

Alexander Sarch, *Criminally Ignorant: Why the Law Pretends We Know What We Don't*, (Oxford: Oxford University Press, 2019), 282 pages. ISBN: 9780190056575 (hbk.). Hardback: \$85.00.

In *Criminally Ignorant*, Alexander Sarch gives a theoretical justification for the wilful ignorance doctrine. He also uses the doctrine as the starting point for a broader investigation of criminal culpability, in which he defends his own account of criminal culpability and gives a general theory of when it's justified to 'impute' missing mental states to defendants.

We can illustrate the wilful ignorance doctrine with an example. Say you run a shoe shop and friend offers to sell you some brand-name trainers at a very cheap price. He says they are so cheap because they are factory off-cuts, but you suspect they are probably stolen. Your suspicions are correct; the trainers are in fact stolen. You accept his offer without asking any questions about the trainers' provenance, because you want to make a tidy profit by selling them on, and you worry your friend will go elsewhere if you ask any questions. In English law, the criminal offence of handling stolen goods requires one to handle stolen goods "knowing or believing them to be stolen goods" (Theft Act 1968, §22(1)). And you neither know nor believe that the trainers are stolen; you merely suspect they are. But given the wilful ignorance doctrine (referred to as 'wilful blindness' in English law), you can still be prosecuted for handling stolen goods because you suspect the trainers are stolen and deliberately preserve your ignorance. This can seem initially puzzling. Given the role of mental states like knowledge in determining culpability, it needs explaining how it's justified to convict people for crimes that require knowledge when they lack such knowledge. Sarch's book aims to answer this explanatory demand.

Chapter 1 gives a summary of case law on the wilful ignorance doctrine, with a focus on U.S. federal law. Sarch identifies that the traditional justification for the wilful ignorance doctrine given by the courts as "the equal culpability thesis" (p. 15). According to this thesis, the wilful ignorance doctrine is justified because a wilfully ignorant defendant is as culpable as an analogous knowing defendant (p. 22). Later chapters defend a specific qualified version of the equal culpability thesis.

Chapter 2 defends a general theory of criminal culpability, which Sarch appeals to in his discussion of the wilful ignorance doctrine. He defends a version of an 'insufficient regard' theory, according to which someone is culpable to the degree that their conduct manifests insufficient account for the legally recognized interests of others. This kind of account is familiar, and moral philosophers will be reminded of parallel accounts of moral blameworthiness, such as that defended by Nomy Arpaly. Sarch's account is innovative though in the novel way he suggests of measuring the *degree* of insufficient regard manifested, which Sarch argues we should understand as the *least* amount of insufficient regard required to explain that conduct (pp. 50–54).

Chapters 3–4 are on how to justify the wilful ignorance doctrine. Sarch's starting point is that not *every* instance of wilful ignorance is as culpable as the analogous knowing misconduct. Wilful ignorance does not seem as culpable, for instance, when one has a justification or an excuse for preserving one's ignorance. This means that the wilful ignorance doctrine needs to be restricted in scope to only apply to those cases when wilful ignorance *is* as culpable as the analogous knowing misconduct, and the key question is *when* that is the case. Chapter 3 gives a critical survey of answers to this question that have already been given in the literature, and will serve as an exemplary state of the art for anyone wishing to learn about existing philosophical work on wilful ignorance. Chapter 4 gives Sarch's own answer: wilfully

ignorant defendants *do* look as culpable as analogous knowing defendants when they culpably violate the “duty to reasonably inform oneself” (p. 115). This is a conditional duty one has *if* one suspects that the relevant proposition is true (e.g. if you suspect the trainers you’re buying are stolen), a duty to acquire more information about whether the proposition is in fact true. This, Sarch claims, provides the correct restriction on the wilful ignorance doctrine.

Chapter 5 steps back and discusses the broader issue of imputation principles in the criminal law, of which the wilful ignorance doctrine is one example. Others include the voluntary intoxication doctrine, which holds that a defendant can be deemed to be reckless (i.e. aware of a risk) if their unawareness stems from voluntary intoxication, and the felony murder doctrine appealed to by U.S. courts, according to which one can be convicted of murder despite lacking the relevant intent, if one causes death in the course of committing a felony. Sarch here gives a general theory of when such imputation principles are justified and when they are not. On Sarch’s account, imputing a missing mental state to a defendant is justified when a) the defendant manifests the *same degree of insufficient regard* as an analogous defendant who has the relevant mental state, and b) the defendant manifests insufficient regard to the *same set of interests* (pp. 158–60). This chapter was one of the book’s strongest points, and really advances theoretical understanding of imputation principles by offering a systematic test of when they’re justified. Sarch proves this point in Chapters 6–8, where he defends a number of novel imputation principles in the neighbourhood of the wilful ignorance doctrine.

This is an excellent book. It’s clear and well-argued, and any philosopher working on wilful ignorance and other culpability imputation principles is going to have to engage with it. I cannot here give the book the full critical discussion it deserves, so I’ll restrict myself to a single broader comment on how the question of wilful ignorance is framed. Justifying the wilful ignorance doctrine is understood by Sarch as requiring us to say something *positive* about the wilfully ignorant defendant. It is assumed that knowledge is positively inculcating, so we need to say something positive about the wilfully ignorant defendant which inculpates him to the same degree as the knowing defendant. Sarch does this by arguing that (some) wilfully ignorant defendants manifest the same degree of insufficient regard as knowing ones.

But this does not seem to be the only way to understand the role of knowledge and ignorance in criminal culpability. We could instead start from the idea that ignorance often excuses wrongdoing, and then see the question we need to answer as why ignorance does not excuse if it’s wilful. With the question framed in this way, the wilful ignorance doctrine may be easier to understand. This is because it’s independently plausible that ignorance only excuses when it explains one’s behaviour, and not when it merely accompanies one’s behaviour. Compare two parallel cases in which you drive over your neighbour’s dog. In the first case you run him over when you drive off because, unbeknownst to you, he was sleeping under your car. In the second case, you run him over as you are driving, but don’t realise because you’re blind drunk. In the first case, but not the second, the fact that you didn’t know that the dog was there explains why you ran it over. But in the second case your drunkenness rather than your ignorance explains your behaviour. It would be false to say to your neighbour that you ran over their dog because you didn’t know it was there; that would be missing the crucial part of the explanation. It also looks like ignorance only *excuses* when it explains one’s behaviour, as in the first case, and not when it does not, as in the second case. This is not to say you necessarily lack any excuse in the

second case – you might have one if your drink were spiked, for example – just that *ignorance* won't be that excuse.

This is relevant because cases of wilful ignorance, such as the case of buying the suspicious trainers, are also cases in which one's ignorance does not explain one's behaviour. It's not the case that you bought the stolen trainers because you didn't know they were stolen; you bought them because you wanted to make a quick profit, and for that same reason you deliberately didn't find out whether they were stolen. And it seems we'll be able to say much the same about other cases of wilful ignorance. So if ignorance only excuses when it explains one's behaviour, this gives us an easy explanation of why ignorance doesn't excuse if it's wilful.

In this respect, the merits of the Sarch's defence somewhat depends on our starting point. If we view our task as one of explaining why culpability is present, then wilful ignorance does seem initially puzzling, and Sarch provides a decent explanation of why there is the requisite culpability present in (at least some instances of) wilful ignorance. But if we instead view our task as one of explaining why a particular excuse, the excuse of ignorance, is absent, then the wilful ignorance might not seem so puzzling in the first place.

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