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The morality of law in the digital age^{*}

Introduction

Although the term “digitalization” is ambiguous, and consequently, there are many definitions of it¹, one can certainly agree that the digitalization of society means the application of information and communication technologies (hereafter also new technologies or ICT²) in every area of social life and the economy³. As ambiguous as the notion of digitalization is, assessments of its impact on social and economic life are also diverse. Alongside voices perceiving the expansion of the technologies as almost pure superlatives and treating it as a motor for “civilizational, social and economic development”⁴, there are also opinions exposing, above all, the threats generated by the technological revolution, especially in the area of individual freedom and democratic stan-

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¹ J. Pieriegud, *Cyfryzacja gospodarki i społeczeństwa – wymiar globalny, europejski i krajowy*, [in:] J. Gajewski, W. Paprocki, J. Pieriegud (eds.), *Cyfryzacja gospodarki i społeczeństwa – szanse i wyzwania dla sektorów infrastrukturalnych*, Gdańsk 2016, p. 12.

² „Information and Communications Technology (ICT) refers to a range of technologies that enable access to, creation, and exchange of information through digital means. ICT encompasses various forms of communication technologies such as the internet, telecommunications networks, and wireless devices” – M. Lynch, *What is ICT (information and communications technology)?*, <https://www.thetechadvocate.org/what-is-ict-information-and-communications-technology/> (accessed: 26.01.2024). For more on the definition of the term ‘ICT’ see: M. Kowalczyk, *Cyfrowe państwo. Uwarunkowania i perspektywy*, Warsaw 2022, 1.1.

³ L. Koćwin, *Spółczesność cyfrowe w Polsce – strategię, plany i realia*, [in:] J. Kędzior, et. al. (eds.), *Komunikacja a zmiana społeczna*, Wrocław 2018, p. 86.

⁴ Główny Urząd Statystyczny – Urząd Statystyczny w Szczecinie, *Spółczesność informacyjna w Polsce Wyniki badań statystycznych z lat 2006–2010*, Warsaw 2010, p. 7, https://stat.gov.pl/cps/rde/xber/gus/nts_spolecz_inform_w_polsce_2006-2010.pdf (accessed: 26.01.2024). This point of view is called technofetishist – D. Gałuszka, G. Ptaszek, D. Żuchowska-Skiba, *Uspołecznianie technologii u progu czwartej rewolucji przemysłowej*, [in:] D. Gałuszka, G. Ptaszek, D. Żuchowska-Skiba (eds.), *Technologiczno-społeczne oblicza XXI wieku*, Kraków 2016, p. 15.

dards⁵. Unsurprisingly, the digital revolution also has a very significant impact on the process of lawmaking and law application, and the assessment of this impact on this sphere is as varied as the above-mentioned assessments of a general nature, i.e. relating to the impact of digitalization on social life in all its areas. And in this case, there is by no means uniformity of opinion. The assessments range from those which are, in fact, radically critical, indicating that the law in the emerging information civilization is becoming an “anti-law” systemically and programmatically disrespectful of the real and objective, as well as rational and moral order⁶ to positions which are almost a paean to information technologies in the context of their beneficial influence on the process of lawmaking and law application⁷.

A phenomenon that provokes such radically different assessments certainly deserves to be made the subject of in-depth consideration to identify the most significant benefits and the greatest risks that the development of new technologies entails for the legal order in a broad sense⁸. For this reason, the main research question of this article is whether new technologies can contribute to the increase in the quality of law, by which term I mean the improvement of both the process of lawmaking and its application. Analyses to answer the indicated main research question will refer to the eight characteristics that, according to L.L Fuller, a “good law” must possess, or in other words, the eight requirements of the “internal morality of law”⁹. Indeed, Fuller’s concept of the “internal morality of law”, as aptly pointed out in the literature, is not only “far universal in space-time”¹⁰, but even seems to be more relevant and productive in the 21st century than in the 20th century in

⁵ See more: S. Zuboff, *The age of surveillance capitalism*, Poznań 2020; J. Bartlett, *People against technology. How the Internet is killing democracy (and how we can save it)*, London 2018 – this viewpoint is called technophobic – D. Gałuszka, G. Ptaszek, D. Żuchowska-Skiba, op. cit., p. 15.

⁶ J. Jankowski, *Kierunki filozofii prawa w cywilizacji informacyjnej*, Warsaw 2020, p. 374.

⁷ F. Webber, *The future of law: facing the challenges of information technology* by Richard Susskind, „Race & Class” 1997, Vol. 38, No. 3, p. 102, DOI: 10.1177/030639689703800313 [book reviews].

⁸ For more on this meaning of legal order in broad terms, see: W. Lamentowicz, *Status prawny i dynamika porządku prawnego*, „Jurysprudence” No. 9/17, pp. 76–77.

⁹ L. Fuller, *Morality of law*, Warsaw 1978, p. 83.

¹⁰ In the literature, it is indicated that the *unctim* between the Fullerian archetype can be seen, inter alia, when relating it to the lawmaking standards adopted in the Polish legal order. This connection can be seen both when we juxtapose the assumptions of this concept with the set of legislative technique directives contained in the „Principles of Legislative Techniques” (appendix to the Regulation of the Prime Minister of 20 June 2002 on the „Principles of Legislative Techniques” (consolidated text: Journal of Laws 2016, item 283)), as well as the standards of proper legislation stemming from the jurisprudence of the Constitutional Tribunal – A. Szadok-Bratuń, *Fullerowski paradygmat (nie)dobrego prawa i jego aktualność hic et nunc*, „Studia nad Autorytaryzmem i Totalitaryzmem” 2021, Vol. 43, No. 2, pp. 303–304, DOI: 10.19195/2300-7249.43.2.19.

which it was conceived¹¹. The selection of this concept to determine the structure of the considerations addressed in this article finds support in its comprehensive nature. Fuller's postulates on the "internal morality of law" apply not only to all stages of lawmaking, including the earliest but also to its application by both the executive authorities and the courts. Moreover, according to this concept, we can speak of the morality of the law – in a complete sense – only when both the procedural requirements for the law are met and the principle of maintaining and deepening communication between people is realized¹². It is a truism to say that human communication is one of those areas in which new technologies have made the most radical changes¹³. The considerations carried out in the pages of this article will be divided into sections devoted to each of Fuller's distinguished requirements for the "internal morality of law". The purpose of each of these "sub-analyses" will be to answer the question of the impact of new technologies on the realization of the condition(s) chosen as their subject. The results of these considerations will then make it possible to answer the main research question. Due to the universality of the title issue, both domestic and foreign experiences will be drawn upon in conducting the analyses, using literature from both fields.

Generality and stability¹⁴

The first of these conditions indicates that the law should be based on general principles, avoiding *ad hoc* settlements and excessive casuistry¹⁵. This condition is closely related to another of L.L. Fuller's distinguishing characteristics of good law, which is its immutability, or a rather low variability over time¹⁶

¹¹ W. van der Burg, *The work of Lon Fuller: a promising direction for jurisprudence in the twenty-first century* [review], „The University of Toronto Law Journal” 2014, Vol. 64, No. 5, p. 752, <http://www.jstor.org/stable/24311962> (accessed: 26.01.2024).

¹² A. Rossmann, *Praworzędność w perspektywie zasady podtrzymywania oraz pogłębiania komunikacji między ludźmi*, „Acta Universitatis Lodzianensis. Folia Iuridica” 2019, No. 87, p. 140, DOI: 10.18778/0208-6069.87.09.

¹³ M. Casalino, *The digital age and the impact of technology on communication and society*, <https://medium.com/@mauriziocasalino/the-digital-age-and-the-impact-of-technology-on-communication-and-society-ddb457c4f450> (accessed: 26.01.2024).

¹⁴ R. Donelson, I.R. Hannikainen *Fuller and the folk. The inner morality of law revisited*, „Oxford Studies in Experimental Philosophy” 2020, Vol. 3, p. 10.

¹⁵ P. Kantor-Kozdrowicki, *Prakseologia prawa w pracach Leona L. Fullera i J. Finnis*, „Ruch Prawniczy Ekonomiczny i Socjologiczny” 2018, Vol. 80, No. 4, p. 121, DOI: 10.14746/rpeis.2018.80.4.9.

¹⁶ L.L. Fuller, *Morality...*, pp. 123–125. For it would be absurd to maintain, that good law cannot change. Modifications of laws are inevitable. The point is, however, that these changes should be made only rarely, when absolutely necessary, and, moreover, that the legislator, when designing certain regulations, should keep in mind that they should be as durable and resistant to changes in reality as possible.

(relatively constant)¹⁷. Expanding on this theme, the growing digitalization, interfering in almost all areas of human activity, will foster the creation of new regulations and necessitate their frequent amendment¹⁸. The law will have to regulate more and more new, previously unknown areas and keep up with the changes introduced to individual areas of social life by information and communication technologies, which are subject to constant development. On the other hand, the possibility of drafting and publishing legal acts electronically¹⁹ creates the temptation to create an excessive number of overly elaborate regulations rather than encouraging restraint in this area. However, it is a truism to say that the recently described phenomenon can be easily remedied. In this case, technological facilities are only a tool in the hands of humans, who decide what use they will make of them. Therefore, with their help, people can create both flawed and unflawed acts and regulations.

It will be much more difficult for the legislator to simultaneously meet the demands for generality and stability of the law and the need for an adequate and timely response to new forms of the impact of ICT on social life that require legislative intervention. However, the situation is not without a solution. An appropriate and increasingly popular remedy may turn out to be ensuring the drafting of legal acts to multidisciplinary legislative teams. Such teams would be composed of lawyers, persons responsible for shaping norms and examining their experiential effects on people, representations of official groups that are affected by the regulations being drafted, representatives of public authorities that will apply the regulations, and, if necessary, specialists from other fields²⁰. The work in such teams will help the legislator diagnose the directions in which new technologies will develop and the areas in which they will intervene in a new or significantly changed (and consequently so far unregulated) way. It will also help to identify the forms of this interference and their similarities and differences. Such arrangements are necessary to ensure that the proposed standards cover the widest range of areas and addressees and consider not only the current state of development of new technologies but also the directions of its future development, thus avoiding the need for frequent amendments to the regulations²¹.

¹⁷ C. Murphy, *Lon Fuller and the moral value of the rule of law*, „Law and Philosophy” 2005, No. 24, p. 241.

¹⁸ A. Pięta, *Technologie regulacyjne szansą na obniżenie kosztów compliance*, „Ruch Prawniczy Ekonomiczny i Socjologiczny” 2018, Vol. 80, No. 2, p. 241, DOI: 10.14746/rpeis.2018.80.2.17.

¹⁹ Since January 1, 2012, in Poland, official journals have, as a rule, been promulgated only in electronic form – see: Article 2a(2) of the Act of July 20, 2000 on the promulgation of normative acts and certain other legal acts (consolidated text: Journal of Laws 2019, item 1461).

²⁰ P. Ciurak, *Czy multidyscyplinarne zespoły to przyszłość legislacji?*, <https://iuscase.pl/czy-multidyscyplinarne-zespoły-to-przyszłość-legislacji> (accessed: 26.01.2024).

²¹ In this context see for example program *Better legislation for smoother implementation* provided by The Legal Interoperability Team of the European Commission (DIGIT): <https://join-up.ec.europa.eu/collection/better-legislation-smoother-implementation/about> (accessed: 26.01.2024).

Promulgation (publicity) and prospectivity

Another requirement to which a good law must conform, according to L.L. Fuller's conception, is that it must be promulgated²². Making this *prima facie* requirement a reality would seem to be the easiest. Firstly, it would be difficult to find anyone who would – at least openly – question the need to satisfy this requirement, the functions of which have not, in fact, changed for centuries.²³ Secondly, this requirement lends itself most easily to formalization²⁴. In principle, new technologies are conducive to the implementation of this postulate. The Polish experience also shows that even the publication of official journals exclusively in electronic form (provided that the obligations of administrative authorities related to making such journals available are appropriately shaped) does not result in depriving persons who do not use electronic means of communication themselves of access to them²⁵.

It had been emphasized in the literature that introducing the principle of publishing legal acts solely in electronic form has led to a significant reduction in objectionable practice. This practice was present when official journals were published in paper form and involved stating in transitional provisions that a legal act enters into force on the day of its announcement (i.e. at 00.00 of that day)²⁶, even when the official journal was printed and submitted for distribution only in the afternoon hours of that day²⁷. Indeed, a legal fiction

²² L.L. Fuller, op. cit., pp. 87–89.

²³ The promulgation of a normative act still ensures the certainty of the text (authenticity) and is a *sine qua non* for its entry into force. Moreover, due to public access to the content of the legal act, it lays the foundation for the presumption (fiction) of common knowledge of the law – W. Taras, W. Zakrzewski, *Idea społeczeństwa informacyjnego a ogłaszanie aktów normatywnych w Polsce*, „Annales UMCS – Sectio G (Ius)” 2017, No. 1, p. 216. Moreover, making laws public subjects them to scrutiny, opens them to social criticism, political demonstrations, active and passive resistance, and friction. It is also legitimately pointed out in the literature that legislators are tempted to pass secret laws when they want to do something so outrageous that they do not want anyone to know they will do it. The requirement that the law be public thus serves to mitigate the ‘outrageous nature of the law’ by making it more difficult for officials to avoid the political costs of enacting it – D. Luban, *The rule of law and human dignity: reexamining Fuller's canons*, „Georgetown Public Law and Legal Theory Research Paper” 2010, No. 10(29), p. 6.

²⁴ T. Chauvin, *Przypadki króla Rexa – koncepcja wewnętrznej moralności prawa L.L. Fullera*, „Edukacja Prawnicza” 2013, No. 4(142), p. 11. In the Polish legal order, the obligation of promulgation, stemming from a principle formed in antiquity, has been elevated to constitutional status. The provision of Article 88(1) of the Constitution stipulates that the condition for the entry into force of laws, regulations and acts of local law is their promulgation.

²⁵ G. Wierczyński, *Polska reforma ogłaszania prawa*, „Przegląd Sejmowy” 2011, No. 5(106), pp. 27–28.

²⁶ See the Constitutional Court's decision of 13 February 1991, S 2/91, OTK 1991, No. 1, item 30, in which it is indicated that it is accepted that the formula of the entry into force of an act ‘as of’ means the beginning of a day, not its expiry.

²⁷ See more: W. Zając, *Określanie dnia wejścia w życie oraz utraty mocy ustaw i rozporządzeń z użyciem zwrotu „z dniem” – uwarunkowania konstytucyjnego systemu źródeł prawa a praktyka legislacyjna*, „Przegląd Legislacyjny” 2014, No. 3(89), pp. 43–56.

was adopted, whereby the requirement of the proper publication of an act (with the date of its entry into force specified as the day of publication) was deemed fulfilled if the official journal was submitted for distribution on the date shown on its vignette. The use of electronic solutions and the associated precise marking on the act, indicating not only the date but also the exact time of its publication in the official journal, blocked the possibility of resorting to this legal fiction²⁸. The above resulted first in a change of legislative practice only, and later in changes to the law, specifically to § 45(1) of the Annex to the Regulation of the Prime Minister of 20 June 2002 on ‘Principles of Legislative Techniques’²⁹. Indeed, by virtue of the amendment of 5 November 2015³⁰, a point 2a was added to this paragraph which reads “the Act enters into force on the day following the day of promulgation”. In the literature, the introduction of this modification was treated as an expression of the legislator’s preference for the formula on the entry into force of the act on the day following the day of announcement, although leaving the possibility of the act entering into force on the day of announcement³¹. It was concluded that the introduction of “electronic official journals has a significant effect on reducing the risk of surprising the addressees with acts of law which, being in force from the date of publication, in fact, made it impossible to adapt to their content on the date envisaged as the beginning of the period of validity”³². In retrospect, however, tying this advantage to the introduction of electronic-only publication of official journals has proven to be at least partly misplaced. Indeed, as of 28 October 2020, the legislator has abandoned the indication of the exact hour, minute and second of the publication of a legal act in the official gazette. Moreover, even in the times when these data were given, even in acts containing regulations interfering with individual rights and freedoms, it was stated that these acts entered into force on the day of promulgation³³. The indicated change in legislative practice is further evidence that the advantages of a given tool, including an electronic one, fundamentally depend on how it is used by the entity that has it.

The recent issues raised are also closely related to the third characteristic that, according to Fuller, good law must possess, i.e. the prospectivity of the

²⁸ Ibidem, pp. 45–46.

²⁹ Consolidated text: Journal of Laws 2016, item 283.

³⁰ Regulation of the Prime Minister of 5 November 2015 amending the regulation on „Principles of Legislative Techniques” (Journal of Laws 2015, item 1812).

³¹ M. Berek, *Normatywne podstawy elektronicznej promulgacji prawa – refleksje na 5-lecie wdrożenia elektronicznych dzienników urzędowych*, „Przegląd Prawa Konstytucyjnego” 2017, No. 2(36), pp. 186–187, DOI: 10.15804/ppk.2017.02.10.

³² Ibidem, p. 187.

³³ See, e.g., regulation Council of Ministers of 19 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the outbreak of an epidemic (Journal of Laws of 19 April 2020, item 697).

law. Although Fuller also recognized that there may be exceptions to the principle that the law does not operate retrospectively, he pointed out that, as a rule, such exceptions are admissible in cases where it is necessary to remedy the disadvantageous consequences for the citizen of previously binding regulations³⁴. A similar position is taken by the Polish Constitutional Tribunal, which considers the principle of non-retroactivity to be one of the essential elements of the rule of law, closely linked to the principle of citizens' trust in the state. The latter – in the assessment of the Constitutional Tribunal – requires that legal norms should not be applied to events (understood in the *largo sense*), which took place before the entry into force of the newly established legal norms and to which the law has not yet attached legal consequences provided for by those norms. The Court further emphasizes that the principle of non-retroactivity, although a fundamental principle of the legal order in a democratic state under the rule of law, is not absolute. It is most strictly applied in criminal law. By contrast, it may suffer certain exceptions in other areas of law, but it is generally impermissible to give a retroactive effect to rules governing rights and obligations when this leads to a worsening of their situation about the previous situation. The Court emphasizes, which is the most important in the context of the issues discussed here, that a legal act has a retroactive effect when the beginning of its application in terms of time is set for a moment earlier than the act became binding (was not only enacted but also duly published in an official publication)³⁵. This is because the requirement of the announcement cannot be treated in a purely formal manner, i.e. identifying the date of the announcement only with the data provided in the official publication. Publicity means making an act known to the public by publishing it in an official publication organ in such a way that the addressees can acquaint themselves with it. The date indicated in the legal gazette creates a certain presumption but is not entirely conclusive. Relying on this thesis, the Court stated, for example, that in the case of the Regulation of the Minister of Finance of 22 December 2000 on the list of specialized periodicals to which a 0% rate of goods and services tax applies and the conditions for its application, which was promulgated in the Journal of Laws dated 30 December 2000 with the date of entry into force set for 1 January, it is reasonable to assume that not only was there a complete elimination of the *vacatio legis* when it was promulgated, but even that it came into force before the promulgation within the meaning of Article 88(1) of the Constitution³⁶. Considering this view, it is obvious that in a situation where a legal act, according to the decision of the legislator, enters into force “on the day of its promulgation” (i.e. at 0.00 a.m. on that day), and the hour and minute of its

³⁴ L.L. Fuller, *op. cit.*, pp. 89–103.

³⁵ Ruling of 29 January 1992, ref. K 15/91, OTK 1986–1995, Vol. III, item 8.

³⁶ Judgment of the Constitutional Court of 20 June 2002, K 33/01, OTK-A 2002, No. 4, item 44.

publication in the Journal of Laws falls at much later hours, there is a retro-active effect given to the act³⁷.

Clarity and non-contradiction

Further requirements, singled out by L.L. Fuller, that a good law must meet, are the requirements of its clarity and non-contradictory nature. Clarity of the law should be understood as clarity and comprehensibility for the addressees, who have the right to expect a rational legislator to create legal regulations that do not raise doubts as to the content of the imposed obligations and granted rights³⁸. Clarity of the law is determined by two elements, i.e. comprehensibility (communicability) and precision (unambiguity). Comprehensibility of the text of a normative act means that a person can reproduce the norms of conduct (legal norms) contained in this text, and the requirement of precision is met when the text indicates unambiguously (at least - practically unambiguously) what, who and when should be done³⁹. A precise text is a text without lexical and syntactic ambiguities⁴⁰. On this occasion, however, it should also be noted that general linguistic competence is not sufficient to properly understand a legal text⁴¹. This is because not everyone who has the general ability to understand utterances in a specific language (e.g., Polish) will properly understand the expressions encoded in a legal text drafted in that language. For this, apart from even the most perfect linguistic competence, legal communicative competence is also needed⁴². The latter, in addition to linguistic competence, which includes knowledge of the vocabulary from those registers

³⁷ For this reason, e.g. in the literature, it is proposed that, at least in the case of criminal law, an interpretation should be adopted that the phrase „as of the date of publication”, in the absence of *vacatio legis*, meant the end of the day – W. Wróbel, *Zmiana normatywna i zasady intertemporalne w prawie karnym*, Kraków 2003, 3.2.1. However, such a solution does not seem sufficient. The interpretation of phrases that result from the principles of legislative technique and are used to denote the moment a legal act enters into force should be interpreted equally, regardless of which branch of law the legal act belongs to. The importance of this issue argues for these matters to be unambiguously regulated by law.

³⁸ Judgment of the Constitutional Court of 21 March 2001, K 24/00.

³⁹ J. Karczewski, *Postulat jasności prawa w odniesieniu do prawa Unii Europejskiej*, „Archiwum Filozofii Prawa i Filozofii Społecznej” 2015, No. 2(11), p. 44.

⁴⁰ Ibidem.

⁴¹ „Linguistic competence is the mastery of a language system by a language user, enabling him/her to produce and recognise texts of that language. Depending on the degree of mastery of the system, a distinction is made between grammatical competence, consisting in mastery of only the formal side of the language and enabling the production and recognition of grammatically correct texts, and lexotactic competence, consisting in mastery also of the semantic, contextual and stylistic constraints on the connectivity of expressions” – B. Bojar (ed.), *Słownik encyklopedyczny informacji, języków i systemów informacyjno-wyszukiwawczych*, Warsaw 2002, p. 140.

⁴² A. Choduń, *Postulat jasności prawa. Plain language czy praca edukacyjna*, „Krytyka Prawa” 2018, Vol. 10, No. 3, pp. 231–233.

of the ethnic language with which a given legal text is associated and specialized legal vocabulary, also requires knowledge and the ability to correctly apply in practice the rules of reconstructing norms from legal provisions⁴³. The above is a consequence of the two-level nature of legal language (legal texts), which has to be considered not only at the level of the language of legal rules but also of the language of norms. The language of legal rules, on the other hand, is only the starting point for determining the wording of a particular legal norm. In order to know its content, it is necessary to move from the level of rules to the level of norms, which requires a number of, sometimes very complicated, interpretative procedures. The above is related to the fragmentation (syntactic and content) and condensation of norms in legal provisions⁴⁴, or – looking at it from a slightly different angle – to the multichannel, diachronic and hierarchical nature of communication through law, which prescribes a holistic approach to the interpretation process⁴⁵. This process is, moreover, becoming increasingly complicated, because the development of international cooperation makes it increasingly necessary for the interpreter of a legal text to take into account in the interpretation process not only the rules established by the national legislator but also the supranational (e.g., EU) and international legislator. It follows from the comments made that the requirement of “clarity of the law” cannot be achieved solely by improving the quality and simplifying the content of legal provisions. The mere fact that a particular regulation will be linguistically correct and uncomplicatedly formulated and that the recipient will correctly read its content⁴⁶, does not mean that he or she will accurately reproduce the legal norm from it. For this reason, even the full implementation of all the recommendations of the *plain legal language movement*⁴⁷

⁴³ That is, first and foremost, the knowledge of techniques for encoding norms in legal provisions and rules of interpretation *sensu stricto*, i.e. rules for eliminating lexical and syntactic ambiguity, inferential rules, as well as the system of values to be attributed to a rational legislator – see: T. Gizbert-Studnicki, *Język prawny z perspektywy socjolingwistycznej*, Warsaw–Kraków 1986, pp. 113–114.

⁴⁴ M. Matczak, *Dwupoziomowość języka prawnego w derywacyjnej koncepcji wykładni i jej znaczenie dla współczesnych sporów w anglosaskiej teorii interpretacji prawniczej*, [in:] S. Czepita, A. Choduń (eds.), *W poszukiwaniu dobra wspólnego. Księga jubileuszowa profesora Macieja Zielińskiego*, Szczecin 2010, pp. 129–140.

⁴⁵ See more: idem, *Summa iniuria. O błędzie formalizmu w stosowaniu prawa*, Warsaw 2007, pp. 160–164.

⁴⁶ Which, after all, also depends on the circumstances of the particular case. The linguistic competence of the individual recipients of a legal text also varies, after all, and thus even the most correctly and simply constructed provision may not be understood by all recipients (cf. Z. Zódi, *The limits of plain legal language: understanding the comprehensible style in law*, „International Journal of Law in Context” 2019, No. 15, p. 247, DOI: 10.1017/S1744552319000260).

⁴⁷ Plain legal language movements „refers to the efforts to make legal documents more accessible to the general public by simplifying the language used. The main aim of this movement is to do away with the use of legal language or legalese in these documents and use plainer and more comprehensible language” – Ch. Laldintluangi, *Critical analysis of the plain English movement*, „International Journal of Creative Research Thoughts” 2022, Vol. 10, No. 4, p. 315.

(which, for various reasons, would not be possible anyway)⁴⁸, would not make the law clear to all citizens.

The above means that apart from taking care of the linguistic correctness of the provisions, to fulfill the postulate of clarity of the law, it is necessary to disseminate knowledge about the law among the citizens. The point is not only to provide citizens with unlimited access to the content of the law itself, as this goal – thanks to digitalization – has in principle already been achieved⁴⁹, but also to knowledge of what the law entails. Knowledge of legal regulations alone cannot protect citizens from perceiving the law as “intricate and intimidating”⁵⁰. It is about actions that will enable citizens to understand the law and, consequently, to use it more effectively in everyday life. It is not about providing citizens with the knowledge that enables them to interpret all texts of legal acts on their own. The latter is professional and is obtained during law studies⁵¹, and then in the course of further education, in particular in the course of applications preparing for specific legal professions. The purpose of public legal education is to provide citizens with information about the law to the extent that it enables them to understand their own legal situation. It also aims to equip citizens with the skills to deal with cases where they become a party to a legal dispute and to gain access to justice. The knowledge provided to citizens is also intended to enable them to identify on their own the cases that require professional legal assistance and to obtain this assistance⁵².

The development of the Internet and new technologies has facilitated such activities. Increasingly widespread access to the Internet⁵³ and the development of remote education tools make it possible to reach a much wider audience with the message than in the case of traditional forms of communication⁵⁴. At the

⁴⁸ J. Barnes, *When ‘Plain Language’ legislation is ambiguous – sources of doubt and lessons for the plain language movement*, „Melbourne University Law Review” 2010, Vol. 34, No. 3, pp. 671–707.

⁴⁹ Thanks to publicly available online databases of legal acts provided by state authorities – see e.g. in Poland: isap.sejm.gov.pl/isap.nsf/home.xsp; in the UK: legislation.gov.uk.

⁵⁰ *When laws become too complex. A review into the causes of complex legislation*, Office of the Parliamentary Counsel Cabinet Office March 2013, p. 1.

⁵¹ A. Choduń, op. cit., p. 242.

⁵² *Developing capable citizens: the role of public legal education*, The report of the PLEAS Task Force, July 2007, p. 9.

⁵³ Analyses suggest that 4.9 billion people will be using the internet by the end of 2021, or around 63 per cent of the population – <https://www.opportimes.com/the-growth-of-the-internet-in-the-world> (accessed: 26.01.2024).

⁵⁴ It is rightly pointed out that the development of the Internet and new technologies has not only made it possible but has even obliged university law school lecturers to assume a central role in providing free legal education to the public based on remote communication instruments. In doing so, it is pointed out that the benefits of involvement in this field by universities go far beyond simply providing citizens with knowledge about the law. It is emphasized, inter alia, that by engaging in the process of public education, students are made aware that pro bono activity for the benefit of the public is one of the obligations incumbent on legal professionals – see: S.M. Johnson,

same time, it is reasonably noted that although the use of face-to-face means of communication for public legal education usually gives better results than the use of online communication, these differences are not so significant as to undermine the legitimacy of using remote communication means for this type of education⁵⁵. After all, these, due to the continuous development of new technologies, have a great potential for improvement⁵⁶, and their undeniable advantage, which is the ease with which information can reach an essentially unlimited number of recipients, cannot be overestimated. However, it should be remembered that the use of the Internet for educational purposes is also associated with threats. The widespread availability of the Web increases not only the number of recipients of information but also the number of senders. As a result, apart from valuable material containing information about the law, a whole range of resources full of worthless or even misleading content is available on the net. The most important problem here is that it is sometimes very difficult for a citizen who does not have legal knowledge to distinguish between useful information and completely useless information⁵⁷. However, this problem can, at least in part, be remedied if legal professionals and universities are involved in the process of public education about the law. Indeed, educational platforms run, of course, with the full involvement of these entities, provide guarantees to citizens that the information contained therein will not only be in line with the current state of the law but also useful in the everyday life of the average citizen. With the help of these platforms, educational activities can be carried out in various forms, targeting different audiences. Using these platforms, legal professionals, both academics and practitioners, can, for example, give lectures on specific legal issues or the functioning of law enforcement bodies, provide commentaries on selected court rulings that are accessible to non-professionals, or even audiovisual recordings of trials with appropriate commentary, or simulate trials. Combining remote education with traditional education seems to be the most valuable approach. After all, recordings of lectures and “live” meetings could be posted on online platforms. Such initiatives are taking place all over the world. Examples include materials

WWW.legaleducation.edu: using technology to educate the public, „Journal of Legal Education” 2000, Vol. 50, No. 3, pp. 393–397.

⁵⁵ *Developing capable...*, p. 15.

⁵⁶ After all, new learning platforms are popping up online containing courses for different age groups, all from different fields and industries. They usually include videos, interactive whiteboards, or games to practice. This alone makes education much more accessible and scalable than ever before.

⁵⁷ A. Cialek aptly observes that while in the beginning the Internet was very exclusive, requiring high technological competence, now, after its massification, we have to face a diametrically different problem, which boils down to the fact that competence is required to search for what is reliable and valuable on the Internet – G. Jasiński, *Jak nie dać się algorytmom? Dr Cialek: Trzeba wyjść poza bankę informacyjną*, [https://www.rmfm24.pl/nauka/news-jak-nie-dac-sie-algorytmom-dr-calek-trzeba-wyjsc-pozu-banke](https://www.rmfm24.pl/nauka/news-jak-nie-dac-sie-algorytmom-dr-calek-trzeba-wyjsc-pozu-banke-informacyjna), nId,5049236#crp_state=1 (accessed: 26.01.2024).

prepared by the Judicial Office and posted on the “UK Judiciary” channel on YouTube, and educational activities undertaken by the British organization EachOtherUK, or the Canadian Centre for Public Legal Education Alberta (CPLEA). In Poland, there is also no lack of many very valuable initiatives aimed at conveying knowledge about the law to the public, in which representatives of the legal community engage. The activities of the educational team of the LEX SUPER OMNIA association, the IUSTITIA Legal Education Foundation, or Copernicus College can be mentioned. However, the scale of national activities in this area, especially when it comes to the use of various tools of remote education in conducting it, is still relatively small compared to other countries. Of course, simply making material available online does not solve all the problems. Citizens need to be informed about the existence of such platforms, which in turn requires the implementation of information campaigns, on a large scale, using traditional media, i.e. the press, radio and television. Indeed, simply making a platform available on the Internet, particularly given the phenomenon of the “information bubble”, does not guarantee that potential recipients will reach it. However, when such campaigns are implemented, new technologies have a good chance of becoming an instrument that will contribute to making the law more comprehensible to the citizens.

In addition to clarity, good law must also be characterized by its internal as well as external inconsistency. Indeed, the provisions of a particular piece of legislation must not contradict each other and the regulations contained in other pieces of legislation, including higher-order legislation. Undoubtedly, new technologies make it easier for the legislature to create regulations that are free of these defects. The Internet itself is a tool enabling the legislator to conduct in-depth legal analyses, including quick access to the legal acts in force in the legal system of a given state regulating the issues covered by the proposed regulation. In turn, the above is crucial for the coherence of the legal system⁵⁸. In the legislative process, however, more sophisticated IT tools, based on NLP technologies, specifically dedicated to detecting differences and contradictions in legal texts can be used to detect and prevent contradictions in the law⁵⁹.

⁵⁸ This possibility, of course, also applies to legislation adopted in other countries, which is also an important value. Indeed, knowledge of how an issue has been regulated in the legal orders of other countries is extremely valuable and can (although it need not, and in some cases should not), influence the shape of domestic legal regulation – S.J. Kealy, *Technology & legislative drafting in The United States*, [in:] I. Rhee, W. Voermans (eds.), *Innovation of legislative process proceedings of the 11th Congress of the International Association of Legislation (IAL) in Seouls*, Seoul 2018, p. 76.

⁵⁹ For more on this topic, see: M. Araszkiwicz, E. Francesconi, T. Zurek, *Identification of contradictions in regulation*, [in:] E. Schweighofer (ed.), *Legal knowledge and information systems*, Amsterdam–Berlin– Washington 2021, pp. 151–160 and *Artificial intelligence: innovation in parliaments*, „IPU Innovation Tracker” No. 4, 12 February 2020.

Possibility

Good law, in L.L. Fuller's view, cannot claim the impossible either. Although Fuller analyses the above issue essentially through the prism of liability and fault⁶⁰, the issue is much more complex. In doing so, the problem is not limited to the fact that the law cannot demand what is objectively (e.g. on physical grounds) impossible. For the law also cannot demand behavior from citizens which, although objectively feasible, is immanently contrary to society's sense of decency, or entails such great inconvenience and hardship that it cannot be demanded of them, even if it were justified by the general interest. The impact of new technologies on this front can, of course, be considered from many perspectives. However, given the subject matter of the above article, the most important thing to highlight is two issues, i.e. firstly, how new technologies affect public participation in the legislative process and secondly, how the degree of digitalization of society (or even of particular groups of society) and public trust in new technologies (which applies in particular to AI tools), should influence the legislator's decisions on the use of new technologies in social life.

Regarding the first of the points highlighted above, it should be stated that there is no doubt that new technologies generally facilitate the active involvement of citizens in the legislative process. In this context, particular attention should be paid to the idea of CrowdLaw, which is based on the premise that parliaments, governments, and public institutions work better when they increase the involvement of citizens in lawmaking and other decision-making, which in turn is strongly facilitated by new technologies. New technologies are being used to obtain new sources of information, assessments, and expertise to improve the quality of lawmaking and public decision-making and increase the legitimacy of government⁶¹. The idea is conceptually linked to lawmaking and public decision-making of every kind and at every level, from constitution-making to ordinary legislation, to decision-making by public authorities⁶². CrowdLaw, precisely because it is based on new technologies, differs significantly from the long-known, traditional forms of public participation in law-making and decision-making (such as referendums, citizens' initiatives, and stationary public hearings). This is because, in principle, it can not only reach a larger audience but also provide them with the opportunity to participate in the above-mentioned processes in many different forms and at all their stages⁶³. Of course, widespread public participation in the lawmaking

⁶⁰ L.L. Fuller, op. cit., pp. 112–122.

⁶¹ V. Alsina, J.L. Martí, *The birth of the CrowdLaw movement: tech-based citizen participation, legitimacy and the quality of lawmaking*, „Analyse & Kritik” 2018, Vol. 40, No. 2, p. 338.

⁶² Ibidem, p. 339.

⁶³ I.e. at the stage of identification of the (already perceived or projected) problem requiring legislative intervention and comprehensive diagnosis of the individual dimensions of this problem, at the stage of determining the axiological basis of the proposed legal regulation, at the stage of

process is also associated with risks, one of the biggest of which is the instrumentalization of this tool and its use by politicians to convey populist content⁶⁴. Moreover, it should not be forgotten that the participation of citizens in the process of lawmaking and other decision-making by public institutions cannot take place only with the use of new technologies. For from here it is only a step to creating another platform where the consequences of digital exclusion will become apparent⁶⁵.

Developing the theme of digital exclusion, it should be pointed out that public institutions must combat this phenomenon not only by undertaking initiatives aimed at increasing access to appropriate technical infrastructure and providing education aimed at increasing digital competencies, but also by creating – through the introduction of appropriate legal regulations – such conditions for the functioning of citizens in private and public life that any lack of, or restrictions on, access to modern technologies would be the least burdensome for them⁶⁶. Legislators introducing, *inter alia*, solutions based on new technologies in the activities of public institutions must take into account both the degree of digitalization of society and social assessments as to the appropriateness of using digital tools in a specific area of social life. By way of example, one can point to the problems faced by legislators around the world in developing remote court proceedings. These proceedings, on the one hand, may facilitate access to court for persons who have difficulties in reaching the court (e.g., because of long distances between the court premises and their place of residence, or because of medical conditions that prevent or hinder them from traveling further distances), may, however, hinder such access for digitally excluded persons. Access to the technical infrastructure and the ability to use it alone does not solve all the problems. Suffice it to mention that a low-quality Internet connection or outdated equipment may result in transmission delays, degradation of sound and image quality and loss of communi-

identifying and evaluating alternatives of lawmaking decisions and making a choice; at the stage of formulating the text of a legal act, enacting this act and its promulgation, as well as at the stage of applying the introduced legal regulation, controlling its effectiveness and taking possible corrective actions – M. Pękala, *Potencjalne zastosowania crowdsourcingu w prawotwórczych o procesach decyzyjnych*, „Zarządzanie Publiczne” 2018, No. 2(42), p. 234.

⁶⁴ B. S. Noveck, *Congress is broken. CrowdLaw could help fix it*, „Forbes”, 23 January 2018.

⁶⁵ Digital exclusion, according to the commonly accepted definition proposed by the OECD, is the gap in access to and use of modern technologies between individuals, households, businesses and geographical areas at different socio-economic levels – *Understanding the digital divide*, OECD, Paris 2001. For more on digital exclusion and the duties of public institutions to combat it, see: M. Kowalczyk, *op. cit.*, 2.4.

⁶⁶ Undoubtedly, the considerations mentioned above were not taken into account in the creation of the National Immunization Program at the beginning of 2021 and, more specifically, in the determination of how senior citizens could register for vaccinations, which was rightly treated in the literature as a manifestation of a breach of the prohibition, stemming from the Fullerian concept, of demanding impossible things from citizens – for more on this topic see: A. Szadok-Bratuń, *op. cit.*, pp. 310–311.

cation during transmission, and the aforementioned interference may make a person who appears before a court remotely and experiences such problems “look less real and convincing”⁶⁷. For this reason, the development of remote court proceedings must be accompanied in parallel by measures to ensure the participation also of citizens without access to new technologies. In the USA, for example, tablet rentals and special points (so-called “technology kiosks”, “justice buses”, specially designated places in libraries, or other public facilities) are organized, where people without access to the Internet or lacking the ability to use it can get assistance and participate in remote court proceedings⁶⁸. Of course, the degree of digitalization of society is only one of the issues that the legislator must bear in mind when introducing remote court proceedings. For this reason, even in countries, where the degree of digitalization of society is high and the action to prevent social exclusion is carried out on a large scale, remote court proceedings are postulated to be optional and not only for the reasons indicated above. Remote court proceedings are not an optimal solution in all cases, and the widespread use of this mode of procedure may sometimes not only not bring any benefit to the justice system, but can also clearly harm it and negatively impact the quality of lawyer’s work⁶⁹. However, discussing these issues in detail is beyond the scope of this article⁷⁰.

When introducing solutions based on artificial intelligence in many different areas of social life, including in the administration of justice, the lawmaker must first consider that citizens trust “human experts” much more than “artificial intelligence”⁷¹. This lack of trust, even when it lacks rational justification and can be labelled as “algorithmic aversion”⁷², should not be overlooked. Imposing decisions based on algorithms against citizens’ beliefs may erode trust in public institutions, including the courts, and consequently, undermine

⁶⁷ R. Smith, *Remote courts and the consequences of ending ‘practical obscurity’*, <https://law-tech-a2j.org/remote-courts/remote-courts-and-the-consequencesof-ending-practical-obscurity/> (accessed: 26.01.2024).

⁶⁸ M. Spoto, M. Alder, *Rural digital divide complicates virtual court participation*, „Bloomberg Law”, 29 August 2022.

⁶⁹ M. Eisen, *Remote hearings are ill-suited default for litigation realities*, <https://www.beneschlaw.com/images/content/3/3/v2/33436/Law360%20Remote%20Hearings%20Are%20Ill-Suited%20Default%20For%20Litigation%20R.pdf> (accessed: 26.01.2024); R. Ufberg, S. Netanel, E. Stallman, G. Daley, *Clinic cut off from the courthouse: how the digital divide impacts access to justice and civic engagement*, p. 5, <https://www.law.berkeley.edu/wp-content/uploads/2022/04/cut-off-from-the-courthouse-March2022.pdf> (accessed: 26.01.2024).

⁷⁰ These issues will be the subject of a monograph being prepared as part of the project „Remote procedural acts in the criminal process” funded by the National Science Centre No. 2020/37/B/HS5/02752.

⁷¹ V. Polonski, *Humans don’t trust AI predictions – here’s how to fix it*, <https://www.oecd-forum.org/posts/29988-humans-don-t-trust-artificial-intelligence-predictions-here-s-how-to-fix-it> (accessed: 26.01.2024).

⁷² M. Bagaric, D. Hunter, N. Stobbs, *Erasing the bias against using artificial intelligence to predict future criminality: algorithms are color blind and never tire*, „University of Cincinnati Law Review” 2020, Vol. 88, No. 4, pp. 1037, 1041.

public compliance with the law. Therefore, implementing such changes should not be rushed; they should be preceded by comprehensive information and education campaigns, followed by evaluation studies. Moreover, when considering the introduction of these solutions to the justice system (in particular in criminal matters), it should be borne in mind (in addition to a whole series of issues raising doubts as to the compatibility of these solutions with the standards of a fair trial and as to their objectivity⁷³), and that the limit setting the actions of the legislator, especially in this sphere, is the obligation to respect human dignity. Undoubtedly, the expectation of the parties to a trial, for example, that their case will be heard by a human being, even with all his or her frailties resulting from human nature, and not by an artificial intelligence to which the judge will merely delegate the decision, does not seem to be an expression of “algorithmic aversion”, but a fully justified, natural expectation, deriving from the essence of humanity and inherent human dignity.

Congruence

The last requirement that must be met for a law to deserve the name of “moral” is compliance between the actions of public institutions and the law in force (the rule of law in the process of law application)⁷⁴. Theoretically, new technologies providing a fast flow of information and the possibility of a wide observation of the actions of representatives of the authorities (which applies, for example, to the observation of the legislative process, access to documents drawn up in its course, observation of trials before courts or tribunals and access to court rulings with their justifications) should favour the observance of the law by representatives of the authorities. However, the experience of recent years shows that these tools are not a sufficient remedy. This is because they do not prevent either obvious violations of the law or the reprehensible instrumentalization of the law by representatives of the authorities⁷⁵. The reasons for this are undoubtedly complex, although certainly, one factor is the formal⁷⁶ or practical lack of legal sanctions for actions that violate the law⁷⁷.

⁷³ See in more detail: G. Le Moli, *AI vs human dignity: when human underperformance is legally required*, „Revue européenne du droit” 2022, Vol. 4, No. 1, pp. 105–109.

⁷⁴ A. Rossmann, op. cit., p. 135.

⁷⁵ For more on the negative instrumentalization of the law and its manifestations see: S. Wronkowska-Jaśkiewicz, [in:] J. Zimmermann (ed.), *Aksjologia prawa administracyjnego*, Vol. 1, Warsaw 2017, pp. 28–36.

⁷⁶ E.g. formal lack of legal responsibility of an MP or senator who votes in favour of a law containing unconstitutional provisions due to substantive immunity (Article 105 and Article 105 in conjunction with Article 108 of the Polish Constitution).

⁷⁷ E.g. the practical lack of responsibility of the President, for signing an unconstitutional law – as R. Piotrowski aptly stated, the mere existence of the State Tribunal „is not sufficient to prevent violations of the Constitution. It seems that the illusion of constitutional responsibility,

Indeed, politicians are all too often prepared to take actions which, although illegal, may ensure their political success, with minimal risk of negative political consequences of such behavior. Indeed, it should be noted that situations in which even an evident violation by representatives of power causes no or only minor negative political or reputational consequences are not rare⁷⁸. This is the case when society, or at least that part of it on which the political success of the representatives of power who committed the said violations depends, judges this move, despite its illegality – whether from the perspective of their economic situation, their professed worldview, or even from mere political sympathies – as right or at least justified.

Conclusions

In conclusion, it should be stated that new technologies are an instrument that, when used properly, can significantly contribute to the realization of each of the postulates of the “internal morality of law” distinguished by L.L. Fuller and thus have a positive impact on the quality of law. However, everything depends on how these tools are used. This, in turn, depends both on the extent to which the representatives of the authorities are aware of the opportunities and threats that the application of new technologies in the field of lawmaking and application of law entails and are able and, above all, willing to use them to realize all the postulates of the internal morality of law. In this case, it seems that it is not a lack of knowledge, but a lack of will may be the more severe problem. It should be noted, which is particularly evident when analyzing the requirement of “possibility”, that according to Fuller’s doctrine, the law is created because of the interaction between the legislator and the citizen (the addressee of norms), who is perceived in an entirely subjective manner⁷⁹. In contrast, in the Polish legal order, as the earlier subsections show, the law is sometimes perceived as a tool for the unilateral exercise of power, treated instrumentally and thus objectifying its addressees⁸⁰.

References

Alsina V., Martí J.L., *The birth of the CrowdLaw movement: tech-Based citizen participation, legitimacy and the quality of lawmaking*, „Analyse & Kritik” 2018, Vol. 40, No. 2.

which is co-created by its current regulation, delegitimizes the democratic legal state, fostering the primacy of politics over law” – <https://oko.press/prof-piotrowski-trybunal-niespelnionych-nadziei> (accessed: 26.01.2024).

⁷⁸ F. Schauer, *The political risk (if any) of breaking the law*, „Journal of Legal Analysis” 2012, Vol. 4, No. 1, pp. 89–91, DOI: 10.1093/jla/las010.

⁷⁹ A. Rossmanith, *op. cit.*, p. 134.

⁸⁰ A. Szadok, *op. cit.*, p. 314.

- Araszkievicz M., Francesconi E., Zurek T., *Identification of contradictions in regulation*, [in:] E. Schweighofer (ed.), *Legal knowledge and information systems*, IOS Press BV, Amsterdam–Berlin–Washington 2021.
- Bagaric M., Hunter D., Stobbs N., *Erasing the bias against using artificial intelligence to predict future criminality: algorithms are color blind and never tire*, „University of Cincinnati Law Review” 2020, Vol. 88, No. 4.
- Bartlett J., *People against technology. How the Internet is killing democracy (and how we can save it)*, Penguin Publishing Group, London 2018.
- Barnes J., *When ‘Plain Language’ legislation is ambiguous – sources of doubt and lessons for the plain language movement*, „Melbourne University Law Review” 2010, Vol. 34, No. 3.
- Berek M., *Normatywne podstawy elektronicznej promulgacji prawa – refleksje na 5-lecie wdrożenia elektronicznych dzienników urzędowych*, „Przegląd Prawa Konstytucyjnego” 2017, No. 2(36), DOI: 10.15804/ppk.2017.02.10.
- Bojar B. (ed.), *Słownik encyklopedyczny informacji, języków i systemów informacyjno-wyszukiwawczych*, Wyd. SBP, Warsaw 2002.
- van der Burg W., *Review: the work of Lon Fuller: a promising direction for jurisprudence in the twenty-first century*, „The University of Toronto Law Journal” 2014, Vol. 64, No. 5, <http://www.jstor.org/stable/24311962>.
- Chauvin T., *Przypadki króla Rexa - koncepcja wewnętrznej moralności prawa L.L. Fullera*, „Edukacja Prawnicza” 2013, No. 4(142).
- Choduń A., *Postulat jasności prawa. Plain language czy praca edukacyjna*, „Krytyka Prawa” 2018, Vol. 10, No. 3.
- Ciurak P., *Czy multidyscyplinarne zespoły to przyszłość legislacji?*, <https://iuscase.pl/czy-multidyscyplinarne-zespoły-to-przyszłość-legislacji>.
- Developing capable citizens: the role of public legal education*, The report of the PLEAS Task Force, July 2007.
- Donelson R., Hannikainen I.R., *Fuller and the folk. The inner morality of law revisited*, „Oxford Studies in Experimental Philosophy” 2020, Vol. 3.
- Eisen M., *Remote hearings are ill-suited default for litigation realities*, <https://www.beneschlaw.com/images/content/3/3/v2/33436/Law360%20Remote%20Hearings%20Are%20Ill-Suited%20Default%20For%20Litigation%20R.pdf>.
- Fuller L.L., *Morality of law*, PIW, Warsaw 1978.
- Gałaszka D., Ptaszek G., Żuchowska-Skiba D., *Uspołecznianie technologii u progu czwartej rewolucji przemysłowej*, [in:] D. Gałaszka, G. Ptaszek, D. Żuchowska-Skiba (eds.), *Technologiczno-społeczne oblicza XXI wieku*, Libron, Kraków 2016.
- Gizbert-Studnicki T., *Język prawny z perspektywy socjolingwistycznej*, PWN/UJ, Warsaw–Kraków 1986.
- Główny Urząd Statystyczny – Urząd Statystyczny w Szczecinie, *Spoleczeństwo informacyjne w Polsce Wyniki badań statystycznych z lat 2006–2010*, Warsaw 2010, https://stat.gov.pl/cps/rde/xbcr/gus/nts_spolecz_inform_w_polsce_2006-2010.pdf.
- Jankowski J., *Kierunki filozofii prawa w cywilizacji informacyjnej*, Difin, Warsaw 2020.
- Johnson S.M., *WWW.legaeducation.edu: using technology to educate the public*, „Journal of Legal Education” 2000, Vol. 50, No. 3.
- Kantor-Kozdrowicki P., *Prakseologia prawa w pracach Leona L. Fullera, i J. Finnisa*, „Ruch Prawniczy Ekonomiczny i Socjologiczny” 2018, Vol. 80, No. 4, DOI: 10.14746/rpeis.2018.80.4.9.
- Karczewski J., *Postulat jasności prawa w odniesieniu do prawa Unii Europejskiej*, „Archiwum Filozofii Prawa i Filozofii Społecznej” 2015, No. 2(11).

- Kealy S.J., *Technology & legislative drafting in The United States*, [in:] I. Rhee, W. Voermans (eds.), *Innovation of legislative process proceedings of the 11th Congress of the International Association of Legislation (IAL) in Seoul*, Seoul 2018.
- Koćwin L., *Spółeczeństwo cyfrowe w Polsce – strategie, plany i realia*, [in:] J. Kędzior, et al. (eds.), *Komunikacja a zmiana społeczna*, Instytut Pedagogiki UW, Wrocław 2018.
- Kowalczyk M., *Cyfrowe państwo. Uwarunkowania i perspektywy*, Wyd. Nauk. PWN, Warsaw 2022.
- Laldintluangi Ch., *Critical analysis of the plain English movement*, „International Journal of Creative Research Thoughts” 2022, Vol. 10, No. 4.
- Lamentowicz W., *Status prawny i dynamika porządku prawnego*, „Jurysprudencja” 2017, No. 9.
- Le Moli G., *AI vs human dignity: when human underperformance is legally required*, „Revue européenne du droit” 2022, Vol. 4, No. 1.
- Luban D., *The rule of law and human dignity: reexamining Fuller’s canons*, „Georgetown Public Law and Legal Theory Research Paper” 2010, No. 10(29).
- Lynch M., *What is ICT (information and communications technology)?*, <https://www.thetechadvocate.org/what-is-ict-information-and-communications-technology>.
- Mateczak M., *Dwupoziomowość języka prawnego w derywacyjnej koncepcji wykładni i jej znaczenie dla współczesnych sporów w anglosaskiej teorii interpretacji prawniczej*, [in:] S. Czepita, A. Choduń (eds.), *W poszukiwaniu dobra wspólnego. Księga jubileuszowa profesora Macieja Zielińskiego*, Wyd. Nauk. US, Szczecin 2010.
- Mateczak M., *Summa iniuria. O błędzie formalizmu w stosowaniu prawa*, Wyd. Nauk. Scholar, Warsaw 2007.
- Murphy C., *Lon Fuller and the moral value of the rule of law*, „Law and Philosophy” 2005, No. 24.
- Noveck B.S., *Congress is broken. CrowdLaw could help fix it*, „Forbes”, 23 January 2018.
- Pękala M., *Potencjalne zastosowania crowdsourcingu w prawotwórczych o procesach decyzyjnych*, „Zarządzanie Publiczne” 2018, No. 2(42).
- Pieriegud J., *Cyfryzacja gospodarki i społeczeństwa – wymiar globalny, europejski i krajowy*, [in:] J. Gajewski, W. Paprocki, J. Pieriegud J. (eds.), *Cyfryzacja gospodarki i społeczeństwa – szanse i wyzwania dla sektorów infrastrukturalnych*, Europejski Kongres Finansowy, Gdańsk 2016.
- Pięta A., *Technologie regulacyjne szansą na obniżenie kosztów compliance*, „Ruch Prawniczy Ekonomiczny i Socjologiczny” 2018, Vol. 80, No. 2, DOI: 10.14746/rpeis.2018.80.2.17.
- Polonski V., *Humans don’t trust AI predictions – here’s how to fix it*, <https://www.oecd-forum.org/posts/29988-humans-don-t-trust-artificial-intelligence-predictions-here-s-how-to-fix-it>.
- Rossmann A., *Praworządność w perspektywie zasady podtrzymywania oraz pogłębiania komunikacji między ludźmi*, „Acta Universitatis Lodziensis. Folia Iuridica” 2019, No. 87, DOI: 10.18778/0208-6069.87.09.
- Schauer F., *The political risk (if any) of breaking the law*, „Journal of Legal Analysis” 2012, Vol. 4, No. 1, DOI: 10.1093/jla/las010.
- Smith R., *Remote courts and the consequences of ending ‘practical obscurity’*, <https://law-tech-a2j.org/remote-courts/remote-courts-and-the-consequencesof-ending-practical-obscurity/>.
- Spoto M., Alder M., *Rural digital divide complicates virtual court participation*, „Bloomberg Law”, 29 August 2022.

- Szadok-Bratuń A., *Fullerowski paradygmat (nie)dobrego prawa i jego aktualność hic et nunc*, „Studia nad Autorytaryzmem i Totalitaryzmem” 2021, Vol. 43, No. 2, DOI: 10.19195/2300-7249.43.2.19.
- Taras W., Zakrzewski W., *Idea społeczeństwa informacyjnego a ogłaszanie aktów normatywnych w Polsce*, „Annales UMCS – Sectio G (Ius)” 2017, No 1.
- Ufberg R., Netanel S., Stallman E., Daley G., *Clinic cut off from the courthouse: how the digital divide impacts access to justice and civic engagement*, <https://www.law.berkeley.edu/wp-content/uploads/2022/04/cut-off-from-the-courthouse-March2022.pdf>.
- Webber F., *The future of law: facing the challenges of information technology* by Richard Susskind, „Race & Class” 1997, Vol. 38, No. 3, p. 102, DOI: 10.1177/030639689703800313 [book reviews].
- When laws become too complex. A review into the causes of complex legislation*, Office of the Parliamentary Counsel Cabinet Office, March 2013.
- Wierczyński G., *Polska reforma ogłaszania prawa*, „Przegląd Sejmowy” 2011, No. 5(106).
- Wróbel W., *Zmiana normatywna i zasady intertemporalne w prawie karnym*, Zakamycze, Kraków 2003.
- Zajac W., *Określanie dnia wejścia w życie oraz utraty mocy ustaw i rozporządzeń z użyciem zwrotu „z dniem” – uwarunkowania konstytucyjnego systemu źródeł prawa a praktyka legislacyjna*, „Przegląd Legislacyjny” 2014, No. 3(89).
- Zimmermann J. (ed.), *Aksjologia prawa administracyjnego*, Vol. 1, Wolters Kluwer, Warsaw 2017.
- Zódi Z., *The limits of plain legal language: understanding the comprehensible style in law*, „International Journal of Law in Context” 2019, No. 15, DOI: 10.1017/S1744552319000260.
- Zuboff S., *The age of surveillance capitalism*, Zysk i S-ka, Poznań 2020.

Summary

The morality of law in the digital age

Keywords: law, morality, digitalization, legislation, society.

The ongoing digital revolution is significantly affecting various aspects of social life. It does not, of course, bypass the area of lawmaking and law application either. The literature sometimes presents radically differing viewpoints on how digitalization affects the mentioned area. A phenomenon that arouses such divergent opinions deserves in-depth reflection. For this reason, this article is devoted to this issue. Its primary purpose was to examine whether digitalization and its achievements can improve the quality of law and contribute to the realization of the eight conditions of “good law” in L.L. Fuller’s view. The analysis shows that information and communication technologies are valuable tools. When used appropriately, they can greatly contribute to fulfilling the requirements mentioned earlier. However, harnessing their potential depends on the knowledge and, more importantly, the will of those responsible for making and applying the law.

Streszczenie

Moralność prawa w epoce cyfrowej

Słowa kluczowe: prawo, moralność, cyfryzacja, legislacja, społeczeństwo.

Trwająca rewolucja cyfrowa znacząco wpływa na różne aspekty życia społecznego. Nie omija, co oczywiste, również obszaru stanowienia i stosowania prawa. Wyrażane w literaturze oceny wpływu cyfryzacji na ostatnio wspomnianą sferę niekiedy radykalnie się od siebie różnią. Zjawisko, które budzi tak rozbieżne opinie, zasługuje na pogłębioną refleksję. Z tego też powodu kwestii tej poświęcono niniejszy artykuł. Jego podstawowym celem było zbadanie, czy cyfryzacja i jej osiągnięcia mogą poprawić jakość prawa, a w szczególności przyczynić się do urzeczywistnienia ośmiu warunków „dobrego prawa” w ujęciu L.L. Fullera. Przeprowadzona analiza prowadzi do wniosku, że technologie informacyjno-komunikacyjne są cennymi narzędziami, które odpowiednio zastosowane mogą w istotny sposób przyczynić się do spełnienia wskazanych wymogów. Wykorzystanie ich potencjału zależy jednak od wiedzy i, co ważniejsze, woli osób odpowiedzialnych za tworzenie i stosowanie prawa.

