to the Split Between Wisconsin and Missouri* (Milwaukee: Northwestern Publishing House, 2003), 132-138; and Jack T. Robinson, "The Brux Case," *Currents in Theology and Mission* 4 (June 1977): 143-150.

³¹ Adolph Brux, *An Appeal to Synod with History of Case Including Charges against Board of Foreign Missions and Its General Secretary and Charges against the President of Synod* (Racine, WI: 1934); and Adolph Brux, *Christian Prayer-Fellowship and Unionism: An Investigation of our Synodical Position with Respect to Prayer-Fellowship with Christians of Other Denominations* (Racine, WI: 1935).

³² LC-MS, *Proceedings of the Thirty-seventh Regular Convention of the Ev. Lutheran Synod of Missouri, Ohio and Other States, St. Louis, June 15-24, 1938* (Saint Louis: Concordia Publishing House, 1938), 195-198.

³³ LC-MS, *Proceedings of the Thirty-eighth Regular Convention of the Ev. Lutheran Synod of Missouri, Ohio and Other States, St. Louis, June 18-27, 1941* (Saint Louis: Concordia Publishing House, 1941), 272. This became Chapter V in the bylaws from 1941 to 1971.

³⁴ On this point, see Martin R. Noland, "A Primer on Doctrinal Supervision in the LCMS," in *The Lutheran Clarion* 8 no. 6 (May 2016): 9; available online here: : <http://lutheranclarion.org> ; accessed April 15, 2016.

³⁵ See for example, *Handbook of The Lutheran Church—Missouri Synod, 1960 Edition* (Saint Louis: LC-MS, 1960), Bylaws 5.119-5.127.

³⁶ See Martin R. Noland, "Law and Due Process in the Kingdom of the Left and the Kingdom of the Right," in John R. Stephenson, ed., *God and Caesar Revisited: Luther Academy Conference Papers No. 1* (Shorewood, MN: The Luther Academy, 1995), 52-53 n. 26. This essay is available for a reasonable fee here: <http://www.logia.org/luther-academy-books/god-and-caesar-revisited> ; accessed April 15, 2016.

³⁷ On the Otten case, see James C. Burkee, *Power, Politics, and the Missouri Synod: A Conflict that Changed American Christianity* (Minneapolis: Fortress Press, 2011), 26-38; Kurt Marquart, ed., *Concordia Seminary Saint Louis vs. Herman Otten, Book of Documentation* (New Haven, MO: Lutheran News, Inc., 1959), available online here:

http://www.christiannewsno.com/Concordia_Seminary_vs_Otten_Case_By_Kurt_Marquart_p/0010006190.htm ; accessed December 28, 2015; and Herman Otten, ed., *A Forty Year Battle for Free Speech* (New Haven, MO: Lutheran News, Inc., 1995), available online here: http://www.christiannewsno.com/A_Forty_Year_Battle_for_Free_Speech_By_Herman_Otte_p/0010002890.htm ; accessed April 15, 2016.

³⁸ See official letter from the LC-MS Commission on Appeals to LC-MS President Bohlmann, dated December 12, 1984, signed by Richard G. Bodenstab, Chairman and Walter C. Dissen, Secretary , in Otten, *A Forty Year Battle for Free Speech*, 37.

³⁹ LC-MS, *Proceedings of the 49th Regular Convention of The Lutheran Church—Missouri Synod, Milwaukee, Wisconsin, July 9-16, 1971* (Saint Louis: Concordia Publishing House, 1971). This became Chapter VIII in the bylaws from 1971 to 1992.

⁴⁰ See for example *Handbook of The Lutheran Church—Missouri Synod, 1960 Edition*, Bylaws 5.141-5.185.

⁴¹ See for example *Handbook of The Lutheran Church—Missouri Synod, 1983 Edition* (Saint Louis: LC-MS, 1983), 195-198 [Bylaw 8.51].

⁴² On the Preus case, see David P. Scaer, "In Memoriam: Robert David Preus," *LOGIA* 5 #3 (Trinity 1996): 7-8; Texas Confessional Lutherans, *Anarchy* (Brenham, TX: TCL, 1992); Craig Stanford and Karl Weber, *A House Divided*, 5th ed. (Mason City, IA: Stanford Publishing, 1992); *Convention Workbook, Reports and Overtures: 58th Regular Convention of The Lutheran Church—Missouri Synod, Pittsburgh, PA, July 10-17, 1992* (Saint Louis: LC-MS, 1992), 123-127, 369-417; as well as a variety of documents sent to synod delegates in 1992, including a letter from five members of the LC-MS Board of Directors, the Fort Wayne Board of Regents minority members, and *Balance News*.

⁴³ See for example *Handbook of The Lutheran Church—Missouri Synod, 1989 Edition* (Saint Louis: LC-MS, 1989), 115 [1989 Bylaw 6.53].

⁴⁴ See for example *Handbook of The Lutheran Church—Missouri Synod, 1989 Edition* (Saint Louis: LC-MS, 1989), 111 [1989 Bylaw 6.43].

⁴⁵ See official rulings of the LC-MS Commission on Appeals dated January 24, 1992 and May 31, 1992. Portions of the January 24, 1992 ruling and other decisions by that adjudicatory body pertaining to the Preus case can be found in *Texas Confessional Lutherans, Anarchy*.

⁴⁶ See *Convention Proceedings: 58th Regular Convention of The Lutheran Church—Missouri Synod, Pittsburgh, PA, July 10-17, 1992* (Saint Louis: LC-MS, 1992), 187 [resolution 11-02].

⁴⁷ See *Convention Proceedings: 58th Regular Convention of The Lutheran Church—Missouri Synod, Pittsburgh, PA, July 10-17, 1992* (Saint Louis: LC-MS, 1992), 187 [resolution 11-01, second resolved].

⁴⁸ See *Convention Proceedings: 58th Regular Convention of The Lutheran Church—Missouri Synod, Pittsburgh, PA, July 10-17, 1992* (Saint Louis: LC-MS, 1992), 141-150 [Resolutions 5-01B, 5-02A, 5-03B, and 5-04]; cf. *Convention Workbook, Reports and Overtures: 58th Regular Convention of The Lutheran Church—Missouri Synod, Pittsburgh, PA, July 10-17, 1992* (Saint Louis: LC-MS, 1992), 235-243 [overture 5-17]. Overture 5-19 from the LC-MS Commission on Appeals (*ibid.*, p. 243) noted that the report of the Task Force on Conflict Resolution was not completed prior to the publishing of the Convention Workbook, it had not been shared with existing Commission on Adjudication or Appeals, and that the synod needed more time to review the proposals and consider their implications. This overture was ignored.

⁴⁹ See for example *Handbook of The Lutheran Church—Missouri Synod, 1992 Edition* (Saint Louis: LC-MS, 1992), 128 [1992 Bylaw 8.13.d].

⁵⁰ I authored such an essay soon after the Dispute Resolution System was initiated: Martin R. Noland, “Law and Due Process in the Kingdom of the Left and the Kingdom of the Right,” in John R. Stephenson, ed., *God and Caesar Revisited: Luther Academy Conference Papers No. 1* (Shorewood, MN: The Luther Academy, 1995). I also analyzed how the dispute resolution pertains to the powers of district presidents in: Martin R. Noland, “District Presidents and their Council: Biblical and Confessional Limitations,” in John R. Fehrmann and Daniel Preus, eds., *Church Polity and Politics: Papers presented at the Congress on the Lutheran Confessions, Itasca, Illinois, April 3-5, 1997* (Crestwood, MO: Luther Academy, 1997), 156-172; available online here: <http://www.logia.org/luther-academy-books/congress-on-the-lutheran-confessions-church-polity-and-politics>; accessed April 15, 2016.

⁵¹ See letter from Harold M. Olsen to Ralph Bohlmann, April 5, 1990, with regard to “The Presidency/Adjudication/Supervision.”

⁵² See Clint Poppe, “The CCM and Due Process,” *Lutheran Clarion* 8 no. 6 (May 2016): 8; available online here: <http://lutheranclarion.org>; accessed April 15, 2016.

⁵³ See for example *Handbook of The Lutheran Church—Missouri Synod, 1992 Edition* (Saint Louis: LC-MS, 1992), 129 [1992 Bylaw 8.21.f]

⁵⁴ See for example *Handbook of The Lutheran Church—Missouri Synod, 2001 Edition* (Saint Louis: LC-MS, 2001), 8 [2001 LC-MS Const. VI.2b].

⁵⁵ On the Benke case, see Herman Otten, ed., *Crisis in Christendom: Seminex Ablaze* (New Haven, MO: Lutheran News, 2004), especially “A Chronology of Key Events and Dates (2001-2004)”, 18-22; “That They May Be One,” 249-251; “Decision of Dispute Resolution Panel”, 362-366; and “Signers of That They May be One,” 378-379; see also *Convention Workbook, Reports and Overtures: 62nd Regular Convention of The Lutheran Church—Missouri Synod, Saint Louis, MO, July 10-15, 2004* (Saint Louis: LC-MS, 2004), 5-7, 11-14.

⁵⁶ See *Convention Proceedings: 62nd^h Regular Convention of The Lutheran Church—Missouri Synod, Saint Louis, MO, July 10-15, 2004* (Saint Louis: LC-MS, 2004), 161-185 [Resolution 8-01A]; cf. *Convention Workbook, Reports and Overtures: 62nd Regular Convention of The Lutheran Church—Missouri Synod, Saint Louis, MO, July 10-15, 2004* (Saint Louis: LC-MS, 2004), 25-43, 291-305. On page 6 of that *Convention Workbook*, President Kieschnick observed that the existing bylaws regarding “restricting, suspending, or expelling” “have caused considerable confusion and discord in the Synod.” I agree with his assessment.

⁵⁷ Go here for free download: <http://steadfastlutherans.org/2014/10/problems-with-2013-disputeexpulsion-system>; accessed April 15, 2016.

⁵⁸ See Minutes of the Commission on Constitutional Matters, September 18-19, 2015, #129 (15-2750); available here: <http://www.lcms.org/Document.fdoc?src=lcm&id=3796>; accessed April 15, 2016.

⁵⁹ On this point, see Martin R. Noland, “A Primer on Doctrinal Supervision in the LCMS,” in *The Lutheran Clarion* 8 no. 6 (May 2016): 9; available online here: : <http://lutheranclarion.org>; accessed April 15, 2016.

⁶⁰ See Overture One at: [http://lutheranclarion.org/images/Three Overtures for the 2016 Convention.pdf](http://lutheranclarion.org/images/Three_Overtures_for_the_2016_Convention.pdf) ; accessed April 15, 2016

⁶¹ See 487 N.E.2d 990 (Ill.App. 1 Dist. 1985); 139 Ill.App.3d 496, 94 Ill.Dec. 113; *Wilbur WERLING, Carl Driessnack, Loren Saar, and Henry Eickelberg, individually on their own behalf as voting members of Grace Evangelical Lutheran Church of River Forest, Illinois, and on behalf of all similarly situated voting members of Grace Evangelical Lutheran Church of River Forest, Illinois, and derivatively on behalf of Grace Evangelical Lutheran Church of River Forest, Illinois, Plaintiffs-Appellants, v. GRACE EVANGELICAL LUTHERAN CHURCH OF RIVER FOREST, Illinois, an Illinois religious corporation, Defendant-Appellee*. No. 85-0546. Court of Appeals of Illinois, First District, Third Division. December 18, 1985.

⁶² See SUPREME COURT OF THE UNITED STATES; No. 10–553; *HOSANNA-TABOR EVANGELICAL LUTHERAN CHURCH AND SCHOOL, PETITIONER v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION et al.*; on writ of certiorari to the united states court of appeals for the sixth circuit; January 11, 2012.

⁶³ See *Hillenbrand v. Christ Lutheran Church of Run*, 091515 MICA, 319127; *RICHARD P. HILLENBRAND, Plaintiff-Appellant, v. CHRIST LUTHERAN CHURCH OF BIRCH RUN, Defendant-Appellee, and LUTHERAN CHURCH-MISSOURI SYNOD, Amicus Curiae*. No. 319127. Court of Appeals of Michigan. September 15, 2015. Saginaw Circuit Court LC No. 13-019736-CK.

⁶⁴ See Martin R. Noland, “Doctrinal Supervision and the Becker Case,” *Lutheran Clarion* 7 no. 5 (May 2015): 1-5 ; available here: <http://lutheranclarion.org/images/NewsletterMay2015.pdf> ; accessed April 15, 2016.

⁶⁵ See the third of three overtures titled “OVERTURE THREE – TO REVIEW THE POWERS OF THE SYNODICAL PRESIDENT, SYNODICAL SECRETARY, COMMISSION ON CONSTITUTIONAL MATTERS, AND DISTRICT PRESIDENTS”; available here: [http://lutheranclarion.org/images/Three Overtures for the 2016 Convention.pdf](http://lutheranclarion.org/images/Three_Overtures_for_the_2016_Convention.pdf) ; accessed April 15, 2016.