

“Logically Private Laws”

Duncan MacIntosh

Dalhousie University

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Abstract: I argue that there could in principle be laws whose existence, legitimacy, goodness and efficacy as laws depend upon their being private, in this sense: their existence is not widely known. More specifically, the existence of the laws is not known to those who legitimately benefit from the laws and yet who would illegitimately destroy the laws were they to come to know of them; and the existence of the laws is not known to those who would illegitimately benefit from being able to circumvent the laws, and who could illegitimately circumvent them were they to come to know of them. (The idea is that the secrecy of these laws increases their efficacy against bad behaviour; and their secrecy makes it less likely that the public will lose its nerve and demand the rescinding of laws which are in fact in the public interest.) These laws are therefore in a way logically private: they cannot at one and the same time exist, have the foregoing virtues, and be public. After proposing some general conditions under which we might think such laws ought to be enacted, I moot logical objections to the very idea that there could be such laws, practical objections to their workability, and moral objections to their permissibility.

I Introduction: the Definition of Logically Private Laws

Wittgenstein taught us that there could not be a language on the proper speaking of which there could logically be only one expert. For then there would be no difference between

this person thinking she was using the language correctly and her actually using it correctly. This distinction requires that there be the logical possibility of someone other than her being expert enough to criticize or corroborate her usage. So there could not be a logically private language, one it was logically impossible for more than one person expertly to speak.

I wish to explore the possibility of something rather opposite-sounding about laws, namely, the idea that there could in principle be laws whose existence, legitimacy, goodness and efficacy as laws depend upon their being private, in this sense: their existence is not widely known. More specifically, the existence of the laws is not known to those who legitimately benefit from the laws and yet who would illegitimately destroy the laws were they to come to know of them; and the existence of the laws is not known to those who would illegitimately benefit from being able to circumvent the laws, and who could illegitimately circumvent them were they to come to know of them. The idea is that the secrecy of the laws increases their efficacy against bad behaviour; and their secrecy makes it less likely that the public will lose its nerve and demand the rescinding of laws which are in fact in the public interest. These laws are therefore in a way logically private: they cannot at one and the same time exist, have the foregoing virtues, and be public.

Of course, it seems there could also be laws with the properties that their being unknown is a harm to those whom good law should not harm, and a benefit to those whom good laws should not benefit. This would happen if corrupt or ideologically extreme agents acquired power of government and enacted secret laws benefiting their

cronies or alike-thinkers and harming the public interest. The secrecy of the laws allows the corrupt or extreme to proceed unmolested, and prevents the public from awakening to privations of its own interest. And, of course, one of the great objections to permitting logically private laws is that if our institutions permit the former, good private laws, they will be at risk of becoming corrupted and resulting in the latter, bad private laws, laws whose efficacy against the public interest and for the interest of the corrupt or extreme depend upon the laws' privacy. More on this in due course.

II Appropriate Conditions for the Enacting of Logically Private Laws

Assuming for now that such laws are conceptually intelligible, under what sorts of conditions should such laws be enacted? There are two: conditions of universal justice, and conditions of absolute war.

By conditions of universal justice, I mean this: suppose there is a total set of arrangements whose existence would be best for everyone, a deal, if you will, that offers everyone a higher expected utility than in any other deal. But suppose there are people incorrigibly too stupid or ignorant to recognize the deal for what it is, or too weak-willed to do their part in it. Suppose further that these people's behaviour in consequence of these deficiencies would ruin the deal for themselves and others. Those who can't recognize the deal for what it is might directly act against the deal; while those too weak-willed might balk at the severity of the laws needed to deal with the former sorts of people, and so might themselves wrongly worsen the deal for everyone. But now suppose that there are arrangements which would save the deal for others, and even for these problematic people, because, while the arrangements might result in the secret

manipulation of these people's circumstances, or in their incarceration or death, the arrangements still give them a better chance of a good life than would any other arrangements that also constituted a best deal for everyone else. Finally, suppose these arrangements would have to be brought about by secret means, for the reasons stated in the definition of logically private laws, namely, that, were the arrangements not secret, people who benefit from them would, from weakness of will, destroy the arrangements, thereby worsening the deal; and the people who are meant to be dealt with by the arrangements could evade the arrangements, again, worsening the deal. Then such laws should be instituted.

The other sorts of conditions where such laws should be instituted, conditions of absolute war, are when some deal is best for some people, another deal is best for other people, but no deal is best for all, and each deal puts its people at war with the people of the other deal. Then by right of self-defence, each group of people would be justified in trying to enact such laws to try to win in the battle with the others.

III Instances of Secret Laws

The following have been offered as instances of secret laws:

- it not being made public what the criteria are for being on a drone kill list
- it not being made public when a kill will occur
- there not being a public trial for an alleged terrorist
- there being non-public Presidential orders, e.g., authorizing interrogation techniques that would be widely seen as torture, or the killing of an American citizen, or the violation of the privacy of citizens, or the forbidding of the disclosing of violations of the privacy of

citizens, or the forbidding of the disclosing of the existence of means to the violation of the privacy of citizens

-there being secret treaties between nations

-there being private Presidential authorizing of exceptions to publically proclaimed principles, in what is arguably a kind of legalized hypocrisy

I suggest that under some conditions, any and all of these things can be the proper object of good logically private laws.

VI Possible Objections

We all have as our default intuition the idea that law must be public in every dimension. Naturally, this leads us to entertain objections to the very idea of a logically private law.

For example, **don't laws have to be enacted by a lawful authority?** Sure. But that doesn't mean their enactment has to be public – duly elected representatives could oversee the enacting of the law by duly enacted processes and just keep quiet about it.

But mustn't laws be public to make a difference? Well, some people must know of them, to be sure, namely, those who implement them. But not everyone must know of them; for laws can affect lives in ways other than by people deliberately obeying them. It can be enough that people exist within the social structures the laws create, for example, without people having to be aware that these structures are the product of a given law. This might be the case in secret treaty arrangements between governments: a peaceful co-existence of countries is secured; so the countries' citizens enjoy peace, but the law securing this is private and unknown to the public that enjoys it. (Maybe the law had to be secret because the signatories had to pacify their populations with public

posturing in a direction against the law, pacify the populations for their own good.

Perhaps for many years the populations had hated each other over past conflicts and are not ready to make peace, even though peace would be in everyone's best true interest.

The populations' leaders see this, and so deceive their own populations in treaties, while publically posturing in the attitudes their populations expect publically. There are many current examples in the politics of the Middle East.) Moreover, its merely being suspected that something is the law could induce people to comply with the law. It needn't be publically known that something actually is the law.

But mustn't a law be in the public interest in order to be a good law? Let's say yes (although that's problematic; for under some circumstances it could be that the public interest should yield to some individual's good, and this should then be enshrined into law). **But then doesn't this require that the public be consulted in order for its interests to inform the content of the law? And so doesn't this require in effect that the public approve of and so know of the law?** No and no. Even if a law must be in the public interest in order to be a good law, it doesn't follow that the best or only way to produce such a law is by public consultation in the deliberate production of law. Instead, it might be better done by social experts and technocrats who have privately polled or otherwise discovered the public interest, and who thereafter are the only ones who know of the law.

But mustn't the law express the public will in order to be legitimate? Let's say yes (although that's problematic, for the public will might be evil and therefore not the kind of thing which should find its way into good law). **But doesn't this require the**

public to know of and expressly approve the law? No. Again, the public will might be discovered other than by collectively and overtly asking the public. And in fact, a law might, under some circumstances, more fully express the public will if it is arrived at by some process other than one involving public, deliberative democracy, as where, in a given year, the public is distracted into misunderstanding its own will by demagoguery, superficialities of personality, or local, temporary, unrepresentative events. (In Canada, capital punishment is illegal. The issue sometimes comes up, however, usually in response to some horrible crime which inflames the public. But the leaders of Canada's political parties have for many years had a little known pact never to let legislation be proposed re-instituting capital punishment. The leaders think it would not express the angels of their citizens' better natures, i.e., their true wills. Something similar occurs for the abortion issue. Abortion is legal under many conditions in Canada; and the country's political parties' leaders try to head off private members' bills to make it illegal.)

But if a law is secret, won't there be slippery slope dangers of its abuse? Not necessarily. There could be oversight by elected representatives who, nevertheless, do not apprise the public of what they are doing. Besides, publicity of laws is no guarantee against slippery slopes either – the public can become inured, can uncritically fail to make key distinctions needed to block slides down the slope; and in these instances, perhaps better that matters have been controlled by professionally critical thinkers who are habitually on guard against this sort of thing. At any rate, perhaps the best insurance against such things is good general education of those who will eventually have legislative power, and the electing of people of good character, broadly democratic and

liberal values and critical intelligence to these offices. (In this, I agree with Michael Skerker, “A Foundation for Government Secrecy”, THIS CONFERENCE, p. 27.)

But surely fairness, and so the ultimate legitimacy and goodness of the law, requires that the law be published in order to give people fair warning before they violate it, and before they incur punishment for violating it? Not necessarily. First, suppose we don't expect the law to deter, and the reason for the law isn't to attempt deterrence; it's to make legitimate the use of force to deal with a certain kind of behaviour that we expect some people to attempt to engage in whether or not there exists this law against that behaviour. Then it's not clear that any sort of fair warning is required, especially if giving the warning would only make it more likely that these people would get away with such behaviour.

Thus it is not always true that the main or only point of a law is to increase desirable behaviour or decrease undesirable behaviour by means of people coming to obey the law upon learning that it is the law. Rather, it can be that the means by which the existence of the law makes good behaviour more likely is by its authorizing other people to directly intervene in people's behaviour, authorizing other people to control the behaviour of those whose behaviour the law is designed to regulate, or even, in extreme cases, to incarcerate or kill those who behave in ways against the law. Laws therefore don't necessarily operate by their publicity having a direct effect on their target population; they can also or instead operate by inducing other agents to act to control the target population.

But surely for something to exist and operate in a society qua law, the law

must be publically known? Otherwise, the role this thing is playing isn't that of a law. This is false, partly for the reasons just discussed, but also because most of law is non-public in the following sense: most people don't know exactly what the laws are, people who violate laws don't know if or exactly when they will be arrested, and they don't know exactly what punishments they will face. This latter fact is partly from ignorance of the rules about punishment, and partly because often the matter requires a judge's or jury's decision in order to become determinate. After all, the law provides for a range of possible punishments, and then the judge's and/or jury's judgment chooses from that range. Moreover, most laws are not exactly understood by most people. And most people don't know exactly what happens to most law violators. And yet, all of this notwithstanding, no one can argue that it is a moral surprise when they are found to have broken a law, when they are arrested, when they face a punishment. (This is at best strategically surprising; and in the case of laws against terrorists, the element of strategic surprise is a necessary part of effective enforcement.) That is, moral outrage from those who are accosted by agents of the law is not appropriate, and is untypical. Remarkably, when the laws are good laws, one can work out what they are –by which I mean what is in their spirit, although not necessarily what is in their exact letter – by asking what they ought to be. One doesn't need to be told. And this is what informs one's expectations and one's sense of justice about the matter.

Indeed, because of all of this, terrorists, like everybody else, know in some sense what the law is, and what it ought to be. And they don't even disagree with us about what it ought to be – they agree that what they do is, ordinarily, wrong. They don't even think

it ought to be legal for them to do what they do in pursuit of their cause. They just think their cause justifies breaking laws. Of course, they don't agree with every law of the U.S.; and they want certain additional laws, e.g., about the behaviour of women. But they agree in general that there should be laws against killing, theft, torture, slander, libel, etc. And they are generally in favour of the rule of law, even where they disagree about particular laws. In effect even those who are subject to punishment by a secret law could very well be imagined to satisfy the Hobbesian condition on the justice of punishment that the punished in some sense consent to their own punishment – they recognized the illegality of what they do, and the appropriateness of the punishing of such illegal behaviour.

There is a more esoteric but nonetheless plausible idea from Wittgenstein that is relevant to this issue. Before Wittgenstein, it was thought that people learn things like the rules of language, or like the laws of the land, by being given some language that expresses these things, accompanied by a few examples of proper use of language, a few examples of proper and improper conduct in accord with the law, then people generalize from this data to a conception of what behaviours the rules and laws require.

Unfortunately, due to the general phenomenon of the under-determination of theory by data, any number of conjectures about what the rules and laws require are compatible with any finite set of examples; that is, the examples cannot suffice to dictate how rightly to carry on from them. So it cannot be that this is how people learn the rules/laws; and that cannot be in what knowledge of the rules/laws consists. Rather, “knowing the rules/laws” is just a matter of being disposed to carry on from the examples in ways to which the general community will not object. That is, what is involved is a shared

tendency of people to carry on in the same ways from the same precedents. And this is something that may, and indeed, must pre-exist instruction by example. So our agreeing to a practice can't be our literally following a law conceived as a verbal instruction. It's not like, when people behave law-abidingly, they do so in consequence of having the law books before them, running their finger under the sentences describing the law like someone following a recipe in a cook book. It's almost never like that. Every now and then it is, e.g., when trying to follow a conceptually difficult change in rules about income-tax. But I do not know a single law of my country. I couldn't recite a single one of them. And yet I am inveterately law-abiding. I have the ability to behave legally. We're all like this. Therefore, it cannot be a condition on something's being the law that such an instruction is made public as an explicit rule. Rather, a law is in place just so far as we would all go on in the same way; and perhaps just in so far as we would not be morally astonished to discover that there is a law written down about this somewhere, that some due process enshrined it into official law.

In fact, I suspect that a lot of the controversy about non-public laws isn't really about their secrecy. It's really about their content, that is, about whether they are correct laws, that is, about how we ought all to carry on given how we've carried on in the past, and given the new circumstances we face. The controversy is really about a failure of national consensus concerning the correctness of the behaviours these laws authorize.

We've all heard how President Bush authorized torture, how Presidents Bush and Obama authorized the use of technology to spy on citizens' electronic communications, how both ordered that this technology and this use of it be kept from the public – how

they in effect made it illegal to disclose these things. And now, after the whistles have been blown, there is outrage.

But imagine instead that President Bush had secretly outlawed torture rather than secretly permitted it. Or that Presidents Bush and Obama has secretly outlawed use of technology to monitor electronic communication between citizens. Well, we'd all be applauding; we'd think these were wonderful uses of Presidential authority in time of war, good secret laws, laws that were rightfully kept secret in order not to embolden the enemy, and so on. Unless of course there had been a sequence of even worse 9-11s, and a lot of public evidence that if only the Presidents had required torture and spying, all of it could have been prevented. Then now we'd all be castigating them for their failures of moral courage, for their excessively tender-hearted reluctance to order the hard things, to be our Dark Knights, to take moral stain upon themselves in order to keep us all safe.

But surely if we all think and act publically as if the law was one way, when, secretly, it's another, then our law, our nation, and we ourselves in so far as we are represented by, and think of ourselves as endorsing, our law, our nation, are hypocrites. And isn't hypocrisy in law a decisive objection to something's being good law? Relatedly, the law is in a way an ambassador for the people whose law it is; and shouldn't they know what laws their system is creating? And if their system's laws are conflicted, isn't that a problem for citizen self-concept and self-identity?

I begin with the hypocrisy issue. I suggest that, first, arguably what's going on isn't hypocrisy; and that, second, if it is hypocrisy, it's not, in this instance, bad. Suppose

American public policy forbids torture; suppose President Bush secretly authorizes water boarding. There is a dispute about whether that's torture. Let's say it is. Is America now hypocritical? Not necessarily. America may in effect be saying, "we think torture is generally bad, we think it shouldn't be used in ordinary times, we think we should all work to bring about a world in which there are no times so extraordinary that its use would ever be called for; but for now, in this imperfect world, in these extraordinary times, we'll use it if we have to." This is a consistent message, and it is not trying to have anything both ways. Nor would the following message be hypocrisy: "we can use torture for our cause because our cause is good, but you can't use it for your cause, because your cause isn't good." Since in one case the ends justify the means and in the other, not, the cases are different and there is no hypocrisy. But suppose the message is literally, "do as we say, not as we do", with the acknowledgment that we are proposing to use torture secretly in exactly the same circumstances as we publically forbid it. This might well be hypocrisy. But is it necessarily bad? Suppose torture would in fact advance our cause, and suppose our cause is good. And suppose that torture would only advance our cause insofar as we were generally against it, and generally seen to be against it (even if we're not in fact against it in this very narrow, limited case). Then our multiple, conflicting messaging could be a good thing. It allows those who oppose torture to endorse us for our public stance on the issue. It allows those who think an exception needs to be made in these extraordinary times to endorse us for our secret real-politik. Our secret stance makes our enemies fear us – which, incidentally, makes it less likely that we'll actually have to use torture, for the vague threat of it will be enough – and our public stance makes our

potential allies more disposed to ally with us, since they like to think of themselves as people against torture; and their allying is for a good cause, and, incidentally, also makes the need for torture less likely, because now the enemy sees it faces overwhelming force in opposition and so will more likely give up. For all of these reasons, consistency is over-rated as a feature of good law.

And I think something similar might be said about whether consistency is always a good and necessary thing for the ambassadorial function of law, and for the role of our relation to it in our self-conception and self-identity as citizens. That is, a greyed out, even conflicted identity isn't necessarily always a bad thing. (Here I'm seeking to make contact with Christopher Kutz, "The Repugnancy of Secret Law", THIS CONFERENCE.)

I have said that a good logically private law has the property that, were it to become public, it would wrongly be voted away – the electorate would demand that it be rescinded. **But surely if a law is such that, were it to become public, it would be voted away, then the law must be a bad law?** Not necessarily. After all, sometimes the public, in a moment of clarity, messages to its government that it wants something done, wants a war won, for example. But it is known that the public can experience fading resolve and weakness of will. This often happens in war-time. It is why upon warring, the government invariably propagandizes the enemy as more evil than they really are, the war as going better than it really is, the number of casualties as less than they really are. Now suppose that, in the public's initial moment of clarity, the President enacts laws that have a good chance of winning the war. In order to protect the public from its own failure of

will, perhaps the laws should be kept secret. Paradigms are laws suspending rights to privacy, public trial and freedom from torture.

Here is an example: suppose the nation is attacked, the President, with popular support from a terrified population, announces that he will be making secret Presidential decrees to help deal with the urgency—perhaps this is immediately post 9-11. The President then decrees to security agents that it is legally permissible and obligatory for national security agents to spy on all citizens (in hopes of catching terrorists who walk among us); and it is illegal to tell citizens that the technology exists to make this possible and to tell citizens that it is being so used (for then the terrorists among us will be able to evade the technology, and, in any case, the citizenry would lose the resolve embodied in their commander in chief, and insist that the violations of citizen privacy stop). Further, the President decrees that it is legally permissible and obligatory secretly to try citizens for conspiracy to commit terrorists acts where the convicting evidence would, were it to become public, make citizens aware of the foregoing technology and its use (for all of the foregoing reasons). And the President decrees that it is legally permissible and obligatory to secretly impose punishment on those convicted – e.g., death, where this is the only way to prevent a terrorist act; and incarceration otherwise (again, for all of the foregoing reasons). And of course, the example is not just hypothetical. It's what happened.

Notice, by the way, that there are logically possible logically private laws that don't involve coercion, torture, or any other such negative thing. Suppose, for example, that Presidents Bush and Obama had instead used executive authority to bribe away or otherwise non-violently eliminate all conflict, making it part of secret law to pay off

terrorists with enormous amounts of money, and so on, instead of using these resources on kinetic weapons in physical wars; or had used the money in enormously expensive sorts of secret social work, psychotherapy, education, subsidies, and so on, proceeding on the assumption that most of America's enemies are such because they are afraid, ignorant, ill-educated, traumatized from past conflict, hopeless, under-affiliated, confused by self-defeating, self-oppressing ideologies infused in them by problematically illiberal cultures, under-schooled in the self-liberatory tools of critical thinking. Suppose the Presidents had decided to deal with all of this with "love bombs", not real bombs, soft-skills rather than weapons. And suppose the public would never have accepted this, thinking instead along the lines that the attacks on America were unjustified, and should be met with retaliation and revenge, not paternalistic indulgence, therapy, and constructive nation-building. Again, there would have been an argument for making these sorts of legal initiatives logically private. After all, were they publicized, the public would have objected; and it's conceivable that the unscrupulous would have tried to horn in on the benefits being lavished. My point is that it is not just prima facie vile things that may have to be stealthed in efficacious law. Note that this may tend to mean the issue of secret laws is not itself a left/ right issue. For there could be logically secret laws preferred by left-wingers and bleeding hearts, others by right-wingers and hawks.

A final point about whether a good law should be able to pass public scrutiny: first, I've been suggesting that sometimes laws must be secret to protect those whom they are meant to benefit from their own weakness of will. But situations change, laws that once were of moment become obsolete, the terrorist threat is overcome, it's time for

things to return to normal. Or maybe there is still a threat, but the nation matures in its conception of it, sees it more proportionately (after all, only 2,000 people lost their lives, the number of terrorists still active is small, their capacity to harm us, smallish, etc., perhaps the nation's agenda can afford to be less focussed on the threat, maybe we over-reacted, maybe our war-conception of how to respond is only making things worse, etc., etc.) This may mean that secret laws properly have a half-life – their correctness tends to decay. In fact, the irony here is that, insofar as they tended to work, they tend eventually to be vilified – secret laws allowing torture and citizen spying eliminate the threat (or at least the mind-set that created the laws does things that eliminate the threat, even if the secret laws aren't necessarily responsible for this), and then not only get renounced, but get retro-actively condemned as over-reactive, unnecessary, mendacious. At any rate, the fact that they had to be enacted secretly doesn't mean they should be permanent. Trying to save a population from its own legislative weakness of will is one thing, failing to recognize that sometimes the population's will rationally changes, is another. This recognition is a responsibility of the leadership in reviewing secret laws and asking whether there is still a good rationale for them. In this, they are like any other law.

Next, Christopher Kutz, in "The Repugnancy of Secret Law", THIS CONFERENCE, says: "I argue that a distinction between two forms of secrecy--between direct secrecy, where the fact of secrecy is itself known, and meta-secrecy, where the secret itself is unknown--provides a key to the puzzle. When the state makes clear the bounds of its secrets, it remains committed to a conception of limits to the ruler's power, and hence to one of the central bases of legitimacy. Meta-secrecy obscures the limits of

state power, and so undermines the state's claim to legitimacy." **Aren't my logically private laws in effect instances of meta-secrecy, and therefore the illegitimate artifacts of a government itself illegitimate?**

Well, yes, I think they are instances of meta-secrecy; but no, I don't think they go too far, for the reason that I don't think meta-secrecy is the thing Kutz thinks. I agree that the state loses legitimacy if it accepts no limits on its power. But the mere fact that the state has secrets themselves secret is not an instance of an over-reach of power. It is, after all, fully consistent with there being oversight by elected officials, oversight by the judiciary, oversight by branches of government that were designed to ride herd on each other. There are other limitations too, imposed by the requirements of re-election for all levels of government. Kutz seems to be thinking that when laws are secret, the law issuer has no limit on its power. But in fact, as we've just seen, the two issues are quite separate.

It is certainly true that, as Wittgenstein would tell us, there is only such a thing as something legitimately being a law if there is a distinction between someone saying it's a law, and it's actually being a law. It is probably also true that, insofar as a state features rule by law vs. rule by decree, there must be a distinction between, say, the President saying that something is a law, and it's actually being a law. That is, his mere saying that it's a law can't make it so. But the later conditions are met by the fact that the law-maker in my picture is duly elected, is enacting secret law by provisions enshrined in the constitution –itself a document created by legitimate means – and has those laws examined by the judiciary and by oversight committees from the elected bodies of government, is accountable to these bodies, and so on. This means that it is not sufficient

for something becoming law that the President so decrees it; all these other hurdles must be overcome. Of course it will be true that, if we take all these hurdles, and call them the government, then if the government says something's a law, then it is. But this is exactly as it should be, and cannot be called the state accepting no limits on its power. Rather, its accepting of limits is its producing laws by a process that includes all these checks and balances.

Perhaps Kutz thinks that full legitimacy requires full accountability – accountability to everyone whom the law is to govern. Now, in one sense, the process I've just described yields that very thing – we elect people who elect people who oversee the process of even secret law generation for us, so there is accountability all the way down. Of course, what there is not is every person to whom the laws apply perusing candidate laws and voting on them. But that is not a reasonable ambition of legitimate government. For one thing, it's impossible – see above on the competence of people as existing under laws. And for another thing, it's not necessary. As the philosopher, Hilary Putnam, tells us, what is needed for distinctions to be real is for there to be such a thing as the possibility of expertise upon them. He calls this the distribution of linguistic labour. The world is divided into natural kinds, for example – substances like gold and water – and we have words for these different kinds; but we are not all expert on what counts as instances of each kind, and so on what instances deserve to be called by the names that are the words for those kinds. I can't tell the difference between gold and fools gold, but an expert can, and because of that, the distinction is a real distinction in my language. And the same is true of genuine law and non-genuine law, and of good genuine law and

bad genuine law. What makes it true that something the President decrees to be a law actually becomes a law is that it becomes a law only if it passed oversight by all of the foregoing institutions. And some of those institutions are operated by experts on the permissibility of something's being enacted into law. Moreover, all of those bodies, the President included, are accountable to tests for something being not just a genuine law, but a good one, one that is in the public interest. So here too, there is a distinction between the President saying something is a good law, and its actually being a good law. And none of this requires explicit consulting of every person to whom a law is to apply.

Conclusion

There can and ought sometimes to be logically private laws, laws whose existence, legitimacy, goodness and efficacy as laws depend upon 1) their not being known to those who legitimately benefit from the laws and yet who would illegitimately destroy the laws were they to come to know of them; and 2) their not being known to those who would illegitimately benefit from being able to circumvent the laws, and who could illegitimately circumvent them were they to come to know of them.