

Law and Interdisciplinarity

Edited By
PHILLIP HELLWEGE
and MARTA SONIEWICKA

Mohr Siebeck

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Legal and Theological Dogmatics

Thomas Marschler

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I. Introduction

Even though jurisprudence did not derive its understanding of dogmatics from theology, but from its encounter with medicine,¹ the identical naming of a core discipline is noted with interest in both theological and legal literature. In this respect, it may come as a surprise that detailed comparisons between legal and theological dogmatics, which elaborate differences as well as similarities, are rarely found. Discussions in legal handbooks are scarce, and even recent monographic contributions to the theory of legal dogmatics often avoid bridging to theology. Nevertheless, there are exceptions. In interdisciplinary research projects featuring the participation of Catholic theologians, the legal scholar *Nils Jansen* has dealt with “Processes of Dogmatization in Law and Religion” (“Dogmatisierungsprozesse in Recht und Religion”), and in this context he has reflected on the specific nature of legal dogmatics.² In his dissertation on the “Interdisciplinarity of Legal Dogmatics” (“Interdisziplinarität der Rechtsdogmatik”), *Alexander Stark* discusses parallels and differences with theological

¹ See *M. Herberger*, *Dogmatik. Zur Geschichte von Begriff und Methode in Medizin und Jurisprudenz* (1981); for a brief summary see: *idem*, *Rechtsdogmatik*, in: J. Ritter et al. (eds.), *Historisches Wörterbuch der Philosophie*, vol. 8 (1992), 266–272.

² See *G. Essen/N. Jansen* (eds.), *Dogmatisierungsprozesse in Recht und Religion* (2011); see also *N. Jansen*, *Kanonisierungs- und Dogmatisierungsprozesse in Recht und Religion. Historisch-vergleichende Beobachtungen*, in: I. Augsberg/G.F. Schuppert (eds.), *Wissen und Recht* (2022), 487–506.

dogmatics.³ *Philipp Sahn* sees in “dogmatic thinking” (“dogmatische Denkform”) (*Erich Rothacker*) a principle that connects both disciplines, making the structural comparison the central thread of his study on legal dogmatics.⁴ He observes an absence of similar efforts on the theological side:

“Theologen [...] erwähnen die Rechtsdogmatik wenn überhaupt nur selten. Und falls doch, dann erfolgt der Verweis auf die Rechtsdogmatik in apologetischer Absicht, wonach auch irdisch orientierte Juristen, die anders als Theologen gewöhnlich nicht unter dem Verdacht frommer Naivität stehen, ganz selbstverständlich Dogmatik betreiben.”⁵

“Theologians [...] mention legal dogmatics, if ever, only rarely. And if they do, then reference to legal dogmatics is made with an apologetic intention: also worldly orientated jurists, who – unlike theologians – are not under the suspicion of pious naivety, pursue, perfectly naturally, dogmatics.”

A look at current introductory literature of both Catholic and Protestant provenance could easily confirm this judgment. The only theological contribution I know of dedicated to a direct comparison of the dogmatics of both disciplines is a paper authored by the Protestant theologian *Michael Welker*, intended as an outsider’s perspective on recent legal debates.⁶ It is therefore to be wel-

³ *A. Stark*, *Interdisziplinarität der Rechtsdogmatik* (2020), 56–60.

⁴ *P. Sahn*, *Elemente der Dogmatik* (2019); he writes in his summary on 195: “Die Gegenüberstellung der Rechtsdogmatik mit der theologischen Dogmatik zeigt die charakteristischen Merkmale der dogmatischen Denkform. Diese zeichnet sich zunächst dadurch aus, dass sich das dogmatische Denken auf einer spezifisch mittleren Abstraktionshöhe abspielt. Sodann wird deutlich, dass sich die Dogmatiken jeweils einem Primärtext unterwerfen, der Gegenstand und Ziel ihrer hermeneutischen Bemühungen ist. Gleichzeitig wird diese Bindung an den Primärtext unterlaufen, indem die Dogmatiker um ihres Primärtextes willen dessen Interpretationsbedürftigkeit einräumen müssen und sich so Freiräume schaffen. So wird der Primärtext für den unvermeidlichen Beitrag des Interpreten geöffnet und seine alleinige Stellung als autoritative Quelle unterlaufen. Der Primärtext wird folglich nicht nur rekonstruiert, sondern auch konstruiert. Die dogmatische Argumentation ist ferner von einem spezifischen Geltungsanspruch gekennzeichnet, der den Dogmatikern argumentative Spielregeln in Form einer Pflicht zu loyaler Textauslegung auferlegt.” (“A comparison of legal dogmatics with theological dogmatics reveals the characteristics of dogmatic thinking. Dogmatic thinking is characterized firstly by a specifically middle level of abstraction. Secondly, the comparison makes clear that both legal and theological dogmatics submit to a primary text that is the object and objective of their hermeneutical efforts. At the same time, the binding force of the primary text is undermined by the dogmatists – for the sake of the primary text – having to concede the need for interpretation and thus creating freedom for themselves. Thereby, the text is opened to the inevitable input of the interpreter and its sole role as an authoritative text is undermined. Consequently, the primary text is not only reconstructed, but it is also constructed. Moreover, dogmatic argumentation is characterised by a specific claim to validity, which imposes argumentative rules on the dogmatist in the form of a duty to interpret the primary text loyally.”).

⁵ *Sahn* (n. 4), 34.

⁶ See *M. Welker*, *Juristische und theologische Dogmatik*, *Evangelische Theologie* 75 (2015), 325–341.

comed that *Franciszek Longchamps de Bériér* is now continuing the interdisciplinary dialogue by explaining several dimensions of the dogmatic method in legal sciences that could be instructive for dogmatic theology. In response to his contribution, I will look at common definitions and descriptions of legal and theological dogmatics in order to take up some of his observations and add further aspects of comparison. Like *Longchamps de Bériér*, I will judge primarily from a Roman Catholic professional perspective.

II. Definitions of legal dogmatics

Longchamps de Bériér offers a definition of legal dogmatics⁷ that emphasizes three aspects in particular: (1) The primary subject of dogmatics is the *lex lata*. Its valid principles can be understood as “dogmas”, of which therefore the law is “full”.⁸ (2) The analysis of the law, connected with classifications and proposals for distinctions,⁹ has a practical goal: dogmatic conclusions should serve the application of the law. (3) Dogmatics can help prepare future legislation through critical, innovative proposals. Even if it is repeatedly emphasized that there is no consensus in the definition of legal dogmatics,¹⁰ these basic elements are (with different emphasis) regularly found,¹¹ sometimes enriched by further aspects. An example is the proposal that *Christian Bumke* places at the beginning of his monograph on the subject:

⁷ “Dogmatics is practised by those legal scholars who deal with the law in force. They analyse its content, drawing conclusions about the content of binding norms from legal provisions. Their domain is the *lex lata*, i.e. ‘the existing law.’ This does not prevent them from considering which direction changes of law and statutes in force can or should take, and they, thus, also make propositions de lege ferenda, i.e. ‘under the pretence of what is to be proposed as law.’” *Longchamps de Bériér*, p. 76, above.

⁸ “Law is full of dogmas, i.e. statements of an obligatory nature, which express the truth of what law is in force or which solution is good, and which regulation should be adopted as just within the art of settling social relations in a particular situation that requires regulation.” *Longchamps de Bériér*, 82, above.

⁹ See *Longchamps de Bériér*, p. 80, above: “classifying and suggesting distinctions”.

¹⁰ See *B. Rüthers*, Rechtsdogmatik als Schranke des Richterrechts?, *Jahrbuch des öffentlichen Rechts der Gegenwart* 64 (2016), 309–343, 313: “Der Begriff wird als bekannt vorausgesetzt, aber selten und meistens spärlich definiert” (“The concept is presumed to be known, but it is rarely and mostly only scarcely defined”); *C. Waldhoff*, Lob und Kritik der Dogmatik, in: G. Kirchhof et al. (eds.), *Was weiß Dogmatik?* (2012), 17–37, 21: “Was juristische Dogmatik oder Rechtsdogmatik ist, ist allerdings bis heute unklar.” (“However, it remains unclear just what juridical or legal dogmatics is.”).

¹¹ According to *Sahm* (n. 4), 17, there has been a “stable core of meaning in the definitions of dogmatics over the past hundred years” (“in den vergangenen hundert Jahren einen zeitlich stabilen Bedeutungskern der Dogmatikdefinitionen”); they all sounded “very similar” (“sehr ähnlich”) (*ibid.*, 39).

“Die Rechtsdogmatik lässt sich als eine Disziplin beschreiben, die das positive Recht durchdringen und ordnen will, um die rechtliche Arbeit anzuleiten, und jene Fragen zu beantworten sucht, die die Rechtspraxis aufwirft. Sie bemüht sich darum, die Vorstellungen und Einsichten über das Recht zu sichten und zu sichern, indem sie Begriffe formt, Unterscheidungen einführt, Figuren oder Prinzipien erarbeitet und den Stoff ordnet. Sie hinterfragt die bestehenden Vorstellungen oder Entscheidungen der Praxis, greift Neuerungen auf und prüft den daraus resultierenden Veränderungsbedarf, zeichnet nach und vor. Auf diese Weise hält sie ein Wissensreservoir für die Praxis vor, trägt zur Erlernbarkeit der praktischen Rechtsarbeit bei und leistet einen Beitrag zur Rationalisierung und damit auch zur Legitimierung des Rechts.”¹²

“Legal dogmatics may be described as a discipline that wishes to permeate and map out positive law. It thereby aims to guide any engagement with law and to answer questions raised by legal practice. It seeks to screen and collect perceptions on, and insights into, the law by shaping concepts, introducing distinctions, elaborating ideas and principles, and sorting the legal material. It questions existing legal views and decisions of legal practice, takes up new developments and analyses any resulting need for change – it looks both back and ahead. In so doing, legal dogmatics holds available for legal practice a reservoir of legal knowledge, it contributes to the learnability of practical legal work as well as to the rationalization and, thus, also the legitimization, of law.”

In addition to a more precise description of the systematizing task of legal dogmatics and its interaction with practice, *Bumke* mentions the function of legal dogmatics for didactic purposes and for the legitimization of law.

III. Definition and subject of theological dogmatics

In theology, as in jurisprudence, dogmatics as a disciplinary name has been established in the course of modern times. Since the middle of the seventeenth century, the term has appeared in textbook titles, and at the beginning of the nineteenth century it came to prevail as a name for the primarily theoretical reflection on Christian doctrine.¹³ While academic theology in the Middle Ages was regarded as a unity, clearly distinguished only from canon law, in the post-Reformation period a gradual specialization and division took place, the result of which are the sub-disciplines currently represented in theological faculties. Among them, dogmatics is found in the area of systematic theology. For centuries, contributions to theological dogmatics, with few exceptions, came almost exclusively from scholars specialized in this area, who had close ties to academic teaching.¹⁴ By contrast, the field of participants in legal dogmatics

¹² *C. Bumke*, *Rechtsdogmatik* (2017), 1 f.

¹³ See *H. Filser*, *Dogma, Dogmen, Dogmatik. Eine Untersuchung zur Begründung und zur Entstehungsgeschichte einer theologischen Disziplin von der Reformation bis zur Spätaufklärung* (2000), 628–661.

¹⁴ *W. Hassemer*, *Dogmatik zwischen Wissenschaft und richterlicher Pragmatik: Einführende Bemerkungen*, in: *Kirchhof et al.* (n. 10), 3–15, 11, gives a negative answer to the

has been much broader, insofar as “judges, academic staff at the federal courts and in the large law firms, administrative officials or lawyers” (“Richter, wissenschaftliche Mitarbeiterinnen an den Bundesgerichten und in den großen Anwaltsfirmen, Verwaltungsbeamte oder Rechtsanwälte”)¹⁵ are involved together with legal scholars.

The fact that the term “dogmatics” – the science “of dogmas” – was established for reflection on the doctrine of faith in its narrower sense documents a turning away from older scholastic theology, which was accused by humanists and reformers as embodying an excess of useless speculation not serving the faith. Since then, the “positive” method gained in importance in Catholic theology, with the method aiming at a precise presentation of the doctrine of faith from Scripture and Tradition, thereby being withdrawn from scholastic discussions and largely renouncing speculative questions.¹⁶ While the “*theologia positiva*” initially supplemented the scholastic mode of presentation in the seventeenth century,¹⁷ it became dominant after the latter’s collapse from the mid-eighteenth century. At the beginning of the nineteenth century, and in the wake of German Idealism and Romanticism, under the title of “Dogmatics” a new synthesis was sought between positive and speculative elements, a synthesis which remained authoritative in the subsequent Neo-Scholastic movement. Theological dogmatics continues to follow this basic model to this day. However, significant changes and differentiations have taken place both in exegetical and speculative method as well as in the understanding of their inner connection.¹⁸

The subject of dogmatics is the entire content of the revealed faith as normatively attested in the teaching of the Church (in its “dogmas”).¹⁹ Especially the second criterion designates a Catholic proprium; Protestants do not recognize a living ecclesiastical *magisterium* “of those who have received through Episcopal succession the sure gift of truth” (*Dei Verbum* 8). They therefore determine the content of faith in a different way (recurring to the self-

question “whether everything that jurisprudence produces may be considered legal dogmatics” (“ob all das, was Rechtswissenschaft produziert, als Rechtsdogmatik gelten darf”). This certainly also applies to the contributions of dogmatic theologians.

¹⁵ Bumke (n. 12), 15.

¹⁶ See M.-J. Congar, *Théologie*, in: *Dictionnaire de théologie catholique*, vol. 15 (1946), 341–502, 432.

¹⁷ In the seventeenth century, one finds theological treatises which are structured within the framework of scholastic tradition but draw their arguments in large part (Ruiz de Montoya) or almost completely (Petavius, Thomassin) from Patristic sources. From the end of the seventeenth century, book titles like “*dissertatio scholastico-dogmatica*” became common.

¹⁸ See the programmatic guidelines of Vatican II in *Optatam totius* (1965), 16.

¹⁹ See T. Marschler, *Dogmatik*, II. Theologisch, in: *Staatslexikon online* (8th edn., 2022), <https://www.staatslexikon-online.de/Lexikon/Dogmatik> (last accessed on 27 September 2022); *idem*, *Dogmatik als Wissenschaft*, in: B.P. Göcke/L.V. Ohler (eds.), *Die Wissenschaftlichkeit der Theologie*, vol. 2 (2019), 101–138.

interpreting Bible, creeds of the ancient Church or personal inner testimony of the Holy Spirit). In Catholic understanding, dogmatics has to do with descriptive, indicative propositions, whose content has to fulfill two criteria: on the one hand, to be part of God's self-disclosure to mankind, represented in Scripture and Tradition, and on the other hand, to be officially attested by the Church (in various ways) as content of revelation.²⁰ The testimony of the Church establishes neither the affiliation of a truth to revelation nor man's obligation to believe, but only makes both clearly recognizable. Thus, the ecclesiastical judgment of faith differs from legislation in its proper sense.²¹ The distinction between sources of revelation and testifying instances, between constitutive and interpretive theological *loci*, already developed in the influential treatise on the theological sources of knowledge by *Melchor Cano* ("De locis theologicis", 1563), is of central importance. The work of theologians has traditionally been viewed as an interpretive source of second rank because it lacks the certainty of testimony that belongs to the official doctrinal statements of the Church and to its faith as a whole.

IV. Main steps of theological dogmatics

On this basis, three central and interpenetrating steps of theological dogmatics can be distinguished. There are fundamental parallels to the description of legal dogmatics,²² but at the same time we encounter important differences.

²⁰ See *First Vatican Council*, *Dei Filius* (1870), c. 3 (DH 3011): "Porro fide divina et catholica ea omnia credenda sunt, quae in verbo Dei scripto vel tradito continentur et ab Ecclesia sive solemnii iudicio sive ordinario et universali magisterio tamquam divinitus revelata credenda proponuntur."

²¹ *M.J. Scheeben*, *Glaubensregel*, in: J. Hergenröther/F.P. Kaulen (eds.), *Wetzer und Welte's Kirchenlexikon*, vol. 5 (2nd edn., 1888), 685–693, 688: "Allerdings sind die auctoritativen Bestimmungen der kirchlichen Lehrgewalt insofern keine eigentlichen Gesetze, als sie nur ein von Gott gegebenes Gesetz declariren; ja meistens auch insofern, als sie ein bereits geltendes Gesetz nur nachdrücklicher einschärfen." ("However, the authoritative rules of ecclesiastical doctrine are insofar not themselves actual laws as they only reproduce a law given by God; indeed, they are not actual laws also insofar as they only strongly inculcate a law that already is in force."). *Waldhoff* (n. 10), 27, points out: "Dogmatik ist nicht Rechts-, sondern Rechtserkenntnisquelle." ("Dogmatics is not a source of law but only a source of finding the law."). In the context of dogmatic theology, this applies not only to scholarly contributions but also to the official teachings of the Church – the "legislator" in a strict sense is God alone.

²² See R. Dreier's three-prong description of legal dogmatics as referenced in *O. Lepsius*, *Kritik der Dogmatik*, in: *Kirchhof et al.* (n. 10), 39–62, 42: "Dogmatik besitze drei Dimensionen: eine empirische Dimension, die auf die Sammlung und Sichtung des positiven Rechtsstoffs gerichtet ist, eine analytische, die auf die begrifflich-systematische Durchdringung des positiven Rechts gerichtet ist, sowie eine normative, rechtsethische Dimension, die

A. Identification and explication of the contents of revelation from Scripture and Tradition under the guidelines of ecclesiastical testimony

The first task of dogmatics is to precisely identify the contents of revelation from the aforementioned sources and, in doing so, to distinguish them from facts that do not meet the relevant criteria. Since God's revelation is addressed to all people of all times, dogmas apply to the whole church, while laws are, with the exception of public international law, regional. In this respect, theological dogmatics has a broader perspective than legal dogmatics.²³ On the other hand, the material theological dogmatics has to deal with is not ready-made in the same way as the norms in a code of laws. This is especially true in light of more recent theories of revelation, which understand revelation as the event of God's communication with mankind, in which his personal self-disclosure and not the transmission of propositional truths is the central point (although propositional truths are indispensable for human understanding of God and his intentions). The source text of theological dogmatics is not simply "the Bible";²⁴ this is because Scripture is not identical with revelation, which takes place in different ways in human history, but is instead a medium (albeit an excellent one) of faith and ecclesiastical testimony. Furthermore, the Bible contains much that is not relevant to the understanding of revelation. What is "to be believed" has been raised within the community of the Church in a process of scriptural tradition and interpretation over centuries and, in many cases, has been defined in normative statements. Tracing these historical processes of dogmatization is inseparable from an accurate understanding of dogmatic content. Thus, the famous core formula of the First Ecumenical Council of Nicaea (325), according to which Christ the Son is "of one substance with the Father", can be understood correctly only if one reads it against the background of the (philosophical) prehistory of the term *homousios* and as a response to Arius's subordinationist Christology, anathematized (without mentioning his name) in the appendix of the Nicene symbolum. For the first time, a non-biblical term was used here to determine as precisely as possible the orthodox understanding of a central article of faith and to reject an opposing interpretation (the Son as the first creature of the Father). By making a distinction between "explicit" and

den Bezug zur praktischen Vernunft herstellt." ("Dogmatics has three dimensions: an empirical dimension that is directed at collecting and looking through the positive law; an analytical dimension that is directed at the conceptual-systematic reviewing of the positive law; and a normative, legal-ethical dimension that establishes a link to practical reason.").

²³ See *Longchamps de Bérrier*, p. 87, above.

²⁴ The tendency to parallelize "the Bible" and "current law" as the primary texts of theological and legal dogmatics is characteristic for *Sahm* (n. 4), 53 f. It fits well with a Protestant understanding of dogmatics (see *Welker* (n. 6), 333). The decisive question a theologian, unlike a lawyer, has to ask is not whether a book belongs to the canon of Scriptures or whether the biblical text is reliable (see *Sahm* (n. 4), 80 f.), but rather which statements derived from the Bible can be regarded as God's revelation (and why).

“implicit” content of revelation, theologians acknowledge the possibility of genuine dogmatic development that takes place in the progressive reflection on God’s word expressed in human words. There is a broad consensus across all major Christian denominations and theologies regarding the conviction that revelation itself is definitively completed because God’s self-communication in Christ cannot be surpassed.²⁵ Because, unlike the sources of legal dogmatics, all constitutive sources of theological dogmatics are withdrawn from future change or increase,²⁶ progress can only take place in the interpretation of these sources.

A further challenge for dogmatic theology consists in the fact that the Church’s affirmation of the contents of revelation is neither uniform nor always unambiguous. Dogmas in the narrower sense are the precisely formulated decisions of doctrinal questions by Councils or (in more recent times, after the clarification of papal infallibility) by the pope alone, usually linked to canonical sanctions.²⁷ One can speak of “dogmata declarata” here. However, such definitions remain comparatively rare and do not follow a certain plan. They are often reactions to contemporary discussions; therefore, they do not provide a complete systematic treatment of the respective topics. The Second Vatican Council, unlike previous councils, presented overall theological drafts, especially in its major dogmatic constitutions on revelation (*Dei Verbum*) and on the Church (*Lumen gentium*). At the same time, however, it established a new form of conciliar teaching emphasizing pastoral goals and dispensing with the juridical precision of earlier dogmatic definitions or condemnations, though not with doctrinal claims in general. Controversies about the correct hermeneutics in dealing with the texts of Vatican II still preoccupy dogmatic theologians more than half a century after the end of the Council.

²⁵ Problems connected with the strict distinction between the event of revelation and its interpretation cannot be discussed here. Only few Christian denominations, such as the Mormon Church, acknowledge the principle of continuing revelation through living prophets.

²⁶ See *Rüthers* (n. 10), 320 f.; *Sahm* (n. 4), 106 f. *N. Jansen*, *Dogmatisierungsprozesse in Recht und Religion: Einführung*, in: *Essen/Jansen* (n. 2), 1–22, 8, considers this a fundamental difference between legal and theological processes of dogmatization: “Ein Diskurs von Normsetzern (Gesetzgebern, aber auch Gerichten) und Rechtsanwendern, wie er das Recht kennzeichnet, konnte sich in der christlichen Religion deshalb nie herausbilden. Eine Externalisierung von Problemen, die sich innerhalb des theologischen Diskurses argumentativ nicht lösen lassen, auf politische oder juristische Entscheidungsinstanzen war damit ausgeschlossen.” (“For that reason, a discourse between lawmakers (the legislature as well as the courts) and those applying the law, as is characteristic for law, was never able to develop in Christianity. An externalization of problems that could not be solved argumentatively within the theological discourse onto political or legal decision makers was thereby excluded.”).

²⁷ *Longchamps de Bérrier*, p. 85, above, correctly points out that dogmatic theologians will often encounter texts of juridical character, which require them to have a certain skill of interpretation.

The Church's doctrine of faith is not constituted solely by the formal definitions of councils and popes. There is content which has been consistently and unchallengedly attested by the Church, whereas there was no need to protect it through official dogmatization. Since the nineteenth century, theologians speak of an attestation in "living doctrinal tradition" by the "ordinary and universal magisterium" as distinguished from the acts of the "extraordinary magisterium" (definitions of the councils and papal *ex cathedra* decisions). If one wants to use juridical terms, the solemnly defined dogmas can be compared as suggested by *Matthias Joseph Scheeben* to the "statutory law" or "written law", while the "dogmata non declarata", truths of faith attested by the ordinary *magisterium*, are given "in the form of a kind of customary law".²⁸ It is obvious that the latter is actually the more original way in which the rule of faith has been transmitted in the Church, even if the tendency towards formal definitions and thus towards a juridification of the Church's doctrine of faith has become more and more evident over time.

The treatment of the so-called secondary objects of dogmatics is more difficult.²⁹ These doctrines, although not considered formally revealed, are "required for the holy keeping and faithful exposition of the deposit of faith". In 1989, Pope *John Paul II* added a paragraph to Canon Law (CIC 1983, can. 750, § 2), requiring that these teachings "must be firmly accepted and held".³⁰ This is obviously less than faith in the sense of the divine virtue required for dogmas, but it is more than the mere acceptance in "religious reverence" that Catholics are generally supposed to have towards the statements of the *magisterium*, even if they are not definitive. Some theologians have criticized the expansion of the claim to infallibility, which has been carried out here, as an encroaching innovation.³¹ A hotly disputed question in the contemporary Catholic Church, the

²⁸ *Scheeben* (n. 21), 687 f.

²⁹ See *D. Hercsik*, *Die Grundlagen unseres Glaubens. Eine theologische Prinzipienlehre* (2005), 176–180, 184.

³⁰ *John Paul II*, *Motu Proprio Ad tuendam fidem* (1998), https://www.vatican.va/content/john-paul-ii/de/motu_proprio/documents/hf_jp-ii_motu-proprio_30061998_ad-tuendam-fidem.html (last accessed on 25 October 2022): "Furthermore, each and everything set forth definitively by the Magisterium of the Church regarding teaching on faith and morals must be firmly accepted and held; namely, those things required for the holy keeping and faithful exposition of the deposit of faith; therefore, anyone who rejects propositions which are to be held definitively sets himself against the teaching of the Catholic Church." Theological criticism of the increased demands of the ecclesiastical magisterium can be likened to lawyers' complaints that supreme courts are expanding their authority to interpret the constitution without an explicit mandate; see *Lepsius* (n. 22), 43 f.

³¹ See *M. Rehak*, *Wie weit reicht die Unfehlbarkeit des kirchlichen Lehramts? Can. 750 § 2 CIC und die Lehre von den "Katholischen Wahrheiten"*, in: F.X. Bischof/G. Essen (eds.), *Theologie, kirchliches Lehramt und öffentliche Meinung. Die Münchener Gelehrtenversammlung von 1863 und ihre Folgen* (2015), 153–192.

exclusion of women from sacramental ordinations, belongs to the realm of these secondary objects.

Once one has identified a “revealed truth” (or a doctrine to be distinguished from it) according to the dogmatic criteria, its exact content remains to be determined. This, too, is one of the central tasks of dogmatic theology. From a Catholic point of view, the dogmatic formulations of the Church, which are often the result of long collective reflection, represent a binding framework of orientation. Therefore, they were called *norma proxima fidei* in older theology and were placed before Scripture and Tradition in the theological order of knowledge. This entails the danger of “dogmatism” that reads historical sources exclusively in the light of dogmatic interpretations (analogous dangers are discussed in legal dogmatics). After the crisis of modernism in the early twentieth century, Catholic theology has learned to understand more deeply the historicity of revelation itself. Now it has been recognized that scriptural exegesis and the historiography of dogma must in principle be methodologically independent of dogmatic prescriptions. *Longchamps de Bériér* rightly points out that exegetical and hermeneutical skills are just as indispensable for the dogmatic theologian as for the lawyer.³² Since the inclusion of historical and comparative perspectives has become a matter of course since the end of Neo-Scholasticism, at least in German-speaking countries, theology will not have to learn too much from legal dogmatics on this point.³³ Perhaps the reverse learning path can be taken here – within legal scholarship, the complaint is expressed that dogmatic interpretation shows a tendency to de-temporalize or de-contextualize its sources and to tune out comparative perspectives.³⁴

Just as the work of dogmatic theology does not begin simply with the examination of ecclesiastical formulas, it does not end with it either. Even the earliest councils show that practically all ecclesiastical decisions raise numerous follow-up questions. For example, when the Council of Chalcedon (451) confessed Christ as “one person in two natures,” it did not provide a definition of what exactly was to be understood by these terms. It was left to the theologians to ponder such problems. They were encouraged to submit proposals for further

³² See *Longchamps de Bériér*, p. 88, above.

³³ This refers to the advice given by *Longchamps de Bériér*, p. 83, above: “As experts in the history of dogma, theologians are aware of its development. It might be useful for them to be also aware that the methodology of legal studies, for pragmatic reasons, tells us to reach beyond dogmatics towards historical and comparative arguments”. Currently, the accusation of unhistorical thinking is only occasionally raised against representatives of analytical theology.

³⁴ See *Lepsius* (n. 22), 40: “Die dogmatischen Abhandlungen unserer Tage scheuen den historischen Rückblick, den philosophischen Tiefblick, den sozialwissenschaftlichen Rundblick oder gar den politischen Ausblick.” (“Today’s dogmatic treatises eschew the historical view back, the in-depth view into philosophical insights, the panoramic view of the social science as well as the political outlook.”).

dogmatic development; this has a parallel in the critical-innovative dimension of legal dogmatics.³⁵ The acceptance or rejection of these proposals falls within the competence of ecclesiastical authorities (as in the field of law, legislature and courts are responsible for the reception of dogmatic proposals). However, even popes and bishops are dependent on the expertise of dogmatic theology, as can be illustrated by the history of every doctrinal decision.

Statements of theological dogmatics, we said at the beginning, are descriptive, indicative propositions. Two important comments must be made here. “Dogmatics” as a theological discipline came into existence from a point in time when scholarly reflection on the doctrine of faith had been separated from reflection on the precepts and virtues ordering Christian life (in moral theology). This separation was unknown in pre-Reformation theology, as can be easily verified in medieval *Summae* and Commentaries on the Sentences. In a broader sense, the principles of theological ethics officially taught by the Church could be called “dogmata practica”,³⁶ considered in moral theology as “ethical practical dogmatics”. One may ask whether moral theology understood in this way would not correspond more directly to legal dogmatics than the systematic interpretation of faith. In addition, the Catholic Church has its universal canon law, which formulates norms based on dogmatic and moral principles and which can develop its own legal dogmatics. It is noticeable that the case studies *Longchamps de Bériet* discusses in the last part of his contribution could also be assigned to these two disciplines: The concepts of ecological or structural/social sin are to be treated by moral theology as well as by dogmatics; the question of whether active faith must be a prerequisite for the validity of sacramental marriage is inextricably linked to the canonical understanding of marriage consensus.

A second remark: In formulating indicative propositions, dogmatics as “science of the dogmas (of faith)” always pursues a practical goal. Already since *Tertullian* (†220), long before the Church made its first dogmatic decisions, the doctrine of faith was understood as the “norm of faith” (*regula fidei*). This normative claim is affirmed in the authoritative presentation of the *credenda* by ecclesiastical creeds. Symbols of faith are necessary to protect the identity of the ecclesiastical community, to reject threats from false teachings and to enable the transmission of faith in catechesis. In this respect, dogmatics can be described as both an expression and a stabilization of a social practice. At the same time, it illustrates the conviction that the confession of the articles of faith (at least to a certain extent) is indispensable for each individual person’s relationship with God and for receiving the grace of salvation. Therefore, the “doctrine of salvation” as reflected in dogmatics undoubtedly has practical relevance for the faithful. In the Middle Ages, theology sometimes defined itself

³⁵ See *Longchamps de Bériet*, p. 77 and p. 93, above.

³⁶ See *J. Brinktrine*, *Einleitung in die Dogmatik* (1951), 26.

as “practical science” because it wanted to be an introduction to the path of salvation opened by God, providing deeper understanding. In contrast to legal dogmatics, however, theological dogmatics is not focused on the solution of practical problems. It is not concerned with bridging the gap between general, abstract norms and the case-by-case decisions³⁷ that a court cannot avoid.³⁸ In the Catholic Church there is no ecclesiastical jurisdiction dealing with questions of faith in distinction from the *magisterium*. At best, theological dogmatics succeeds in improving and deepening the understanding of revealed faith in the Church as a whole, or at least for individual believers.

B. Systematic connection and further development of dogmatic statements

The identification and precise determination of the content of faith from its constitutive sources described so far is followed by systematic reflection. Its goal is to show inner connections between the individual doctrinal statements and their integration into an overall view that is as coherent as possible and determined by consistent principles. When theology as science emerged with the scholasticism of the twelfth and thirteenth centuries, closely connected to the establishment of the universities, its epistemological model was taken from the Second Analytics of *Aristotle*. According to the philosopher, scientific knowledge is mainly generated by logically correct conclusions drawn from basic propositions. *Thomas Aquinas*³⁹ applied this model to theology by qualifying the revealed articles of faith as participation in the *scientia Dei et beatorum*, i.e., a higher science, to which theology relates as *scientia subalternata*, the same way, for example, engineering science relates to physics. Although medieval scholasticism never carried out this method consistently, it has remained dominant in Catholic dogmatics into the modern era. Theologians were now willing to include purely philosophical premises in order to derive conclusions from revealed principles. This conclusive procedure has close counterparts in modern theories of science. Nevertheless, it has come under criti-

³⁷ See *Waldhoff* (n. 10), 26. The definition of legal dogmatics as an “operationalizing intermediate layer between legal norms and the application of law in individual cases” (“operationalisierende Zwischenschicht zwischen den Rechtsnormen und der Rechtsanwendung im Einzelfall”) (*M. Eifert*, *Zum Verhältnis von Dogmatik und pluralisierter Rechtswissenschaft*, in: *Kirchhof et al.* (n. 10), 79–96, 81) cannot be transferred to theological dogmatics. See *Sahm* (n. 4), 72.

³⁸ “Der Unterschied zwischen theologischen und juristischen Dogmatikern besteht darin, dass die theologischen Dogmatiker keinem Entscheidungszwang ausgesetzt sind” (“The difference between theological and legal dogmatists is that theological dogmatists are under no obligation to decide.”): *Sahm* (n. 4), 173.

³⁹ See *Congar* (n. 16), 378–392; *M. Grabmann*, *Die theologische Erkenntnis- und Einleitungslehre des hl. Thomas von Aquin auf Grund seiner Schrift In Boethium de trinitate im Zusammenhang der Scholastik des 13. und beginnenden 14. Jahrhunderts dargestellt* (1948); *J.-P. Torrell*, *Le savoir théologique chez saint Thomas*, *Revue thomiste* 96 (1996) 355–396.

cism in recent theology because of its tendency towards unhistorical argumentation (especially in the Neo-Scholasticism that prevailed between around 1850 and 1950). Since then, hermeneutic methods of interpretation as developed in modern humanities have been adopted to a large extent. Nevertheless, important systematic contributions are still characterized by a logically coherent unfolding of fundamental principles, which, of course, must be historically reflected. The “hierarchy of truths” (Vatican II, *Unitatis Redintegratio* 11) given in revelation itself, i.e., the insight into the theological priority of certain truths of faith over others, serves as a fundamental ordering principle. Insofar as consistency, rational accessibility and communicability of Christian doctrine are clarified by systematic presentation, the dogmatic *intellectus fidei* has implicit relevance for the justification of faith in the face of critical inquiries on the part of philosophical reason. Every dogmatic system implies the decision in favour of certain philosophical premises. While in Christian antiquity and in the Middle Ages the dominant paradigms were first Platonism and then Aristotelianism, the situation has changed considerably in modern times. Since the middle of the nineteenth century, the aforementioned Neo-Scholastic movement, with the support of the ecclesiastical *magisterium*, pursued the goal of bringing the premises of Thomistic Aristotelianism once again to general acceptance within Catholic philosophy and theology. After Vatican II, Neo-Scholasticism came to a rapid end. Since then, a diversification has taken place in Catholic dogmatics that goes far beyond the variety of theological schools existing in earlier centuries.

C. Explanation of Christian doctrine in contemporary contexts

A third task of theological dogmatics has received greater attention only in the last few decades: the effort to make the ecclesiastical doctrine of faith plausible in changing forms of thought as well as in changing cultural and linguistic situations, in dialogue with contemporary sciences, worldviews and religions. In fact, dogmatic judgments of the Church and their interpretation by theologians have always been made under the auspices of changing philosophical, but also political and social conditions. The concept of transubstantiation could not have been established at the beginning of the thirteenth century without the reception of Aristotelian metaphysics. The definition of the doctrinal and jurisdictional primacy of the pope by the First Vatican Council (1870) is to be understood against the background of political developments after 1789. Dogmas must therefore be interpreted not only with respect to their conditions of origin; under changing circumstances, they may need to be supplemented and to be placed into new contexts of meaning. For example, the Second Vatican Council explained the previous Council’s definition of papal infallibility in its larger ecclesiological context and introduced a counterweight to papal absolutism with the doctrine of episcopal collegiality. Dogmatics can and should

formulate constructive suggestions for such updates.⁴⁰ However, it must continue to be recognized that “translating” dogma does not mean an exchange of its meaning. The Catholic Church does not recognize a formal abandonment of dogmatic statements of the past on the argument that its judgments are no longer understandable or that they are based on erroneous premises. This would be difficult to reconcile with the statements about the stability of dogmatic teaching in Vatican I (see Dogmat. Konstitution *Dei Filius*, can. 4, *Denzinger-Hünemann* 3043) and the chapters on “sacred tradition” in Vatican II (cf. *Dei Verbum* 7–10). In fact, some demands for a “transformation of the form of thought” within dogmatic theology no longer touch solely on previous interpretations of Christian dogmas, but on the dogmas as such. Theologians, who, for example, follow *Immanuel Kant* in refuting the pre-modern understanding of metaphysics will find it difficult to make sense of the dogmas of the “one divine nature in three persons”, of the “one person of Christ in two natures” or of the “transubstantiation” of bread and wine in the Eucharist. This fundamental criticism is often accompanied by an appeal to historical-critical exegesis. In recent times, demands for changes in previous church teachings, as evidenced for example by the hermeneutical basic text of the “Synodal Path” (*Synodaler Weg*) in Germany,⁴¹ are often raised with reference to two further criteria. One is the “sense of faith of the faithful”, now understood as the current majority opinion of church members or as their refusal to adopt certain official positions of the *magisterium*. In addition, reference is made to “signs of the times” (cf. Vatican II, *Gaudium et Spes* 4), phenomena and developments of the present age which are conceived as “effects of the Spirit in society and in history”⁴² and as manifestations of divine revelation for a certain time. Gender equality, democratic standards regarding participation and separation of powers, or the evaluation of sexuality in the humanities can be used as benchmarks for changes in ecclesiastical doctrine. The shifts in theological epistemology associated with these criteria are currently giving rise to serious controversy.⁴³ It remains to be seen whether, on this basis, certain parts of the doctrine of the Church will in the future be more closely aligned with profane legal systems, which are subject to constant change in the process of social transformation.

⁴⁰ See the remarks in *L. Scheffczyk*, *Grundlagen des Dogmas. Einleitung in die Dogmatik* (1997), 180–189.

⁴¹ *Büro des Synodalen Weges* (ed.), *Orientierungstext. Auf dem Weg der Umkehr und der Erneuerung. Theologische Grundlagen des Synodalen Weges der katholischen Kirche in Deutschland* (2022).

⁴² *P. Hünemann*, *Dogmatische Prinzipienlehre. Glaube – Überlieferung – Theologie als Sprach- und Wahrheitsgeschehen* (2003), 223.

⁴³ See *T. Marschler*, *Zeichen der Zeit als neuer locus theologicus?*, in: J.-H. Tück/M. Striet (eds.), *Jesus Christus – Alpha und Omega. Festschrift H. Hoping* (2021), 38–56. English version: <https://churchlifejournal.nd.edu/articles/signs-of-the-times-as-a-new-locus-theologicus/> (last accessed on 18 October 2022).

V. Conclusion

Our incomplete comments on the relationship between theological and legal dogmatics based on the definitions of the terms have shown that considerable parallels can indeed be discovered if the respective methods are described from a certain abstracting distance. One could easily extend the comparison to the storage and relief function of dogmatics and its didactic dimension, or reflect on specific problems associated with dogmatic thinking.⁴⁴ On the other hand, it cannot be overlooked that the different character of legal and theological principles and the diverging perspective of dogmatic statements in the two disciplines set limits on the comparison. Therefore, direct interdisciplinary contact between legal and theological dogmatics will probably remain rare in the future.

⁴⁴ *M. Jestaedt*, *Wissenschaftliches Recht. Rechtsdogmatik als gemeinsames Kommunikationsformat von Rechtswissenschaft und Rechtspraxis*, in: Kirchhof et al. (n. 10), 117–137, identifies four threats to legal dogmatics (131–136): dogmatism (the danger of “excessive disciplinary auto-reference”); exclusive or inclusive universalism (perceiving the dogmatic method as the only true method within the entire discipline or as the synthesis of all other methods); systematism (a compulsive fitting of all facts into the scheme of dogmatics); integralism (a blurring of the boundaries between knowledge and generation of law). All four points are relevant (*mutatis mutandis*) for theological dogmatics as well.