FORMALIZATION, INVENTION, JUSTIFICATION

1. ONTOLOGICAL AND EPISTEMOLOGICAL CONDITIONS

In any instance of justification there is a conditioned, \( X \), whose conditions are said to be fulfilled. Thus: \( X \), if the set of conditions, \( C \). And \( C \). Therefore, \( X \). This justificatory structure holds in every domain.

The conditioned, \( X \), is a proposition. There is a distinction between ontological and epistemological conditions. Tarski's suggestion (Tarski [1944] 1949) that the proposition expressed in the sentence 'Snow is white' is true iff it is the case that snow is white, denotes the ontological condition of the truth of the proposition. The ontological condition does not epistemologically justify the proposition. If I am asked why I claim that snow is white, I do not answer simply: 'Because it is white'. Rather I give an answer like: 'Because when I look out my window and see what I have been taught to call "snow", I get the impression that it is the colour that I have been taught to call "white".' This may not be thought to be a very satisfactory answer, that is, the questioner may not think that this is sufficient evidence for affirming the proposition, but the sole present point is that it is a different kind of answer from the ontological answer. When presented with any proposition whatsoever one knows at once the ontological condition of its being true; namely, that what it affirms is the case. Contrariwise, one does not immediately know the epistemological conditions of whatsoever proposition. To know the relevant epistemological conditions is to know the domain within which the proposition belongs.

In the formal expression of the basic form of inference, '\( X \) if \( C \), And \( C \), So \( X \)', the major premiss, '\( X \) if \( C \)', asserts not that \( C \) holds but that \( C \) is the relevant condition. The minor premiss, 'And \( C \)', asserts that \( C \) holds. The justified conclusion asserts that \( X \) holds because \( C \) holds and \( C \) is the relevant condition of \( X \).

2. THE STRUCTURE OF THE CONDITIONED ENTITLEMENT

What holds for every domain, holds for the jural domain, but to distinguish the jural domain it will be necessary to describe the character of the conditioned, \( X \) and the set of relevant conditions, \( C \).

In the jural domain the internal structure of the conditioned is \( RxAy \), where \( x \) and \( y \) are legal persons; \( A \) is the entitlement or what is due; and \( RxAy \) is that

x is entitled to $A$ from $y$. Thus, $RxAy$ if $C$, where $C$ is the set of relevant conditions and $RxAy$ is the consequent relation of entitlement.

This is an empirical claim about rules of justice and decisions of courts. It pretends to denote what is, as a matter of fact, the case, not what must be the case. Thus, it is perfectly possible to imagine a criminal process where the conclusion of the Court is simply of the form: ‘$x$ is guilty of the crime of which he stood accused’, or: ‘$x$ is not guilty . . .’, or: ‘The accusation against $x$ is not proven’. But, as a matter, not of necessity but of fact, this type of judgement, although it forms an important part of the Court’s process, is not its conclusion. The conclusion is of the type: ‘$x$, having been declared guilty of the crime of which he stood accused, is sentenced to $S$,’ where $S$ is what, in the judgement of the Court, is due to $x$ from the State.2

This analysis accepts the division between crime and tort which, again, is a division of convenience, perhaps of great convenience and of considerable antiquity; it is certainly not a matter of necessity. Thus, where $S$ is interpreted as ‘$S$ is due to $x$ from the State’ this is a particular application of the general structure $RxAy$ of a particular criminal procedure in which $x$ is ‘the Criminal’, $y$ is ‘the State’ and $A$ is ‘the Sentence’.

The analysis illustrates that, even where, at first glance, the Court’s decision is not of the form $RxAy$, it turns out to be so on closer investigation.

In any attempt to use the structure $RxAy$ it will be necessary to specify what stands for $x$, what for $y$ and what for $A$. Some further specification is given below.

3. ENTITLEMENTS AND RULES

Not all rules are of this kind.

Rules such as ‘Do not drive vehicles in this park’, ‘Do not park on this side of the road’, ‘No smoking’, ‘Ships must display shapes by day and lights by night’, are not of this kind.

There is no suggestion that is uninteresting to study such rules. But they are not rules of justice and it is misleading to confuse them with rules of justice and to take them or their like as paradigms when discussing justice and its administration.3

Suppose a Court to be confronted with someone accused of driving a vehicle in the park where the only rule is ‘Do not drive vehicles in this park’. The Court could consider the evidence and come to the conclusion that the accused was or was not in contravention of the rule but it could go no further; it could not assign an entitlement for the clear and simple reason that