TÛ-TÛ

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On the Noîsulli Islands in the South Pacific lives the Noît-cif tribe, generally regarded as one of the most primitive peoples to be found in the world to-day. Their civilization has recently been described by the Illyrian anthropologist Ybodon,[1] from whose account the following is taken.

This tribe, according to Mr. Ybodon, holds the belief that in the case of an infringement of certain taboos—for example, if a man encounters his mother-in-law, or if a totem animal is killed, or if someone has eaten of the food prepared for the chief—there arises what is called *tû-tû*. They also say that the person who committed the infringement has "become *tû-tû*". It is very difficult to explain what is meant by this. Perhaps the nearest one can get to an explanation is to say that *tû-tû* is conceived of as a kind of dangerous force or infection which attaches to the guilty person and threatens the whole community with disaster. For this reason a person who has become *tû-tû* must be subjected to a special ceremony of purification.

This interesting but far from unusual tale led me to the following reflections.

It is obvious that the Noît-cif tribe dwells in a state of darkest superstition. "*Tû-tû*" is of course nothing at all, a word devoid of any meaning whatever. To be sure, the above situations of infringement of taboo give rise to various natural effects (such as a feeling of dread and terror), but obviously it is not these, any more than any other demonstrable phenomena, which are designated as *tû-tû*. The talk about "*tû-tû*" is pure nonsense.

Nevertheless, and this is what is remarkable, from the accounts given by Mr. Ybodon it appears that this word, in spite of its lack of meaning, has a function to perform in the daily language of the people. The *tû-tû* pronouncements seem able to fulfil the two main functions of all language: to *prescribe* and to *describe*: or—to be more explicit—to express commands or rules and to make assertions about facts.

[1] Ydobon, *The Noît-cifonian Way of Life. Studies in Taboo and Tû-tû* (Erewhon 1950).

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I ought perhaps to say a few words here about what is meant by the terms "assertion" and "prescription".[2]

If I say, in three different languages, "My father is dead", "Mein Vater ist gestorben" and "Mon père est mort", we have three different sentences, but one assertion, and one only. Despite their differing linguistic forms, all three sentences refer to one and the same state of affairs ("my father's being dead"), and this state of affairs is asserted as existing in reality, as distinct from being merely imagined. The state of affairs to which a sentence refers is called its semantic reference. It can more precisely be defined as that state of affairs which is related to the assertion in such a way that if the state of affairs be assumed actually to exist, then the assertion is assumed to be true. What the semantic reference of a sentence is will depend upon the linguistic usages prevailing in the community. According to these usages a certain definite state of affairs is the stimulus to saying "My father is dead". This state of affairs constitutes the semantic reference of the pronouncement and can be established quite independently of any ideas the speaker may possibly have concerning death—for example, that the soul at death departs from the body.

On the other hand, if I say to my son "Shut the door!", this sentence is clearly not the expression of any assertion. True, it has reference to a state of affairs, but in a quite different way. This state of affairs ("the door's being shut") is not indicated as actually existing, but is presented as a guide for my son's behaviour. Such pronouncements are said to be the expression of a prescription.

Mr. Ybodon's account allows us to assume, as has been said, that the pronouncements of *tû-tû*, despite their apparent meaninglessness, may very well function as the expression both of assertions and of prescriptions. Now let ut see how this can be explained.

(*a*) *The function of prescription*

According to Mr. Ybodon's account, within the community of the Noít-cif tribe there are in use, among others, the following two pronouncements:

[2] On the distinction between descriptive and prescriptive language, see e.g. R. M. Hare, *The Language of Morals* (Oxford: Clarendon Press, 1952), pp. 1 f.

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1. *If a person has eaten of the chief's food he is tû-tû.*

2. *If a person is tû-tû, he shall be subjected to a ceremony of purification.*

Now it is plain that quite apart from what "*tû-tû*" stands for, or even whether it stands for anything at all, these two pronouncements, when combined in accordance with the usual rules of logic, will amount to the same thing as the following pronouncement:

3. *If a person has eaten of the chief's food he shall be subjected to a ceremony of purification,*

which obviously is a completely meaningful prescription pronouncement, without the slightest trace of mysticism. This result is not really surprising, for it is simply due to the fact that we are here using a technique of expression of the same kind as this: "When $x = y$ and $y = z$, then $x = z$", a proposition which holds good whatever "*y*" stands for, or even if it stands for nothing at all.

(*b*) *The function of assertion*

Although the word "*tû-tû*" in itself has no meaning whatever, yet the pronouncements in which this word occurs are not made in a haphazard fashion. Like other pronouncements of assertion they are stimulated in conformity with the prevailing linguistic customs by quite definite states of affairs. This explains why the *tû-tû* pronouncements do have semantic reference although the word is meaningless. The pronouncement of the assertion "N.N. is *tû-tû*" clearly occurs in definite semantic connection with a complex situation in which two parts can be distinguished:

(1) The state of affairs in which N.N. has either eaten of the chief's food or has killed a totem animal or has encountered his mother-in-law, etc. (Hereafter called "state of affairs 1".)

(2) The state of affairs in which the valid norm which requires ceremonial purification is applicable to N.N., which may more precisely be paraphrased as that state of affairs in which if N.N. does not submit himself to this ceremony he will in all probability be exposed to a given reaction on the part of the community (for example, he may be put to death). (Hereafter called "state of affairs 2".)

Given the existence of this twofold state of affairs, the pronouncement that N.N. is *tû-tû* will be assumed to be true, and thus

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it is this state of affairs which in consequence of the given definition is the semantic reference of the pronouncement. It is quite another matter that the members of the Noît-cif tribe are not themselves aware of this, but rather, in their superstitious imaginings, ascribe to the pronouncement a different reference (the occurrence of a dangerous force) from that which it has in reality. This, however, does not prevent its being possible to discuss quite reasonably whether or not a person in given circumstances really is *tû-tû*. The reasoning, then, sets out to show whether the person in question has committed one of the relevant infringements of taboo, and whether the purification norm is, or is not, applicable to him in consequence.

An assertion to the effect that N.N. is *tû-tû* can thus be verified by proving the existence of either the first or the second state of affairs. It makes no difference which, because according to the ideology prevailing in the tribe these two states of affairs are always bound up with one another. It is therefore equally correct to say "N.N. is *tû-tû*, because he has eaten of the chief's food (and therefore must be subjected to a ceremonial purification)"; or "N.N. is *tû-tû*, because the purification norm is applicable to him (because he has eaten of the chief's food)". The latter does not preclude the possibility of also saying at the same time "The purification norm is applicable to N.N. because he is *tû-tû* (because he has eaten of the chief's food)". The vicious circle which apparently results here is in reality no such thing, since the word "*tû-tû*" stands for nothing whatever, and there thus exists no relation, either causal or logical, between the presumed *tû-tû* phenomenon and the application of the purification norm. In reality all three statements—as indicated in the added parentheses—express, each in its own way, nothing more than that the person who has eaten of the chief's food shall undergo a ceremonial purification.

What has been said here in no way upsets the assertion that "*tû-tû*" is a meaningless word.[3] It is only the statement "N.N. is *tû-tû*" to which *taken in its entirety* semantic reference can be ascribed. But this reference is not of such a kind that in it there can be distinguished a certain reality or quality which can be ascribed to N.N. and which corresponds to the word "*tû-tû*". The

[3] Strictly speaking, I ought to explain here what I understand by the meaning of a word, or its semantic reference. But this is a difficult question, and I do not think a general discussion of it is necessary to make plain what is meant in the present context.

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form of the statement is inadequate in relation to what is referred to, and this inadequacy is of course a consequence of the superstitious beliefs held by the tribe.

Thus any attempt to ascribe to the word *"tû-tû"* an independent semantic reference is doomed to failure in propositions like the following:

1. *If a person has eaten of the chief's food he is tû-tû.*

2. *If a person is tû-tû he shall be subjected to a ceremony of purification.*

One might care to make the attempt in the following possible ways:

(*a*) In proposition 1, for *"tû-tû"* substitute state of affairs 2; and in proposition 2, for *"tû-tû"* substitute state of affairs 1. Each will then acquire a meaning on its own.[4]

But this solution is inadmissible, because the two propositions constitute the major and minor premises for the conclusion that a person who has eaten of the chief's food shall be subjected to a ceremony of purification. The word *"tû-tû"*, therefore, if it means anything at all, must mean the same thing in both of them.

(*b*) In both propositions, for *"tû-tû"* substitute state of affairs 1. This will not do, for in that case proposition 1 becomes analytically void and thus without any semantic reference whatever. For the sense of it will be:

"When a person has eaten of the chief's food, the state of affairs exists where he has either eaten of the chief's food or killed a totem animal or . . ."

(To substitute for *"tû-tû"* state of affairs 1, defined as "a state of affairs which makes a person *tû-tû*, will naturally get us nowhere, since the *tû-tû* symbol is not thereby removed.)

(*c*) In both propositions, for *"tû-tû"* substitute state of affairs 2. This will not do either, for in that case proposition 2 becomes analytically void, as can be demonstrated by exact analogy with the above paragraph.

Mr. Ydobon tells of a Swedish missionary who had worked for a number of years among the Noît-cif tribe, ardently endeavouring

[4] Proposition 1 would mean, "If a person has eaten of the chief's food, he shall be subjected to a ceremony of purification"; and proposition 2, "If a person has either eaten of the chief's food or . . . he shall be subjected to a ceremony of purification".

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to make the natives understand that *"tû-tû"* signified nothing whatever, and that it was an abominable heathen superstition to maintain that something mystical and indeterminable comes into being because a man encounters his mother-in-law. In this, of course, the good man was quite right. However, it was an excess of zeal which led him to denounce anyone who continued to use the word *"tû-tû"* as a sinful heathen. In so doing he overlooked what has been demonstrated in the foregoing, namely, that quite apart from the fact that the word in itself has no semantic reference whatever, and quite apart from the ideas of mystical forces attaching to it, pronouncements in which the word occurs can nevertheless function effectively as the expression of prescriptions and assertions.

Of course it would be possible to omit this meaningless word altogether, and instead of the circumlocution:

1. *He who kills a totem animal becomes tû-tû;*

2. *He who is tû-tû shall undergo a ceremony of purification;*

to use the straightforward statement:

3. *He who has killed a totem animal shall undergo a ceremony of purification.*

One might therefore ask whether—when people have realized that *"tû-tû"* is nothing but an illusion—it would not be an advantage to follow this line. As I shall proceed to show later, however, this is not the case. On the contrary, sound reasons based on the technique of formulation may be adduced for continuing to make use of the *"tû-tû"* construction.

However, although the *"tû-tû"* formulation may have certain advantages from the point of view of technique, it must be admitted that it *could* in certain cases lead to irrational results if against all better judgement the idea that *"tû-tû"* is a reality has been allowed to exert its influence. If this should be the case, it must be the task of criticism to demonstrate the error and to cleanse one's thinking of the dross of such imaginary ideas. But even so, there would be no grounds for giving up the *"tû-tû"* terminology.

But perhaps it is now time to drop all pretence and openly admit what the reader must by now have discovered, namely

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that the allegory concerns ourselves. It is the argument concerning the use of terms such as "right" and "duty" approached from a new angle.[5] For our legal rules are in a wide measure couched in a *"tû-tû"* terminology. We find the following phrases, for example, in legal language as used in statutes and the administration of justice:

1. *If a loan is granted, there comes into being a claim;*
2. *If a claim exists, then payment shall be made on the day it falls due,*

which is only a roundabout way of saying:

3. *If a loan is granted, then payment shall be made on the day it falls due.*

That "claim" mentioned in (1) and (2), but not in (3), is obviously, like *"tû-tû"*, not a real thing; it is nothing at all, merely a word, an empty word devoid of all semantic reference. Similarly, our assertion to the effect that the borrower becomes "pledged" corresponds to the allegorical tribe's assertion that the person who kills totem animal becomes *"tû-tû"*.

We too, then, express ourselves as though something had come into being between the conditioning fact (juristic fact) and the conditioned legal consequence, namely, a claim, a right, which like an intervening vehicle or causal connecting link promotes an effect or provides the basis for a legal consequence. Nor, really, can we wholly deny that this terminology is associated for us with

[5] For the benefit of non-Scandinavians it may be revealed that the "Swedish missionary" of the fable refers to the late Professor A. V. Lundstedt. Throughout his writings (see e.g. *Die Unwissenschaftlichkeit der Rechtswissenschaft* vol. 1 (1932), pp. 35 f.) he has emphasized that the only demonstrable reality in the so-called situations of rights consists in the function of the machinery of the law. Under given conditions a person can, according to the law in force, institute proceedings and thereby set the machinery of the law in motion, with the result that the public power is exercised for his benefit. He can achieve judgement and execution by force, creating for himself an advantageous position, a possibility of action, an economic benefit. And that is all.

One can readily agree with the author up to this point. But then, instead of proceeding to ask what is characteristic of the situations designated as "rights" and how the concept of rights may be analyzed and used as a tool for the description of these situations—as will be attempted in the following pages—Lundstedt gives a peculiar twist to his critical account by saying that rights do not exist, and that anybody using this term is talking rubbish about something that does not exist.

Similar views have been defended by Leon Duguit, *Traité de droit constitutionnel* t. I (3rd ed. 1927), and earlier by Jeremy Bentham (see for example, *Works*, published by John Bowring (1843), vol. I, pp. 248, 358, 361; vol. II, 497 f. and particularly *The Limits of Jurisprudence Defined* (first published 1945), pp. 57 f.).

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more or less indefinite ideas that a right is a power of an incorporeal nature, a kind of inner, invisible dominion over the object of the right, a power manifested in, but nevertheless different from, the exercise of force (judgement and execution) by means of which the factual and apparent use and enjoyment of the rights is effectuated.

In this way, it must be admitted, our terminology and our ideas bear a considerable structural resemblance to primitive magic thought concerning the invocation of supernatural powers which in their turn are converted into factual effects. Nor can we deny the possibility that this resemblance is in reality rooted in a tradition, which, bound up with language and its power over thought, is an age-old legacy from the infancy of our civilization.[6] But after these admissions have been made, there still remains the important question, whether sound, rational grounds may be adduced in favour of the retention of a *"tû-tû"* presentation of legal rules, i.e. a form of circumlocution in which between the juristic fact and the legal consequence there are inserted imaginary rights. If this question is to be answered in the affirmative, the ban on the mention of rights must be lifted. Now I do maintain that this question must be answered in the affirmative, and shall proceed to show why, taking as my point of departure the concept of ownership.

The legal rules concerning ownership could, without doubt, be expressed without the use of this term. In that case a large number of rules would have to be formulated, directly linking the individual legal consequences to the individual legal facts. For example:

> if a person has lawfully acquired a thing by purchase, judgement for recovery shall be given in favour of the purchaser against other persons retaining the thing in their possession;
>
> if a person has inherited a thing, judgement for damages shall be given in favour of the heir against other persons who culpably damage the thing;
>
> if a person by prescription has acquired a thing and raised a loan that is not repaid at the proper time, the creditor shall be given judgement for satisfaction out of the thing;

[6] In his book *Der römische Obligationsbegriff* (1927), vol. I, Axel Hägerström has cited weighty arguments in support of the magical origin of Roman legal conceptions. Modern research in sociology and history of religion also points in the same direction; see in this connection, Alf Ross, *Towards a Realistic Jurisprudence* (1946). ch. IX, pp. 2–5, and *Max Weber on Law in Economy and Society* ed. by Max Rheinstein (1954), p. 106.

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if a person has occupied a *res nullius* and by legacy bequeathed it to another person, judgement shall be given in favour of the legatee against the testator's estate for the surrender of the thing;

if a person has acquired a thing by means of execution as a creditor and the object is subsequently appropriated by another person, the latter shall be punished for theft,

and so on, bearing in mind, of course, that in each case the formula might be far more complicated.

An account along these lines would, however, be so unwieldy as to be practically worthless. It is the task of legal thinking to conceptualize the legal rules in such a way that they are reduced to systematic order and by this means to give an account of the law in force which is as plain and convenient as possible. This can be achieved with the aid of the following technique of presentation.

On looking at a large number of legal rules on the lines indicated it will be found that it is possible to select from among them a certain group that can be arranged in the following way:

$$\begin{array}{llll} F_1—C_1 & F_2—C_1 & F_3—C_1 \cdots & F_p—C_1 \\ F_1—C_2 & F_2—C_2 & F_3—C_2 \cdots & F_p—C_2 \\ F_1—C_3 & F_2—C_3 & F_3—C_3 \cdots & F_p—C_3 \\ \vdots & \vdots & \vdots & \vdots \\ F_1—C_n & F_2—C_n & F_3—C_n \cdots & F_p—C_n \end{array}$$

(Read: the conditioning fact F_1 is connected with the legal consequence C_1 etc.) This means that each single one of a certain totality of conditioning facts (F_1–F_p) is connected with each single one of a certain group of legal consequences (C_1–C_n); or, that it is true of each single F that it is connected with the same group of legal consequences ($C_1 + C_2 \ldots + C_n$), or, that a *cumulative plurality of legal consequences is connected to a disjunctive plurality of conditioning facts.*

These $n \times p$ individual legal rules can be stated more simply and more manageably in the figure:

$$\left.\begin{array}{l} F_1 \\ F_2 \\ F_3 \\ \vdots \\ F_p \end{array}\right\} \rightarrow O \left\{\begin{array}{l} C_1 \\ C_2 \\ C_3 \\ \vdots \\ C_n \end{array}\right.$$

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where O (ownership) merely stands for the systematic connection that F_1 as well as F_2, F_3 ... F_p entail the totality of legal consequences C_1, C_2, C_3 ... C_n. As a technique of presentation this is expressed then by stating in one series of rules the facts that "create ownership", and in another series the legal consequences that "ownership" entails.

It will be clear from this that the "ownership" inserted between the conditioning facts and the conditioned consequences is in reality a meaningless word—a word without any semantic reference whatever, serving solely as a tool of presentation. We talk as if "ownership" were a causal link between F and C, an effect occasioned or "created" by every F, and which in its turn is the cause of a totality of legal consequences. We say, for example, that:

(1) If A has lawfully purchased an object (F_2), ownership of the object is thereby created for him.

(2) If A is the owner of an object, he has (among other things) the right of recovery (C_1).

It is clear, however, that (1) + (2) is only a rephrasing of one of the presupposed norms (F_2—C_1), namely, that purchase as a conditioning fact entails the possibility of recovery as a legal consequence. The notion that between purchase and access to recovery something was "created" that can be designated as "ownership" is nonsense. Nothing is "created" as the result of A and B exchanging a few sentences legally interpreted as "contract of purchase". All that has occurred is that the judge will now take this fact into consideration and give judgement for the purchaser in an action for recovery.

What has been described here is a simple example of reduction by reason to systematic order. In the final instance it is, to be sure, the task of legal science to undertake this process of simplification, but this task has largely been anticipated by prescientific thought. Already at an early stage in history the idea of certain rights took shape. It goes without saying that a systematic simplification can be carried out in more ways than one, and this explains why the categories of rights vary somewhat from one legal system to another, though this circumstance does not necessarily reflect a corresponding difference in the law in force.

The same technique of presentation can frequently be employed without the idea of an intervening right. In international law, for example, one series of rules may state which area belongs to a specific state as its territory. That this area has the character

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of "territory" is *per se* meaningless. These rules become meaningful only when taken together with another set of rules expressing the legal consequences that are attached to an area's character as territory. In this example it would also be possible to state the legal relations without using the interpolated concept ("territory"), although such a statement would undeniably be complicated.

Sometimes the intermediate link is not a single right, but a complex legal condition of rights and duties. This is the case, for example, when in family law a distinction is made between the conditions for contracting marriage and the legal effects of marriage; when in constitutional law a distinction is made between the acquisition of nationality and the legal affects of nationality; or in administrative law between the creation of civil-servant status and its legal effects. In these and similar situations it is usual to speak of the creation of a status (the status of marriage, status of nationality, status of civil servant).

Whatever the construction, the reality behind it is in each case the same: a technique which is highly important if we are to achieve clarity and order in a complicated series of legal rules.

Words like "ownership", "claim" and others, when used in legal language, have the same function as the word *"tû-tû"*; they are words without meaning, i.e. without any semantic reference, and serve a purpose only as a technique of presentation. Nevertheless, it is possible to talk with meaning about rights, both in the form of prescriptions and assertions.

With regard to *prescriptions,* this emerges from the foregoing. The two propositions "A person who has purchased a thing has the ownership of it" and "A person who has the ownership of a thing can obtain recovery of it" together produce the meaningful prescriptive rule that a person who has purchased a thing can obtain recovery of it.

With regard to *assertions,* the following holds good by exact analogy with the exposition given above in respect of *"tû-tû"* assertions:

The assertion that A possesses the ownership of a thing, when taken *in its entirety,* has semantic reference to the complex situation that there exists one of those facts which are said to establish ownership, and that A can obtain recovery, claim damages, etc. It is thus possible with equal correctness to say:

A has the ownership of the thing because he has purchased it (and can therefore obtain recovery, claim damages, etc.)

and

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A has the ownership of the thing because he can obtain recovery, claim damages, etc. (because he has purchased it).

The latter does not preclude its being possible also to say:

A can obtain recovery of the thing and claim damages, etc., because he has the ownership of the thing (because he has purchased it).

Just as in the case of the corresponding "*tû-tû*" formulations, there is no vicious circle here, since "ownership" does not stand for anything at all, and there thus exists no relation, either causal or logical, between the supposed phenomenon of "ownership" and the legal consequences mentioned. All three pronouncements—as indicated by the added parentheses—express, each in its own way, nothing more than that the person who has purchased a thing can obtain recovery of the same, claim damages, etc.

On the other hand it is impossible to ascribe to the word "ownership" an *independent* semantic reference in the arguments operating with the word.[7] Any attempt to take it as a designation of either legal facts (conditioning facts) or of legal consequences, or of both together, or of anything else whatever, is foredoomed to failure. Let us, for example, consider the following conclusion:

A

—If there is a purchase, there exists also ownership for the purchaser.
—Here there is a purchase.
—Therefore there exists also ownership for the purchaser.

[7] In an article published shortly after the original publication of the present article but evidently without knowledge of it ("Some Problems in the Logical Analysis of Legal Science", *Theoria*, 1951, pp. 246 f.) Anders Wedberg has arrived at conclusions similar to mine. He writes:

"It may be shocking to unsophisticated common sense to admit such 'meaningless' expressions in the serious discourse of legal scientists. But, as a matter of fact, there is no reason why all expressions employed in a discourse, which as a whole is highly 'meaningful', should themselves have a 'meaning'. It appears likely that many expressions employed by other sciences, especially by the so-called exact sciences, lack interpretation and solely function as vehicles of systematization and deduction. Why should not the situation be the same within legal science?"

A similar view has since been expressed by H. L. A. Hart. It is not possible, this author maintains, to define a term such as "a right" by substituting for it other words describing some quality, process or event, but only by indicating the conditions necessary for the truth of a sentence of the form "You have a right" taken as a whole, see H. L. A. Hart, *Definition and Theory in Jurisprudence* (Oxford, 1953), pp. 8, 12–17.

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B

—If ownership exists, the owner can obtain recovery.
—Here there is ownership.
—Therefore recovery can be obtained.

Together, A + B express the meaningful rule that a person who has purchased a thing can obtain recovery of it. This conclusion holds good whatever "ownership" may stand for, or even if it stands for nothing at all. For "ownership" there could be substituted "old cheese" or *"tû-tû"* and the conclusion would be just as valid.

On the other hand it is impossible in this conclusion to ascribe to the word "ownership" a semantic reference such that each of the conclusions A and B considered *in isolation* can acquire meaning or legal function.

The conceivable possibilities of such an attempt are the same as those given above in the analysis of the corresponding *"tû-tû"* propositions, and the results also correspond:

(*a*) If we substitute for "ownership" in A the cumulative totality of legal consequences, and in B the disjunctive totality of conditions, A and B each acquire meaning, but cannot be combined in a syllogism since the middle term is not the same.

(*b*) If in both cases we substitute for "ownership" the disjunctive totality of conditioning facts, the major premise in A becomes analytically void and thus without any semantic reference.

(c) If in both cases we substitute for "ownership" the cumulative totality of legal consequences, then the major premise in B becomes analytically void.

I will leave it to the reader to work out for himself the correctness of these assertions by exact analogy with the analysis of the corresponding *"tû-tû"* pronouncements.

The observations I have made here are well fitted to throw light on a most interesting controversy conducted in recent years in Scandinavian literature between Per Olof Ekelöf and Ivar Strahl concerning the meaning in which the concept of rights is taken when used in legal reasonings.[8] Ekelöf started the discussion in an attempt to find out what states of affairs could be substituted

[8] The discussion was conducted in the Scandinavian legal reviews *Tidsskrift for Rettsvitenskap* and *Svensk Juristtidning* in the years 1945–50.

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in these reasonings for an expression couched in terms of rights. This attempt is the same thing as a quest for the semantic reference of the term. It is interesting to follow the course of the controversy, as it amusingly illustrates the correctness of what has been maintained here.

In broad outline, the course of the controversy was as follows. Ekelöf began by assuming that the term "claim" (this is the term he operated with in his examples, which in other respects were completely analogous with the A and B formulations adduced above) does not stand for the same thing in both A and B, but respectively for the legal consequence and the legal fact. Thus this corresponds exactly to the possibility marked by (*a*) in the experiment set out above. Strahl countered with the powerful argument that such an interpretation was inadmissible, because the term must of necessity be used with one and the same meaning in both A and B propositions because these constitute the premises of a conclusion. Adopting this standpoint, Strahl made himself the spokesman for the view that the concept of rights in both cases stands for the juridical fact, i.e. for the disjunctive totality of conditioning facts. This position thus corresponds to the possibility set out above under (*b*). To this Ekelöf replied with the argument that if that is so the major premise in case A becomes analytically void. Subsequently Ekelöf adopted Strahl's theory that the word must stand for the same state of affairs in both A and B, but maintained that it did not follow as a matter of course that this state of affairs common to both was necessarily the juridical fact. He discovered that the conclusion comprising A and B held good whatever was substituted for the rights concept—whether juridical fact, legal consequence, or both of them together. But he got no further. He did not realise that the conclusion would hold good even if for the concept of rights there were substituted "old cheese" or *"tû-tû"*.

In this controversy it was Strahl who came closest to the truth, when he asserted that the concept of right in case A is used to designate the circumstance which in case B serves as juridical fact, and goes on to characterize this as a device serving the technique of presentation. But what Strahl did not see was that the concept of right does not designate any "circumstance" at all, nor that the right as "fact" is not a fact at all, nor that it is hopeless to attempt to ascribe a meaning to the major premises in the A and B syllogisms respectively when considered each in isolation. For "the device serving the technique of presentation" means that the

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two propositions only have meaning as fragments of a larger whole in which they both occur, causing the concept of rights as the common middle term in a syllogism to vanish as completely meaningless.

In making these critical observations I have not in any way intended to belittle the value of the research undertaken by Ekelöf and Strahl. On the contrary, I think that Ekelöf's substitution method was a fortunate line to take and that it guided the controversy on to fruitful ground; and I must add that it was along these lines that I was led to the view which I believe to be the true one, namely, that the concept of rights is a tool for the technique of presentations, serving exclusively systematic ends, and that in itself it means no more and no less than does "*tû-tû*".

In conclusion, may I add that I have tried elsewhere to show how the concept of rights can lead to errors and dogmatic postulates if it is wrongly taken not merely as being the systematic unit in a set of legal rules, but as being an independent "substance".[9]

[9] See Alf Ross, *Towards a Realistic Jurisprudence* (Copenhagen 1946), ch. VIII, pp. 5, 6.

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