

'Law' in the Medieval Christianity as understood from the Etymologies of Isidore of Seville

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Abstract

The article is an attempt to explore the history behind and meaning of the term 'law' in medieval Christianity. Isidore of Seville's 'Etymologiae' is an encyclopedia of etymology and has defined in detail 'law' and relevant terms. This provides a glimpse of 'Medieval' culture and society, legal concepts, different laws prevalent at that time, nature of crimes and punishments.

Key words: etymologiae, bishop, medieval, culture, law, natural law, human law.

The Medieval period of western European history is spread over ten centuries, followed the disintegration of Roman Empire in the 4th and 5th century and lasted till the Italian Renaissance in 15th century.²

Isidore is commonly known as Isidore of Seville. He was born in 560, in Cartagena, Spain. This was the time when his father Sevastianus brought his family to Seville from Cartagena, since Cartagena was invaded and controlled by Byzantine forces. After the death of his parents he was brought up and educated by his elder brother Leander whom he succeeded as bishop of Seville later in 600. He received his elementary education in the cathedral school of Seville. He mastered Latin, Hebrew and Greek.³

Reccared, the king, converted to Catholicism which established close ties between the Catholic Church and the Visigoth (Spanish) monarchy.⁴

It seems that Isidore had some political influence as well. He enjoyed the relationship of friendship with Sisebut (612-621) due to common intellectual interests.⁵

Braulio, his younger colleague, who later became bishop of the church of Saragossa in 636 and on whose request he wrote his famous 'Etymologies' and who after the death of Isidore compiled a list of his works wrote about his personality and he has introduced his Etymologies, "[Etymologiae] ... a codex of enormous size, divided by him into topics, not books. Although he left it unfinished, I divided it into twenty (or fifteen in some manuscripts) books, since he wrote the work at my request. Whoever thoughtfully and thoroughly

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² <http://encyclopedia2.thefreedictionary.com/mdeival+period.britennica.com>

³ However another opinion is that his knowledge (of Hebrew and Greek) "extended only to disconnected Greek terms and phrases, and a smattering of Hebrew words" (Barney.et.al. 2007).

⁴ Catholic Encyclopedia at: <http://www.newadvent.org/cathen/08186a.htm> Retrieved on: 10.12.2014

⁵ Stephan A. Barney, W.J. Lewis, J.A. Beach & Oliver Berghof,(translation) The Etymologies of Isidore of Seville (Cambridge University Press 2007) p.7.

reads through this work, which is suited to philosophy in every respect, will not be ignorant of the knowledge of human and divine matters, and deservedly so. Over-flowing with eloquence of various arts with regard to nearly every point of them that ought to be known, it collects them in summarized form.”⁶

The *Etymologiae* of Isidore became one of the most influential books of European culture through the medieval period. This is in the form of an encyclopedia of Latin vocabulary which presents a systematic survey of the world according to ancient Greco-Roman and early Christian civilization⁷.

“Etymologiae” is also known as ‘Origins’.⁸ Isidore is believed to be the last of the ancient Christian Philosopher and possibly be the last native speaker of Latin. His “Etymologiae” is said to be printed ten times between 1470 and 1590. Isidore quotes in his “*Etymologiae*” a hundred and fifty-four authors. It is an evidence of the writer’s intimate knowledge of the Greek and Latin writers⁹.

As this work does not aim at writing either Isidore’s biography or an analysis of his work “*Etymologiae*” rather it is an attempt to understand “Law” in the Medieval Christianity as depicted in the Etymologies of Isidore. I would now restrict myself to this task after pointing only to the division of Isidore’s work by Braulio. He had dedicated this work to Braulio and also sent to him for correction. The division of Braulio is in the following order:

The first book is Grammer (*De grammetica*)

The second book is Rhetoric and dialectic (*De rhetorica et dialectica*)

The third book is Mathematics (*De Mathematica*)

The fourth book is Medicine (*De Medicina*)

The fifth book is Laws and times (*De legibus et temporibus*)

The sixth book is Book and ecclesiastical Offices (*De libris et officiis ecclesiasticis*)

The seventh book is God, Angles and Saints (*De deo, angelis et sanctis*)

The eighth book is The Church and Sects (*De ecclesia et sectis*)

The ninth book is Languages, nations reigns, the military, citizens, family relationships (*De linguis, gentibus, reignis, militia, civibus, affinitatibus*)

The tenth book is vocabulary (*De vocabulis*)

The eleventh book is The Human being and portents (*De homine et Portentis*)

The twelfth book is Animals (*De animalibus*)

The thirteenth book is the cosmos and its parts (*De Mundo et Partibus*)

The fourteenth book is the earth and its parts (*De Terra et Partibus*)

The fifteenth book is Buildings and fields (*De aedificiis et agris*)

The sixteenth book is Stones and metals (*De lapidibus et mtallis*)

The seventeenth book is Rural matters (*De rebus rusticis*)

The eighteenth book is war and games (*De bello et ludis*)

The nineteenth book is Ships, buildings and clothing (*De navibus aedificiis et vestibus*)

The twentieth book is Provisions and various implements like furniture, instruments, utensils, food stuff etc.¹⁰

My concern is Book V, *De legibus et temporibus* (Laws and times), but only that part in which he explains the law, its origin, its types and various legal concepts.

According to Isidore Moses was the first to explain the Divine Law to his (Hebrew) people then he mentions those rulers and Emperors who gave laws to their nations. He also mentions some early attempts of

⁶ Ibid p.8.

⁷ Ibid p.3.

⁸ Barney et.al. Etymologies p.3. & <http://newadvent.org/cathen/08186a.html>

⁹ <http://newadvent.org/cathen/08186a.html>

¹⁰ Barney et.al. (trans.)The Etymologies of Isidore of Seville.

codification of laws. Hermes gave laws to the Egyptians; Solon to Athenians, Numa Pompilius to the Romans. Laws of Solon were translated into Latin these are written by *Decemvirs* (Ten men) who were selected to draw up laws and were inscribed on twelve tables¹¹. He has given names of those ten men as well. He mentions the efforts of the rulers to collect the laws into books, and that ancient laws became obsolete due to neglect. Emperor Constantine¹² originated new laws but they were not in order. Then he mentions the code of Theodosius Augustus (the younger) comprising of the decrees from the period of Constantine, which were arranged under the name of each Emperor who had issued the decree and this code was called Theodosian code¹³. After providing the history and origin of law, he attempts to differentiate between divine law and human laws. According to Isidore “all laws are either divine or human”. ‘*Fas*’ divine law and jurisprudence ‘*ius*’ is human law. Divine law is based on nature¹⁴ and human law on custom and this is the reason why human law varies from place to place and people to people.¹⁵

Ius or jurisprudence is called so because it is just (*Iustus*). It consists of law and custom. Law (*lex, gen, legis*) is from reading (*legere*) and it is written while custom (*mos*) is a usage drawn from word habits (*mores*). According to him customary law in the absence of law is taken as law as it is validated by reason. Law must be considered with reason and should agree with religion. He gives example of trespass while explaining the difference between operation of Divine law and human law that passing through another’s property is permitted by Divine law whereas it is not allowed under human law.¹⁶

Classification of Law in Etymologies:

Isidore relied on Roman sources to define the *ius gentium*.¹⁷ His division of law is into three branches; natural law (*ius natural*), civil law (*ius civile*) and law of nations (*ius gentium*).¹⁸

Natural law (*jus natural*), according to Isidore, is common to all nations like union of man and woman, begetting and rearing children, their inheritance and education, the common possession and right of acquiring of everything taken from the earth, water and sky, right of same freedom for all men, the liability of man to return a thing which was entrusted to him and of money which was deposited and his right to repulse violence by force. According to Isidore these rights or what are similar to these are never unjust but these are held to be natural and fair.¹⁹ According to him natural law is, without human agreement, common

¹¹ Latin Lex XII Tabularum 451-450 BC it is considered to be the earliest written legislation of ancient Roman law. Ten Commissioners were appointed to write this law on the insistence of Plebians (commoners) because the courts judgments were based on unwritten customary laws known only to a small group of patricians (nobles). They produced initially ten Tables and later two additional tables. There were no reforms rather it was recognition of Patrician Prerogative. The code was posted on bronze tablets in the Roman forum. This made the Plebians to be acquainted with the law. (<http://byzantinecoins.com/history.html>)

¹² Constantine the Great (306-337) who issued laws to limit the rights of Jews. <http://www.fordham.edu/halsall/jewish/jews-romanlaw.html>

¹³ He has not mentioned Babylonian Law. Perhaps at that time it was unknown to the world and was later found in 1901; Also he has not mentioned Justinian Code (529) which was relatively a contemporary law as far as the period of Isidore is concerned i.e 560-636 Justinian-I was a Byzantine emperor and he reigned in 527-565 A.D. The Justinian code was comprised of four books (1) *Codex* (2) *Digesta*, (3) *Institutiones* (4) *Novellae constitutiones post codicem*. First three were in Latin and the fourth was in Greek however the western Roman provinces were provided with official Latin translation. Justinian resided in Constantinople his *Corpus Juris Civilis* was prepared by his order and under the guidance of Tribonian. He codified Roman law to purify the Roman legal system from repetition, obscurity and conflicts which had emerged due to the large number of commentaries and treatises written by *juris consults*. By this codification he forbade further preparation of commentaries and prohibited citation of original work by burning the manuscript and forbade any reference to the work of *jurisconsults*.

(John Henry Merryman, Rogelio Perez-Perdomo, *The Civil Law Tradition*. Available at; <http://books.com.pk>)

¹⁴ According to him divine law is based on nature not revelations.

¹⁵ Barney et. al. *Etymologies*, p.17 (V-ii).

¹⁶ Barney et al. *Etymologies of Isidore of Seville*, p. 117.(V-i,ii,iii).

¹⁷ Rafael Domingo, *The New Global Law*, (Cambridge University Press 2011) pp. 45-46.

¹⁸ *Op.Cit.* 11 (V-vi,v,vi).

¹⁹ Edgar Bodenheimer, *Jurisprudence*, (Harvard University Press 1962) p.23

to all people as it is possessed by an instinct of nature this definition according to Bodenheimer contemplates to some extent “absolute natural law”.²⁰

The civil law (*ius civile*) according to him is in conformity with human and divine reasons and is established by each population for itself whereas the law of nations (*ius gentium*) which is common to almost all nations is concerning the following; occupation, wars, captives, fortifications, enslavement, peace treaties, pledge not to molest the embassies. Moreover Isidore states that law of nations prohibits inter marriages between races.²¹

He has divided law in further branches like military law (*ius militare*) concerning the waging of wars, making treaties, distribution of booty, marching against the enemy and cessation of hostilities, military ranks, disciplining those who leave their posts and bring disgrace and rewards of honor. The public law (*ius publicum*) is about religious places, people and things. Romans called *Quirites* hence their law as quirital law (*ius quiritorium*) which is further divided into laws, plebiscites, decrees and orders of rulers and responses of jurists. The law is ordained for people- common and noble. Common people’s resolutions are termed as plebiscites or *plebium*, senate decree or *senatesconsultum* is decision of senate in consultation of people’s interest and an order and an edict (*constitution et edictum*) is an order decree of king. Responses of jurists (*response prudentium*) are answers of jurists to the people consulting them. Some responses issued to settle the disputes were composed in the name of jurists issuing these instructions such as responses of Paulus. Some laws were named after those emperors who produced them like ‘*Lex Falcidia*’ or ‘*Lex Aquilia*’. Laws dealing with miscellaneous topics were termed as replete laws or ‘*lex satura*’ or a medly.²²

Isidore has termed the commerce law as Rhodian Law (*legibus rhodiis*) for existence of commerce practices there since ancient times. The laws used in private matters are private statutes (*privatae leges*).²³

Purpose of Law:

Isidore gives purpose of enactment of law as arousing fear to control human arrogance by pronouncing punishments to protect innocent people. According to him law regulates human life either through rewarding, forbidding or punishing.²⁴ The law, according to Isidore, 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 contains something deceitful, and it should be written not for private convenience, but for the common benefit of the citizens.”²⁵

Parties to a case, witnesses and instruments;

Parties to cases (*De causis*) are termed ‘*pragmaticus*’ as case or legal business is termed as pragmatic. Witnesses (*De testibus*) are termed as ‘*alligatus*’, as they were bound (*alligare*) by covenant by the litigant to testify hence they could not withdraw later, they were asked to sign testaments therefore they were also termed as ‘*testes*’ and ‘*signator*’. Witnesses were considered quite important in the legal process to elicit the truth.²⁶

In the section of legal instruments he has given different types of wills. According to him a testament of citizens is under civil law is signed by five witnesses whereas a testament of praetors is sealed by seven witnesses under praetorian law. Other types are ‘holograph testament’ which was written and signed by the testator, ‘invalid testament’ when its author has lost the right of citizenship or it is made without following

Stephen A.Barney et.al.(Trans.) Etymologies, p.117(V-iv).

²⁰ Op.cit.14

²¹ Barney et. al. (trans.) Etymologies of Isidore, p.118 (V-vi).

²² Ibid (V-xvi).

²³ Ibid p.119 (V-xvii,xviii).

²⁴ Ibid (V-xix,xx).

²⁵ Ibid (V-xxi).

²⁶ Ibid.(V-xxiii).

the lawful procedure, '*inofficiosus testament*' is which disinherits children and is made to benefit other people. '*Ius liberorum*' or 'law of children' had nothing to do with children rather it is an arrangement for issueless couples to name each other as heir.²⁷ While describing exchange of goods and selling and buying he mentions an old form of marriage too in which husband and wife purchased each other thus denying the idea of wife being a "handmaid".²⁸

The property (*De rebus*) is possessed either through inheritance or by 'money' and is held under legal title as possessed 'well'. One's own property used 'improperly' or possessing another's property is termed by him as possessed 'wrongly' (wrongfully). Goods are possessed by 'honorable' or 'noble' and are termed good (*bona*) as being used for good purpose (*bonus*). The goods allowed by the owner to his son or slave to handle as his own are termed as '*peculium*' from '*pecula*' (livestock) which was exclusive source of wealth in ancient times.²⁹

He has mentioned different transactions in the property; like lending, borrowing, commodity loan (*commodatum*), deposit (*depositum*) of property for safe custody, pledge (*pignus*) and *arra* which is part payment of the property purchased and on completion of contract full payment is made to which partial payment is also a part³⁰.

Some other legal terms he has used are used in contemporary law in the same sense like 'interim or temporary injunction' (*interdictum*) which is not pronounced by way of perpetuity rather for the time being (*interim decitur*), '*integri restitutio*' is restoring the property.³¹

Crimes and Punishments:

Isidore's etymological analysis of crimes and punishments gives an insight to the medieval societal crimes and the punishments awarded for those crimes.

He has mentioned crimes (*crimen*) related to property, life and honor. Theft, deceit and actions which cause disgrace but do not kill, sedition (*seditio*) or 'dissentation of citizens', sacrilege (*sacrilegium*) 'theft of sacred objects' later this term was used for idol worshipping. Homicide (*homocidium*) is derived from 'homo' (man) and '*caedes*' (slaughter). If someone killed his parents or a brother he was charged with parricide (*parentis caedes*). Killing by giving false testimony would charge a person of murderous judgment i.e. *internicivum iudicium*. Sex crimes mentioned were *adulterium* (adultery) defiling another's marriage bed (*alterius tortum*), rape (*raptus*) is derived from '*raptus potitur*' means taken by force, whereas 'incest' (*incestum*) is when it is committed on a 'consecrated virgin' or a blood relation as the offender is termed as 'unchaste' (*incactus*). Violation of royal rule or conniving with enemies was termed as treason (*maestas*). The acts liable to 'expiation' were termed as '*piaculum*'.³²

The punishments mentioned in 'Etymologies' are eight types quoted from Cicero's³³ work. These are; "fines, fetters, lashes, compensation in kind, disgrace, exile, slavery and death."³⁴

"Compensation in kind (*tailo*)" is 'retribution'. It is 'repaying' not only "injuries" but also "favors". "Ignominy" (*ignominium*) denotes to the one apprehended in crime because of being "without reputation" (*sine nomine*). Exile is derived from '*extra solum*' means 'outside the country'. It was of two types; '*relegatus*', the one exiled with his possessions and '*deportatus*' who is exiled without possessions. Death was caused by use of various possible ways for instance; cross (*crux*), '*patibulum*' (forked gibbet) which

²⁷ Ibid. pp.119-120 (V-xxiv).

²⁸ Ibid. p.120 (V-xxiv).

²⁹ Ibid. p.121 (V-xxv).

³⁰ Ibid. 122 (V-xxv).

³¹ Ibid.

³² Ibid.p.124 (V-xxvi)

³³ A Roman philosopher (106-43BC).

³⁴ Barney et al (trans.) Etymologies of Isidore of Seville, p.124.(V-xxvii)

caused death by hanging on gibbet thus strangled whereas cross tormented more than '*patibulum*' as the person was nailed to it for a long time. According to Gospel the legs of thieves were broken and then hanged from cross. Some ways of causing deaths are condemned by Isidore and termed as 'cruel' like death by drowning, burning alive, by cold and hunger or by throwing to fierce animals. Sometimes the death was caused by sewing in a leather bag '*culleum*' with a rooster, ape or snake and thrown into the sea. However Isidore is of the opinion that earlier to his age some people preferred 'death by sword' which is quicker than other ways.³⁵ As 'fire' and 'water' are common and free by nature and were forbade by Romans to 'condemned' people to prevent them from enjoying what is offered by nature.³⁶

Conclusion;

The legal concepts introduced by Isidore in his '*Etymologies*' are mostly based on Roman sources. These concepts are very familiar to modern law. Some of his concepts bear similarity with Islamic law as well for instance 'idea of common ownership' and 'retribution by sword', 'repulsion of violence' (or harm) and 'responsibility of man for return of entrusted property'.³⁷

His book was quite influential in Europe for one thousand years and had influenced many writers to come. Isidore's '*Etymologiae*' is an evidence of his knowledge of history, language and different authors and their scholarly work. This etymological encyclopedia is not devoid of interest even today as it not only provides interesting details of etymological history of different things but also an insight into the medieval culture and society.

References:

Barney, Stephan A., Lewis W.J., Beach J.A., and Berghof, Oliver, (trans.) *The Etymologies of Isidore of Seville*, Cambridge University Press, 2007.

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Domingo, Rafael, *The New Global Law*, Cambridge University Press, 2011.

³⁵ Barney et al. (trans.) *Etymologies of Isidore of Seville*, pp.124-125.(V-xxvii)

³⁶ Ibid.

³⁷ People are jointly owner of water, grass etc. and also preference of sword as a speedier weapon of retribution, lifting harm and no reciprocal harm and a hand is responsible to return what it has been entrusted with, are all Islamic teachings based on the traditions of the Prophet (Peace be upon him).