Rechtsdogmatik and its place in practical and theoretical jurisprudence

Csaba Varga[†]

Abstract *Legal doctrine, doctrine juridique, or as termed in its specialised German cultivation, Rechtsdogmatik, by transforming the given texture of the law into a logically organised conceptual system, will result in changes not of law itself but in the law's understanding. Thereby it duplicates the legal phenomenon, giving mere wordings conceptuality and systemicity. The law's doctrinal study is practically coeval with law, situated at a meta-level to the law. Considering that law itself is neither theoretical in nature, nor a directly scientific product but is practical a category, the doctrinal study of law does not "cognitively recognize": nothing from its results can be verified or falsified. As a reflection on what is positivated as valid law, it is just a function of the law. Albeit analogon to theology and theoretical economics, it is no science at all.*

Keywords *languages of law; doctrinal study of law; ius/lex; rules/norms; conceptualisation; systemicity; law / the law*

Résumé *Legal doctrine, doctrine juridique, ou comme on l'appelle dans sa culture allemande spécialisée, Rechtsdogmatik, en transformant la texture donnée du droit en un système conceptuel logiquement organisé, entraînera des changements non pas dans le droit lui-même mais dans la compréhension du droit. Ainsi, elle reproduit le phénomène juridique, donnant aux simples formulations linguistiques une conceptualité et une systémicité. L'étude doctrinale du droit est pratiquement contemporaine du droit, située à un méta-niveau du droit. Considérant que le droit lui-même n'est ni de nature théorique, ni un produit directement scientifique mais plutôt une catégorie pratique, l'étude doctrinale du droit ne « reconnaît pas cognitivement » : rien de ses résultats ne peut être vérifié ou falsifié. En tant que réflexion sur ce qui est positivé comme loi valide, c'est simplement une fonction de la loi. Bien qu'analogue à la théologie et à l'économie théorique, ce n'est pas du tout une science.*

Mots-clés *langages du droit, étude doctrinale du droit, ius/lex, règles/normes, conceptualisation, systémicité, law / the law*

[†] Professor Emeritus, Philosophy of Law Department of the Pázmány Péter Catholic University (H–1088 Budapest, Szentkirályi utca 28) & Research Professor Emeritus, Institute for Legal Studies of the Hungarian Academy of Sciences; e-mail: varga.csaba@jak.ppke.hu

Inquiries into the languages of law[1] have long revealed that beyond the law (i.e. law in books) and its juridical application (i.e. law in action) themselves,[2] one may add both the doctrinal study of law and legal scholarship to the former as further representations of what the law is, each of them using languages somewhat differing from each other. Basically, within the domain of law, in a strict sense there is nothing but mere words. They are used as speech-acts, to represent and operate the law's working. In practice, this is a discourse wherein terms of law are treated and processed.[3] When approached from the perspective of either the doctrinal study of law or legal scholarship, those terms (together with their conceptual representations) will be seen as a *meta*-language or conglomerate, that is, a re-formulation of the very law proper at a higher, systemic level. This will be the *meta*-system created by the mental processing of law. As a result, what was positivated as the text of the law with random wording during the legislation, will now appear as an element of this system, organised into some kind of coherent conceptual system, thanks to a primarily linguistic-logical analysis.[4]

The Law's Doctrinal Treatment

The law's doctrinal study is practically coeval with law. Once law gets objectified and positivated, discourses on what it exactly is (i.e., stands for as applicable *hic et nunc*) are necessarily expressed in statements at a *meta*-level to it.

In Roman legal development, statements of and on law were still mostly in direct transmutation into one another. Early dogmatics in separation could have a start later, with the emergence of the differentiated role of jurisprudents only. From the reception of Roman law, it had started what became *pandectism* at an ulterior time. And from modern times, with codification either achieved (as in France) or in want but badly needed (and the lack of which was filled by doctrinal work in Germany), two narrowly positivistic stands came to being, the

[1] Bronisław Wróblewski *Język prawny i prawniczy* [The language of law and of lawyers] (Kraków: Polska Akademia Umiejętności 1948) v + 184 [Prace Komisji Prawniczej Polskiej Akademiji Umiejętności 3].
[2] Roscoe Pound 'Law in Books and Law in Action' *American Law Review* 44 (1910) 1, 12–36.
[3] Cf. Csaba Varga 'Hermeneutics of the Law' *Public Governance, Administration and Finances Law Review* VII (2022) 1, 77–90 & <https://doi.org/10.53116/pgaflr.2022.1.6>.
[4] For a first approach to, resp. treatment in depth of, the whole problematics, see, by Csaba Varga, 'Doctrine and Technique in Law' *Iustum Aequum Salutare* IV (2008) 1, 23–37 & <http://ias.jak.ppke.hu/hir/ias/20081sz/02.pdf> and 'Law and its Doctrinal Study (On Legal Dogmatics)' *Acta Juridica Hungarica* 49 (2008) 3 & in <http://real-j.mtak.hu/763/1/ACTAJURIDICA_49.pdf>, 253–274.

exegetic school, reducing legal scholarship to the valid law's mere textual analysis[5] and the *jurisprudence of concepts*, reducing whatever analysis of law to the one of mere abstract conceptual schemes.[6]

The doctrinal study of law stands for practical action itself as part, extension, or completion of treating whatever law-posited text taken as the embodiment of the law—i.e., acknowledging anything as legal [*ius*] only provided that it can be deduced from the legal [*lex*]—and thereby treating law-texts as the starting point of all departures in and reflective exercises on law. When by critical analysis and systemic reinterpretation dogmatists produce linguistic-logical projections on such texts, they reconceptualise their word-use, resolve latent contradictions, fill in obvious gaps, by completing the conceptual framework within which the given rules/norms[7] do apply. By giving professional meaning[8] to terms used by law-posited texts according to one logic, i.e. to the one they adopted in treating the whole body of the law,[9] they produce a coherent system by their linguistic-logical operation.[10] Thereby *Rechtsdogmatik* is in fact reconstructing and also conceptually formulating the systemic idea which *may* have governed the thought patterns of those having drafted the law. Considering the fact that from the historically cumulated amalgamate of the body of the law more than one reconstructions can be achieved, rivaling systemic constructs may emerge. These are and cannot be but singularly authored ones, even if mostly produced by a historical chain of authoring.

Novelty

[5] "From 1814 to 1880, in the face with this new and sacred Code, jurists agree[d] on the need for an exegesis work, that is to say, literal interpretation, as had been done for centuries for the Bible", writes Jean-Louis Halpérin *Histoire du droit privé français* depuis 1804 [1996] 2e éd. (Paris: Presses Universitaires de France 2012) vii + 391 [Quadrige / Manuels: droit – science politique], ch. 1, para. 21 at 35 [„Face à ce Code neuf et sacralisé, tous les juristes conviennent de la nécessité d'un travail d'exégèse, c'est-à-dire d'interprétation littérale, comme on le faisait depuis des siècles pour la Bible"].

[6] Cf., e.g., Hans-Peter Haferkamp 'Begriffsjurisprudenz / Jurisprudence of Concepts' in *Enzyklopädie zur Rechtsphilosophie* <http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitraege/105-jurisprudence-of-concepts> (2011).

[7] For the distinction, see Csaba Varga 'Differing Mentalities of Civil Law and Common Law? The Issue of Logic in Law' *Acta Juridica Hungarica* 48 (2007) 4 & in <http://real-j.mtak.hu/762/1/ACTAJURIDICA_48.pdf>, 401–410.

[8] The terms 'having a meaning' and 'giving a meaning' are remarkably equated by Chaïm Perelman 'Avoir un sens et donner un sens' *Logique et Analyse* 5 (1962), No. 20, 235–250.

[9] Béla Pokol *Theoretische Soziologie und Rechtstheorie* Kritik und Korrigierung der Theorie von Niklas Luhman (Passau: Schenk Verlag 2012), ch. 4, para. 3 simply calls legal doctrine, as a decisive part of the several layers of the law's meaning, its system of varied meanings [„Die Sinnschichten des Rechts: Rechtsdogmatik als Sinnsystem"].

[10] Some authors insist on that normative evaluation is also involved. E.g., according to Aleksander Peczenik 'A Theory of Legal Doctrine' *Ratio Juris* 14 (2001) 1, 75–105, Abstract, "The argumentation used to achieve coherence involves not only description and logic but also evaluative (normative) steps."

According to usual definitions, "Legal doctrine in Continental European law (*scientia iuris*) consists of professional legal writings, e.g., handbooks, monographs, etc., whose task is to systematize and interpret valid law. By production of general and defeasible theories, legal doctrine aims to present the law as a coherent net of principles, rules, meta-rules, and exceptions, at different levels of abstraction, connected by support relations."[11] Accordingly, the outcome will be "a system of sentences by the help of which the valid law is conceptually and systematically processed and traced back to more abstract institutions in order to control its application".[12] Or, simplified for the French tradition, "Legal doctrine denotes all opinions (writings, commentaries, theories, etc.) given by academics and jurists."[13]

Considering that "the essence of jurisprudential dogmatics lies in the systematic assignment of the individual case to basic rules and basic principles on the basis of the valid law",[14] and that its tools, conceptualisation and abstraction, are "propositions for the understanding […]; a factor for coordinating […], the value of which is measured by its usefulness in explaining […]",[15] doctrinal study may and will rightly seem to be hardly more than an explanatory framework attached exteriorly and posteriorly to the law. But, as the question may be raised, by whom and to whom? By and to anyone who is addressed by or interested in it. And, as continued, whose order is it to represent? Roughly speaking, no one's in person, but in the name of law taken as an institution embedded in and lived for by a given culture.

For law by itself is just a set of words, silent like a rock, until addressees start making it speak for—and by and within—that culture. Law is not even a conceptual phenomenon by itself (even if its wording is already based on some conceptualising tradition); its thoroughgoing coherent systemic conceptualisation can only be a posteriorly added product.

///At the same time, this is a most intricate, composite process, in which neither points of departure nor axiomatic bases are in anticipation given. All particles and elements drawn from the laws' terms are just variables in a huge

[11] Ibid.

[12] Uwe Volkmann 'Veränderungen der Grundrechtsdogmatik' *Juristenzeitung* 60 (2005) 6, 261–271 at 262 [„ein System von Sätzen mit denen das geltende Recht begrifflich-systematisch durchdrungen und auf abstraktere Institute zurückgeführt wird, um so seine Anwendung zu steuern"].

[13] <https://fr.wikipedia.org/wiki/Doctrine_juridique_française> [„la doctrine juridique désigne l'ensemble des opinions (écrits, commentaires, théories, etc.) données par les universitaires et les juristes."]

[14] Rolf Stürner 'Die Zivilrechtswissenschaft und ihre Methodik' *Archiv für die civilistische Praxis* 214 (2014) 1–2, 7–54 at 11 [„Allgemein gesagt liegt das Wesen rechtswissenschaftlicher Dogmatik in der systematischen Zuordnung des Einzelfalles zu Grundregeln und Grundprinzipien auf der Basis des geltenden Rechts."].

[15] Stanislaw Ehrlich 'On the So-Called Legal Dogmatics, Sociology of Law and Political Science (A Polemic Paper)' *Polish Round Table* 1 (1967), 113–130 at 125.

reconstructive game, to be positioned in one or another way for that it can be ascertained what their systemic identity will have been from the beginning. When conceptualising, first we create some taxonomy out of the law's text. However, forming taxonomic units is potentially in a constant change and flux, since the matter of what and at which level will become a taxonomic identifier is contingent on the whole structure's internal dynamic as seen by its actual reconstruction operator; and the issue of what will function in quality of exactly what will have only been defined in the end, by—and in function of—the entire contexture of the system (involving the issue as well, e.g., which is to stand for a rule or a principle, or whether some same words used in various law texts will indeed have identic or differing meanings).[16] And such taxonomic *locus/loci* will turn to be decisive when consequences prescribed by the law are to be drawn, when classifying an event.[17]

In sum, something new will be the result of mental operations using conceptual division, classification, categorisation, and hierarchisation. For it is conceptualisation within a systemic idea that will serve as the foundation of the law's *meta*-system.

Formative Role

Thanks to doctrinal work in *Rechtsdogmatik*, a new quality is brought into being. This, by "redescribing" the corresponding legal area in a "clearer context",[18] makes "the law more coherent than mere legislation-cum-judicial practice is".[19] As an exemplification taken from the Common Law world holds, "Behind the facade of simply describing what the law was, deriving it in the most orthodox way from the reported decisions of the courts, [legal writers] gave it a structure that English law had not previously had. In a sense they brought nothing new to the law, in that all the principles so demonstrably

[16] Cf. Csaba Varga 'Structures in Legal Systems: Artificiality, Relativity, and Interdependency of Structuring Elements in a Practical (Hermeneutical) Context' *Acta Juridica Hungarica* 43 (2002) 3–4, 219–232 & <http://www.akademiai.com/content/r27863g6u01q777u/fulltext.pdf> as well as in *La structure des systèmes juridiques* [Collection des rapports, XVI[e] Congrès de l'Académie internationale de droit comparé, Brisbane 2002] dir. Olivier Moréteau & Jacques Vanderlinden (Bruxelles: Bruylant 2003), 291–300.

[17] As the example by Thijmen Koopmans 'Denken en doen in het recht' in *Juridisch stippelwerk* (Deventer: Kluwer 1991), 67–75 at 68 shows, "If biologists classify a whale as a mammal instead of as a fish, nothing changes in the world of facts [...]. But if jurists qualify a barstool as a movable object and not as an immovable, they mean to say that in case of insolvency of the pub owner, it is not the bank that as mortgagee is entitled to the stool, but the brewery".

[18] Catharine Pierce Wells 'Langdell and the Invention of Legal Doctrine' *Buffalo Law Review* 58 (2010) 3, 551–618 at 617.

[19] Peczenik 'A Theory of Legal Doctrine', 94.

introduced from abroad could easily be identified somewhere in the English case law. On the other hand, and what was new, though, they elevated these principles to the status of doctrinal orthodoxy. As doctrinal orthodoxy these principles could both influence the way in which lawyers thought about the law and the way in which the more concrete rules of law were framed."[20] By the very acknowledgment of the fact that "Legal doctrine sets the terms for future resolution of cases in an area",[21] it is assumed to operate in function substitutive to clearly defined rules and standards where they are missed in the Common Law.

In a timeline perspective, the doctrinal reconstruction of the law offers a conceptual framework in which the very same law is reflected as a logically structured system. In a longer run, once accepted, this reflection will form the basis and framework of any imagination of law as well, causing this to prevail in defining the mental channels and patterns within which law is thought when applied and about which law is thought when remade, that is, in a perspective of both *de lege lata* and *de lege ferenda* considerations.

It is precisely in the sense above that one may ascertain that legal dogmatics has an "ordering and stabilising" function in *complemental* parallelity;[22] accordingly, "[t]he doctrine is consubstantial with the law";[23] because, in an irreversibly progressing process in time continuation, "law is not simply [any longer – Cs.V.] a body of rules: it is a body of reasoned doctrines that are interconnected and interrelated."[24] Or, in a historical perspective, from the birth of reconstructive doctrinal elaboration, the law given at any time and its doctrinal counterpart are mutually preconditioned. That is why the doctrinal

[20] David Ibbetson 'Legal Printing and Legal Doctrine' *Irish Jurist* 35 (2000) (N.S.) 345–354 at 351–352. Anyhow, Common Law is specific in that its doctrines are mostly engendered by the analysis of precedents. This results both in that "doctrinal choices in fact matter in judicial decisionmaking" and that "[j]udges create new doctrine all the time." Cf. Emerson Tiller & Frank B. Cross 'What is Legal Doctrine' *Northwestern University Law Review* 100 (2006) 1, 517–534 & <http://law.bepress.com/nwwps-pltp/art41> at 527 and Edward Rubin & Malcolm Feeley 'Creating Legal Doctrine' *Southern California Law Review* 1989 69 (September 1996) 6, 1989–2037 at 2037, respectively. It means that the casual aggregate of precedents is arranged, conceptualised and completed through its doctrinal elaboration in the Common Law world. Or, as it is noticed of the historically accumulated mass of precedents, "if the index to a book is complete and accurate, it may not matter that the table of contents discloses profound disorder." Tony Weir 'The Common Law System' in *International Encyclopedia of Comparative Law* II: The Legal Systems of the World, Their Comparison and Unification; Chapter 2: Structure and the Divisions of the Law (Tübingen: Mohr & The Hague: Mouton 1974), 79.

[21] Tiller & Cross (2006).

[22] Nils Jansen 'Rechtsdogmatik im Zivilrecht' in *Enzyklopädie zur Rechtsphilosophie* <http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitraege/98-rechtsdogmatik-im-zivilrecht> (2011) [„ordnende und stabilisierende Rekonstruktion"].

[23] Anne Marmisse-d'Abbadie d'Arrast 'Le rôle de la doctrine dans l'élaboration et l'évolution de la responsabilité civile délictuelle au XX^{e} siècle (1ère partie)' *Les Petites affiches* (2002) 188 at 4 [„la doctrine est consubstantielle au droit"].

[24] Grant Lamond 'Analogical Reasoning in the Common Law' *Oxford Journal of Legal Studies* 34 (Autumn 2014) 3, 567–588 & <https://doi.org/10.1093/ojls/gqu014> at 581.

instantiation of the law always claims to be final but finite in its given state, even if it may or will in fact reopen the next moment. Or again, as it has been sharply formulated, "legal doctrine takes part in the production of law".[25]

Thereby doctrinal research plays a creative role in the development of the axiomatics of law, in its timely completion. The cultivation of legal dogmatics is a practical step in the direction of the once positivism's geometrical ideal of law,[26] owing to its identifying laws' words (expressions or substitutes) as embodying or representing some conceptuality; searching for and reconstructing an order for the random and contingent texts positivated as the law; and arranging the latters' composing parts as transformed into some quasi axiomatic systemicity.

And it may make a balance that since the earliest time of legal development, the law's doctrine has ever operated with whatever material available. For, thanks to generalisation and extrapolation, it is capable of producing perfect systemicity out of almost anything.[27]

As a Tentative Scheme

As to the timely products of the doctrinal study of law, neither any attempt nor the timely cumulation of efforts at perfection is logically necessary but is alternative and competing. There are always theoretical possibilities. All they are "open to constant correction",[28] for law withstands to be locked in an idealistically perfect, finished and closed system,[29] due to the fact that as a practical action, it responds to particular varying challenges.[30]

In the case of concurrence, the issue will be decided by *volitio*, helped by pragmatically oriented systemic considerations. "Being reasonable is weighing and considering all reasons, not merely the reasons some methodology or epistemology or logic claims to be stations of the cross along the one pass to

[25] Jacques Chevallier 'Doctrine juridique et science juridique' *Droit et Société* (2002) 1 [No. 50], 103–119 at 103.

[26] Cf., e.g., Wolfgang Röd *Geometrischer Geist und Naturrecht* Methodengeschichtliche Untersuchungen zur Staatsphilosophie im 17. und 18. Jahrhundert (München: Verlag der Bayerischen Akademie der Wissenschaften 1970) 246 [Bayerische Akademie der Wissenschaften Philosophisch-historische Klasse: Abhandlungen 70].

[27] Classically, this is exemplified by the long and successful usage, and the record of various reception stories, of a most casuistic monster, the General State Laws for the Prussian States (*Allegemeines Landrecht für die Preußische Staaten*, 1791).

[28] Ehrlich 'On the So-Called Legal Dogmatics…', 125.

[29] For the limits of axiomatism in law, cf. Csaba Varga 'The Quest for Formalism in Law: Ideals of Systemicity and Axiomatisability between Utopianism and Heuristic Assertion' *Acta Juridica Hungarica* 50 (2009) 1, 1–30 & <http://www.akademiai.com/content/k7264206g254078j/>.

[30] A challenge may simply call for a change in the normative content, but it may also require a legal response to a new factual situation (either a new combination of known facts or the emergence of previously unknown facts).

Justified True Belief."[31] Moreover, "Juridical rationality basically lies not in individual consciousness but in an institutional process, organized according to the legally prescribed division of labor."[32] This accords to the truth according to which whatever is justifiable is justifiable on the basis of the background network of actual timely acceptances and preferences.[33]

And indeed, legal dogmatics' relative permanence in whatever time section is a function of the chosen perspective. Once we are to see it in some historical continuum, we recognise that we are faced with a progressive chain of development.

Scientific Status

In contrast to the 19th century ideal of continental jurisprudence, which found its advocates until almost recently,[34] law itself is neither theoretical in nature, nor a directly scientific product. It is *practical* a category. Consequently, the doctrinal study of law does not "cognitively recognize". Consequently, none of its results can be verified or falsified. What is more, it is fundamentally a parasite: an entity contingent on the law in force, a guidance on how to understand the latter.

Its potential implied is not of a material or objective nature, at least not in the sense of describing independently existing (prevailing) entities. Essentially, by the law's conceptualisation we are creating a collateral entity.[35] This is why there can be a standing competition amongst players of the 'law' for becoming the agent who will master its practical life as well, through dominating its dogmatics.

In sum, the doctrinal study of law cannot be a scientific field on its own. As a reflection on what is positivated as valid law, it is just a function of the law, given at any time. This is why it might rightly be asserted: "Three words

---

[31] Deirdre N. McCloskey *The Rhetoric of Economics* (Madison, Wis.: University of Wisconsin Press 1985) xx + 209 [Rhetoric of the Human Science] at 51–52.

[32] Helmut Schelsky *Die juridische Rationalität* (Opladen: Westdeutscher Verlag 1980) 17 [Vorträge: Rheinisch-Westphälische Akademie der Wissenschaften, G 247] at 7 [„Die juridische Rationalität entsteht […] grundsätzlich nicht im Einzelbewußtsein, sondern in einem institutionellen, nach Regeln arbeitsteilig organisierten Prozeß."].

[33] Keith Lehrer *Self-Trust* A Study of Reason, Knowledge, and Autonomy (Oxford: Clarendon Press 1997) ix + 204 at 3.

[34] Perhaps most effectively, see Aleksander Peczenik *Wartosc naukowa dogmatyki prawa* Praca z zakresu porównawczej metodologii nauki prawa [Scientific value of legal dogmatics: On comparative methodology of the science of law] (Kraków: Nakl. Uniw. Jagiellonskiego 1966) 149 [Zeszyty Naukowe Uniwersytetu Jagiellonskiego CXXXVII: Prace Prawnicze 26].

[35] Cf. Csaba Varga *The Paradigms of Legal Thinking* [1997/1999] enlarged 2nd ed. (Budapest: Szent István Társulat 2012) 418 [Philosophiae Iuris] & <http://mek.oszk.hu/14600/14657/>, in particular para. 2.3.

amended by the legislator and whole libraries become wastepaper!"[36] It concludes therefrom that "One can hardly give the attribute of science to a skill, the accomplishments of which can be annulled at any time by *extrascientific* intervention. 'Legal dogmatics' is neither a theoretical nor an applied science. In fact, it is no science at all."[37] Perhaps "by means of criteria of clarity, precision and coherence" it can perhaps be qualified as "objective or at least intersubjective."[38]

Sometimes doctrinal work on law is rightly compared to theologies constructed upon godly revelations, that is, to the reasonable human search for decoding, and giving meaning to, some holy text, in order to understand its self-imposing authoritativity.[39] In addition, it is benevolently characterised by modelling representation as well, likened to the methodical approach characteristic of theoretical economics.[40]

There remains, however, a basic difference when any kind of analogy in outlook, approach or method is drawn between the doctrinal study of law, on the one hand, and theology and theoretical economics, on the other. Namely, legal doctrine is self-limiting and self-reducing from the outset, an abstractly sterilised analysis of nothing but the law's own texture, with no grounding in any factual contexture, albeit—as the old maxim on law's dependence on the case's facts (*ius in causa positum*)[41] suggests—it is, in the end, exclusively given with the

---

[36] Julius H. von Kirchmann *Die Wertlosigkeit der Jurisprudenz als Wissenschaft* [Berlin 1848; reprint] hrsg. Hermann Klenner (Freiburg & Berlin: Haufe 1990) ix + 141 at 23 [„Drei berichtigende Worte des Gesetzgebers und ganze Bibliotheken werden zu Makulatur!"].

[37] Ehrlich 'On the So-Called Legal Dogmatics…', 114.

[38] Anne Ruth Mackor 'Legal Doctrine As a Non-Normative Discipline' <https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2012/1/ReM_2212-2508_2012_002_001_003 Facts and Norms in Law>, reprinted in *Facts and Norms in Law* Interdisciplinary Reflections on Legal Method, ed. Sanne Taekema, Bart van Klink & Wouter de Been (Cheltenham: Edward Elgar Publishing 2016), ch. 6: »Legal Doctrine is a Non-normative Discipline: An Argument from Abstract Object Theory«, 127–149.

[39] Cf. Julius Kraft 'On the Methodical Relationship between Jurisprudence and Theology' ['Über das methodische Verhältnis der Jurisprudenz zur Theologie' *Revue internationale de la théorie du droit* 3 (1928–1929), 52–56] trans. Neil Duxbury *Law and Critique* 4 (March 1993) 1, 117–123 at 118: "The dogmatics of law and religion are neither theoretical-empirical nor pure-rational disciplines, but depictions of systems of legal or religious ordinances as if their objectivity were beyond doubt. Thus, dogmatics is generally the depiction of a system of arbitrary propositions as a system of objective judgements."

For a-rational motifs and even formulations abundant in judicial decision-making practice, too, see, among others, JMT Labuschagne 'Juridiese denkpatrone as oorblysfels van oerreligieuse rites: 'n Regsantropologiese perspektief op die behoefte aan angswerende meganismes by respraak' [Patterns of legal thought as remnants of primitive religious rituals: An anthropo-legal perspective on the need for anxiety averting mechanisms in judicial decisions] *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* [Pretoria] 65 (2002) 4, 539–555.

[40] Cf. Csaba Varga 'A jogtudomány természete (Komplexitás, modellértékűség: eszmények, korlátok) [The nature of legal scholarship (Complexity and modelling function: Ideals and limits)]' *Acta Universitatis Sapientiae* Legal Studies 5 (2016) 2, 309–325 & <http://jog.sapientia.ro/data/tudomanyos/Periodikak/scientia-iuris/2011-3/hu1-Varga.pdf>.

[41] D.9.2.52.2 in *The Digest of Justinian* trans. ed. Alan Watson (Philadelphia: University of Pennsylvania Press 1985).

facts.[42] For "Rules are not self-applying, as Wittgenstein noted, and their application is therefore intrinsically mixed with the facts of the case or, in other words, its context."[43]

Conclusion

Or, summing up theoretical developments within the topic, as a result of doctrinal working on law in *Rechtsdogmatik*, changes will occur not in law but in its understanding. Doctrine, by transforming the given texture of the law into a logically organised conceptual system, "supplies the language of legal—or rather, judicial—decisionmaking".[44] Thereby it duplicates the legal phenomenon, giving mere wordings conceptuality and systemicity.

Literature

Chevallier, Jacques 'Doctrine juridique et science juridique' *Droit et Société* (2002) 1 [No. 50], 103–119

Ehrlich, Stanislaw 'On the So-Called Legal Dogmatics, Sociology of Law and Political Science (A Polemic Paper)' *Polish Round Table* 1 (1967), 113–130

Gordon, W. 'Lawyers, Scholars, and the »Middle Ground«' *Michigan Law Review* 91 (1993) 8, 2075–2112 & in <https://digitalcommons.law.yale.edu/fss_papers/1355>

Haferkamp, Hans-Peter 'Begriffsjurisprudenz / Jurisprudence of Concepts' in *Enzyklopädie zur Rechtsphilosophie* <http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitraege/105-jurisprudence-of-concepts> (2011)

Halpérin, Jean-Louis *Histoire du droit privé français* depuis 1804 [1996] 2e éd. (Paris: Presses Universitaires de France 2012) vii + 391 [Quadrige / Manuels: droit – science politique]

Ibbetson, David 'Legal Printing and Legal Doctrine' *Irish Jurist* 35 (2000) (N.S.), 345–354

Jansen, Nils 'Rechtsdogmatik im Zivilrecht' in *Enzyklopädie zur Rechtsphilosophie* <http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitraege/98-rechtsdogmatik-im-zivilrecht> (2011)

The Digest of Justinian trans. ed. Alan Watson (Philadelphia: University of Pennsylvania Press 1985)

Kirchmann, Julius H. von *Die Wertlosigkeit der Jurisprudenz als Wissenschaft* [Berlin 1848; reprint] hrsg. Hermann Klenner (Freiburg & Berlin: Haufe 1990) ix + 141

[42] William Twining *Law in Context* Enlarging a Discipline (Oxford: Clarendon Press & New York: Oxford University Press 1997) 365, 26–28.

[43] Marc A. Loth 'Private Law and the Limits of Legal Dogmatics' in *Facing the Limits of the Law* ed. Erik Claes, Wouter Devroe & Bert Kiersbilck (Berlin & Heidelberg: Springer-Verlag 2009), 25–45 at 26, with reference to Ludwig Wittgenstein *Philosophical Investigations* (Oxford: Basil Blackwell 1978), para. 84–87.

[44] Robert W. Gordon 'Lawyers, Scholars, and the »Middle Ground«' *Michigan Law Review* (1993) 91, 2075–2112 & in <https://digitalcommons.law.yale.edu/fss_papers/1355>, at 2078.

Koopmans, Thijmen 'Denken en doen in het recht' in *Juridisch stippelwerk* (Deventer: Kluwer 1991), 67–75

Kraft, Julius 'On the Methodical Relationship between Jurisprudence and Theology' ['Über das methodische Verhältnis der Jurisprudenz zur Theologie' *Revue internationale de la théorie du droit* 3 (1928–1929), 52–56] trans. Neil Duxbury *Law and Critique* 4 (March 1993) 1, 117–123

Labuschagne, JMT 'Juridiese denkpatrone as oorblysfels van oerreligieuse rites: 'n Regsantropologiese perspektief op die behoefte aan angswerende meganismes by respraak' [Patterns of legal thought as remnants of primitive religious rituals: An anthropo-legal perspective on the need for anxiety averting mechanisms in judicial decisions] *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* [Pretoria] 65 (2002) 4, 539–555

Lamond, Grant 'Analogical Reasoning in the Common Law' *Oxford Journal of Legal Studies* 34 (Autumn 2014) 3, 567–588 & <https://doi.org/10.1093/ojls/gqu014>

Lehrer, Keith *Self-Trust* A Study of Reason, Knowledge, and Autonomy (Oxford: Clarendon Press 1997) ix + 204

Loth, Marc A. 'Private Law and the Limits of Legal Dogmatics' in *Facing the Limits of the Law* ed. Erik Claes, Wouter Devroe & Bert Kiersbilck (Berlin & Heidelberg: Springer-Verlag 2009), 25–45

Mackor, Anne Ruth 'Legal Doctrine As a Non-Normative Discipline' <https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2012/1/ReM_2212-2508_2012_002_001_003 Facts and Norms in Law>, reprinted as 'Legal Doctrine is a Non-normative Discipline: An Argument from Abstract Object Theory' in *Facts and Norms in Law* Interdisciplinary Reflections on Legal Method, ed. Sanne Taekema, Bart van Klink & Wouter de Been (Cheltenham: Edward Elgar Publishing 2016), ch. 6, 127–149

Marmisse-d'Abbadie d'Arrast, Anne 'Le rôle de la doctrine dans l'élaboration et l'évolution de la responsabilité civile délictuelle au XX^{e} siècle (1ère partie)' *Les Petites affiches* (2002) 188 at 4

McCloskey, Deirdre N. *The Rhetoric of Economics* (Madison, Wis.: University of Wisconsin Press 1985) xx + 209 [Rhetoric of the Human Science]

Peczenik, Aleksander *Wartosc naukowa dogmatyki prawa* Praca z zakresu porównawczej metodologii nauki prawa [Scientific value of legal dogmatics: On comparative methodology of the science of law] (Kraków: Nakl. Uniw. Jagiellonskiego 1966) 149 [Zeszyty Naukowe Uniwersytetu Jagiellonskiego CXXXVII: Prace Prawnicze 26]

Peczenik, Aleksander 'A Theory of Legal Doctrine' *Ratio Juris* 14 (2001) 1, 75–105

Perelman, Chaïm 'Avoir un sens et donner un sens' *Logique et Analyse* 5 (1962), No. 20, 235–250

Pokol, Béla *Theoretische Soziologie und Rechtstheorie* Kritik und Korrigierung der Theorie von Niklas Luhman (Passau: Schenk Verlag 2012) 240

Pound, Roscoe 'Law in Books and Law in Action' *American Law Review* 44 (1910) 1, 12–36

Röd, Wolfgang *Geometrischer Geist und Naturrecht* Methodengeschichtliche Untersuchungen zur Staatsphilosophie im 17. und 18. Jahrhundert (München: Verlag der Bayerischen Akademie der Wissenschaften 1970) 246 [Bayerische Akademie der Wissenschaften Philosophisch-historische Klasse: Abhandlungen 70]

Rubin, Edward & Malcolm Feeley 'Creating Legal Doctrine' *Southern California Law Review* 69 (September 1996) 6, 1989–2037

Schelsky, Helmut *Die juridische Rationalität* (Opladen: Westdeutscher Verlag 1980) 17 [Vorträge: Rheinisch-Westphälische Akademie der Wissenschaften, G 247]
Stürner, Rolf 'Die Zivilrechtswissenschaft und ihre Methodik' *Archiv für die civilistische Praxis* 214 (2014) 1–2, 7–54
Tiller, Emerson & Frank B. Cross 'What is Legal Doctrine' *Northwestern University Law Review* 100 (2006) 1, 517–534 & <http://law.bepress.com/nwwps-plltp/art41>
Twining, William *Law in Context* Enlarging a Discipline (Oxford: Clarendon Press & New York: Oxford University Press 1997) 365
Varga, Csaba 'Differing Mentalities of Civil Law and Common Law? The Issue of Logic in Law' *Acta Juridica Hungarica* 48 (2007) 4 & in <http://real-j.mtak.hu/762/1/ACTAJURIDICA_48.pdf>, 401–410
Varga, Csaba 'Doctrine and Technique in Law' *Iustum Aequum Salutare* IV (2008) 1, 23–37 & <http://ias.jak.ppke.hu/hir/ias/20081sz/02.pdf>
Varga, Csaba 'Law and its Doctrinal Study (On Legal Dogmatics)' *Acta Juridica Hungarica* 49 (2008) 3 & in <http://real-j.mtak.hu/763/1/ACTAJURIDICA_49.pdf>, 253–274
Varga, Csaba 'Structures in Legal Systems: Artificiality, Relativity, and Interdependency of Structuring Elements in a Practical (Hermeneutical) Context' *Acta Juridica Hungarica* 43 (2002) 3–4, 219–232 & <http://www.akademiai.com/content/r27863g6u01q777u/fulltext.pdf> as well as in *La structure des systèmes juridiques* [Collection des rapports, XVI[e] Congrès de l'Académie internationale de droit comparé, Brisbane 2002] dir. Olivier Moréteau & Jacques Vanderlinden (Bruxelles: Bruylant 2003), 291–300
Varga, Csaba 'The Quest for Formalism in Law: Ideals of Systemicity and Axiomatisability between Utopianism and Heuristic Assertion' *Acta Juridica Hungarica* 50 (2009) 1, 1–30 & <http://www.akademiai.com/content/k7264206g254078j/>
Varga, Csaba *The Paradigms of Legal Thinking* [1997/1999] enlarged 2[nd] ed. (Budapest: Szent István Társulat 2012) 418 [Philosophiae Iuris] & <http://mek.oszk.hu/14600/14657/>
Varga, Csaba 'A jogtudomány természete (Komplexitás, modellértékűség: eszmények, korlátok) [The nature of legal scholarship (Complexity and modelling function: Ideals and limits)]' *Acta Universitatis Sapientiae* Legal Studies 5 (2016) 2, 309–325 & <http://jog.sapientia.ro/data/tudomanyos/Periodikak/scientia-iuris/2011-3/hu1-Varga.pdf>
Varga, Csaba 'Hermeneutics of the Law' *Public Governance, Administration and Finances Law Review* VII (2022) 1, 77–90 & <https://doi.org/10.53116/pgaflr.2022.1.6>
Volkmann, Uwe 'Veränderungen der Grundrechtsdogmatik' *Juristenzeitung* 60 (2005) 6, 261–271
Weir, Tony 'The Common Law System' in *International Encyclopedia of Comparative Law* II: The Legal Systems of the World, Their Comparison and Unification; Chapter 2: Structure and the Divisions of the Law (Tübingen: Mohr & The Hague: Mouton 1974)
Wells, Catharine Pierce 'Langdell and the Invention of Legal Doctrine' *Buffalo Law Review* 58 (2010) 3, 551–618
Wittgenstein, Ludwig *Philosophical Investigations* (Oxford: Basil Blackwell 1978)
Wróblewski, Bronisław *Język prawny i prawniczy* [The language of law and of lawyers] (Kraków: Polska Akademia Umiejętności 1948) v + 184 [Prace Komisji Prawniczej Polskiej Akademiji Umiejętności 3]
<https://fr.wikipedia.org/wiki/Doctrine_juridique_française>