

EDITORIAL: IGNORANCE OF THE LAW...

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Just as psychoanalysis is full of well-wrought, if sometimes only half-understood, maxims, so too the law clings to certain axiomatic pronouncements, the meanings of which often become lost in the frequency with which they are deployed. One such precept — at once a foundational legal principle and perhaps the most overworked cliché the law has to offer — provides the basis for our title: "Ignorance of the law is no excuse." An elementary principle of the criminal law, it holds that no individual may avail himself, for the purposes of a legal defense, of an ignorance of the law. The law presumes, in other words, that all citizens know the law.

The psychoanalytic ear is no doubt pricked. It notes first the ambiguity of the sentence construction, an ambiguity that apparently goes unrecognized by legal administrators. Ignorance here only ever refers to the ignorance of the legal subject. Psychoanalysis has no quarrel with the proposition of an ignorant subject — arguably psychoanalysis *invented* this subject. What psychoanalysis would object to, however, is the law's attribution



of ignorance to the subject alone. Although the law rather unproblematically situates (even as it refuses to acknowledge) ignorance on the side of its subject, it is in fact an absent subject to whom an ignorance is imputed. As such, the sentence allows for an alternative reading: there may be an ignorance operative in the law itself.

If what is at issue is ignorance, we ought to ask where it is that knowledge resides. Lacan is quite clear on this point: the locus of knowledge is the Other — the Law. This would appear to square with the customary understanding of the “Ignorance of the law...” dictum, which assumes not that the criminal study up on whatever particular law he would then violate, but rather that all citizens have at least a minimum of legal literacy based on an implicit appeal to a generalized set of (moral) principles supposed to govern human behavior. The wager is that even those who are not especially well-versed in legal particularities will somehow intuit the illegality of their criminal misdeeds. The implication here is that the law functions as its own warrant, that there is a guarantee that any particular law is knowable and, furthermore, is legitimate by virtue of the omniscience and ultimate authority of the big Other. Psychoanalysis, however, suggests otherwise. The Other may be the place of knowledge (or, more properly, the place where knowledge is placed), but, as Lacan points out, “[t]he hitch is that the Other, the locus, knows nothing.”¹ In psychoanalysis, there is no guarantee.

The question is, then: How does the law continue to function — and function effectively — when the law is itself ignorant? Not surprisingly, psychoanalysis locates the successful operation of the law precisely in its paradoxical status. Freud’s myth of the primal horde, with the killing of the primal father, remains the most compelling elaboration of this paradox. The murder of the father — the father as the perceived obstacle to the fulfillment of the sons’ desire — does not pave the way for the enjoyment the sons seek but rather strengthens the prohibition against it. In Freud’s genealogy, there is no clear distinction between the brothers’ law and the father’s autocratic rule, the contract only ever being the legally enforced repression of that which brought it into existence in the first place. It is thus what Lacan refers to as a “passion for ignorance”² — a desire not to know — that is the very condition of the proper functioning of the law. Law’s subject wants to know nothing of its desire, and it is this desire, this passion for ignorance, that sustains the law even in its ignorance. What psychoanalysis claims with respect to ignorance and the law is thus a substantial revision of the legal principle: it is not that ignorance of the law is *no* excuse (for violating it); it is rather that ignorance of the law is the *only* excuse (for following it).

Such a revision suggests a wholly different relation between the subject and the law. Implicit in the legal rejection of ignorance as an excuse for transgression is the law’s own “theory of the subject” (to borrow the

title of Alain Badiou's 1982 monograph, an excerpt of which appears in translation in the pages that follow): the law equates the subject with knowledge of the law. That is to say, the legal citizen/subject only rightfully assumes such a position when it is no longer ignorant of the law. The law, however, does not simply produce the effect that it names (the subject that knows the law), but always something more than that, an excess, a desire that it cannot but fail to contain. And it is there in this failure of the law that psychoanalysis locates its subject. For psychoanalysis, it is only by way of the law's ignorance that the subject comes into being. It is this incompleteness or lack that allows for the possibility of a desiring subject, a subject that is not simply a determinate effect of the law.

To acknowledge the generative quality of the lack in the Other is not to suggest that the law isn't forever attempting to conceal it. Perhaps the most spectacular recent example of this is the now-familiar image — the one that graces our cover — of U.S. Attorney General John Ashcroft standing in front of the bare-breasted statue which has for some seventy years symbolized justice for the department bearing that name. The fury that erupted in response to Ashcroft's decision to conceal the Spirit of Justice's offending breast was not over the inordinate expenditure of money he authorized for a set of drapes (\$8,000 is nothing in terms of typical government spending). It was not that veiling the statue offended our aesthetic sensibilities (it's not, after all, a particularly

remarkable piece of sculpture). It is rather that we were confronted with the ignorance of the law and, more significantly, the extraordinary lengths to which the law will go to disguise that fact. In the case of Ashcroft and Minnie Lou (as she's known around the DOJ), the law (or Ashcroft as its guardian) was standing right there in front of the spirit or desire that ostensibly animates it, and Ashcroft *covers her up*. (That he executed the veiling of the statue in the wake of the September 11 terrorist attacks when he was initiating all manner of injustice against both the so-called enemy and his own people cannot be mere coincidence.)

What Ashcroft's fetishistic logic makes painfully clear is that the legal enterprise is not necessarily an ethical one, and it is precisely this sort of logic that psychoanalysis aims to subvert. Psychoanalysis is neither a theoretical apparatus nor a clinical methodology; it is an ethical practice. Psychoanalytic practice turns the ignorance of desire upon which the law rests into knowledge. It produces a subject that acts on the basis of its desire, and this is a subject considered dangerous in the eyes of the law. For this is someone the law cannot control, someone for whom nothing — certainly not a set of chintzy drapes — can stand as obstacle to his desire. The psychoanalytic subject assumes as its own the desire that the law can never truly conceal. Now, does this mean that we believe justice is possible? No, but this doesn't stop us from trying to create it. And that is what Lacan called the ethics of psychoanalysis.

All of this is to say that, ultimately, the problem with the legal formulation rests not in the indeterminacy of its subject, but in the opposition it constructs between ignorance and knowledge. Psychoanalysis, of course, accepts no such dichotomy. For psychoanalysis posits a different kind of knowledge, a “knowledge that is not known.”³ Such knowledge may properly be described as ignorance, an ignorance that is not simply a lack of information, but an active refusal of it: an ignorance that knows. And it is on the basis of such ignorance, “on

the basis of a kind of refusal of understanding that we push open the door to analytic understanding.”⁴ We proceed, then, as does any properly psychoanalytic inquiry: in ignorance. The essays collected here examine the various ways in which these mutually constitutive terms – the law, the subject, ignorance – might be knotted. Such a collection assumes that while ignorance of the law – the ignorance that is the law and our ignorance as subjects of it – may be inevitable, ignorance of this fact is, indeed, inexcusable.

1. Jacques Lacan, *The Seminar of Jacques Lacan, Book XX: Encore: On Feminine Sexuality, The Limits of Love and Knowledge, 1972-1973*, ed. Jacques-Alain Miller, trans. Bruce Fink (New York: Norton, 1998), 98.
2. *Ibid.*, 121.

3. *Ibid.*, 96.
4. Lacan, *The Seminar of Jacques Lacan, Book I: Freud's Papers on Technique, 1953-1954*, ed. Jacques-Alain Miller, trans. John Forrester (New York: Norton, 1988), 73.

