

The Possibilities of a Clergy Labour Union within the Covenantal Relationship of the Methodist Church of Southern Africa

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Abstract

The aim of this article is to investigate the basis upon which a labour union for the clergy within the Methodist Church of Southern Africa (MCSA) could be beneficial for both the church and the clergy. Such a union would recognise the clergy as personnel, rather than representatives of the church. The covenantal relationship that exists between the church and clergy is based on the premise that clergy are called by God and are, therefore, not employees of the church. However, the relationship between church and clergy is often clouded by several factors that make the judiciary hesitant to get involved in church affairs. The aim of this article is to explore how best the relationship between the church and clergy can be improved for the benefit of both parties, and so engender an authentic witness of the social justice proclamation that has become synonymous with Methodism. The effect of her social justice proclamation means the church should view the establishment of a clergy labour union as a step towards a higher standard of clergy care.

Keywords: Methodist Church; labour unions; stipends; clergy; covenantal relationship; priesthood

Introduction

Can we speak of unionising the clergy, when the clergy are not actually employed by the Methodist Church of Southern Africa (MCSA)? “A minister who is so called has a covenantal relationship but not a contractual relationship with the church. The church provides ministers with the opportunity to practise their calling in or through this covenantal relationship” (MCSA 2016, 30).



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In relation to this understanding, this article deals with two questions. Firstly, how can the covenantal relationship between the church and ministers best be defined to make it mutually beneficial? The treatment of clergy within this relationship will also be discussed apropos the Methodist Church's social justice emphasis. This article will outline the Methodist Church's understanding of priesthood within this covenantal relationship. South African Labour and Case Laws will assist us in remaining within the legal framework.

The second question is: Can clergy within the covenantal relationship unionise? The connotations for the concept of a clergy labour union will be looked at, as well as the implications thereof. The article supports the proposal of a review of the employer-employee relationship for the Methodist Church and a better system of representation of clergy within all structures of the church that deal with clergy matters.

A Methodist Understanding of Priesthood and the Social Justice Conviction

Jesus Christ is the ultimate priest as a fulfilment of the combination of all Old Testament descriptions of priesthood, as represented by Melchizedek and Aaron. The Epistle to the Hebrews (2:14-18; 4:14-16; 5:1-10; 7:9, 10, 18) defines Christ's person and role in a way that helps us understand the dual nature of the mediation Christ plays as a priest. Wainwright elaborates the scriptural emphasis of Christ's mediation; although he focuses it on worship. The strength of his outline is an understanding of the dual nature of the mediation Christ offers. "The most characteristic function of Christ in Christian worship, then, is understood to be mediation: He mediates human worship to God, and He mediates salvation from God to humanity" (Wainwright 1980, 66). This is primarily the function of a priest—to act as a mediator in a way similar to that which Christ did. Heitzenrater affirms this when he cites Wesley, saying: "I stand between God and man [sic], by the authority of the great Mediator, in the nearest and most endearing relation both to my Creator and to my fellow-creatures. Have I accordingly given my heart to God, and to my brethren for his sake? Do I love God with all my soul and strength? and my neighbour, every man, as myself?" (Heitzenrater 2017, 15).

Peter Fink defines the theology of priesthood as such: "... the heart of a theology of priesthood must be to understand the four realities of priesthood, namely, Christ, church, minister, individual Christian in relation to each other, and not in opposition ... It must begin with Jesus Christ, who possesses the only Christian priesthood, and see the others as manifestations of this priesthood of Christ" (Fink cited by Richardson and Bowden 1989, 465). The origins of the office in the New Testament differ significantly from what we understand a minister to be now: "Those whom we designate as 'ministers' are, in the New Testament, *diakonoi*, Paul's favourite title for Christian leaders, derived from the Greek word for 'service' (1 Cor. 12:4-30). Significantly, it is the same word that is the root for 'butler' and 'waiter,' terms that have a greater edge to them than 'ministry'" (Willimon 2002, 22).

In his sermon “The Ministerial Office,” commonly known as “Priests and Prophets,” John Wesley (1789) made a clear exposition of his scriptural basis of understanding priesthood, as based on Hebrews 5:4: “No man taketh this honour unto himself but he that is called of God, as was Aaron.” Wesley believed:

So, the great High-Priest of our profession sent apostles and evangelists to proclaim glad tidings to all the world; and then Pastors, Preachers, and Teachers, to build up in the faith the congregations that should be found. But I do not find that ever the office of an Evangelist was the same with that of a Pastor, frequently called a Bishop. He presided over the flock, and administered the sacraments: The former assisted him, and preached the Word, either in one or more congregations. I cannot prove from any part of the New Testament, or from any author of the three first centuries, that the office of an evangelist gave any man a right to act as a Pastor or Bishop. (Wesley 1789)

For Wesley, it was only when Constantine the Great called himself a Christian that the confusion befell the office of priesthood and one person took upon himself all the offices that Christ had called his apostles to, within a congregation. Wesley was quick to say this happened “in order to engross the whole pay” (Wesley 1789).

Wesley’s aversion to worldly gain as the intention for entry into the ministry is seen in his “An Address to Clergy,” where he makes it categorically clear that money should not be the cause of entry into ministry, but ministers must be cared and catered for. “I do not therefore blame, no, not in any degree, a Minister’s taking a yearly salary; but I blame his seeking it. The thing blameable is the having it in his view, as the motive, or any part of the motive, for entering into this sacred office” (Jackson 1872, 495). This is an important point in understanding the role and motive for any clergy, and the need to seek some form of representation for clergy in the carrying out of their calling. In the same vein, any representation must seek to ensure that the vocation remains with the singular vision that Wesley had in mind; to glorify God and the saving of souls. The ministry cannot, therefore, become a source of employment for any who seek prestige, honour and profit. Wesley, in the same address, also warns clergy against seeking better pay on arguments of having bigger families, therefore requiring more money; and also against the moving to congregations that can pay better. He even argues that this seeking better pay, even if it is done under the guise of wishing to serve the poor, contradicts the intention of ministry. “I might add, a larger income does not necessarily imply a capacity of doing more spiritual good. And this is the highest kind of good. It is good to feed the hungry, to clothe the naked: But it is a far nobler good to ‘save souls from death,’ to ‘pluck’ poor ‘brands out of the burning’” (Jackson 1872, 496).

The Methodist English roots remain a strong feature of the governance systems of the current church and very little in systemic transformation represents a church on African soil. Balia says: “Here the cultural hegemony of the ‘Christian West’ must be subject to wholesale transformation since seductive consumerism, quick money and cheap labour are not intrinsic to the African ethos” (Balia 1991, 98). Balia asks: “Is the Methodist Church in South Africa a ‘carbon copy’ of her European mother and a mere extension

thereof? Talk about the Africanisation of the church has never ceased but remains ‘talk about talks.’ No serious attempt has yet been made to free the ‘data of revelation’ from the cultural framework of Europe and as a result little acculturation has taken place” (Balia 1991, 98). Clergy employment and representation need to be framed with these critiques in mind, in order for the church to achieve an authentically African solution.

In the MCSA’s understanding, the relationship between the ministers and the church is outlined in the Methodist *Gt t ptk T w̄ w̄ Laws and Disciplines*, paragraphs 1.36–1.44 (MCSA 2016, 19–21). In paragraph 1.39 it is made clear that ordination is an act by which Christians are authorised by the church to act in its name and on its behalf in certain ways (MCSA 2016, 20). “By the same act the ordained persons receive the grace of God in response to the prayers of the church to enable them to fulfil the ministry to which they are ordained” (MCSA 2016, 20). In paragraph 1.42, it states that “Ordination places ordained Ministers in a new relation both with Christ and with the church. Under Christ they are the leaders and teachers of the congregation, setting forth in their own life the headship of Christ over themselves and over the church” (MCSA 2016, 21). The construction of the paragraph admits to a new relationship between the ordained minister, Christ and the church; however, it only goes as far as defining the relationship in terms of Christ, but not how the church then relates to the minister. Ordination, therefore, plays an important part in the role of clergy and their relation to the church. William Willimon sums it up in this way: “The Christian ministry is multivocal. God calls and the church calls. The inner, personal call must be tested and confirmed by the outer call of the church” (Willimon 2002, 26).

Another important aspect of our ministry that Willimon explains is the centrality of remaining in connexion with the church. “Chalcedon found it necessary to assert that ordination is linked to the ministry of a congregation rather than simply a personal attribute that is held apart from service to a congregation. Canon VI of Chalcedon, which deals with leadership, notes that no one can be ordained priest or deacon unless some church is clearly assigned to him” (Willimon 2002, 27). Chalcedon may appear very ancient to a reader now, but remains effective in that no minister can be without station for a period of two years, and remaining as such would deem the minister to have resigned (MCSA 2016, 40). If this is the case within the MCSA, it means that the relationship between the church and minister is imperative and cannot be separated. There are many instances where, at the end of the annual Conference,¹ some ministers are left “without station” and therefore have no accommodation or stipend for the following year. If two years of this condition lapses, those ministers have no external recourse or alternative ways of caring for themselves. The lack of access to the

1 Conference is an annual meeting whose purpose is defined as: “Conference provides direction and inspiration for the Church and is the Church’s governing authority and supreme legislative body. Conference is the sole and final authority in respect of the doctrines of the Church and their interpretation.” (MCSA 2016, 53)

government's Unemployment Insurance Fund (UIF) and other state resources is a social justice matter needing attention.

The MCSA also witnesses to “the reaffirmation and consistent exercise of the New Testament truth of the universal priesthood of believers” (MCSA 2016, 12). This understanding comes as part of several ecclesiastical developments, which in many ways called for the clarification of the role of the clergy within the life of the church. One of these developments was “A journey to the New Land” process, which has “the six calls of the journey to the new land” (1992; 1995) centred around the vision and mission of the church. Two of these calls are pertinent to our discussion. One called for “the rediscovery of every member ministry or the priesthood of all believers” and alongside that was “To set ordained Ministers free for their primary vocation of preaching, teaching and spiritual guidance” (MCSA 2020a). Ministers are, therefore, members who have been set apart for particular ministries that other members may not perform.

The other aspect that will be important for our argument here is the church's understanding of her commitment to social justice. The Methodist Church has always been involved in matters of social justice. It was these foundations that were part of the reason the United Methodist Church in America ultimately penned a Social Creed of 1908, which sought to deal with workers' rights that called for an end to child labour, a fair wage, and safety standards (United Methodist Church 2017) (National Council of Churches. "Common Witness: The Social Creed of the Churches" n.d.) Clearly then, the Methodist Church world-wide has been at the forefront of the rights of workers and it is unfathomable that in southern Africa we could, in any way, be involved in a system that seeks to oppress those who work within her structures as clergy.

The MCSA has been complicit in the issue of injustice when it comes to the treatment of her clergy. The 1968 Minutes of Conference state that stipends were graded not only by years of service, but more critically, by race. Europeans' stipends varied from R1040 for a first year probationer to R2000 for a minister with 35 years' experience, while the African Ministers' allowances prescribed R568 for probationers and R750 for all ministers, irrespective of years of service post-ordination (MCSA 1968, 237–39). The black ministers experienced discrimination on several levels, which led to the establishment of the Black Ministers Consultation, which soon became the Black Methodist Consultation (BMC). In an article authored by the founding member of the BMC, Rev. Dr E Baartman, he highlights that “the stipend as laid down by Conference was determined by the colour of one's skin. This was the triggering fact. The first meeting was called for Black Ministers to look at inequalities within the MCSA” (Baartman 2009).

When the nationalist government was solidifying its ideology of separate development (apartheid), many churches reacted, and the government was also ready with retorts that pointed out the hypocrisy within the church's profession and practice. After the

Sharpeville massacre, the Methodist Church called for a national convention comprised of leaders from all racial groups. “Prime Minister Verwoerd was not impressed ... unfortunately, it was the same Methodist Church which failed rather miserably to live up to its own ideals. Although its membership was 80 per cent black, the church, like the other multi-racial denominations, remained firmly under white control; its black ministers received well under half the minimum stipend set for whites. Methodist congregations remained essentially segregated” (Walshe 1983, 40). This segregation was visible even in the leadership of the church. Even after such a long time on the African continent, the Methodist Church had only had one President of Conference of colour, the Rev. Seth Mokitimi, elected in 1963 to hold office in the year 1964. These events were also part of the dynamics, along with the strong rise of Black Consciousness, that led to the formation of the BMC.

Caring for the Priests

Priesthood, by its very nature, is a lonely and demanding vocation and it requires not only a lot of self-discipline and inner strength from those who are called, but also the support of those who surround the priest and the institution to which they belong. This phenomenon is not unique to Methodism but is a general reality within many denominations. In a discussion about the necessity for a group that would liaise with the General Synod on the well-being of clergy, the Archbishop of Canterbury, the Rev. Justin Welby, pointed out that “the most stressful part of his career to date had been the ‘isolation’ of being a parish priest” (Macintyre 2017). He said that “the hardest work I’ve ever done and the most stressful was as a parish priest mainly because it was isolated, insatiably demanding and I was on the whole working without ... close colleagues, particularly in the first few years” (Macintyre 2017).

Caring for the clergy does not begin with just the salary, or, in church language, the stipend. There are several other means that the church uses to care for her clergy, such as covering the costs of housing, travelling, medical care and pensions. All these costs are derived from the minister’s station and are dependent on a particular station’s affordability.

Scripture is replete with ways and means through which the priests are to be taken care of, noting that they have no other inheritance but that which is brought to the altar as offering. Therefore, they are to share in the grain and meat offerings and the one tenth of the tithes as outlined in Numbers 18. It is this principle that Paul carries on in his epistle to the Corinthians: “Do you not know that those who are employed in the temple service get their food from the temple, and those who serve at the altar share in what is sacrificed on the altar? In the same way, the Lord commanded that those who proclaim the gospel should get their living by the gospel” (1 Cor. 9:13–14, ESV).

There are many factors that need to be taken into consideration regarding remuneration, and the general belief is that finding a mean is near impossible. Alan Storey (2007, 6) puts it this way:

It seems obvious that all Methodist Ministers would prefer a stipend system that is fair. But this is not as easy to establish as it sounds. It begs the question: “What will be the basis upon which the fairness is determined?” This is where there is likely to be far greater disagreement. It is also where our self-interest often gets the better of us. Furthermore, there are many options from which we could choose, e.g. should Ministers be paid according to their years of service; their age; their qualifications; the responsibility of their appointment; their performance; the size of their congregation/s; the size of their family or their provincial location, etc.

In this line of argument, Storey suggests the basis for determining a just stipend as an establishment of a balanced value system that allows the Circuit/Society to make some decisions whilst the Connexion has an overall oversight:

The Methodist Church needs to develop a stipend system that is able to hold both the values of fairness and freedom together in a creative relationship. We must therefore guard ourselves against the “pendulum effect” of swinging from one to the other. If our stipend policy becomes too centrally planned (read Connexional) without allowing any individual (read Circuit/Society) freedom, it is safe to assume that it will result in anger and resentment as well as imaginative ways to “get around” the system. (Storey 2007, 10)

There is a fine balance that discussions around clergy remuneration and representation must never lose sight of. None of these efforts is to guarantee employment for the clergy, but rather to creatively find a balance that honours the work done and secures the well-being of the priest. It must be remembered that clergy, like many other middle-class income earners, are merely a few stipends away from poverty and it becomes worse when there is not even an Unemployment Insurance Fund (UIF) as a contingency. The lack of contract thus makes clergy vulnerable at another level. In discussing the class systems, in his article on “Poverty and Poor People’s Agency,” Jan Rehmann strikes a similar chord in his statement that “even in better paid positions, the lack of long-term contracts causes conditions where poverty might be just a few steps away” (Rehmann 2013, 148).

The reality is that the deliberations around who pays ministers and what they are paid, are often conducted without an official representative of the clergy. The discussions on stipends and care of the clergy often happen in silos and the voice of the clergy is neither unified nor coordinated, which disadvantages the clergy. The *Book of Order* (MCSA 2016, 111) puts this matter in the following way: “9.51.1 The Finance Unit shall determine and review Stipends and allowances annually, subject to Conference

approval.” The problem here is that the Finance Unit² itself has no ministers dedicated as directly representing the interests of the clergy.

MCSA Polity Governing Relations with Clergy

What is the relationship between the Methodist Church and those who offer for the ordained ministry? Outlining the understanding of the Methodist Church’s ordained ministry brings some interesting views on how often ecclesiastical usages override the written texts, which are the founding documents of the church.

The church acknowledges that those set aside are representatives of both church and Christ:

1.39 Ordination describes the act by which Christians are authorised by the church to act in its name and on its behalf in certain ways. By the same act the ordained persons receive the grace of God in response to the prayers of the church to enable them to fulfil the ministry to which they are ordained. In the Methodist Church they are set apart for the ministry of the Word and Sacraments and the pastoral oversight of the People of God. (MCSA 2016, 20)

Having defined its understanding of ordained ministry, the church then outlines the form the relationship takes for those involved. There are several clauses that are important in defining the relationship between the church and ministers:

4.2. The church encourages those who are called of God and who have the qualities of Christian character, evangelical zeal and preaching ability to offer for the Ministry of Word and Sacrament. (MCSA 2016, 30)

The church then enters into a covenantal relationship with such a called person:

4.3. A Minister who is so called has a covenantal but not contractual relationship with the church. The church provides Ministers with the opportunity to practise their calling in or through this covenantal relationship. (MCSA 2016, 30)

The church then re-iterates differently the way it seeks to absolve itself of any responsibility towards those in whom it has recognised the calling from God, encourages them to offer for the ministry and then provides them with the opportunity to practise, by simply recognising its pastoral responsibility:

2 9.4 The Finance Unit Executive Committee consists of the Presiding Bishop, the Lay President, the Bishop of the District in which the Finance Unit is located, the Ministerial and the Lay General Treasurers, the Ministerial and the Lay General Officers of the Supernumerary Fund, the Finance Unit Director, Human Resource Director and 4 (four) ministers and eight (8) Lay Members nominated by Synods and appointed by Connexional Executive for a three (3) year term, renewable twice (MCSA 2016, 103).

4.4. The church recognises its pastoral responsibility to care for the welfare of its Ministers. Nevertheless, notwithstanding any provision contained in the Laws and Discipline or the decisions of Conference or of the Connexional Executive that seem to indicate the contrary, no legally enforceable contract shall exist at any time between the church or any of its Circuits on the one hand and a Minister on the other hand, in respect of the payment of stipends, allowances or any other material benefit, in cash or kind, the provision of a station or any benefit of any kind which may have at any stage accrued to a Minister. (MCSA 2016, 30)

In this section, when 4.4 says: “notwithstanding any provision ...” the reference is to the fact that in church language salaries are called stipends and retirement is superannuating. These are not just the preference for old English, but a distinguishing factor with regard to the normal language used in employer/employee relationships. This is done to try and emphasise that the church does not employ ministers but has a different type of relationship with them.

This confusion has been a source of discussions leading up to the 2019 Conference, structuring a resolution that the “Covenantal Relationship between church and Ministers be outlined in the *Book of Order*” (MCSA 2020b, 99), which reads as follows:

Conference affirms the covenantal relationship between Ministers, Presbyters, Deacons, Order of Evangelism and the Connexion. However, we note the concern to clearly quantify and outline the expectations and parameters held within covenantal commitment and the need to articulate implications thereof for all concerned parties. Conference directs the Revisions Committee in consultation with DEWCOM,³ to develop a theological framework that would speak to this need and advise on any amendments or additions to the Laws and Discipline.

DEWCOM is also directed to consider the covenant with its sister churches in the CUC.⁴

The exclusion of the human resource unit in the resolution shows a certain bias in how the church may deal with this resolution. The resolution intentionally begins by affirming that the covenantal relationship exists and, therefore, may only be added to but not be revised. My concern is that the church needs to ensure the optimal performance of its human resources unit; this unit needs to be current, and should also be constantly updating policies and processes, if it is to stay productive. The seeming unwillingness to fully re-examine the relationship between the church and her ministers (Covenantal vs Contractual) is indicative of a lack of change that is disingenuous.

3 DEWCOM: Doctrine, Ethics and Worship Committee of the Methodist Church of Southern Africa.

4 Church Unity Commission, a body made up of the following member churches: Anglican Church of Southern Africa, Uniting Presbyterian Church in Southern Africa, The Methodist Church of Southern Africa, The United Congregational Church of Southern Africa and the Evangelical Presbyterian Church in South Africa that covenanted to recognise their partnership and working together on Baptism, Eucharist and Ministry.

Williams (2015), in his unpublished master's thesis, puts it so well when he poses the question and offers these three influences to the church's stance:

But why does the MCSA call this a covenantal relationship and not simply an employer-employee relationship? I believe that there are three influences on the thinking of the MCSA to describe the relationship as a covenantal relationship—Scripture which records God entering into a covenant relationship with humankind; tradition influenced by the thinking, theology and practices of John Wesley and the Methodist movement, as well as legal challenges by ministers relating to their employment status. (Williams 2015, 18)

This MCSA understanding further makes this resolution seem to be a theological exercise used to handle a very real and practical issue. The intention of this article, therefore, is to encourage the church to call on the expertise of people outside of the church's bureaucratic structures to review and propose adequate changes that are just for all parties concerned.

Williams and Bentley define the use of the phrase “covenantal relationship” as follows: “Although this relational mode has existed undefined for generations long in the MCSA, the term ‘covenantal relationship’ was only formally introduced in 2001 in the application form for those wishing to offer for ministry in the MCSA” (Williams and Bentley 2016, 17). This means that for some time the church and the ministers lived with a particularly undefined relationship, all the while knowing that a commitment between the church and her ministers exists.

Williams and Bentley highlight the problem with this relationship:

However, while the MCSA and Ministers are committed to each other in terms of the covenantal relationship, there are dilemmas which need to be considered. From the side of Ministers, for instance, when a dispute arises, a Minister does not have recourse to labour law. There are no provisions for Ministers to hold the MCSA accountable for actions taken against them (specifically relating to ministry) or to have a decision reviewed by an independent body outside of the courts of the church, and least of all by a civil court of law until such time that all processes have been exhausted from within the church's own structures. (Williams and Bentley 2016, 18)

This is, in fact, a fundamental human right, enshrined in both the Bill of Rights and the Constitution. This strongly suggests a supposition that the use and understanding of the covenantal relationship between two parties is either a misuse of the term or is disingenuous on the side of the church, because it is not possible for the church to claim ignorance of what a covenant means when her *wfnt s i / yw* is as a covenantal community. The church's admission of a covenantal relationship should enable her to recognise the power dynamics. Attwell has this to say in defining “covenant” and the role of the parties: “‘Covenant’ is not a relationship of equals. It is structured as a relationship between a dominant, initiating party (God) and a submissive, responding party (humanity). It is a relationship that is self-consciously entered into by both parties

and signified with appropriate signs, usually involving the shedding and sprinkling of blood” (Attwell 2007, 2).

This is the acceptable definition of covenant. The church shuns her role as the dominant party in displaying how it gives life, restores life and enables the creativity of her ministers in fulfilling the calling the church recognised and encouraged in ministers.

In perhaps the most brutal of observations by Attwell:

There are many implications to be drawn from the breakdown of the Covenantal Relationship between the MCSA and its Ministers. The first and greatest is that it seems to be a fiction, employed only when it is convenient in secular courts of Law. Another is that the MCSA must carefully review its formal legislation with regard to the creation, recreation, sustenance, restoration and reconciliation of its Ministers. If God chooses, freely and mercifully, to bind himself to faithful and merciful observance of the Covenant God himself has made with humanity, the MCSA can do no less in its relationship with its Ordained Ministers. (Attwell 2007, 5)

Ill-treatment of Clergy

As in any community, churches are not immune to conflict. However, of importance is how the church guides or deals with conflict amongst its members, particularly where clergy are involved. The incidents of violence against clergy have increased so much that there is even a resolution from the 2019 Conference dealing with the matter, titled “Treatment of Ministers”: “The use of force and violence as a means of resolving differences in the context of the MCSA is condemned. The available conflict resolution mechanisms, as outlined in the Methodist *Book of Order; Laws and Discipline* of the MCSA Twelfth Edition Revised 2016, be utilised” (MCSA 2020b, 105). This clearly indicates there is a growing problem and, sadly again, ministers have no recourse on this except to rely on church structures and processes, which are often drawn out.

There are no regulations in place to assist a minister or member to seek help when ill-treated from within the church. The MCSA *Book of Order; Laws and Discipline*, states:

3.18 No member, acting in their personal or official capacity, shall institute legal proceedings against the church or any Minister or member thereof for any matter that in any way arises from or relates to the mission, work, activities or governance of the church, unless circumstances require immediate reporting due to statutory requirements. The process and forums referred to in paragraph 5.17⁵ must be used. (MCSA 2016, 28)

This is at the centre of most of the abuse experienced by clergy. Sadly, the church processes referred to take long to implement, without a clearly outlined way of enforcing

5 5.17 All legal proceedings and legal actions by or against the church shall be instituted in the name of the Presiding Bishop and/or the General Secretary for the time being or in the name of the Registrar if such appointment has been made by the Conference for and on behalf of the church. These persons shall sue and be sued in their representative capacity (MCSA 2016, 63).

them. The previous edition of the MCSA *Book of Order; Laws and Discipline*, contained a clause that also prohibited people from laying frivolous and vexatious charges against other members; this has also fallen by the wayside and now leaves members vulnerable to accusations (MCSA 2000, 46). This also gives the Presiding Bishop power over the standing of any minister who has charges laid against them:

11.7.2 In the case of a Minister, the Bishop shall inform the Presiding Bishop of the charge. If, after consultation with the Bishop, it is deemed to be in the interests of the church, the Presiding Bishop may direct that the Minister who is charged must cease to exercise any Ministerial functions until the verdict has been reached. Such direction of the Presiding Bishop shall be delivered to the accused in writing. The Presiding Bishop shall not give the said Minister a prior hearing. (MCSA 2016, 138)

It gets worse! If such a suspension is invoked, it may compromise the livelihood of the minister for a period of up to three months. Should the church not provide for a particular minister, it is not obliged to pay back-pay to the minister, should said minister be vindicated.

11.7.3 The Presiding Bishop shall decide whether the accused shall continue to receive the same stipend and to benefit from the Connexional Funds designated to assist Ministers, during the period of cessation of such Ministerial functions. This decision shall be reviewed if the matter has not been concluded within a period of ninety days of the delivery of the charge. The accused may continue to occupy the Circuit property unless the Presiding Bishop directs otherwise. (MCSA 2016, 138)

If a minister has gone through all the disciplinary processes, the church is not obliged to pay his or her stipends but is only encouraged to do so: “11.30 If the Connexional Disciplinary Committee declares a Minister not guilty who has been suspended without emoluments and any other payments, the church shall endeavour to make good the stipend, grants, and benefits from the Supernumerary and Furlough Funds the Minister lost as a result of the suspension” (MCSA 2016, 142).

So, the clergy are not fully protected by the legislation within the Methodist Church, and thus there is a need for an independent structure that would represent the interests of the clergy.

Case Law Relating to the Relationship between the Church and Ministers

Legal arguments in the relationship between the church and ministers have often centred on why ministers cannot be referred to as employees of the church. Karin Calitz sets her parameters in her court reviews of whether clergy can be defined as employees as follows: “In reaching the decision that these persons should be regarded as employees, the courts had regard to, *inter alia*, the constitutional right to fair labour practices as well as the definition of ‘employee’ in labour legislation. The courts further focused on the substance rather than the form of the relevant contracts. The reality of the relationship and not the written contract was thus decisive” (Calitz 2017, 287).

Calitz further outlines her argument the definition of what an employee is, the cases she will rely on and the legislation that enables her to arrive at a decision different from that which the courts arrived at:

In this article, I will argue that the main reason why the LAC⁶ denied that a contract had been concluded by the parties is that it gave too much weight to the autonomy of the church in a matter that did not involve a spiritual dimension. I will further argue that even if no common-law contract had been concluded, the pastor should, in line with jurisprudence extending the meaning of “employee” and the interpretation of relevant legislation by the courts in light of the Constitution, have been regarded as an employee. (Calitz 2017, 288)

In terms of jurisprudence, Calitz states:

The meaning of “employee” has in recent years been extended by jurisprudence interpreting the definition of “employee” considering the Constitution, thus bringing more working people under the protective umbrella of labour legislation. A contract of employment was no longer seen as a requirement for protection. This development is in line with the Constitution, which provides in section 23 that everyone has the right to fair labour practices. There is no requirement that there should be a contract between the parties. The LRA⁷ moreover gives effect to the constitutional right to fair labour practices by defining an employee as: “(a) any person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive, any remuneration, and (b) any other person who in any manner assists in carrying on or conducting the business of an employer.” (Calitz 2017, 288)

In 2002, the Labour Relations Act section 200A was amended as Section 39 to extend the understanding of an employee as:

(1) Until the contrary is proved, for the purposes of this Act, any employment law and section 98A of the Insolvency Act, 1936 (Act 24 of 1936), a person who works for, or renders services to, any other person is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present (South Africa 2014, 42):

(a) the manner in which the person works is subject to the control or direction of another person;

(b) the person’s hours of work are subject to the control or direction of another person;

(c) in the case of a person who works for an organisation, the person forms part of that organisation;

6 LAC: Labour Appeal Court, South Africa.

7 LRA: Labour Relations Act, South Africa.

(d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;

(e) the person is economically dependent on the other person for whom he or she works or renders services;

(f) the person is provided with tools of trade or work equipment by the other person; or

(g) the person only works for or renders services to one person. (South Africa 1995, 117)

There should be no way the church can claim that ministers are not in an employer-employee relationship. Calitz's argument of this extension of the definition is:

The effect is that a wider group of workers now enjoys protection by labour legislation. The following workers were recently seen as employees entitled to protection by labour legislation: A sex worker working in terms of an unlawful contract, an immigrant with no valid contract, persons whose written contracts indicated that they were not employees since they rendered services through a close corporation, as well as persons described as independent contractors in terms of their contracts. (Calitz 2017, 287)

It is interesting that a case that involved a sex worker would be used to establish that a contract, valid or unlawful is not essential in establishing an employment relationship. "The difficulties of establishing whether or not an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an *attempt to disguise* the employment relationship, [and] that situations exist where *contractual arrangements* can have the effect of depriving workers of the protection they are due" [emphasis added] (Calitz 2017, 289). It becomes even more difficult when the contract is disguised or even perpetuated as something other than what it is.

"The labelling of a contract as something different to an employment contract to favour one of the parties has thus been rejected by the courts" (Calitz 2017, 290). Therefore, whether the Methodist Church calls the employment contract a covenantal relationship or not, should be irrelevant in law because the definition of an employee is a perfect description of a minister. This view of ministers, meeting every criterion of the law in defining an employment relationship between the church and her ministers, is highlighted in an international case in the European court.

Sebastian Raduletu made comments on a case that was before the European Court of Human Rights and said: "The Grand Chamber, applying the relevant criteria set up by the International Labor Organization, concluded that the activities and the duties of the priests had the characteristic features of an employment relationship. In its opinion, despite the specificity of the priests' work, it could not be excluded from the domain of Article 11" (Raduletu 2014, 171).

However, despite all this, courts have seemed to perpetuate the idea that priests are not employees of the church. A distinctive feature of ministers of religion of several churches in the UK is that they are regarded as office holders like certain public servants, whose rights and duties are not defined by contract but by the status of the position. Security of tenure is one of the hallmarks of the position of office holders. The rights and duties flowing from such a position are the same for anyone who holds this position and are not dependent on the agreement between the parties. Thus, the bargaining power of the parties does not play any role in establishing reciprocal rights and duties. As recently as 1998 the court in *Coker* held that there is a presumption in English law that ministers of religion are office holders who do not serve under a contract of employment (Calitz 2017, 294).

In dealing with the *Universal Church of the Kingdom of God v Myeni* (Myeni LAC) case before the Labour Appeals Court, the Court on the issue of contracts highlighted that: “This question must be answered against the background of section 5 of the LRA, which prohibits employers from preventing employees to exercise their rights. The Labour Court interpreted this section to mean that parties cannot contract out of the protective measures of the LRA” (Calitz 2017, 299–300).

All the above cases clearly state that in terms of contracting, the church cannot just name contracts by another title in the hope of contracting out or writing itself out of the law of the land. The most interesting difference with the Methodist Church is the fact that nothing in the church’s statutes speaks to ministers being employed by God. On the contrary, as explained above, the church’s relationship with ministers is based purely on the church’s encouragement but couched in such a way that from the onset the church imposes a power dynamic that is closer to that of master and slave.

Let us now deal with the Doctrine of Entanglement and some constitutional principles in the De Lange case (*De Lange v Presiding Bishop of the MCSA for the time being and Another* [CCT223/14] [2015] 24 November 2015). Contrary to popular opinion, that case did not so much deal with the issue of discrimination against a minister in a same-sex relationship, but rather with the processes followed in dealing with the case between De Lange and the MCSA.

The doctrine of entanglement was defined as the “reluctance of the courts to become involved in doctrinal disputes of a religious character”... In *De Lange v Presiding Bishop, Methodist Church of Southern Africa and Another* 2015 (1) SA 106 (SCA) at para 39, the SCA pointed out that: “A court should only become involved in a dispute [involving religious doctrine] where it is strictly necessary for it to do so. Even then it should refrain from determining doctrinal issues in order to avoid entanglement.” It reasoned that “a proper respect for freedom of religion precludes our courts from pronouncing on matters of religious doctrine.” (Moleya 2018)

The relationship between the MCSA and clergy cannot be an issue of the doctrine of entanglement; it should be a constitutional matter pertaining to the rights of the clergy

as possible employees in the relationship with the church. The questions become: “How far do the Constitution and its interpretation and enforcement by courts reach into our private and social lives? Is there, somewhere in our churches, temples, mosques and synagogues—or for that matter our kitchens and bedrooms—a “constitution-free” zone?” (De Lange v Presiding Bishop of the MCSA for the time being and Another [CCT223/14] [2015] 24 November 2015).

In the same De Lange case, the courts realised that the case truly pushes the constitutional boundaries that would need to be tested in lower courts first and not come into the constitutional court as the court of first and last instance. In writing the ruling, Van der Westhuizen J probed further:

Is it contradictory to say that the Constitution does have a role to play in every sphere, but that we do not want a court to intrude into private spaces with the bluntness of its orders? After all, the Constitution is law; we mostly want law to be enforceable; enforcement is important for the rule of law, because unenforceable law can hardly “rule.” The Constitution is more than law, however. It is the legal and moral framework within which we have agreed to live. It also not only leaves but guarantees space to exercise our diverse cultures and religions and express freely our likes, dislikes and choices, as equals with human dignity. In this sense one could perhaps talk about a “constitutionally permitted free space.” This is quite different from contending that certain areas in a constitutional democracy are beyond the reach of the Constitution, or “constitution-free.” (De Lange v Presiding Bishop of the Methodist Church of Southern Africa for the time being and Another [CCT223/14] [2015] 24 November 2015)

This means there is no way in which anybody, particularly a church, with its supposed moral high ground, can nor should attempt to circumvent the law or perceive itself to be above it. Somehow, in fear of entanglement, the courts have tended to allow incorrect practices to persist within the church. Sharp criticism of the relationship between the church and the courts comes from Prof. Pierre De Vos in an article “Discrimination: SA’s Courts Give Religious Beliefs and Practices a Free Pass” (De Vos 2015). “But some religious beliefs and practices do get a free pass—both from society and from courts that have to enforce the sometimes conflicting rights contained in the Bill of Rights ... First, this may be the case because many of these religious beliefs and practices mirror the deeply embedded beliefs and practices of the economically and politically powerful in society ... It is not possible to disentangle religious beliefs and practices from the political and cultural beliefs and practices dominant in the larger society” (De Vos 2015).

In summary, the doctrine of entanglement and the constitutional democracy we live in, require that the courts approach with caution their involvement in matters that relate to freedom of religion and the church. The church has, in many ways, influenced the *status quo* and therefore, if the courts are approached to intervene, this must be done having followed and exhausted the wisdom of the internal church structures; turning to the courts should be a last resort. However, as things stand, this process is not freely open

to ministers and takes a great deal of wrangling to get to where the De Lange case ultimately arrived. A minister has the ability to approach the court for intervention only when the church structures are exhausted.

Another important element of South African legislation is the enactment of the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act (South Africa 2002). This Act enabled the establishment of the Cultural, Religious and Linguistic Rights Commission (CRL Rights Commission), which aims to promote respect for, and further the protection of, the rights of cultural, religious and linguistic communities. Within its powers and functions, the Commission is to facilitate the resolution of friction between and within cultural, religious and linguistic communities or between any such community and an organ of the state where the cultural, religious or linguistic rights of a community are affected. This involves making recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities. The Commission offers other avenues in the regulation of the relationship between clergy and the church, which offer a possible alternative to a court ruling; a better negotiated settlement can be reached.

Would a Labour Union be the Solution to the Issues that Face the Clergy?

The arrangement between clergy and the churches to which they belong has often hindered the creation of a labour union because clergy are not seen as employees of the church and therefore should not unionise. A labour union is “an organization of workers formed for the purpose of advancing its members’ interests in respect to wages, benefits, and working conditions” (*Merriam-Webster.com Dictionary*, s.v. “labor union,” accessed August 7, 2020).

Unionising the clergy is not an entirely novel idea. In the United Kingdom, there exists a union that clergy can belong to, and it is part of a network of unions. Church of England Clergy Advocates (CECA) and the National Church Institutions (NCIs) are “a workplace grouping of all Church of England clergy who are members of Unite Faith Workers Branch of Unite. The Faith Workers Branch (FWB) includes ministers and workers of all denominations as well as other faiths, and covers all of the UK” (The NCIs and CECA v3 July 2019.Pdf n.d.).

The Evangelical Lutheran Church in Southern Africa has a labour union which clergy can belong to, called the Lutheran Ministers’ Union of Southern Africa. According to its constitution, the aims of the union are, amongst others:

- 2.1 To recruit and represent all pastors employed by the Evangelical Lutheran Church in Southern Africa, including pastors in the tent making ministry and seconded pastors.

2.3 To negotiate and improve salaries, terms and conditions of employment of members through collective bargaining and other lawful means.

2.14 To promote, support or oppose any proposed legislative or other measures affecting the interests of members. (LUMUSA 2010, 2–3)

In this constitution, what is of importance is the use of the phrase “all pastors employed by the Evangelical Lutheran Church in Southern Africa,” which suggests that the relationship between the church and her clergy is a contractual one. In an unpublished dissertation, Mafabo Andries Bernard Mashiane argues that within the Evangelical Lutheran Church of Southern Africa, ministers are viewed as church employees: “In the preceding portion of this work it became obvious that the church by implication is an employer in terms of paragraph 9.2. This situation is confirmed by the fact that the church has a UIF number for church workers. Church employees also pay tax like any other employee in the country” (Mashiane 2005, 50).

In Romania, in a case before the European Court of Human Rights, where clergy were seeking the registration of a labour union, the judgement summed up the aims and objectives of the union as:

... to contribute to employer-employee dialogue on such matters as negotiation of employment contracts, observance of working and non-working hours and the rules on remuneration, protection of health and safety at work, vocational training, medical cover and the opportunity to elect representatives and stand for election to decision-making bodies. (*Sindicatul Paˆstorul cel Bun v Romania* 2013, 6)

Although the Romania Orthodox Church clergy were fully recognised as employees working under contracts of employment, the court refused them this privilege of registering a union in support of an association instead, which would be in keeping with the hierarchical structures of their church. We shall return to this court’s recommendation in the section below.

In South Africa, the law recognises various types of people such as sex workers and immigrants as employees and the Constitution protects them in a very specific way. The MCSA connexion is made up of six countries (Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland) and the discussion on the labour law status of the clergy would still need to take place in those countries as well.

The Constitution of the Republic of South Africa has enshrined within it the right to unionise. Section 23 deals with labour relations and pertinent to our discussion are:

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right: (a) to form and join a trade union; (b) to participate in the activities and programmes of a trade union; and (c) to strike.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with Section 36(1). (South Africa, Department of Justice and Constitutional Development 2015, 9)

The contention of this article has been to explore if it is possible for clergy within a church to unionise. Having looked at the biblical understanding of the role of the clergy, the Methodist Church's own regulations and the possibilities opened by South African legislation, it can be argued firmly that a clergy union within a church is not only possible, but may be legally viable too.

Is there a better Alternative to Unionising?

Is a union the best possible way for a church to deal with the relationship between itself and its members? The complexity of the relationship requires there to be a body that can independently negotiate the terms of the relationship in such a way that power dynamics do not make any member feel victimised for speaking out or ostracised for views that may differ from those of the church. There is, however, something that the uncontracted relationship offers ministers, which a contractual relationship would lose; and if that be the case then unionising may not be the best solution.

In the current state of a covenantal relationship, the minister and the church are both partners; but sadly, the partnership has not been well-balanced and several employee/employer regulations have crept into the system. The ideal would be to remember that this relationship ought to be modelled on the God-church relationship, which is a mutual benefit, and God clearly acknowledges being the powerful party and never defaults on the agreement. The church ought to do the same with her ministers beyond the legal expectations of an employer/employee contractual relationship which unions seek to monitor. To settle for a union would be to settle for the lowest common factor. When the church, in her social justice struggles for workers' rights, supported unionising, she wanted a fair way in which bargaining mechanisms could be created for those who are responsible for the wealth production and the so-called owners of the wealth. The church's work and that of the ministers are the same.

Considering the ideal of the church being an alternative type of community which espouses to higher values, an association should be given due consideration. An association is defined as "a group of employees that provides support and advice for people working within the same organisation, especially in any official discussions with management relating to their responsibilities, pay" (*Cambridge English Dictionary* 2020).

The aim of the association of clergy working within the church and all her units would be to represent and protect the professional, economic, social and cultural rights and interests of its members, in their dealings with the church hierarchy and the country's

statutory bodies such as the Cultural, Religious and Linguistic Rights Commission (CCLR) within South Africa.

Conclusion

This article has explored how the Bible's understanding of the care of the clergy is the responsibility of the church in which they serve. South African law has expanded the definition of what an employee is, and arguably that clergy too can be defined as such. The church's structures and their development of the Human Resources Unit which manages the clergy's pensions, medical aid and other matters designed for employees, affirm that while the church may seek to distance itself from the proper naming of the relationship between it and the clergy, that relationship has all the characteristics of an employment relationship. The fact that there is no current representation of the clergy's interests in many of the church structures, has shown that such representation is imperative. The article therefore suggests two areas for proper representation of clergy within a covenantal relationship.

Firstly, it recommends the re-examination of the covenantal relationship clause. A commission made up of legal, human resource and theological experts should draft a workable definition of the relationship that is in keeping with the Constitution and laws of the countries within the Connexion. To leave this work to an internal structure would be to ask the church to play both prosecutor and judge in a case against her. What has transpired over the years is that the current relationship between the church and ministers is not a healthy one and requires adjustments to maintain the spirit of the ministers at the optimal level.

Secondly, whilst this process of redefining the covenantal relationship continues, the ministers should prepare a resolution for engagement through Conference. The resolution should seek to define the representation of ministers in all structures of the church, such that they are active participants on matters that deal with their vocational practice. The article proposes that whilst a labour union can be permissible, it would be more beneficial to consider the formation of an association within all the relevant structures permissible in the Connexional countries' statutes. The association would need to remain a voluntary engagement organisation that seeks to achieve particular goals, with the interests of not only the clergy, but also the essentials of the church of Christ.

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