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THE LOGIC OF JUDICIAL DECISIONS

TWO ITEMS OF GREATER OR LESSER INTEREST

Item One. Interstate Commerce Commission v. Kroblin*

In Interstate Commerce Commission v. Kroblin, a non-certified carrier (Allen Kroblin) transported frozen, eviscerated chickens interstate. A statute required carriers to obtain certificates from the Interstate Commerce Commission unless the carriers were transporting agricultural commodities, as opposed to manufactured products. The court decided that eviscerated chickens were agricultural commodities, not manufactured products, and that Kroblin was therefore exempt from the certification requirements. A formalist reconstruction of the court's reasoning would be as follows. The major premise (based on a simplified version of the statute which ignores those requirements not at issue) may be stated:

1. Objects that are not manufactured products may be carried without an ICC certificate.

The minor premise is obtained from the facts of the case. The court decided that eviscerated chickens were agricultural commodities, not manufactured products. Thus:

2. These things (eviscerated chickens) are not manufactured products.

From these two premises, the conclusion of the court does indeed follow — eviscerated chickens may be carried by Kroblin without obtaining an ICC certificate...

The first presupposition required by formalism is that there are such things as analytic truths, statements that are true solely by virtue of the meanings of the words which appear within them. According to logical positivism, most true statements are true because they are verified by factual observations. A few statements, however, are true no matter what the facts are because the truth of such statements is a function solely of meaning and not of meaning and fact. A standard example is the statement: "A bachelor is an unmarried man." This is said to be true solely by virtue of the meanings of "bachelor," "unmarried," and "man." No factual observations are necessary to show such a statement to be true.

The existence of analytic truths is presupposed by formalism. To restate, as an example, the syllogism derived from the Kroblin case, a judge's reasoning under a formalistic structure would proceed as follows:

* 113 F. Supp. 599 (N.D. Iowa 1953) aff'd, 212 F.2d 555 (8th Cir. 1954). The discussion is excerpted from The Semantics of Judging, by Michael S. Moore, 54 So. Cal. L. Rev. 151 (January, 1981), pp. 156-157, 170-173, and is reprinted here with permission. Most footnotes omitted.

1. Objects that are not manufactured products may be carried without an ICC certificate.
2. These things are not manufactured products.
3. Therefore, these things may be carried without an ICC certificate.

It is evident that such a deductive process, while impeccable as a matter of logic, seems to ignore the basic problem for decision in the case. Are eviscerated chickens to be classified as manufactured products or not? The second premise of the syllogism assumes an answer to this difficult question. Thus the syllogism is of little use in understanding what it is a judge does, and should do, in deciding the case.

By characterizing the facts in the above example in a less question-begging way, the formalistic deductive process may become more illuminating. Thus, the second premise might read:

2. These things are eviscerated chickens.

Now, however, it is clear that from the two premises available to us — the rule and the facts — nothing whatsoever can be deduced. That is,

1. Objects that are not manufactured products may be carried without an ICC certificate,

and

2. These things are eviscerated chickens.

Nothing follows at all. What is needed is some connection between the predicate, "are eviscerated chickens," and the predicate, "are not manufactured products." A third premise of the following form would allow the deduction to go through:

3. All eviscerated chickens are not manufactured products.

Now by standard logic the conclusion of the court can be deduced.

The problem, of course, is how a formalist may justify the insertion of the third premise. It is not a statement of the facts of the case, but rather a general statement about all things that happen to be eviscerated chickens. It is not a legal rule, for there is no legal authority that has established it as true. Nor may one look to logic, for there is no license in logic to create whatever premise one happens to need. One alternative for a formalist is to assert that the third premise is an analytic truth — that is, that it is always true solely by virtue of the meaning of the phrases "manufactured products" and "eviscerated

chickens.* A formalist must therefore hold the belief in the existence of analytic truths close to his heart. Such a belief is necessary so he may generate the particular kinds of analytic truths necessary for legal formalism to work.

* It might seem that there are other possibilities regarding this third premise. It could, to begin with, be a factual truth of either of two sorts: (1) it might be an accidental generalization that is true; or (2) it might be a true scientific law. If it were the first, it would be like the statement, "All professional basketball players now playing in the NBA are over five feet tall." If it were the second, it would be like the statement, "Sugar is soluble in water."

The logic of either of these statements is such that, if true, they license the kind of inference a formalist needs. In addition, such statements should be a part of a formalist judge's tool kit. Although they are not facts about the particular case which he has found, no one can expect a judge to decide a case beginning in a position of Cartesian doubt.

Is the third premise, clarifying eviscerated chickens as being manufactured products, of this sort?...

Two other kinds of truths require brief mention here: a priori truths and synthetic necessary truths. An a priori truth is one which "can be known to be true independently of all experience." Kripke, Identity and Necessity, in Naming, Necessity, and Natural Kinds 84 (S. Schwartz ed 1977) (emphasis in original). One does not, in other words, need to make inferences from observation in order to know that an a priori truth is true. So defined, a priority is an epistemological category, not a semantic or metaphysical one. While an analytic truth may be known to be true a priori (see Swinburne, Analyticity, Necessity, and A Priority, 84 Mind 225 (1975)), there may be some a priori truths that are not analytic, e.g., one's knowledge of one's own mental state....

The concept of necessity is taken by Kripke to be a metaphysical notion, not an epistemological or semantic one. See *id.* Thus, the truths of science for Kripke are necessarily true, though not analytically true nor known to be true a priori. Synthetic necessary truths are thus no more than one kind of the factual truths earlier discussed, which the third premise does not seem to resemble.

(IN THE SUPREME COURT)
REGINA v. OJIBWAY

Blue, J.

August, 1965

Blue, J.:— This is an appeal by the Crown by way of a stated case from a decision of the magistrate acquitting the accused of a charge under the Small Birds Act, R.S.O., 1960, Sec. 24,s.2. The facts are not in dispute. Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1965. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of said saddle. On this particular day the accused's misfortune was further heightened by the circumstance of his pony breaking its right foreleg. In accord with Indian custom, the accused then shot the pony to relieve it of its awkwardness.

The accused was then charged with having breached the Small Birds Act, part of which states:

2. Anyone maiming, injuring or killing small birds is guilty of an offense and subject to a fine not in excess of two hundred dollars.

The learned magistrate acquitted the accused, holding, in fact, that he had killed his horse and not a small bird. With respect, I cannot agree.

In light of the definition section my course is quite clear. Section 1 defines "bird" as "a two legged animal covered with feathers." There can be no doubt that this case is covered by this section.

Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. We are not interested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of its life.

Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sounds emitted by an animal are irrelevant to its nature, for a bird is no less a bird because it is silent.

Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird, but was actually a pony. Obviously, this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offense at all. I believe counsel now sees his mistake.

* The report of this case was submitted to the Harvard Law Record by Professor W. Barton Leach, and is reprinted with permission. The Editor is grateful to member Jordan Rossen for bringing it to the attention of the Journal.

Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to this court.

Counsel relied on the decision In Re Chicadee, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different colour. A close reading of that case indicates that the animal in question there was not a small bird, but, in fact, a midget of a much larger species. Therefore, that case is inapplicable to our facts.

Counsel finally submits that the word "small" in the title Small Birds Act refers not to "Birds" but to "Act", making it The Small Act relating to Birds. With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O. 1960, c. 725, is just as small. If pressed, I need only refer to the Small Loans Act R.S.O. 1960, c. 727 which is twice as large as the Large Birds Act.

It remains then to state my reason for judgment which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of the Small Birds Act, all two legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multi-legged animals with feathers as well. Counsel submits that having regard to the purpose of the statute only small animals "naturally covered" with feathers could have been contemplated. However, had this been the intention of the legislature, I am certain that the phrase "naturally covered" would have been expressly inserted just as 'Long' was inserted in the Longshoreman's Act.

Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and a fortiori, a pony with feathers on its back is a small bird.

Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less of a bird without its feathers?

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NAALJ NEWSLETTER

In response to the rapid growth of activity within the Association, President-Elect Morgan E. "Pat" Thompson has undertaken to publish a periodic Newsletter, which will replace the popular "NAALJ News" column of this Journal. The Newsletter, which will be published from Pat's home base in Oklahoma City, will feature reports of activity of the National Association, the National Foundation, and the State Chapters; will contain biographical sketches of Association officers; will report on the newsworthy accomplishments of our members; will announce coming events; and will serve as a forum for the timely debate of issues affecting Administrative Law Judges. Under the imaginative and witty guidance of our President-Elect, the Newsletter promises to greatly expand communication between our members. It will be distributed without charge to active members of NAALJ.

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