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The timelessness of Isidore of Seville's thought for the philosophy of law

Abstract

The intellectual legacy of Isidore of Seville is impressive. The Sevillian left behind hundreds of pages of texts that are a subject of reflection of theologians, historians, philosophers and literary scholars. The author of *Etymologiae*, as a talented compiler, created a cohesive vision of law, that resonates indirectly in contemporary philosophy of law. The aim of this paper is to show one possible path of implementation of a fragment of the intellectual legacy of the bishop of Seville to explore and expand readers' horizons in legal philosophy. Isidore of Seville did not create his own school of natural law, but his works affected Thomas Aquinas, to name one. The bishop of Seville can hardly be called solely a thoughtless copyist, because the model of law that he proposed is largely a universal and timeless canon explored by today's outstanding philosophers and theoreticians of law, such as L.L. Fuller or R. Dworkin. Despite the passage of fifteen centuries since the birth of the bishop of Seville, it turns out that the answer to the question of what should a good law be like is still a subject of discourse among lawyers, philosophers, ethicists, sociologists or anthropologists of culture. In order to present the intellectual legacy of the Sevillian, this article uses the method of historical investigation, comparison and linguistic analysis.

Keywords: Isidore of Seville, *Etymologiae*, philosophy of law, natural law, reception

Introduction

Law is a multidimensional cultural phenomenon: it grows out of culture and co-creates culture. Ontological questions about the essence of law have been puzzling humanity since the dawn of times. The question of whether law is a tool of social engineering or a part of humanities is a rudimentary dilemma in philosophy of law. A cultural interpretation of law is much closer to populist, dialogue-inspiring and multi-thread humanities. Most of all, it lends itself to overcoming the reduction of the legal essence to the role of a primitive instrument of oppression, exploitation, harassment and forcing the weaker to goals outlined by the stronger.[1]

Reminiscences of the thought from the turn of antiquity and the Middle Ages have found a continuum in later centuries, but seem to be underestimated in modern times. Isidore of Seville takes a prominent role in the pantheon of thinkers of the turn of the 6th and 7th century, though so far his thought has been explored in theological, cosmological, philosophical, historical, literary or even poetic categories.[2] The aim of this article is to shed light on the entire, how abundant, intellectual legacy of the Sevillian in the context of its possible application in the philosophy of law.

The author adopts a much more modest aim, that is to show one of the possible paths of implementation of a fragment of the intellectual legacy of the bishop of Seville to explore and expand readers' horizons in legal philosophy. It turns out that in the age of post-modernism, people seem to succumb to fascinations with new trends, forgetting about the unexhausted treasure of rational philosophy. To achieve this goal, it is necessary to rely on the following methods: historical examination, comparison and linguistic analysis.

We need to be aware that legal culture has for centuries been shaped largely by philosophers who were not professional lawyers in their contemporary standards. This was the case with Plato, Aristotle, Augustine, Thomas Aquinas, Thomas Hobbes, Hugo Grotius, John Locke and many others. However, contrary to those listed above, Isidore of Seville did not find a place on the pages of academic textbooks on the history of the philosophy of law. The views of the Sevillian are characterized

1 R. Tokarczyk, *Współczesne kultury prawne*, Warsaw 2010, p. 11.

2 See P. Smoliński, *Izydor z Sewilli*, in: A. Maryniarczyk (ed.), *Powszechna encyklopedia filozofii*, Vol. 5, Lublin 2004, p. 155; F. Drączkowski, *Patrologia*, Lublin 1999, http://mikolaj.bydgoszcz.pl/czytelnia/patrologia.pdf (access: 01.07.2023); T. Krynicka, *Izydor z Sewilli*, Kraków 2007, pp. 17–76.

among philosophical compendia or encyclopaedias.[3] This is most likely because he did not create a complete school of natural law, but made a compilation of the thought from the turn of antiquity and the Middle Ages. It is worth emphasizing that his legacy was relied on by, for example, Thomas Aquinas, while today's philosophers and theorists of law – such as Fuller or Dworkin – have demonstrated on many occasions indirect inspiration by the bishop of Seville's thought about law.

The thought of Isidore of Seville constitutes without a doubt the undisputed legacy of the Latin civilization, whose canonical transcendentalia – *bonum*, *verum* and *pulchrum* are still valid.[4] The Sevillian's intellectual legacy has much to offer to today's philosophy of law. The format of the scholar we are dealing with is proven by the fact that Isidore was said to have been equal to Plato with his erudition, to Aristotle with his knowledge, to Cicero with his articulation, to Didymus with his comprehensiveness, to St. Jerome with his solemnity, to St. Augustine with his teachings and to St. George the Great with his holiness of life.[5]

Isidore of Seville's *Opus magnum*

Historical legal scholarship commonly acknowledges the relationship between the life of a creator and his creation. Origin, personality, environment, education or friendships allow a better understanding of man's life choices and the context of his works. Isidore of Seville was born ca. 650. He came from a family whose tradition involved serving the Church and God: his older brother Leander was a bishop of the Visigoth Seville, his other brother Fulgentius was bishop of Astigi and his sister Florentina was a nun. Isidore received a thorough education, which was overseen by his brother Leander. After Leander's death (in 600 or 601) Isidore replaced him on the bishop's throne. He held this revered office until his death, that is for more than three decades.[6] As befitting a bishop, Isidore of Seville supported monasteries

3 See R. Tokarczyk, *Historia filozofii prawa w retrospektywie prawa natury*, Białystok 1999; A. Mycielski, *Historia filozofii prawa*, Warsaw 1980; M. Szyszkowska, *Zarys filozofii prawa*, Białystok 2000; J. Oniszczuk, *Koncepcje prawa*, Warsaw 2004; J.R. Błachnio, *Historia filozofii państwa i prawa*, Bydgoszcz 2005. In the latter, Isidore of Seville is mentioned on page 68.

4 See D. Kostecki, *Axiology of the Constitution of the Republic of Poland of 2 April 1997: Some Reflections*, "Central European Journal of Comparative Law" 2022, No. 3, pp. 119–135.

5 A. Dębiński, M. Jońca, *Słowo wprowadzenia*, in: A. Dębiński, M. Jońca (eds.), *Izydor z Sewilii. O prawach*, Lublin 2021, p. 15.

6 See K. Chmielewska, *Hiszpański biskup Izydor z Sewilli i jego Etymologie o mitologii antycznej Grecji i Rzymu*, "Prace Naukowe Uniwersytetu Humanistyczno-Przyrodniczego im. Jana Długosza w Częstochowie. Zeszyty Historyczne" 2021, No. 19, p. 10; M. Starowieyski, *Izydor z Sewilli*, "Meander" 1967, No. 22, pp. 458–461; T. Krynicka, *Izydor z Sewilli…*, pp. 17–76; A. Ledzińska,

during his service and gave proceeds to the poor. He also advised a few Visigoth kings. Isidore was a fertile creator and addressed many fields of knowledge in his writings.

The greatest drama that an artist may experience is for the next generations to forget his works and for his contemporaries not to notice what he has created. However, this was not the case with Isidore of Seville, "master of compilation," whose *Etymologiae*[7] became, right after the Bible, the most copied, followed, translated, commented on and consulted work among all writers of the Christian world. The work of the bishop of Seville was copied on a mass scale already in his lifetime. Isidore worked on *Etymologiae* for approximately 20 years. Due to his deteriorating health, he vested the finalization of his work in Braulio, who ultimately edited the first encyclopaedia in human history.

Etymologiae quickly gained popularity not only in Spain, but, crossing the Pyrenees, it had a particular impact throughout medieval and Christian Europe. The monumental encyclopaedia of the bishop of Seville that accommodated approx. 7.5 thousand entries was recognized in 1999 by the Pontifical Council for Social Communications as the first database in the human history and its creator was heralded the patron of the Internet.

The fact that *Etymologiae* also became an inspiring source of knowledge about the law is most important to this reflection. Given the volume of this work, it needs to be emphasized that ta lecture on law was placed in Book V titled *De legibus et temporibus*. The Sevillian took up issues from this field of knowledge in other books of *Etymologiae,* too, albeit in a more modest scope, and also in his other works.[8] However, it is the legal aspects included in the discussed chapter of the "first encyclopaedia of Christianity" that are key to this discussion.

A sketch of the methodological status of legal philosophy

A brief outline of the methodological status of the philosophy of law as a science will allow appropriate verification of whether Isidore of Seville's views on law fit the research paradigm described below. Before the emergence of philosophy of law

Gramatyka wobec sztuk wyzwolonych w pismach Izydora z Sewilli. Origo et fundamentum liberalium litterarum, Kraków 2014, pp. 48–101; see T. Krynicka, *Izydor z Sewilli*…; T. Krynicka, *Izydor z Sewilli, Synonimy: Tematyka, Styl, Źródła dzieła*, "Vox Patrum" 2018, No. 38, pp. 405–428.

7 Alternative title: *Etymologiarum sive Originarum libri XX*.

8 A. Dębiński, *Wiedza o prawie w ujęciu Izydora z Sewilli*, "Studia Prawnicze KUL" 2022, No. 1, p. 126.

as a science, it had been part of general philosophy, to then be referred to as "philosophy of natural law". This term was first used by Gustav Huge, history professor of the University in Göttingen, in 1798, in his work *Lehrbuch des Naturrechts, als einer Philosophie des positiven Rechts*.[9] The work by Georg Wilhelm Friedrich Hegel *Grundlinien der Philosophie des Rechts*,[10] which first appeared in 1821, also had a great influence on the popularity of the name "philosophy of law." For example in Poland, philosophy of law was first taught to students as a subject in the first half of the 19th century, replacing the previously taught subject law of nature or natural law.[11]

Many researchers have attempted to specify *genus proximum* and *differentia specifica* for the philosophy of law.[12] One perception of a scholarly definition of philosophy of law close to mine was one presented by Kość, who concluded that "the philosophy of law deals with systematic reflection on the reasons for existence of law and its essence (…), thus the subject of philosophy of law involves law which is between *Sein* «facts» and *Sollen* «obligation»."[13] Not going into details of, how frustrating, the matter of conceptual distinction between philosophy of law and e.g. theory of law or legal doctrines, one needs to note that philosophical-legal reasoning features *nolens volens* in any legal decision.[14]

9 See G. Hugo, *Lehrbuch des Naturrechts, als einer Philosophie des positiven Rechts*, Frankfurt am Main 1969.

10 See G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, Frankfurt am Main 1969.

11 At the Jagiellonian University in Cracow, the first to lecture on philosophy of law in place of law of nature was Jan Kanty Hieronim Rzesiński (1803–1855), who from 1848 worked as deputy professor of the law of nature and criminal law at this university and became full professor of philosophy of law in 1850; See Ł. Korporowicz, *Jan Kanty Rzesiński – dziewiętnastowieczny krakowski romanista i historyk prawa (część I)*, "Krakowskie Studia z Historii Państwa i Prawa" 2023, No. 16, pp. 49–65; Ibidem, *Jan Kanty Rzesiński – dziewiętnastowieczny krakowski romanista i historyk prawa (część II)*, "Krakowskie Studia z Historii Państwa i Prawa" 2023, No. 16, pp. 181–201.

12 For examples of definitions of philosophy of law see J. Zajadło, *Filozofia prawa*, in: J. Zajadło (ed.), *Leksykon współczesnej filozofii prawa*, Warsaw 2007, p. 90. R. Alexy, *The Nature of Legal Philosophy*, "Ratio Juris" 2004, No. 2, pp. 157–158; A. Kaufmann, *Rechtsphilosophie, Rechtstheorie, Rechtsdogmatik*, in: A. Kaufmann, W. Hassamer, U. Neumann (eds.), *Einführung in die Rechtsphilosophie und Rechtstheorie der Gegenwart*, Heidelberg-München-Landsberg-Frechen-Hamburg 2011, p. 1; J. Kalinowski, *Filozofia prawa a antropologia filozoficzna*, in: J. Malarczyk (ed.), *Problemy teorii i filozofii prawa*, Lublin 1985, p. 109; R. Tokarczyk, *Filozofia prawa*, Warsaw 2009, p. 17; H. Waśkiewicz, *Historia filozofii prawa. Filozofia prawa starożytnego świata pogańskiego. Część I Grecja – okres najwcześniejszy i helleński*, Lublin 1960, p. 5.

13 A. Kość, *Podstawy filozofii prawa*, Lublin 2005, pp. 11, 16.

14 "Any practical legal argument, no matter how detailed and limited, assumes the kind of abstract foundations jurisprudence offers, and when rival foundations compete, a legal argument assumes one and rejects others. So any judge's opinion is itself a piece of legal philosophy, even when

It is worth asking a question: to what extent may the intellectual legacy of Isidore of Seville be accommodated under the framework of legal philosophy? An answer to such a problem will be possible after presentation of an intentional and unintentional reception of Isidorean thought by other representatives of philosophy and law.

Systematisation of law in Isidore of Seville's approach

Isidore of Seville proposed a specific typology of law. Acquiring achievements of Roman jurists and ancient writers, the Sevillian carried out a conceptual distinction into divine law (*lex divina*, *fas*) and human law (*lex humana*), concluding that the former relies on nature while the latter on customs. He then explained the difference between jurisprudence (*ius*), laws (*lex*) and customs (*nomos*). As a consequence of this division, a further classification followed: natural law (*ius naturale*), civil law (*ius civile*), law of nations (*ius gentium*), military law (*ius militare*), public law (*ius publicum*) and Quirites' law (*ius Quiritum*). *Ius Quiritum* was binding on citizens of Rome who enjoyed full rights and comprised laws (*leges*), plebiscites (*plebisicitia*), constitutions (*constitutiones*), emperor's edicts, resolutions of the Senate (*senatus consulta*) and opinions of jurists (*responsa prudentium*).[15] The greatest analytical potential from the point of view of legal philosophy lies in the following concepts addressed by Isidore of Seville: the question of capability of a law,[16] purpose of enacting it[17] and attributes a law should have.[18] To show originality of the Sevillian's approach, specific definitions proposed by him will be subject to reflection here in a comparatist angle.

Isidore's v Thomas's vision of law

Thomas Aquinas's views on law are most often examined from the teleological or philosophical perspective. However, it needs to be stated that in his reflections, Aquinas referred not only to philosophical and teleological writings. His knowledge

philosophy is hidden and the visible argument is dominated by citation and lists of facts. Jurisprudence is the general part of adjudication, silent prologue to any decision at law", R. Dworkin, *Law's Empire,* Cambridge, Ma., London 1986, p. 90.

15 A. Dębiński, *Wiedza o prawie…*, p. 131.

16 Isid. *etym.* 5.19. Quod possit lex [literally "What a law is capable of"].

17 Isid. *etym.* 5.20. Quare facta est lex [literally "Why a law is enacted"].

18 Isid. *etym.* 5.20. Qualis debeat fieri lex [literally "What sort of law should be made"].

about the law – as of other 13th century intellectuals' – was knowledge about Roman and canonical law.[19] A reflection on natural law in the Middle Ages was most fully developed by the Angelic Doctor. It is worth carrying out a comparative analysis on how far Isidore of Seville's and Thomas Aquinas's thinking about the law were interrelated.

The comparative sketch merely points out some interpretive differences and similarities in the approach to the vision of law as seen by Isidore of Seville and Thomas Aquinas. The Sevillian defines it as follows: "natural law is common to all nations, and, because it exists everywhere by the instinct of nature, it is not kept by any regulation. Such is the union of a man and woman, the children's inheritance and education, the common possession of everything, a single freedom for all, and the right to acquire whatever is taken from the sky, the earth, and the sea."[20]

In turn, according to Aquinas, natural law cannot concern all nations. Because it is a basis of human law, decoding given law out of natural law involves subjectivism that results from intellectual predispositions of a given individual.[21] This subtle conceptual distinction concerns the subjective scope of natural law. In Aquinas's approach, the essence of natural law involves the prerogative that: *Bonum est faciendum et prosequendum et malum vitandum*.[22] It is a certain "first commandment of law" that has a dual dimension: deontic (to do good) and teleological (to pursue good).[23] It needs to be noted that Aquinas's doctrine of law is much more complex that the compilation-like approach of the author of *Etymologiae*.

Thomas Aquinas doubts the model of good law proposed by the bishop of Seville, pointing out to linguistic and logical issues.[24] This model should be understood as an aretalogical criterion that allows identification of a set of attributes

19 See Ł. Korporowicz, *Kontekst prawniczej wiedzy św. Tomasza z Akwinu,* "Studia Prawno-Ekonomiczne" 2016, No. 98, pp. 49–70.

20 Ius autem naturale [est], aut civile, aut gentium. Ius naturale [est]commune omnium nationum, et quod ubique instinctu naturae, non constitutione aliqua habetur; ut viri et feminae coniunctio, liberorum succession et education, communis omnium possesio et omnium una libertas, adquistio eorum quae caelo, terra marrique capiuntur. Isid. *etym.* 5.4.1.

21 K. Chojnicka, *Zagadnienie relacji pomiędzy prawem naturalnym a prawem stanowionym*, in: M. Zmierczak (ed.), *Prawo natury w doktrynach polityczno-prawnych Europy*, Poznań 2006, p. 62.

22 Good is to be done and pursued and evil to be avoided.

23 M. Łuszczyńska, *Ubi ratio, ibi ius. Doktryna prawna Świętego Tomasza z Akwinu*, Lublin 2013, p. 114.

24 G. Maroń, *Wzorzec dobrego prawa w Etymologiae św. Izydora z Sewilii jako przyczynek do rozważań nad cechami dobrego prawa*, "Zeszyty Naukowe Uniwersytetu Rzeszowskiego" 2009, No. 56, p. 124.

that law should have. Aquinas believed that the statement that law is everything that is established by reason and agrees with moral discipline and serves salvation (prosperity) is sufficient. The Angelic Doctor believed that formulation of new postulates about law is unnecessary. The author of *Summa Theologica* believed that the prerequisite of justice and honourability of law proposed by Isidore of Seville is tautological – "justice is a part of honourability, as Cicero claims in *De officiis*, thus the law should be honourable; Isidore unnecessarily adds that it should be just."[25] Moreover, if written law (*lex*) is juxtaposed with custom (*mores*), then the introduction of the requirement of agreement between written law and custom of a nation is unnecessary.

Semantic identity occurs in the case of further two designates listed by Isidore of Seville – necessity and usefulness. Thomas Aquinas points out that there are two types of necessary things: first – something is necessary in an absolute sense and it is impossible for things to be otherwise. This type is not subject to human judgement.[26] "There are also things that are necessary due to a certain purpose, and such necessity is the same as usefulness. Therefore, there is no need to mention both of these features to say that statutory law must be necessary and useful."[27] This is another example of the Angelic Doctor's polemic approach to the thought of Isidore of Seville.

As one of attributes of good law, Isidore of Seville points out that a law "should be written not for private convenience, but for the common benefit of the citizens."[28] This thought is continued in thomistic philosophy that pays particular attention to the concept of the common good (*bonum commune*). Thomas Aquinas defines law (*lex*) an ordinance of reason for the common good, made by him who has care of the community, and promulgated.[29]

The category of common good was extensively explored in thomistic philosophy and is a foundation of the Catholic Social Teaching. Leon XIII in his *Encyclical* underlined that the common good is a good of each member of state community: "The purpose of a state covers all citizens: it is welfare of every member of state community, that is a good in which each citizen and all citizens together have the

25 Thomas Aquinas, *Summa Theologica*, I–I, q. 95, a. 3.

26 G. Maroń, *Wzorzec dobrego prawa…*, p. 124.

27 Thomas Aquinas, *Summa Theologica*, I–II, q. 95, a. 3.

28 Isid. *etym.* 5.21.

29 Thomas Aquinas, *Summa Theologica*, I–II, q. 90, a. 4.

right to participate to an appropriate degree. Thus, the state is called «the republic», as it joins people for a common, that is universal, good."[30]

Today, the pragmatic dimension of the common good resonates by ensuring decent conditions for living in a society. The role of law is to establish structures and institutions that ensure opportunity for universal development. It is aptly put by Zdyb, who says that: "The content of a common good must always be looked at by the prism of an individual man, because while the state, society, social group, etc., are or may be social necessity-driven arrangements, they are also arrangements necessary for a full realisation of man, but at the same time always a relational creation."[31] It is impossible to isolate or separate the good of an individual man, because without the good of an *indywiduum* (an individual person) there is no common good of a society structured by the state.

In search of a paradigm of a good law

The Isidorean concept assigns the following attributes to law (*lex*) – "A law should be honorable, just, feasible, in agreement with nature, in agreement with the custom of the country, appropriate to the place and time, necessary, useful, and also clear, lest in its obscurity it contain something deceitful, and it should be written not for private convenience, but for the common benefit of the citizens."[32] As aptly noted by Maroń: "these attributes are not uniform. Some of them are form-related, others refer to the substantive «content-related» nature of law."[33]

The attribute of honourability and justice of law was treated cumulatively in the ancient and medieval times. A classic definition of justice comes from Ulpian – justice is a permanent and constant will of granting everyone a right they are entitled to.[34] Justice as an idea that expresses values in its various applications remains in a close conjunction with honourability. Separation of these two mutually-determining concepts would be an artificial manoeuvre. The well-known maxim *lex iniusta non est lex* attributed to Augustine determined force of law on its valuating assessment. The problem of the axiological justification of the validity of legal norms, rather than remaining only on the thetic validity of norms, broadly fits into

30 Leon XIII, *Rerum Novarum*, No. 37; see M. Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*, Warsaw 2012, pp. 118–128.

31 M. Zdyb, *Istota decyzji,* Lublin 1993, p. 30.

32 Isid. *etym.* 5.21.

33 G. Maroń, *Wzorzec dobrego prawa…*, p. 124.

34 Iustitia est constans et perpetua voluntas ius suum euique tribuendi; D.1.1.10.

the age-old dispute of positive law versus natural law.[35] The excessive juridisation of social life has led to the legal legitimisation largely in procedural terms only, but this does not change the fact that the experience of the tragic past – the Second World War – reminds us that the criterion of justice is still an essential component of law.[36] A kind of panacea for relativism in the legal sphere is the internalisation of a certain catalogue of core values into the law.

The issue of application of law addressed by Isidore of Seville has its creative development in Fuller's thought:

> "Because each of the distinctive forms of law is like a specialised tool, apt for some uses and less suited to others, why not apply each form to those situations where it is demonstrably most effective? Why not preserve flexibility by fitting the forms of law directly to the demands of life, instead of deploying them after an irregular pattern set by the accidents of history and the unplanned configurations of society itself?"[37]

The much more refined and complex intellectual approach of the American philosopher of law is noticeable already *prima facie*. However, it is worth noting the fact that Isidore of Seville addressed the postulate that today is subject of reflection rather concisely and synthetically.

Adequacy of law to the time and place postulated by Isidore of Seville on the one hand is to protect the law against quick obsolescence, and on the other to ensure adjustment of law to dynamically changing reality. The attribute of flexibility of law must be closely associated with agreement with nature. Today's German philosophy of law has condensed this thought in the concept of nature of things. This concept involves an ontological determination of law – the material of initial legal regulation is included already in the essence of existence by its nature.[38] While existence of man is permanent and unchangeable, determined by ontological and anthropological regularities, cultural and sociological determinants are generated by man

35 See W. Łączkowski, *Prawo i moralność*, "Poznańskie Studia Teologiczne" 2000, No. 9, pp. 205–211; W. Dziedziak, *O pojmowaniu prawa – zarys problemu*, "Studenckie Zeszyty Naukowe" 2013, No. 23, pp. 17–35; J. Potrzeszcz, *Pozytywistyczna a niepozytywistyczna koncepcja prawa*, "Roczniki Nauk Prawnych" 2005, No. 2, pp. 7–37; J. Jaskiernia, *Spór o istnienie naturalnego porządku prawnego*, "The Peculiarity of Man" 2018, No. 27, pp. 103–122; M. Maciejewski, *Doktrynalne ujęcie relacji prawo naturalne – prawo stanowione od starożytności do czasów oświecenia*, "Krakowskie Studia z Historii Państwa i Prawa" 2015, No. 2, pp. 107–132.

36 See G. Radbruch, *Gesetzliches Unrecht und* Übergesetzliches *Recht*, "Süddeutsche Juristen Zeitung" 1946, No. 1, pp. 105–108; J. Zajadło, *Formuła Radbrucha. Filozofia prawa na granicy pozytywizmu prawniczego i prawa natury*, Gdańsk 2001.

37 L.L. Fuller, *Anatomy of the Law,* New York 1969, https://archive.org/details/anatomyoflaw00full/page/14/mode/2up (access: 01.06.024), p. 169.

38 A. Kość, *Podstawy…*, p. 175.

himself. Given this, law should respond, e.g., to dynamic progress of technology and civilisation (development of new technologies, AI, etc.). This flexibility of law may be read as an attempt to relativise its content. One cannot forget that law plays the role of an instrument that regulates social relations, but also outlines allowed/disallowed scope of modification, contributing to creative modelling of reality.

The necessity of law in Isidore of Seville's reasoning means a certain kind of modesty and legislative moderation. This postulate seems to be particularly apt in the case of the Polish legal order infected with so-called legislative fever.[39] Maroń aptly notes that "creating law is not an activity taken up for its own sake, but one must always see a desired state of affairs in the background of a legislative process in the form of harmonious arrangement of social relations to which law is supposed to lead."[40]

Inflation of law in a particularly dangerous phenomenon in the Polish legislation. According to research carried out by Grant Thorton, a citizen who would like to be up to date with all changes in the law would have to devote 2 hours and 10 minutes of every working day in 2022 to the mere reading of legislative acts (assuming optimistically that it takes 2 minutes to read one page of a legal act), which gives 70 pages of laws and executive acts a day. In a year, the total number of volumes of legislative acts is 17,695 pages.[41] Thus, an addressee of a legal norm is not able to familiarise themselves with its content, which means that he is not able without the help of professionals to specify the scope of his rights and obligations resulting from the norms in force.[42]

Another conceptual designate worth looking at is clarity of law. This postulate is more than valid still. "It is commonly believed that clarity is not only a desired attribute of law, but indeed an indispensable feature of any «good» law."[43] Among the many approaches to clarity of law presented in the theory of law, two elements making up this clarity keep coming up – intelligibility (communicativeness) and

39 See A. Dudzińska, *Gorączka legislacyjna. Zespół objawów*, https://depot.ceon.pl/bitstream/handle/123456789/19923/dudzinska_goraczka_legislacyjna.pdf?sequence=1, (access: 3.07. 2023).

40 G. Maroń, *Wzorzec dobrego prawa…*, p. 130.

41 Barometr prawa. Analiza stabilności otoczenia prawnego w polskiej gospodarce, Edycja IX, 2023, Grant Thorton, https://barometrprawa.pl/wp-content/uploads/2023/03/Barometr-prawa--2023-RAPORT-Grant-Thornton-23-03-2023.pdf (access: 01.07.2023).

42 J. Kochanowski, *Jak powinno być tworzone prawo w Polsce? Reforma procesu stanowienia prawa – Rada Stanu*, https://bip.brpo.gov.pl/pliki/12087762480.pdf (access: 01.07.2023).

43 S. Wronkowska, *Postulat jasności prawa i niektóre metody jego realizacji*, "Państwo i Prawo" 1976, No. 10, p. 19.

precision (unambiguity).[44] The relative unambiguity of law lends itself, to a certain degree, to prevention of arbitrariness of law-applying authorities and to specifying concretised requirements towards addressees of legal norms. The specification of the requirement relating to the clarity of the law is provided by the principles of legislative technique.[45]

There are two more attributes of good law listed by Isidore of Seville: agreement with the custom of the country and creating law for the benefit of the community of citizens. The first of the postulates has its Roman provenance and today we may see its realisation only in common law systems. In turn, making law for the community of citizens was creatively developed by Thomas Aquinas and has taken root in the Catholic Social Teaching. Signalling only the issues of the common good, their strict juridical nature is reflected in many normative acts, with the Polish Constitution being no exception.[46]

Attributes of a good law in the approach of today's philosophy of law

While Thomas Aquinas's reference to Isidore's works seems a natural occurrence since Aquinas thoroughly studied the works of Fathers of the Church, the indirect use of Isidore's legacy in the 20th century may *prima facie* be surprising. This does not change the fact that despite the passage of fifteen centuries since the birth of the bishop of Seville, it turns out that the answer to the question of what should a good law be like is still a subject of debate among lawyers, philosophers, ethicists, sociologists or anthropologists of culture.

Today's representatives of jurisprudence also take up reflections on model features of a good law. Fuller, one of the most distinguished philosophers of law of the previous century, formulated 8 postulates of a good law, whose implementation determines meeting the requirement of internal morality of the entire system of law. The method proposed by Fuller is a certain construction of a tale dressed in moralist and didactic robes. The case study of an audacious king Rex is a springboard

44 J. Karczewski, *Postulat jasności prawa w odniesieniu do prawa Unii Europejskiej*, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2015, No. 2, pp. 42–43; see M. Andruszkiewicz, *Jasność prawa a język prawny*, in: A. Jamróz (ed.), *Państwo prawa. Parlamentaryzm. Sądownictwo konstytucyjne. Pamięci Profesora Zdzisława Czeszejki-Sochackiego*, Białystok 2012, p. 38.

45 Regulation of the President of the Council of Ministers of 20 June 2002 on Rules of Legislative Technique, (Dz. U. (Journal of Laws) of 2002 no. 100 item 908 as amended).

46 Constitution of the Republic of Poland of 2 April 1997 (Dz. U. (Journal of Laws) of 1997 no. 78 item 483 as amended), Article 1. The Republic of Poland shall be the common good of all its citizens.

to a deeper philosophical-legal reflection. The paradigm of a bad law presented in an allegoric form of legislative failures of king Rex is a starting point for Fuller to formulate a counter-proposal for the paradigm of a good law.[47]

Requirements towards the law were defined *quasi* negatively as the imaginary king Rex made eight mistakes one by one during his reign. Rex's negative experience paved the way to formulating positive legislative postulates. The height of the monarch's failures was an attempt to take over the judiciary, which was to guarantee a proper, in Rex's belief, application of an amended code. The published collection of royal decrees was not applied in practice, so the subjects kept talking the king into abandoning the judge's robes. The feeling of bitterness with the ungratefulness of his subjects turned out unbearable for Rex and in consequence led to the ruler's death. The end of this story is very educational: the first step of his successor, Rex II, was to take the power away from lawyers and give it to psychoanalysts and public relations specialists.[48]

The American scholar believed law should meet the following postulates: 1) law should be general; 2) law should be announced (promulgation); 3) there should be no retroaction (prospectiveness, while certain exceptions are allowed); 4) law should be clear; 5) contradictions in law must be avoided; 6) imposing on addressees of legal norms obligations that are impossible to fulfil must be prohibited; 7) law should be permanent in time (stability of law, no frequent changes); 8) there should be agreement in providing and applying law.[49] It needs to be mentioned that the features of a good law (generality, certainty, clarity and stability) and the principles of good legislation (promulgation, no retroactivity, no contradictions and the rule of law) are only basic safeguards of procedural functionality of law.[50] The catalogue of features of a good law proposed by Fuller has a very well-thought construction and, understandable, is much more refined than Isidore of Seville's proposal. However, features such as clarity of law and its being non-contradictory are absolutely timeless. The attempt to search for a paradigm of good law is an inherent and perennial

47 A. Szadok-Bratuń, *Fullerowski paradygmat (nie)dobrego prawa i jego aktualność hic et nunc*, "Universitatis Wratislavensis. Studia nad Autorytaryzmem i Totalitaryzmem" 2021, No. 43, p. 300.

48 L.L. Fuller, *Moralność prawa*, transl. S. Amsterdamski, Warsaw 1978, pp. 31–32; T. Chauvin, *Przypadki króla Rexa – koncepcja wewnętrznej moralności prawa Lona Luvoisa Fullera*, "Edukacja Prawnicza" 2013, No. 4, p. 10.

49 P. Sut, *Lon. L. Fuller*, in: J. Zajadło, K. Zeidler (eds.), *Filozofia prawa w pytaniach i odpowiedziach*, Warsaw 2013, pp. 77–81; T. Chauvin, *Przypadki króla Rexa…*, pp. 9–13; L.L. Fuller, *Moralność…*, pp. 68–74.

50 P. Kantor-Kozdrowicki, *Prakseologia prawa w pracach Lona L. Fullera i Johna Finnisa*, "Ruch Prawniczy Ekonomiczny i Socjologiczny" 2018, No. 4, pp. 123–124.

issue of the philosophy of law. Given the above, a parallel juxtaposition of Fuller's concept of internal morality of law with the Isidorean model of law seems only natural.

Ronald Dworkin – representative of a non-positivist concept of law – is another contemporary legal philosopher who implicitly relies on Isidore of Seville's intellectual legacy. Dworkin does not refer to the natural law argument, that is he does not condition the force of the law on its agreement with internal evaluative and normative standards.[51] In turn, he compares law to a literary piece (metaphor of a novel in instalments), in which subsequent book chapters must take into account the content of previous ones if they do not want to lose the plot striving to maintain internal consistency (law as integrity). Dworkin approaches it as follows:

> In this enterprise a group of novelists writes a novel *seriatim*; each novelist in the chain interprets the chapters he has been given in order to write a new chapter, which is then added to what the next novelist receives, and so on. Each has the job of writing his chapter so as to make the novel being constructed the best it can be, and the complexity of deciding a hard case under law is integrity.[52]

In this context, harmonisation of the law-making act with the effect of the work of previous legislators so that the next "chapter of the book" is a creative development of the work and not its contradiction, is immensely important.

By doing so, Dworking indirectly refers to the postulate of non-contradictoriness of law and its applicability. Just like a novel in Dworkin's approach should have a causal link, the law too should be coherent – it will then be a real tool of social impacting. It is also an indirect reference to postulates of "agreement with nature", "clarity of law" or "[law's] applicability". These attributes *de facto* in a positive approach make up a coherent law. Dworkin points to three elements of law: "All law (…) is anchored in history, practice and integrity."[53] The perspective of practice of law allows direct identification of the legislator's assumptions with the realities of life. It seems that Isidore of Seville did not share this assumption but somehow intuitively, though clearly, defined postulates that were "improved" as law developed.

51 M. Zirk-Sadowski, *Wprowadzenie*, in: R. Dworkin, *Imperium prawa*, Warsaw 2022, pp. XIV.

52 R. Dworkin, *Freedom's Law: The Moral Reading of the American Constitution*, Oxford 1996, pp. 11.

53 Ibidem.

Conclusions

Isidore of Seville did not create his own system of legal philosophy. The author of *Etymologiae* may be said to have been a bishop, scholar, erudite, theologian, writer, politician and a saint of the Catholic Church.[54] He was not a philosopher of law *sensu largissimo* either. However, his intellectual legacy includes a concretised vision of law which fits within the *ius*-naturalistic theme. The typology of laws proposed by the Sevillian has retained his validity only to a limited degree (division of law into civil and criminal law) because, as Dębiński together with Jońca observe, with a hint of regret and at the same time with the awareness of the reality of the epoch: "The bishop of Seville (…) did not get tempted to attempt to separate substantive law from procedural law."[55]

In a relay of generations of eminent thinkers, Isidore of Seville proposed his own model of law, which for later scholars provided a polemical starting point or inspiration for further reflection. The aretical model of the bishop of Seville does not provide a catalogue *numerus clausus*, since discussions on the idea of law will be probably held as long as philosophy of law exists. The universalism of Isidore's thought involves noticing numerous similarities between the author of *Etymologiae* and today's representatives of jurisprudence – L.L. Fuller or R. Dworkin. It needs to be added at that, that the contemporary discourse on philosophy of law has achieved a much greater degree of refining.

Moving on to the ground of a humanistic reflection, the author of *Etymologiae* may impress today's lawyers with precision in defining terms, brevity and conciseness of the message. Isidore of Seville strived to imprint respect for the word on his readers, he taught them how to distinguish between the meaning of words, he shed light to them on the original meaning by establishing etymology and helped them to develop the art of elocution by acquiring as many synonyms as possible.[56] What is left is a mention of an interesting and non-obvious association authored by Zajadło,[57] who juxtaposes Isidore of Seville with Ludwig Wittgenstein. The author of the *Tractatus Logico-Philosophicus* writes: "The limits of my language mean the limits of my world."[58] Isidore of Seville, in turn, thanks to his perfectly mastered art of synthesis, was able to describe the world precisely. In a historical angle, the

54 A. Dębiński, *Wiedza o prawie* …, p. 126.

55 A. Dębiński, M. Jońca M. (eds.), *Izydor*…, p. 14.

56 T. Krynicka, *Izydor z Sewilli*…, p. 80.

57 Presentation during an Isidorean symposium, 25 May 2022.

58 L. Wittgenstein, *Traktat logiczno-filozoficzny*, Warsaw 2002, p. 64.

Sevillian became a teacher of Europe, while the Middle Ages were able to draw on his intellectual legacy in abundance, earning concepts, names, definitions and language.

Closing this article, Isidore of Seville's contribution to the subject matter of legisprudence also needs to be highlighted. The quality of law (*ius*) is determined by sources on which the legal order is based (*leges at mores*) and their suitable processing and preparation by a jurist. The activity of a jurist is a necessary element in the process of making law. An association with the activity of a cook springs to mind here, who, while making a meal, uses appropriate ingredients and cooking methods.[59] Isidore of Seville refers to this metaphor briefly and suggestively, writing that "teachers of cooking have named broth (*ius*) after the word for 'law' (*ius*), because it is the determining factor in the seasoning of cooking."[60] Just like the quality of the "broth" is not determined solely by its ingredients, but also proportions, order of adding them and cooking method, the quality of law in consumers' general reception is influenced by those who "create" it.[61] The Sevillian's flexible metaphor is a universal advice that enriches the toolset of each lawyer.

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59 W. Wołodkiewicz, *Ius et lex w rzymskiej tradycji prawnej*, "Ius et lex" 2002, No. 1, p. 61.

60 Isidorus Hispalensis, *Etymologiarium sive originum*, as quoted in: W. Wołodkiewicz, *Ius et lex w tradycji…*, p. 61.

61 M. Łuszczyńska, *Ubi ratio, ibi ius…*, p. 86; see J. Zajadło, *Minima Iuridica*, Sopot 2019, pp. 125–126.

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Ponadczasowość myśli Izydora z Sewilli dla filozofii prawa

Streszczenie

Spuścizna intelektualna Izydora z Sewilli jest imponująca. Sewilczyk pozostawił po sobie setki stron pism, które są przedmiotem refleksji teologów, historyków, filozofów literaturoznawców. Autor *Etymologiae* jako utalentowany kompilator stworzył spójną wizję prawa, która pośrednio rezonuje we współczesnej filozofii prawa. Celem artykułu jest pokazanie jednej z możliwych ścieżek implementacji fragmentu spuścizny intelektualnej biskupa z Sewilli na potrzeby pogłębienia i rozszerzenia horyzontów filozoficznoprawnych. Izydor z Sewilli nie stworzył własnej szkoły prawa naturalnego, lecz jego twórczość wywarła wpływ chociażby na Tomasza z Akwinu. Biskupa z Sewilli trudno nazwać jedynie bezmyślnym kopistą, gdyż wzorzec prawa, który zaproponował, stanowi w dużej mierze uniwersalny i ponadczasowy kanon eksplorowany przez wybitnych współczesnych filozofów i teoretyków prawa chociażby L.L. Fullera czy R. Dworkina. Pomimo upływu piętnastu wieków od narodzin biskupa z Sewilli okazuje się, że odpowiedź na pytanie: „Jakie powinno być dobre prawo?" jest nadal przedmiotem dyskursu wśród prawników, filozofów, etyków, socjologów czy antropologów

kultury. W artykule w celu wyeksponowania spuścizny intelektualnej Sewilczyka wykorzystano metodę historyczno-komparatystyczną oraz językową.

Słowa kluczowe: Izydor z Sewilli, *Etymologiae*, filozofia prawa, prawo naturalne, recepcja

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