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"IGNORANTIA IURIS NON EXCUSAT": A PLEA FOR JUSTICE

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This paper is titled "Ignorantia Iuris Non Excusat"¹. It is a well-known legal maxim. And my aim in the paper is two fold: (i) To show that the usual defenses of the maxim are not sufficiently persuasive, and (2) to show cause why reasonable and honest ignorance of law should be admissible as a ground of exemption from liability.

I

Let me begin by articulating questions which arise from this maxim: What is ignorance of law? How does ignorance of law affect one's obligation under the law? How is ignorance of fact ("Ignorantia facti") related to ignorance of law? Or are Ignorance of law and ignorance of fact two sides of the same coin? There are two well known views concerning the use of ignorance as an excuse in the criminal law. The first view holds that ignorance of law does not excuse one from liability or obligation under the law, even when such ignorance is honest and reasonable. Thus, if an accused person pleads ignorance that the law forbids rape or arson or abduction, his plea would either not be believed or would be rejected on the ground that everyone is reasonably expected to know that such acts or conducts are forbidden by the law. In a plea of ignorance of law one claims not to know that the law in question exists.

Now suppose a defendant admits knowing that a particular law exists, (e.g. the law forbidding rape) but claims not to know that that law (forbidding rape) includes (and, therefore, prohibits) such actions committed with one's spouse or consort. Here, the pleaded

ignorance relates not to law as such but to a feature of law; that is, to a fact concerning a law whose existence he recognises. Or again, suppose a person admits knowing that there is a law which forbids the use of vehicles in public recreational parks but does not know whether driving his tricycle falls under the relevant law. In both cases cited above we have ignorance concerning a feature of a known law. Ignorance of this type is known as ignorance of fact. Now, the received view is that ignorance of fact, where this is honest and reasonable, does excuse one from liability.

It seems safe to say that most (if not all) modern legal systems agree broadly that ignorance or mistake of law shall not be considered as a ground of exemption from obligation under the law and that a mistake concerning a feature of law which, on its face, does not enforce or prohibit the conduct in question shall be excused. Thus, until quite recently, it was not possible in law to commit rape against one's consort. There are, of course, several reasons why a plea of ignorance here can be admitted as excusing. For one reason, people have been known to misinterpret the requirements of law. For another, laws have not always been formulated in language that was clear and precise and unambiguous. And thirdly, it may well be that the law was not available to the defendant prior to the conduct alleged. A plea of ignorance of law can be made on any or all of these reasons. But the surprising fact is that such pleas are usually to no avail. Against all such pleas, the traditional legal maxim: "*Ignorantia iuris no excusat*" is affirmed. In the next section, I shall ask to what extent this maxim serves the course of justice?

II

It seems to one that if the issue is raised at the level of criminal justice to the individual defendant, the course of justice is poorly served. For one reason, it seems that the distinction between ignorance of fact and ignorance of law is too thin to bear the weight of common usage and might, in fact, make no real difference. Ignorance of law seems to be a species of ignorance of fact. And some jurists are quick to note this point and so to proceed to defend this time-honoured maxim on grounds other than are allowed for by the distinction itself.

Let me point out again that my aim in this paper is to examine whether or to what extent this maxim serves the course of justice from the point of view of the individual suspect or defendant. And from that perspective, one can almost readily say that our legal maxim claims too much. Quite apart from the fact that there have been cases where *reasonable* ignorance of law has been allowed as a defense of law violation, the weaknesses in the standard defenses of the maxim will be pointed out² and, thereafter, I shall underline some conditions which need to be met before the putative claims of the maxim may justifiably be waived.

First, let me take J. Austin's defense³. Austin's strong point is that if a plea of *Ignorantia iuris* is allowed, even assuming that the defendant's pleaded ignorance was reasonable, the courts would be over-worked because the defense would always allege ignorance and the court would be required in each case to decide the claim. In such a situation, it would be extremely difficult for the court to prove either that the ignorance was not reasonable or that the claim was not malevolent. Of course, it should be pointed out that the burden of proof should be made to devolve only on him who would claim reasonable mistake, and not on the court. It is, after all, a matter of commonsense as much as of law that he who would strongly affirm a given point must prove the point. But even this attempt to save Austin's argument must fail and with this failure there would arise a judicial disservice. It must be pointed out that throwing the burden of proof on the suspect or defendant is contrary to judicial procedure, especially where the reversal of burden arises from the difficulty of proof. In the standard case, the burden of proof falls on the prosecution and the court and not on the defense. To reverse this burden would be tantamount to a presumption of the defendant's guilt whereas jurisprudential practice presumes the suspect *innocent* until his guilt is proved.

Secondly, a reversal of burden as suggested above implies that the law is known to everybody (or in any case, to a vast majority of the people who fall under the law). And yet this is not obviously the case. Thirdly, the next weakness in Austin's argument relates to what is usefully referred to as philosophical scepticism. Put simply, philosophical scepticism maintains that knowledge of the mental states of another person is possible only if we can "look" into

that person's mind. Literally understood, we cannot. Therefore, the reverse of burden is meant to declare the issue as to whether a pleaded ignorance of law is honest or not insoluble: The court cannot know when or when not such a plea is honest since "honesty" is a state of mind. Rather than engage the septics in an argument, let us say quickly that if the court is not worried about proving the honesty or otherwise of a defendant who pleads ignorance of fact, I do not see any independent reason for suspecting dishonesty when one pleads ignorance of law. For example, if Papalolo shoots Danmusa at point-blank range and kills him, Papalolo's defense that he did not know that Danmusa was standing before him (ignorance of fact) would not be believed any more than his plea that he did not know that murder was a crime (ignorance of law) would be believed. On the other hand, if Papalolo shoots at Danmusa while he (i.e. Papalolo) was hunting at dusk and kills him, his defense that he did not intend to kill Danmusa might be believed. And so too his belief (or defense?) that he is entitled by law to shoot a would-be armed robber would be admitted. Enough has been said in criticism of Austin's position and I shall now turn to Holmes' defense of our legal maxim of *Ignorantia iuris non excusat*.

O. W. Holmes, Jr. defends the maxim on the ground that it would be unreasonable and inadvisable and, therefore, undesirable for the law to provide citizens with a motive for remaining ignorant of the law as would surely be the case if citizens knew (and acted on the knowledge) that ignorance of law does excuse from liability⁴. Therefore, the effect of the maxim is to compel citizens to learn the standards of conduct required of them. In rebuttal, it must be pointed out that Holmes' argument rests on an assumption, which is mistaken. The argument assumes that the point at issue is the use of ignorance of law *per se* as an excuse, in which case citizens would relax their efforts to learn about the law or even be diligent with the law. Such a use would, no doubt, constitute an abuse of the legal system and would *co ipso* be inadvisable. The cases of the use of pleaded ignorance we are concerned with are those in which there exists a strong belief that one's conduct did not constitute an offense (because one did not know the law exists and not because the law in question is of doubtful constitutional validity). In other

words, we are interested in cases where, regardless of the precautions of the suspect, he would still have failed to learn of the law in question. The circumstances surrounding the plea are such that the suspect could not have done other than he did. This kind of ignorance would, it seems to me, discourage rather than encourage lack of civic precaution and should be admitted as excusing.

I now consider what appears to me to be the strongest jurisprudential argument in support of the maxim. And it has been put forward by Jerome Hall⁵. Hall argues that if a mistake of law is allowed by the courts as a defense, then, we would be compelled to admit - (i) that the legality of a particular law is no longer a matter for determination by the authorised competent officials but of private decision, and (ii) that the moral principles embodied in the law lack objective meaning and application. Hall is anxious to reject cases of mistake of law based on the advice of counsel and of mistake arising from ambiguity in the law. He argues that the law cannot be what one says it is or interprets it to be. This is fair enough. However, what seems to be wrong in Hall's argument is a subtle but real conflation of two distinct questions, which relate to the defendant's obligation under the law, namely, the culpability of the defendant and the legality of his conduct. Culpability has to do with blame-worthiness while legality has to do with adequation of conduct to a given law. Surely, the distinction needs to be kept in mind. Now, the point of a pleaded ignorance is not to say that what one did was legal (i.e. in accordance with the law) and, therefore, did not constitute an offense. Rather, the point is to say that granted that one's conduct was illegal (i.e. not in accordance with the law), one ought not to be held culpable (i.e. blameworthy) for one's (mistaken) interpretation of the law. Thus, pleas of ignorance of law, far from changing the meaning of law, presume, *pace Hall*, that the law has objective meaning. The court cannot determine the culpability of a suspect until it has determined the illegality of the suspect's conduct, and not vice versa. Enough, I believe, has been said by way of critical appraisal of earlier efforts to defend the maxim. I shall now conclude by stating the conditions of reasonable ignorance.

III

Under what conditions may a suspect justifiably enter in a plea of ignorance or mistake as to a matter of law? Is there a *prima facie* case for the recognition of a pleaded case of ignorance of law? A *prima facie* case seems to arise from the nature and character of the legal system itself. Our legal system is one which recognises mutual acceptance of benefits and burdens and one in which sharing the benefits depends on assuming the burdens. The burdens of the legal system may be represented by the rules which require mutual forbearances and restrict freedom. The burdens consist in the exercise of self-restraint by individuals and groups over inclination which, if satisfied, would interfere with others. The benefits are perhaps more obvious: Freedom of movement, of association, security of life and limbs and possessions. H.L.A. Hart points out that the burdens imposed by the legal system can be cumbersome, but they certainly make life less nasty, less brutish, less short and more secure, more commodious and more desirable⁶. Our legal system is also one which attempts to enforce submission to rules through the use of sanctions. And even though the advantages of mutual forbearances are such that the number of those who would voluntarily submit to law would normally be greater than the number of those who would not, the legal system would be fragile if it did not contain a means of checking free-loading and free-riding, that is of checking those who would like to share the benefits without assuming the burdens. It is for this reason that some system of punishment is required as a guarantee that those who would voluntarily submit to the rules are not, as Hart again points out, sacrificed to those who would not⁷.

But punishment, for all its merits, can unfairly distribute the benefits as well as burdens in society unless the legal system also provides for a variety of defenses. Standard among these defenses are mistake, misrepresentation, accident, coercion, infancy provocation, passion, senility and insanity, to mention a few. The point of these excuses is to diminish the possibility of imposing a burden on anyone who has not intentionally violated the law. A defensible theory of just punishment would, therefore, acknowledge

the following conditions of *allowable reasonable ignorance* as constituting exceptions to the *ignorantia iuris non excusat* maxim:

- (a) Where the law in question is not known to the defendant because it has not been published or gazetted or otherwise reasonably made available to him prior to the conduct alleged;
- (b) When a defendant acts in reliance on a decision of a court which was, on appeal, adjusted to be unconstitutional and where the alleged misconduct result from an earlier court decision. In other words, if one had based one's conduct on a decision of a court which was believed to be *intra vires* but was later held to be *ultra vires* then one's pleaded ignorance should be admissible;
- (c) A misinterpretation of the law by anyone authorised to interpret the law is, in law, a reasonable mistake and, therefore, admissible, and
- (d) An error or mistake of law which arises from ambiguity in statutory language is considered to be excusing, (especially where such error is supported by a decision of a high court which reverses a decision of a lower court)⁸.

To conclude, I would like to comment briefly on condition (c) mentioned above. This condition allows for error of law arising from an interpretation by an authorized state counsel or official. The aim of my comment is to seek an extension of the range of this condition to include lawyers who are not employed by the State as such. It is true that lawyers do not technically represent the State. They are nevertheless charged by law with the responsibility for interpreting the law. And they are, in this sense, authorized by the State to give legal advice to the public. If an error of law arises out of *reasonable reliance* on advice of counsel who has been duly certified and registered and authorised by the State, then, fairness (if not justice) would seem to require that the State, and not the individual defendant, should take the blame for such error.

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VALUES OF DEMOCRACY AS ASSETS TO POLITICAL STABILITY

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INTRODUCTION

The current political development in world politics suggests unequivocally that 'democracy' as a political system is succeeding and hence overshadowing its long time counterpart; namely, 'communism'. While there are bases upon which 'democracy' and 'communism' compare, the ideals of the latter are losing grounds to the ideals of the former. The successes of democracy as a system of government have always been connected with the understanding that it admits variety and permits criticism. The current rejection of communism and its collapse as a system of government are pointers to the fact that it lacks such ideals which are intended to secure maximum liberty for citizens. The craze for liberty and equality by people, which are distinctive aims of democracy helps to encourage the feeling of the skeptic that communism will not recover from its present predicament. In any case, this prediction has little to do with our objective in this essay.

Our basic objective in this paper is to identify the ideals of democracy and argue that these ideals help political stability. The work is divided into three principal sections: the nature of democracy where the ideals of democracy can be identified, then look into the concept of political stability, and finally a show of how these ideals enhance political stability.

If ever there is any justification at all for this paper, it must be because it accounts for the political understanding of the ideals of democracy. The struggle for democracy at any cost and the engendering irritation for communism justify the opinion that it is the political elements that are embedded in the ideals of