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Obedient academic freedom in theology - a wooden iron?

On the current interpretation of c. 750 § 2 Code of Canon Law/1983

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Zusammenfassung: *Im Laufe des Pontifikats von Johannes Paul II wurde durch eine Reihe von Stellungnahmen der Glaubenskongregation eine restriktive Verhältnisbestimmung von Lehramt und katholischer Theologie vorgeschrieben, die 1989 zur Einführung eines zweiten Paragraphen in c. 750 § 2 (CIC/1983) führte. Das Lehramts- und Traditionsverständnis, das die damalige Glaubenskongregation zu dieser Einschränkung der theologischen Wissenschaftsfreiheit veranlasste, soll hermeneutisch analysiert und in seinen Konsequenzen durchdacht werden. Damit werden die hermeneutischen Bedingungen für eine Anpassung der geltenden Nihil-obstat-Normen für Theologiedozierenden thematisiert, um einem transparenten und konstruktiven Dialog zwischen Lehramt und Theologie besser entsprechen zu können.*

Abstract: *In the course of the pontificate of John Paul II, a series of interventions by the Congregation for the Doctrine of the Faith prescribed a restrictive definition of the relationship between the Magisterium and theology, which ultimately led to the introduction of the second paragraph of c. 750 § 2 (CODE OF CANON LAW/1983) in 1989. The understanding of the Magisterium and the Tradition that led the Congregation for the Doctrine of the Faith to impose this restriction on theological academic freedom will be hermeneutically analysed and its consequences evaluated. This will help to define the conditions for an adaptation of the current nihil obstat norms ad docendum in order to better correspond to a transparent and constructive dialogue between the Magisterium and theology.*

Schlagwörter: Lehramtsverständnis, Theologie, Wissenschaftsfreiheit, Treueeid, Nihil-obstat-Verfahren, Traditionsverständnis, Anwendung

Keywords: magisterium, theology, academic freedom, Oath of Allegiance, nihil obstat procedure, tradition, application

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The case of the refusal of the nihil obstat by the competent Dicastery for Culture and Education (formerly the Congregation for Education) for the election as dean of the Brixen moral theologian Martin Lintner in 2023 once again made public how far-reaching the disciplinary consequences of a violation of the current interpretation of c. 750 § 2 Code of Canon Law/1983 still are for Catholic theology lecturers. This case attracted international attention and once again raised the question of the freedom of theologians to research and publish on

topics on which the Magisterium has issued a "definitive declaration". Against this background, the Forum of Catholic Theologians (AGENDA), in collaboration with the evaluation team of the Centre for Applied Pastoral Research (ZAP), conducted a survey among theology lecturers in German-speaking countries in 2023, which was intended to provide information on the transparency of the procedure, the average processing time and the reasons for the delay of certain nihil obstat procedures, among other things. The results of this study¹ were presented at the Catholic Theological Faculty Conference (HThF) in Mainz on 26 January 2024 and summarised as follows: "The current procedure for granting nihil obstat is perceived as non-transparent at all stages. In particular, there are neither standardised communication channels nor solutions for queries and complaints. The procedure is discriminatory, as more women than men receive queries and complaints. The procedure is also associated with fear and pressure due to a lack of transparency and unpredictability. This has concrete consequences, such as not researching certain topics or keeping one's own lifestyle secret."² The General Assembly therefore unanimously adopted a statement asking the German Bishops' Conference to amend the current regulations on the granting of church teaching licences in accordance with the new basic regulations of church labour law applicable in Germany.³ This initiative is only the first important step in a more comprehensive reflection which, in order to be truly productive, would have to involve the Roman dicasteries and Catholic theologians worldwide. In my opinion, the starting point for such a discussion should be a historical-hermeneutical thematisation of the current model of the relationship between the magisterium and academic theology, which largely determines the current practice of the nihil obstat. This reconstruction will inevitably come up against an open question, which the new Prefect of the Dicastery for the Doctrine of the Faith, Victor Manuel Cardinal Fernández, rightly formulated as follows in his response to the fifth of the *dubia* brought to Pope Francis by conservative cardinals (whether women can be ordained priests): "Let us recognise that no clear and binding doctrine has yet been sufficiently developed on the question that clarifies what exactly is

¹ See. URL: <https://zap-bochum.de/zap-veroeffentlicht-im-auftrag-von-agenda-forum-katholischer-theologinnen-e-v-studie-zum-nihil-obstat-verfahren/> (Last access: 31.01.2024)

² Statement of the plenary assembly of the KThF on the change of the previous regulations for granting the ecclesiastical teaching licence, 27. January 2024. URL: <https://kthf.de/erklaerung-zur-nihil-obstat-studie/> (Last access: 31.01.2024)

³ To date, the private lives of theology lecturers have not been protected by the reform of church labour law adopted by the German Bishops' Conference in 2022, according to which "the core area of private life, in particular relationships and privacy, [...] remains exempt from legal assessment" Grundordnung des kirchlichen Dienstes, 22. November 2022, Art. 7 (2) 3.

the nature of a 'definitive declaration'. No one can publicly contradict it, and yet it can be subject to scrutiny, as in the case of the validity of Anglican ordinations."⁴

1. From a "negative-exclusionary" to a "positive-determining" type of magisterium

From the Nicene Council to Vatican Council I, all doctrinal decisions of the councils generally followed a "negative-exclusionary" method: the positive *depositum fidei* and the unity of the Church were preserved by condemning opposing errors. The doctrines that were rejected were fixed in canons and explained in preceding doctrinal chapters. This delimiting method also makes it understandable why councils repeatedly gave rise to schisms, insofar as every doctrinal decision had to (at least indirectly) name a "side" that was implicitly excluded from the defined doctrine. What lay within the boundaries of "orthodoxy", on the other hand, was left to the freedom of pre-Reformation theological discussion. In the judgement of Hubert Jedin: "The abstinence of the holders of the magisterium in the late Middle Ages, the blurring of the boundaries between theology and the magisterium, as expressed in the censor's office of the Sorbonne, bore a considerable part of the blame for the 'theological ambiguity' that Joseph Lortz described as a characteristic of the pre-Reformation church."⁵ In this context, Jedin also emphasises that even in the case of the doctrinal decrees of Trent, which, as is well known, defined fundamental doctrines of faith, "if one studies their origin on the basis of the minutes of the negotiations, there can be no doubt that the doctrinal chapters are only of secondary importance in comparison with the canons [...] The canons are the primary ones."⁶

⁴ see Fernández, Victor Manuel, *Dicasterium pro doctrina fidei, ex Audientia die 25. September 2023*, 6 f. Translation by Ludwig Ring-Eifel (KNA). URL: <https://www.katholisch.de/artikel/48994-neueste-schreiben-vatikan-will-im-reformdialog-rote-linien-markieren> (Last access: 31.01.2024)

⁵Jedin, Hubert, *Vaticanum II und Tridentinum. Tradition und Fortschritt in der Kirchengeschichte*, Arbeitsgemeinschaft für Forschung des Landes Nordrhein-Westfalen – Geisteswissenschaften: 137. Sitzung am 17. Januar 1968 in Düsseldorf, Springer Fachmedien Wiesbaden GmbH, Cologne-Opladen 1968, p. 10.

⁶ Ibid, p. 9. Another question in this context is the dogma of the "infallibility" of the pope, which, remarkably, was not defined by the Council of Trent. Even in medieval canon law, Peter was granted "the grace of preserving the faith to the end ... not inerrancy" in connection with Luke 22:32 ("I have prayed for you that your faith may not waver") (KÜNG, Hans, *Der neue Stand der Unfehlbarkeitsdebatte*, in: HASLER, August Bernhard, *Wie der Papst unfehlbar wurde. Macht und Ohnmacht eines Dogmas*, Ullstein Sachbuch (Pieper), Munich 1979, p. 20). The primacy of jurisdiction defined at Vatican I in 1870 and the infallibility of the pope. The primacy of jurisdiction and the infallibility of the pope defined at Vatican Council I in 1870 do not contradict the negative-demarcating understanding of the magisterium, insofar as the first is read as safeguarding the unity of the *Communio Ecclesiae* and the second as "emergency legislation", which the Roman Catholic Church has given itself "in order to ensure the unity of the Church and the freedom of the proclamation of the Gospel (from all state intervention) in extreme emergencies in the face of extreme external threats to the Church." BROSEDER, Johannes, *Ist unsere Kirche*

This "negative-exclusionary" understanding of the magisterium is, of course, confirmed in cc. 1323 § 3 and 1324 of the Code of Canon Law/1917. They follow cc. 1323 § 1 and § 2, which substantiate the claim of papal teaching authority.

c. 1323 § 1: „Fide divina et catholica ea omnia credenda sunt quae verbo Dei scripto vel traditio continetur et ab Ecclesia sive sollemni iudicio sive ordinario et universali magisterio tanquam divinus revelata credenda proponuntur.“⁷

c. 1323 § 2: „Solemne huiusmodi iudicium pronunciare proprium est tum Oecumenici Concilii tum Romani Pontificis ex cathedra loquentis.“⁸

c. 1323 § 3: „Declarata seu definita dogmatice res nulla intelligitur, nisi id manifeste consisterit.“⁹

c. 1324: „Satis non est haereticam pravitatem devitare, sed oportet illos quoque errores diligenter fugere, qui ad illam plus minusve accedunt; quare omnes debent etiam constitutiones et decreta servare quibus pravae huiusmodi opiniones a Sancta Sede proscriptae et prohibitae sunt.“¹⁰

With its typically unified language, c. 1323 Code of Canon Law/1917 formalises the conditions and limits of the infallible magisterium of the pope, as laid down in the dogmatic constitution "Pastor aeternus".¹¹ Irrespective of whether it is the "extraordinary" magisterium of the Pope ("sollemni iudicio" or "ex cathedra") or the "ordinary and universal" magisterium ("ordinario et universali magisterio") "ex cathedra") or the "ordinary and universal" magisterium ("ordinario et universali magisterio") - which is exercised by the entire college of bishops in unity

noch ökumene-fähig? Ökumenische Aspekte der Kölner Theologen-Erklärung, in: *Orientierung*, No. 4 (53. Volume), February 28, 1989, p. 38-39; here: p. 38.

⁷ "By divine and catholic faith is believed that which is contained in Scripture and Tradition and declared by the Church to be divinely revealed by solemn definition or by the ordinary and universal Magisterium." [Translation: GDC]

⁸ "This solemn judgement belongs to the Ecumenical Council and the Pope, who speaks ex cathedra." [Translation: GDC]

⁹ "Nothing should be asserted or defined as dogmatic unless it is clearly established as such." [Translation: GDC]

¹⁰ "It is not enough to avoid heresy, but one must flee the errors that lead to it in a certain way and observe the provisions by which the Holy See forbids and forbids bad opinions." [Translation: GDC]

¹¹ Conc. Vatican., sess. IV, c. IV, *de Romani Pontificis infallibili magisterio*. cited in: https://www.vatican.va/archive/hist_councils/i-vatican-council/documents/vat-i_const_18700718_pastor-aeternus_la.html (Last access: 31.01.2024)

with the pope - we can only speak of dogmatic definition if the pope presents a teaching to be believed as if (*tamquam*) revealed by God: "*tamquam divinus revelata*". It would therefore be a misinterpretation to see in this formulation an explicit limitation of the object of dogma exclusively to the directly revealed doctrines. In fact, c. 1323 § 1 speaks of "*tamquam*" (= as if, as if) and of "*de fide divina et catholica*". This means that the secondary area of faith is also included in the object of infallibility. The dogmatic assumption that the infallibility of the pope is founded in the Word of God and in tradition, but that this can in principle be authoritatively interpreted by the pope, already confirms an explicit understanding of "*tamquam divinus revelata*" in a broad, namely indirect way.

The following § 3 of c. 1323 Code of Canon Law/1917 limits itself by stating that everything that does not fall under the above-mentioned conditions cannot be called doctrinal: "*res nulla intelligitur, nisi id manifeste consistit*". On closer inspection, the adverb "*manifeste*" contains two further semantic nuances: firstly, it refers to the infallibility of the pope as the highest form of exercising that infallibility which Christ promised to the Church as a whole and which is therefore evident ("*manifeste*") for the *sensus fidelium*. Although the Pope does not require ratification by the entire episcopate in the exercise of his infallible teaching office ("*ex sese, non autem ex consensu Ecclesiae*"),¹² all his doctrinal decisions ultimately and exclusively refer to the *sensus Ecclesiae*. On the other hand, only that which is declared *expressis verbis* ("*manifeste*") as dogmatic is removed from theological discussion. For everything that lies outside this positive provision, no legal obligation of consent is established, but only the framework conditions laid down in the following c. 1324 apply. In this regard, Ernst-Wolfgang Böckenförde remarks in a very readable article from 2005: "In this respect, the Code of Canon Law 1917 only stipulated the duty to guard against heresy as well as all those errors that come more or less close to it, and therefore to comply with all constitutions and decrees by which such erroneous views were rejected or prohibited by the Holy See. This was a negatively exclusionary duty, namely to avoid heresies and explicitly condemned errors, not a duty of positive approval of all doctrines presented without further differentiation."¹³ The Code of Canon Law/1917 therefore speaks of an obedient observance of the limits and prohibitions, not of a

¹² *Pastor aeternus*, Chap. IV. AAS 6 (1870-1871), p. 40-47.

¹³ BÖCKENFÖRDE, Ernst-Wolfgang, *Rom hat gesprochen, die Debatte ist eröffnet*, FAZ 25.07.2005. URL: <https://www.faz.net/aktuell/feuilleton/glosse-feuilleton-rom-hat-gesprochen-die-debatte-ist-eroeffnet-1293904.html> (Last access: 31.01.2024).

"religious obedience of the will and intellect" ("religioso voluntatis et intellectus obsequio") to the non-definitive, i.e. not infallible, teachings of the *magisterium actuale*, i.e. the "authentic ordinary magisterium". Religious obedience to non-definitive teachings was first introduced in c. 750 Code of Canon Law/1983 with recourse to Lumen Gentium 25 (LG). However, in order to prevent this paragraph from being understood in the traditionally negative and delimiting sense of c. 1324 (Code of Canon Law/1917), the Congregation for the Doctrine of the Faith published a restrictive interpretation of c. 750 Code of Canon Law/1983¹⁴ in 1989, which was by no means expressed in this form by the Second Vatican Council. Rather, it represents a restrictive rejection of the "liberal" interpretation of the Council.¹⁵

In the course of John Paul II's pontificate, the transition to a "positive-determining" type of magisterium took place along the path of decrees, which "intervenes positively in all aspects of the life of faith (religious life, family life, bioethics, problems in the world of work, tourism, sport, shop closures...) and thus claims to cover the entire area that until then had been reserved for free theological and pastoral discussion".¹⁶ Only with the necessary historical distance is it possible, in my opinion, to attempt a reconstruction of the events that led to this positive understanding of the magisterium with regard to content that was not infallible. Without being able to reconstruct all the detailed theological issues that led to disciplinary measures against individual theologians, a generally significant event should be highlighted here, which can be seen as a symptom of the prevailing understanding of the magisterium at the time and as the cause of the later legal crystallisation.

¹⁴ AAS 90 (1998), p. 544-551.

¹⁵ In 1968, Joseph Ratzinger commented on this situation as follows: "[W]hile in Trent it was clear from the reform problem of the late Middle Ages what one wanted to reform against and from what, in our case the desire for reform was clear, but neither the 'from what' nor the 'where' was clear. This is the accusation that Oskar Cullmann levelled at John XXIII's 'Aggiornamento': it was a principle without a yardstick. Whether this is true remains to be discussed. In any case, it seems to me to contain something correct for the trend of events, since it was by no means clear what exactly the Church had to be reformed from and what, consequently, was the direction in which one had to reform" RATZINGER, Joseph, *Diskussion*, in: JEDIN, Hubert, (ed.) *Vaticanum II und Tridentinum*, p. 31-32. 55 years later, the awareness of reform in the Catholic Church in Germany is more pressing than ever before. The topics that were decided by the German Synodal Way, for example, are: Power and separation of powers in the Church; Priestly existence today; Women in ministries and offices in the Church; Involvement of the faithful in the appointment of the diocesan bishop; Magisterial re-evaluation of homosexuality; Blessings for loving couples; Dealing with gender diversity.

¹⁶ GRILLO, Andrea, *Immaginare e fare sinodo*, in: Munera. Rivista europea di cultura, 17.07.2023. URL: <https://www.cittadellaeditrice.com/munera/immaginare-e-fare-sinodo/> (Last access: 31.01.2014)

Enough is enough: The "Cologne Declaration"

On Epiphany in 1989, the "Cologne Declaration" was published on behalf of fourteen theologians, later signed by more than a thousand theology lecturers from all over the world. The reason for the statement entitled "Against incapacitation - for an open Catholicity" was the authoritarian style of Pope John Paul II and the Roman Congregations in the appointment of bishops, the practice of granting nihil obstat, as well as the interference in the academic freedom of theological research, which gave rise to fears of a "loss of the reputation of theology at universities".¹⁷ An immediate trigger for the Cologne initiative were the papal addresses on the regulation of conception in autumn 1988. Twenty years after the publication of the encyclical "Humanae vitae" (1968), "the concepts of 'fundamental truth' and 'divine revelation' were used in papal addresses [...] in order to discipline a concrete, detailed question based on natural law arguments."¹⁸

Twenty years after the "Cologne Declaration", Dietmar Mieth, one of the initiators of the letter, has drawn a thought-provoking balance: One of the greatest gains of the statement was the founding of the European Society for Catholic Theology and the fact that the Congregation for the Doctrine of the Faith sought dialogue with representatives of the Cologne initiative (Alfons Auer, Johannes Gründel, August Wilhelm von Eiff) on controversial points during the preparatory work for the 1993 moral encyclical "Veritatis Splendor". Among the "clouding" mentioned by Mieth in retrospect, there is no reference to the statements of the Congregation for the Doctrine of the Faith in the months and years following the Cologne position. Although Mieth notes the persistence of the problems of the academic-ecclesiastical system diagnosed in the Cologne statement after two decades, he does not address the legal restrictions systematically imposed by Rome on the academic freedom of theology lecturers.

¹⁷ *Kölner Erklärung*, in: Orientierung No. 2 on January 31st 1989, p. 23 f. The full text is available as an offprint from *PublikForum* (Frankfurt) and *Kathpress* (Vienna). The list of 163 signatories from Germany, the Netherlands, Austria and Switzerland can be found in: *Süddeutsche Zeitung*, 27.1., *Rheinischer Merkur*, 3.2. A Spanish translation was published by *El País* on 2 February 1989, an English translation by *The Tablet* on 4 February 1989 and a French translation by *Témoignage Chrétien* on 6 February 1989.

¹⁸ MIETH, Dietmar, *Eine durchwachsene Bilanz. Die „Kölner Erklärung“ von 1989 und ihre Wirkungen*, in: *Herder-Korrespondenz* Issue 2/2009, p. 66-70; here: p. 66.

The thematic sequence of the following normatively charged documents from Rome demonstrates an intervention project that cannot be explained away by sophistry.

Less than two months after the "Cologne Declaration", the *Professio Fidei et Ius iurandum fidelitatis in suscipiendo officio nomine ecclesiae exercendo*¹⁹ as published on 1 March 1989. The decisive factor is the motivation stated in the introductory note: "It became ... necessary to compose suitable texts that corresponded better in style and content to the teaching of the Second Vatican Council and the subsequent documents."²⁰ There is no doubt that the oath of allegiance corresponds to the assumptions of "Humanae vitae" - and wants to put an end to the twenty-year discussion about it once and for all. At the same time, however, the discussion about the teaching of the Second Vatican Council should not be ended immediately, because there - as Peter Hünemann emphasises - "an appeal to the competence of the teaching office to definitively present truths related to the doctrine of faith and morals was not decided."²¹ Until then, only bishops were obliged to take a special oath of allegiance inspired by the custom of anti-modernist envy (according to c. 380, also still Code of Canon Law/1983). The Congregation for the Doctrine of the Faith had already issued a corresponding *Professio Fidei et Jus iurandum fidelitatis* in 1967.²² The first part contained the great profession of faith, the second part a general and concise recognition of the authority of the Magisterium in matters of faith and morals. With the decree of 1989, this obligation was extended to all those who are to exercise an ecclesiastical ministry in preaching (including teachers of theology or philosophy in theological convents or seminaries)²³ and fixed in canon law with the newly inserted §§ 5-8 of c. 833. The new version of 1989 contains in the first part the "Professio fidei" of 1967 and in the second part a completely reformulated oath of allegiance in three paragraphs, which better distinguishes between the nature of the truths of faith and the relative

¹⁹ AAS 81 (1989), p. 104-106.

²⁰ Ibid., p. 104.

²¹ See. Commentary by Peter HÜNEMANN on the motu proprio "Ad tuendam fidem" (18. Mai 1998), in: Denzinger-Hünemann, DH, 5065–5066, Herder Verlag, Freiburg ⁴²2009, p. 1998.

²² AAS 59 (1967), p. 1058.

²³ „Teachers of theology at German state universities are exempt from this obligation. The oath of allegiance is not one of the recruitment requirements listed conclusively in the aforementioned decrees of the Congregation for Education. The Apostolic See would have to amend the Decree on Accommodation in order to oblige the above-mentioned teachers to fulfil this requirement. Heribert Schmitz rightly points out that this would lead to a 'double oath' for holders of a confessional or confessional state office and would be repugnant. Furthermore - according to Schmitz - the Apostolic See would have to seek the agreement of the state if it did not want to damage the current relationship between church and state through an 'unfriendly approach'." Lüdecke, Norbert, *Ein konsequenter Schritt. Kirchenrechtliche Überlegungen zu „Professio fidei“ und Treueid*, in: Herder Korrespondenz 54 (2020), p. 339 – 344, here: p. 343.

consent required ("theological faith", "ecclesial faith" and "obedience of the will and of the intellect").

„Firma fide quoque credo ea omnia quae in verbo Dei scripto vel tradito continentur et ab Ecclesia sive sollemni iudicio sive ordinario et universali Magisterio tamquam divinitus revelata credenda proponuntur.“²⁴

The first paragraph comprises the truths contained in Scripture and Tradition which are to be accepted with theological faith (*fide divina*: c. 750) and which are presented to the faithful as revealed by the ecclesiastical, ordinary or extraordinary magisterium (whose task it is to interpret the written or traditional Word of God authentically).

„Firmiter etiam amplector ac retineo omnia et singula quae circa doctrinam de fide vel moribus ab eadem definitive proponuntur.“²⁵

The second paragraph refers to the Catholic faith, i.e. to everything that concerns faith and morals, even if it is not directly revealed, but is defined in a definitive way by the solemn Magisterium, precisely because it is virtually contained in the deposit of faith. We will have to return later to the nature of this virtual connection with revelation.

„Insuper religioso voluntatis et intellectus obsequio doctrinis adhaere reo quas sive Romanus Pontifex sive Collegium episcoporum enuntiant cum Magisterium authenticum exercent etsi non definitivo actu easdem proclamare intendant.“²⁶

The third paragraph, which corresponds to c. 752 of Code of Canon Law/1983 (and LG 25), prescribes a specific duty of obedience (and not the assent of "ecclesial faith") to the "ordinary" magisterium, i.e. to that magisterium which presents a teaching on faith and morals without a definitive act on faith. Remarkably, this third paragraph contains no reference to c.

²⁴ "I also firmly believe everything that is contained in the written or traditional Word of God and is presented by the Church as revealed by God to be believed, whether by solemn judgement or by the ordinary and universal Magisterium." [Translation: P. HÜNERMANN]

²⁵ „I also firmly recognise and adhere to everything and everyone that is definitively presented by the Church with regard to the doctrine of faith and morals." [Translation: P. HÜNERMANN]

²⁶ „Moreover, I adhere with religious obedience of will and intellect to the teachings that the Pope or the College of Bishops present when they exercise their authentic magisterium, even if they do not intend to proclaim them in a definitive act." [Translation: P. HÜNERMANN]

212 §§ 1-3 (Code of Canon Law/1983), where the obedience of the faithful to the pastors is accompanied by the "awareness of one's own responsibility". It is precisely here that the right of petition of all the faithful is anchored in canon law, i.e. the freedom of the faithful to communicate their needs, especially their spiritual needs, and their wishes to the pastors of the Church. It would therefore be desirable to refer to § 3 of c. 212 (Code of Canon Law/1983), which expresses freedom of opinion in the context of safeguarding communion with the Church: "According to their knowledge, their competence and their prominent position, they have the right and sometimes even the duty to communicate their opinions to the spiritual pastors in matters concerning the good of the Church and to make them known to the other faithful, while respecting the integrity of faith and morals and reverence for the pastors and with due regard for the common good and dignity of persons".

"Donum veritatis"

This right to express an opinion, within the parameters laid down in § 3 of c. 212, is not only not mentioned at all in the oath formula, but is furthermore subject to a restrictive interpretation in the following legally binding Instruction of the Congregation for the Doctrine of the Faith of 24 May 1990 on "The Ecclesiastical Vocation of the Theologian", entitled: "Donum veritatis"²⁷. Three points in particular should be emphasised here:

Firstly, those who teach theology are expected to obediently agree with all magisterial statements without exception, regardless of the hierarchy of truths. Although a distinction is made between different degrees of agreement, this differentiation must not be misunderstood as a possibility of "degrees of rejection". The duty of obedience, which was morally commanded in Code of Canon Law/1917 as the avoidance of error, now becomes legally binding (and its

²⁷ Detailed critical comments on this document have already been presented by: NEUMANN, Ursula; NEUMANN, Johannes, *Theologie als Glaubensgehorsam. Anmerkungen zu einem bemerkenswerten Dokument der römischen Kongregation für die Glaubenslehre*, in: *Materialien und Informationen zur Zeit* 19 (1990) No. 3–4, p. 21–28 u. p. 20 (1991) No. 1, p. 34–38. See. auch: Pottmeyer, Hermann, *Rezeption und Gehorsam. Aktuelle Aspekte der wiederentdeckten Realität „Rezeption“*, in: Beinert, Wolfgang (ed.), *Glaube als Zustimmung. Zur Interpretation kirchlicher Rezeptionsvorgänge* (Quaestiones disputatae 131), Freiburg i. Br u. a. 1991, p. 51–91, p. 60–62. Zu „Donum veritatis“ (insb. No. 23-41): LÜDECKE, Norbert, *Die Grundnormen des katholischen Lehrrechts in den päpstlichen Gesetzbüchern und neueren Äußerungen in päpstlicher Autorität* (Forschungen zur Kirchenrechtswissenschaft 28), Würzburg 1997, p. 452–497 und BIER, Georg, *Das Verhältnis zwischen dem kirchlichen Lehramt und den Theologen in kanonistischer Perspektive*, in: AHLERS, Reinhold; LAUKEMPER-ISERMANN, Beatrix (ed.), *Kirchenrecht aktuell. Anfragen von heute an eine Disziplin von „gestern“*, Essen 2004, p. 1-44.

violation sanctioned) because, according to the interpretation of the Congregation for the Doctrine of the Faith, it represents the actual form of the true *intellectus fidei*. In other words, the possibility of a legitimate dissociation for reasons of intellectual honesty on the part of those teaching theology from statements of the Magisterium that are not infallible is ruled out in principle and objectively, as it would ultimately be due to a moral deficiency of the will or intellect²⁸: "To speak here of the violation of human rights is out of place, because one fails to recognise the precise hierarchy of these rights" (Donum veritatis, no. 37). Any concerns or even conflicts must therefore never be made public (Donum veritatis, no. 30). In the event of disagreement between theology teachers and the non-definitive magisterial teachings, the bishops are therefore called upon to make disciplinary arrangements in accordance with the Code.

Secondly, the authority and competence of the Magisterium also extends to statements in the area of natural law, insofar as these are considered to be directly or indirectly connected with revelation. Thus, with reference to "Humanae vitae", the Instruction emphasises that "Revelation itself contains moral teachings which could in themselves be recognised by natural reason, but which are difficult to access because of man's sinful constitution. It is a doctrine of faith that these moral norms can be taught infallibly by the Magisterium." (No. 16) The theologian is obliged to "obedience of faith" without exception.

Thirdly - and this closes the circle - this instruction of the Congregation for the Doctrine of the Faith, approved by the Pope, should also be upheld as an act of the "authentic ordinary" magisterium. It is claimed that the "organs of the Roman Curia, in particular the Congregation for the Doctrine of the Faith" belong to the "ordinary magisterium" if their pronouncements are approved by the Pope (No. 18). Ursula and Johannes Neumann comment on this: "This is an unheard-of innovation and the *Instructio* also refers at this point to sources that in no way support the assertion. (c. 360f. Code of Canon Law/1983 = Congregations as organs of the pope, which have to work according to established rules)"²⁹. After all that has been said, we are dealing with what has already been described as a "positive-determining" understanding of the magisterium with regard to content that is not infallible.

²⁸ *Donum veritatis*, AAS 82 (1990), p. 1567. Translation nach AAS (1990) 1427-1442, Nr 38: „Wenn ferner der Theologe wie jeder Gläubige seinem Gewissen folgen muß, so ist er auch gehalten, es zu bilden... Das richtige Gewissen aber ist ein Gewissen, das durch den Glauben und das objektive Moralgesetz erhellt ist und damit auch den aufrichtigen Willen zum Erstreben des wahrhaft Guten voraussetzt.“

²⁹ NEUMANN, Ursula; NEUMANN, Johannes, *Theologie als Glaubensgehorsam*, p. 34f.

In the following years, further Roman interventions cemented this positive and authoritative understanding of the magisterium, which ultimately claimed to cover all areas of theological discussion. Gradually, an "expansion"³⁰ of the concept of dogma became apparent: It was prepared by the aforementioned second paragraph of the *Ius iurandum fidelitatis* of 1989, it was presented to the universal Church in the Catechism of the Catholic Church of 1992 (CCC 88) and it was expressed, for example, in the encyclical "Veritatis splendor" of 6 August 1993. August 1993, in the Apostolic Letter "Ordinatio Sacerdotalis" of 22 May 1994 (in which the impossibility of ordaining women to the priesthood is definitively declared to be figurative and unalterable [i.e. dogmatic]) and in the encyclical "Evangelium vitae" of 25 March 1995.

"Ad tuendam fidem"

Beyond the individual factual questions, the *motu proprio* "Ad tuendam fidem" in particular must be taken into account in order to profile the hermeneutical framework of this magisterial development more precisely. As is well known, this Apostolic Exhortation inserted a further § 2 in c. 750³¹ with the introductory justification that the authors of the Code had not made a legal regulation corresponding to the second paragraph of the "Professio fidei" of 1989 (!). Based on the negative-exclusionary type of magisterium already described, it can also be assumed that the scholars of the Code of Canon Law/1917 could not perceive such a gap at all and that the scholars of the Code of Canon Law/1983 also did not intend to close such a gap or to speak a final word in the debate, since it was "disputed in post-conciliar theology whether the magisterium in this area had the competence to teach definitively at all"³². Four

³⁰ See. SEEWALD, Michael, *Dogma in Wandel. Wie Glaubenslehren sich entwickeln*, Herder, Freiburg-Basel-Vienna 2018. Michael SEEWALD has already drawn attention to the fact that the Catechism of the Catholic Church of 1992 also extended the understanding of dogma to the secondary area of "fides tenenda", that which is to be definitively held: The same, *Worüber wird gestritten, wenn Glaubenslehren sich entwickeln? Ein kontingenztheoretischer Vorschlag*, MThZ 69 (2018), p. 279-287; here: p. 280. This reconstruction places SEEWALD's assumption in a broader historical context.

³¹ "Also to be firmly recognised and held is everything and anything that is definitively presented by the Magisterium of the Church concerning faith and morals, that is, what is necessary for the intact preservation and faithful exposition of the deposit of faith; therefore, whoever rejects these propositions as definitively to be held is opposing the teaching of the Catholic Church". Corresponding modifications of cc. 833, 1371 1§ del CODE OF CANON LAW also cc. 598 e 1436 of the CCEO became necessary.

³² BÖCKENFÖRDE, Werner, *Kirchenrechtliche Anmerkungen zur gegenwärtigen Lage in der römisch-katholischen Kirche*, Pro manuscripto, 5. URL: https://www.wir-sind-kirche.de/files/2099_BOECKENFOERDE%20Kirchenrechtliche%20Anmerkungen.pdf (Last access: 31.01.2024). Joseph Ratzinger explained this fact as early as 1968 as follows: "Of course, even before Vatican II, we knew that not everything the Church's magisterium says is

months after the publication of the *motu proprio* of 18 May 1998, the Congregation for the Doctrine of the Faith published a reprint of the *Professio fidei* and the oath formula of 1989 on 19 September 1998 with a corresponding "doctrinal commentary"³³, which distinguishes between different orders of the truth of faith and the corresponding assent. This doctrinal note, which was not formally approved by the Pope and is therefore in principle not part of the "ordinary magisterium", was intended by the author to be used to interpret the *Professio fidei* and the new § 2 c. 750. Up to this point in time, the Congregation for the Doctrine of the Faith had never published a commentary on an Apostolic Exhortation of the Pope, so that this form of publication represents a hapax legomenon in the history of the Congregation for the Doctrine of the Faith to date. This expansion of the Great Creed is reproduced below, followed by a brief rendition of this "doctrinal" interpretation.

"I, N.N., believe with firm faith and confess all and everything contained in the Creed:

1. I believe in the one God, the almighty Father. With firm faith I also believe all that is contained in the written or traditional Word of God ("in verbo Dei scripto vel traditio continetur") and is presented by the Church - whether by solemn judgment or by the ordinary and universal Magisterium - to be believed as revealed by God ("divinitus revelata credenda pro-ponuntur"). [*fides credenda*]

infallible, and that everything proclaimed in a way that is not infallible can be revised. In fact, however, the concrete standardisation of the magisterium actuale was so strong that it represented the binding standard at all times, which stood before the faithful (for example in the social encyclicals) as irrefutable church teaching that was neither capable of nor in need of criticism. Today, the gradation of binding force in the Church's pronouncements has taken on a new significance; it has moved into the general public consciousness of the Church, and the faithful find themselves referred much more strongly than in the past to their conscience, to their critical enquiry behind the magisterium actuale. What used to be a clear standard is now always tainted with the sign of historicity and thus in any case no longer as inflexible as before. I believe that one of the main reasons for the change in the Church's situation that Mr Lausberg formulated so emphatically lies in this general knowledge of historicity (even if it cannot be formulated by everyone) that resulted from Vatican II." Joseph, Ratzinger, *Diskussion*, in: Jedin, *Vaticanum II und Tridentinum*, p. 45.

³³ AAS 90 (1998), p. 544-551; BÖCKENFÖRDE, *Kirchenrechtliche Anmerkungen zur gegenwärtigen Lage in der römisch-katholischen Kirche*, Pro manuscripto, 5: "The journalist Guido Horst reported in the Deutsche Tagespost that the Roman Curia itself displayed a German translation in the press room of the Vatican on 30 June 1998 in order to ensure that its request was also implemented for the Church in Germany."

2. I also faithfully accept and hold ("firmiter etiam amplector ac retineo") anything and everything that is definitively presented by the same with regard to the doctrine of faith or morals. [*fides tenenda*]

3. Moreover, I adhere with religious obedience of will and intellect ("religioso voluntatis et intellectus obsequio") to the doctrines which either the Roman Bishop or the College of Bishops proclaim, exercising their authentic magisterium, even if they do not intend to proclaim them by a definitive act".³⁴

The first section refers to the teachings that have been presented as revelation. This is the area of *fides credenda*, which requires "the assent of theological faith". The Code of Canon Law/1917 c. 1223 § 1 and c. 750 of Code of Canon Law/1983 have already pointed this out.

The second sentence includes "all teachings which refer to dogmatic and moral science and are necessary [...] even if they have not been presented by the Magisterium of the Church as duly revealed."³⁵ This is the area of *fides tenenda*, the definitive tenets of faith. The type of assent here is that of "ecclesial faith". The insertion of § 2 in c. 750 refers precisely to this secondary area of faith or to the definitive and infallible magisterium in matters of faith and morals that cannot be considered directly revealed. The "Nota doctrinalis" cites various examples of the secondary object of the infallible magisterium, such as the impossibility of ordaining women to the priesthood or the invalidity of Anglican ordination established by Pope Leo XIII (no. 11).

Finally, the teachings of the third area, which refer to the not infallible *magisterium actuale*, require "religious reverence". Even where absolute, definitive decisions of faith are not involved, the faithful and thus also those who teach theology are called to "obedience of will and understanding". Offences against these three forms of obedience are qualified by c. 1365 (Code of Canon Law/1983) as an offence against the faith and the unity of the Church - according to the currently still valid interpretation of c. 750 § 2 and 3 (Code of Canon Law/1983). What until then had tacitly motivated the interventions *ad personam* of the Congregation for

³⁴ DH 5070. AAS 90 (1998), 542-549.

³⁵ DH 5071. AAS 90 (1998), 542-549.

the Doctrine of the Faith in the academic freedom of Catholic theologians now became the "doctrinal" interpretation of c. 750 (Code of Canon Law/1983) and has de facto led either to a "standstill agreement" of theology with the Magisterium or to a conflict-laden, subject-specific refusal of reception on the part of those teaching theology.

Even the German bishops expressed reservations about the new oath of allegiance. It took around eight years before they arranged for a German translation, whereby even the three additions added to the creed were "inaccurately labelled as 'promises'. But the 'Professio fidei' is not directly about the future."³⁶ With regard to the third addition to the oath of allegiance, which deals with religious obedience of the will and the intellect, the explanation of the German Bishops' Conference ends with the statement: "The required attitude does not exclude loyal dissent that is committed to the truth, uses reasoned arguments, does not deny respect to the endeavours of the magisterium and is oriented towards the good of the Church"³⁷. According to Norbert Lüdecke, this declaration by the German Bishops' Conference "does not correspond to the will of the legislator".³⁸

„Theology today“

The will of the legislator is in fact expressed in the 2012 document of the International Theological Commission entitled: *Theologie heute: Perspektiven, Prinzipien und Kriterien (Theology Today: Perspectives, Principles and Criteria)*, which was authorised by the then Chairman of the International Theological Commission and Prefect of the Congregation for the Doctrine of the Faith, William Cardinal Levada. Both historically and systematically, the role of theology in the development of Christian and dogmatic doctrines is indisputable. If the magisterium itself wanted to explain how it arrived at its insights with their unavoidable claim to truth, it would have to refer positively or negatively to particular historically determined theological debates. If the magisterium has knowledge from historical debates, then it also has knowledge of the truth of this knowledge not from historical debates, but from the Holy Spirit. In this sense, the

³⁶ LÜDECKE, Norbert, *Ein konsequenter Schritt. Kirchenrechtliche Überlegungen zu „Professio fidei“ und Treueid*, in: Herder Korrespondenz 54 (2020), p. 339-344; here: p. 340

³⁷ *Erläuterungen der Deutschen Bischofskonferenz zur Schlussformel des Glaubensbekenntnisses - zum Versprechen gemäß dem Zweiten Vatikanischen Konzil (LG 25) and „Iusiurandum fidelitatis“*, in: AfkKR 169 (2000), p. 141-144.

³⁸ *Ibid.*, p. 342.

International Theological Commission, with reference to Thomas Aquinas, distinguishes between a "magisterium cathedrae pastoralis" and a "magisterium cathedrae magistralis"³⁹: "Bishops and theologians have different vocations and must respect each other's respective competences so that the magisterium does not reduce theological science to mere repetition and theology does not claim to replace the ecclesiastical magisterium of the Church's pastors" (Theologie heute, no. 37). On the other hand, it is insisted that there is "something like the 'magisterium' of theologians" (no. 39), which must not be reduced to a mere echo of magisterial teaching, even if it remains subordinate to it. For "the magisterium [needs] theology in order to demonstrate not only doctrinal authority in its interventions, but also theological competence and the ability of critical evaluation" (No. 39). On the other hand, academic theology should "show how its own contributions are consistent with previous magisterial statements and how they advance them" (ibid.)

On the positive side, the Theologians' Commission understands the function of theological work as a hermeneutical increase in the same truth (*depositum fidei*), whereby every better understanding is always also a new understanding of the same. On the other hand, the authors of the document fail to see that Christian parrhesia and the intellectual honesty of a theology that is bound to a confession and capable of dialogue include, in principle, the fact that freedom of speech is not completely prejudiced in the area of doctrines that are not infallible. In this way, the academic freedom of theologians appears to be like a wooden iron, insofar as they are not even formally granted freedom of research in the area of non-infallible doctrines - provided that they belong to the church (*sentire cum ecclesia*) - and every critical statement on historically determined applications of the deposit of faith is stylised as personal apostasy. It is precisely this "loyal dissent" that the German Bishops' Conference wanted to make room for. After all, how could scientific theology "advance" the "previous magisterial statements" without scrutinising the basis of their claims? This would require a hermeneutical self-distance that cannot be demanded of the magisterium, but which is inherent to theological-scientific reflection.

³⁹ Internationale Theologische Kommission, *Theologie heute: Perspektiven, Prinzipien und Kriterien*, No. 39, Footnote 87: Thomas von Aquin, *Contra Impugnantes*, cap. 2; *Quaest. Quodlibet.* III, q. 4, a. 9 ad 3; *In IV Sent.*, d. 19, q. 2, a. 3, q. 3, ad 4.

The multi-layered spectrum of theology with its positive and critical articulations can only contribute to a deeper understanding of the traditional in so far as, alongside the affirmative affirmation of beliefs, it also recognises a critical distance to their history of problematisation and problem-solving. This is the critical accompanying function of theology vis-à-vis the current magisterium. If this possibility is restricted from the outset in disciplinary terms, the scientific nature of theology is dangerously jeopardised. Although the document of the Commission of Theologians emphasises that "not every magisterial pronouncement [...] is of equal weight" (No. 40), i.e. that magisterial teaching statements have different "theological qualifications" and corresponding degrees of approval, theology is nevertheless required to show responsible obedience even to teachings and directives of the magisterium that are not infallible. This demand goes so far that "[a] purely external and formal obedience or compliance on the part of theologians [is] not sufficient" (No. 41). Despite the attempt to place theology and the magisterium in an asymmetrical but mutually productive relationship, the academic freedom of a confessional and academic theology ultimately remains highly unsatisfactorily profiled in this document.

The question that arises from this legal situation cannot be avoided: What is the function of Catholic theology in the process of re-translating the deposit of faith and its practical consequences in the respective time?

It is unlikely that c. 752 § 2 (Code of Canon Law/1983) can be changed or supplemented in its current formulation. This is also not necessary insofar as the "Nota doctrinalis" written by the Congregation for the Doctrine of the Faith in 1989, which is not part of the ordinary magisterium, is hermeneutically deepened and further developed. The possibility of adapting the current nihil obstat norms for (or sanctions against) theology lecturers also stands or falls with this, in order to be able to better correspond to a transparent, constructive dialogue between the magisterium and theology. A communication-theoretical understanding of tradition that corresponds to the early church and the *communio* structure of Vatican II⁴⁰ is in a little-noticed

⁴⁰ According to Hans Georg GADAMER, tradition is not simply "a prerequisite under which we have always stood, but we create it ourselves, insofar as we understand it, participate in the process of transmission and thereby determine it further ourselves." GADAMER, Hans Georg, *Gesammelte Werke*, Tübingen 1985–1995, Volume 1: *Hermeneutik I: Wahrheit und Methode. Grundzüge einer philosophischen Hermeneutik*, GW 1, J.C.B. Mohr (Paul Siebeck), Tübingen 1990, p. 298. On the controversial reception of Gadamer in Catholic theology see: STOPPE, Heinz-Günther, *Hermeneutik – ein ökumenisches Problem. Eine Kritik der katholischen Gadamer-Rezeption* (Ökumenische Theologie. Band 8), Benziger-Gütersloher Verlagshaus, Zurich / Cologne / Gütersloh 2004, (at the same time

tension with the "hypostatization" of tradition advocated by the Congregation for the Doctrine of the Faith at the time.

2. Theology as the science of a living understanding of tradition

Christian theology is a "derived science", as it does not derive its principles from reason, but from revelation.⁴¹ Accordingly, everything that concerns the primary area of faith (*de fide credenda*) as a constitutive part of the kerygma is essentially shared by Catholics and Protestants. From a theological point of view, "the historical and revelatory aspect is also essential" in such beliefs.⁴² For Protestant theology, as is well known, only the Apostolic Tradition is normative, as it emerges directly from the event of revelation. It follows from this that only what is explicitly stated in Scripture is authoritative for faith. All traditions that go beyond the testimony of Scripture have at best a supporting function of human law, never a salvific function. This is related to Luther's interpretation of catholicity as a history of the decay of the true Christian and motivated his critical purge of historically added traditions. "In contrast, Catholic historiography saw itself as having to prove the identity between the church of the present and the church of the apostles, i.e. to put it bluntly: the purpose of Catholic historiography became, to a certain extent, to prove that no history had taken place, but that everything had always remained the same from the beginning [...] The Catholic plus vis-à-vis Scripture was defended with this idea, which by its very nature excludes history: If over-delivery is to be understood in this way, the purpose of historical endeavour can only be to prove that everything has always existed in the same way, and to refine this proof further and further."⁴³ From here, according to Ratzinger in 1965, it becomes understandable why the post-Tridentine affirmation of tradition obscured the view of the historicity of the dogma and the being of Christianity.

Dissertation, Münster 1977); Gianluca, De Candia, *Gadamer und die Theologie*. In: Gadamer Handbuch, ed. by DUTT, Carsten, Mohr Siebeck Verlag, Tübingen 2025 [In preparation].

⁴¹ According to Thomas Aquinas, theology is a „scientia subalterna“ (*Sent. Prol. q. 1 a.*), which owes its principles to the science of God and the blessed. In the words of Wolfhart PANNENBERG, theology is the "science of God as he reveals himself to us". "God can only be recognised when he reveals himself." Wolfhart, Pannenberg, *Systematische Theologie*, Bd.1, Göttingen 1988, p. 207.

⁴² Here I use a formulation by Luigi PAREYSON, which, however, occurs in a different context: PAREYSON, Luigi, *Wahrheit und Interpretation*, translated and published by Gianluca DE CANDIA (Philosophische Bibliothek, Volume 761) Felix Meiner Verlag, Hamburg 2023, p. 62.

⁴³ RATZINGER, Joseph, *Das Problem der Dogmengeschichte in der Sicht der katholischen Theologie*, Arbeitsgemeinschaft für Forschung des Landes Nordrhein-Westfalen – Geisteswissenschaften: 139. Sitzung am 15. Dezember 1965 in Dusseldorf, Springer Fachmedien Wiesbaden GmbH, Köln-Opladen 1966, p. 11.

According to the Tridentine, the unwritten traditions are to be accepted with equal reverence alongside Scripture (*et - et*),⁴⁴ because the whole of revelation is contained in them in various modes. The Council of Trent speaks here of traditions in the plural. This refers to the various institutions (ministries), rituals (sacraments) and devotional practices (canonisation) that belong more or less directly to revelation and represent the secondary faith (*de fide tenenda*) as fundamental elements of church life. In the message of salvation, Scripture and traditions agree; in subordinate matters of faith, the traditions supplement Scripture (*traditio additiva*) or they authentically explain or interpret Scripture (*traditio explicativa et interpretativa*).

With Vatican II, this (already "instruction-theoretical") view of the traditions connected with revelation is dynamised, in which tradition is read as an ecclesial-sacramental process of making present and actualising the faith-consciousness of the entire Church as a community of understanding (*sensus fidei et fidei-um*).⁴⁵ Biblically and theologically, the concept of tradition has always encompassed two things: the content that has been handed down (*tradita* as a noun; Greek παραδόσεις) and the process of handing down (*tradere* as a verb; Greek παραδίδοναι). This means that tradition should not be understood as conservatism - in the sense of reactionary, merely "backward-looking". Rather, a genuine theological understanding of tradition sees - in addition to the passively received life stream of faith content (*traditum*) - the process of the continued working of the same Word of God in the course of history (*tradere* as a process), which must be actively shaped. Inhabiting a tradition therefore in no way means passively submitting to a rigidly defined system of doctrines, but primarily recognising an interpretative affiliation that should enable the possibility of its critical articulation and the actualisation of traditions in the first place.

On the basis of this premise, we must ask about the academic freedom of Catholic theology in this process of tradition. More precisely, it is a question of its freedom of research with regard to the second and third paragraphs of the oath of allegiance, i.e. the teachings that are not part of revelation and yet must be "definitively" (finally) recorded, as well as all other non-infallible statements of the magisterium. The "doctrinal commentary" of the Congregation for the Doctrine of the Faith from 1989 responds to this in a way that is actually not an answer, but a blocking of the question. It states: The doctrines of the second area include "all truths

⁴⁴ DH 1501-1505.

⁴⁵ Dei Verbum, 9 – 10. AAS 58 (1966) 821-822.

about faith and morals" that are "linked either historically or by logical inference [to revelation]" - literally: "historica ratione sive logica consecutione".⁴⁶

From the perspective of judgement theory, the question here is to what kind of interpretative acts do the derived beliefs "historica ratione" (literally "on the basis of history" or "in the manner of history") and the "logica consecutione" (through logical inference) belong? To analyse these beliefs, I propose, with recourse to Immanuel Kant's analytic of judgement, to understand these beliefs respectively as acts of the "determining" and the "reflecting" power of judgement.⁴⁷ The determining power of judgement deduces, i.e. a particular is "subsumed" under a given general. If, on the other hand, a given particular is "reflected" onto an unknown general, this is an act of reflective judgement.

Transferred to the magisterial pair of terms: All judgements of faith in the secondary realm, which are derived "*logica consecutione*" from revelation, are expressions of the determining power of judgement, which subsumes precisely a particular under a general. "For this very reason - writes Kant - [the determining power of judgement] is also not exposed to any danger of its own antinomy and a contradiction of its principles". In other words: If the premises are accepted as true (e.g. the absolute freedom of God as the reason for creation), then the doctrines derived from them must also be true (e.g. the "creatio ex nihilo doctrine" according to the dogmatic definition of the Fourth Lateran Council)⁴⁸. With such (analytical) judgements "logica consecutione", there are narrow limits to the attempt at an arbitrary interpretation of faith.

The situation is different with the form of reflective judgements "in the manner of history" in the secondary area, for example when it comes to questions of sacramental discipline. For if these secondary doctrines are bound to revelation, then the nature of this binding is not apodictic ("logica consecutione"), but proves in each case to be a worldview-impregnated application of the Church, whereby the teleological aspect must not be neglected in the respective formation of judgement. In reflective judgements, the validity continuity of the respective underlying evaluation criteria is always provided with a historical index, which must be thematised as precisely as possible. In other words: the "determining power of judgement" is always

⁴⁶ DH 5066. AAS 90 (1998) 457-459.

⁴⁷ Kantian here, of course, is only and exclusively the definition of the "determining" and "reflecting" power of judgement, not its application to the spiritual doctrine of dogma.

⁴⁸ DH 800.

apodictic, which is why all questions necessary for salvation are answered dogmatically. The historically contingent details related to this general (inductive-reflective) are to be differentiated hermeneutically depending on the question and theological discipline in the canon of subjects and questioned as to whether the derived ideological and historically conditioned applications are still justifiable or capable of approval (*sensus fidelium*) today, i.e. whether or not they contribute to a better understanding of the primary area of faith. Here it is necessary to reflect once again on the purpose (the why) of a secondary proposition of faith, i.e. on its prophetic application. From a Catholic point of view, it should be noted that the Church (and the Magisterium as the authentic interpreter of the Word of God, under which it also stands) has established such value judgements "historica razione" or norms of application in its history and will continue to do so. By their very nature, however, such judgements are in principle exposed to the possibility that their agreeable content or their virtual inherence to revelation requires a new interpretation so that their telos, their normative ("infallible") content is better expressed in the respective epochal or cultural context. Incidentally, this is the basis of dogmatic development in general and, moreover, precisely the field of discussion in which the greatest practical steps in ecumenical dialogue have already been or will be taken. This may - according to Pope Francis - "appear as imperfection and fragmentation to those who dream of a monolithic doctrine defended by all without nuance". In reality, however, this diversity helps "to better show and develop the various aspects of the inexhaustible richness of the Gospel."⁴⁹ On the other hand, those who take an undifferentiated view of tradition as a whole in terms of "instruction theory" assume that all possible questions have already been asked in tradition and that there are actually already ready-made answers to current questions.⁵⁰ This completely contradicts the historical understanding of faith that the young Ratzinger also spoke of in his insightful essay from 1965 mentioned above.⁵¹

Pope Francis has also emphasised on various occasions in recent years that tradition is primarily about passing on the fire and not about keeping the ashes. The point is that this fire of faith

⁴⁹ Franziskus, *Evangelii gaudium*, No. 40. AAS 105 (2013), 1036-1037. Translation: vatican.va.

⁵⁰ In the concept of tradition, the encoded tension between *traditum* and *tradere*, in my opinion, finds its counterpart precisely in the five so-called 'Dubia' – doubts that, as is well-known, five cardinals have submitted to the Pope. URL: <https://www.vaticannews.va/de/papst/news/2023-10/papst-franziskus-dubia-zweifel-kardinaeleantworten-synode.html> [eingesehen am: 31.01.2024].

⁵¹ RATZINGER, Joseph, *Das Problem der Dogmengeschichte in der Sicht der katholischen Theologie*, Arbeitsgemeinschaft für Forschung des Landes Nordrhein-Westfalen – Geisteswissenschaften: 139. Sitzung am 15. Dezember 1965 in Dusseldorf, Springer Fachmedien Wiesbaden GmbH, Cologne-Opladen 1966.

can only be authentically - and not artificially - maintained in the Church (*sensu fidelium*). *Amoris laetitia*, *Veritatis gaudium*, *Fiducia supplicans*, the nature of the discussion in the current World Synod are all examples of an adapted style in the application of the Catholic doctrine of principles. In his most recent Apostolic Exhortation "Ad theologiam promovendam" of 1 November 2023, the Pope called on theological reflection to engage in precisely this "reflective" activity by encouraging theology to develop further using the "inductive method". This is the "courageous cultural revolution",⁵² the "paradigm shift"⁵³ that Francis' pontificate will decisively leave behind for the Church. According to Francis, this leads to a theology that knows how to reflect in a transdisciplinary (and not just multidisciplinary), contextual, wise, pastoral, dialogical and synodal way.⁵⁴

In this sense, it seems to be time to approach the question of the ecclesiastical vocation of theologians in a true attitude of mutual trust between the magisterium and theology and in a broad understanding of tradition.

The confidence of the magisterium in the assertiveness and inherence of the worldview-laden applications ("historica razione") of revelation must no longer lead to a mistrust of theological-critical work on such applications, as is still the case - despite the encouraging encouragement from the current Pope - according to the current interpretation of the guidelines for the declaration of no objection. Thomas Aquinas already pointed out how the practical application of principles becomes increasingly uncertain the more they are applied to concrete situations.⁵⁵ This ultimately means two things: the series of applications worked out by the Church from the primary area of faith ("in the manner of history") remains an indispensable reservoir for future theological research, which is always confronted with these authoritative evaluations of the depositum fidei. A mere reference to "contemporaneity" in the demand for reform would prove to be an empty concept that ultimately takes the demand as its yardstick. It is therefore crucial that acts of reform or possible new applications always remain embedded as

⁵² Franziskus, *Laudato si'*, No. 114; The same, Motu proprio *Ad theologiam promovendam*. URL: https://www.vatican.va/content/francesco/la/motu_proprio/documents/20231101-motu-proprio-ad-theologiam-promovendam.html (Last access: 31.01.2024)

⁵³ Franziskus, Motu proprio *Ad theologiam promovendam*.

⁵⁴ Ibid.

⁵⁵ Thomas von Aquin, S. th. II/II q. 43 a 1–3; q. 94 a. 4.

such in a tradition (παράδοσις), even if they challenge a historically entrenched usage to a fundamental re-reading.

The second consequence would be: Insofar as tradition is understood not only as a selection-functional factual ground, but primarily as a ground of knowledge, such prejudicial secondary interpretations of faith are not the end, but the reference point of future authentic ecclesial applications. How else could it be explained that even certain "canonisations" of applications have gradually entered the realm of the "no-longer-canonical" in the course of church history?⁵⁶ Here we touch the heart of an incarnational understanding of tradition as a "continuing word event"⁵⁷. As Luigi Pareyson writes: "the incessant exploration that [tradition] encourages ... [binds] the unfolding of present possibilities not only to the heritage of already developed possibilities, but also to the source of infinite possibilities themselves."⁵⁸

From this starting point, the academic freedom of theology is not reduced to the intellectual grasp of an objectifiable, isolated factual content by a subject (what? - *traditum* - be it in the sense of rationalism or traditionalism), but lives just as much from the affiliation (*sensus Ecclesiae*) to a shared and continuing tradition (*sensus* and *consensus fidelium* - *tradere*), which for its part carries with it world-view-laden application achievements, the understanding of which is never complete and which must be teleologically contextualised according to the respective agreeable primary content of faith (What for?). In addition to the certainly justified task of preserving what has been, a rationally responsible theology committed to the principle of incarnation has the task of critically reflecting on what has become of it and thinking ahead,

⁵⁶ The application of a rule, the establishment of a judgement or standard is declared to be normative and binding, i.e. "canonical", in one time, but in another time it may be judged differently. The analyses of Ernst-Wolfgang BÖCKENFÖRDE, who refers to the infallible magisterial pronouncements of the papal encyclicals "Mirari" by Gregory XVI (1832), "Quanta cura" with the appended "Syllabus errorum" by Pius IX (1864) and "Libertas praestantissimum" by Leo XIII (1888), go in this direction: *Rom hat gesprochen, die Debatte ist eröffnet*, FAZ 25.07.2011, and the studies by Michael SEEWALD, *Dogma in Wandel*; the same, *Reform – Dieselbe Kirche anders denken*, Herder, Freiburg-Basel-Wien 2019, p. 132-137. In the legitimisation discourses for new canonical forms that abolish the old ones, the doctrinal office used rhetorical forms of inflationary assertion, harmonising continuity narratives, sharpening or fading out perceptions in order to awaken a "canon-inherent" presence of the new in the old. Taking inspiration from Claude LÉVI-STRAUSS and Jan ASSMANN, the patterns of justification and legitimisation of canonisation and decanonisation processes in the secondary sphere in the Catholic Church can be described as "institutionalised[...] mnemonics" (ASSMANN, Jan, *Das kulturelle Gedächtnis, Schrift, Erinnerung und politische Identität in frühen Hochkulturen*, München 1992, p. 52f.). In this direction, Michael SEEWALD has clearly uncovered three doctrinal self-correction strategies: „Autokorrekturmodus“, „Oblivisierungsmodus“ und „Innovationsverschleierungsmodus.“ SEEWALD, *Reform*, p. 93.

⁵⁷ This is the definition by SECKLER, Max, *Tradition und Fortschritt*, CGG Bd.23, Verlag Herder, Freiburg i.B. 1982, p. 18–21.

⁵⁸ Luigi Pareyson, *Wahrheit und Interpretation*, p. 53.

considering what could and should be (teleological understanding). For in reflection, forethought and application lies not only a better understanding of what has been handed down, but also the creative vitality of tradition itself and the actual task of a church-bound and scientific theology.