

CHAPTER 5

CATEGORIES OF LEGAL INSTITUTIONS

1. Classification of Particular Propositions and Legal Judgments

What forms can legal institutions take? It is possible to find an answer on the basis of the insight that, being complex legal conditions, legal institutions purport to effectuate a social practice that can be interpreted as resting on a common belief in their existence. Consequently, the forms legal institutions can take must be such as to make them conceivable as existent. This amounts to the requirement that legal institutions take the shape of singular conditions that are representable by particular propositions. The question arises as to which categories of such singular conditions can be distinguished. The following categorisation, comprising three basic categories of particular propositions representing singular conditions, offers a point of departure:¹

1. Propositions representing a certain entity. (There is an Eiffeltower.)
2. Propositions representing a certain entity as having a certain property. (The Eiffeltower is made of steel.)
3. Propositions representing certain entities as having a certain connection. (The Eiffeltower is near the Louvre.)

Furthermore, within the category of entities a distinction can be made between subjects and objects. Subjects can perform acts, objects cannot.

These distinctions lead to the following classification consisting of seven categories of particular propositions according to the singular conditions they represent:

1. Propositions representing a *subject*.
2. Propositions representing an *object*.
3. Propositions representing a *property* of a *subject*.
4. Propositions representing a *property* of an *object*.
5. Propositions representing a *connection* between *subjects*.
6. Propositions representing a *connection* between *objects*.
7. Propositions representing a *connection* between a *subject* and an *object*.

¹ See also: Dick. W. P. Ruiter 'A Basic Classification of Legal Institutions', *Ratio Juris* 10 (1997b), 357-371.

Whether this classification can also be used to distinguish different categories of legal institutions, turns on the answer to the question of whether legal judgments that are brought to expression in order to create legal institutions are capable of projecting régimes of legal conditions (legal régimes) as subjects, objects, properties, or connections, respectively. The difference between propositions and legal judgments is that the former represent conditions that can *obtain* in reality, whereas the latter project legal conditions that can only be *believed to obtain* in reality. In spite of this fundamental difference, both exhibit a significant common characteristic in that the condition they present must at least be *conceivable* as taking part in reality. The question then becomes whether institutional legal régimes are indeed conceivable as taking part in reality as subjects, objects, properties or connections. An answer in the affirmative would justify the following classification:

1. Legal judgments projecting a legal régime as a *subject*.
2. Legal judgments projecting a legal régime as an *object*.
3. Legal judgments projecting a legal régime as a *property of a subject*.
4. Legal judgments projecting a legal régime as a *property of an object*.
5. Legal judgments projecting a legal régime as a *connection between subjects*.
6. Legal judgments projecting a legal régime as a *connection between objects*.
7. Legal judgments projecting a legal régime as a *connection between a subject and an object*.

Valid legal institutions projected by perfect particular legal judgments of all seven categories are indeed discernible in legal systems.

1. Legal Persons

A legal person is a valid legal régime with the form of an entity that can act.

Example: the European Community.

2. Legal Objects

A legal object is a valid legal régime with the form of an entity that can serve as the object of (trans)actions.

Example: a conveyable right of ownership.

3. *Legal Qualities*

A legal quality is a valid legal régime with the form of a property of a subject.

Example: a person's legal majority.

4. *Legal Status*

A legal status is a valid legal régime with the form of a property of an object.

Example: a listed historical monument.

5. *Personal Legal Connections*

A personal legal connection is a valid legal régime with the form of a connection between subjects.

Example: a personal right.

6. *Legal Configurations*

A legal configuration is a valid legal régime with the form of a connection between objects.

Example: an easement, that is, a legal régime with the form of a connection between a servient tenement and a dominant tenement consisting in a burden (e.g. a right of way) laid on the former for the benefit of the latter. All successive owners of the servient tenement are obligated to bear the burden and all successive owners of the dominant tenement are entitled to treat the former as thus obligated.

7. *Objective Legal Connections*

An objective legal connection is a valid legal régime with the form of a connection between a subject and an object.

Example: ownership of property.

2. **Kinds of Institutional Legal Concepts**

The next step is to generalise from the foregoing a classification of constitutive rules of institutional legal concepts. For simplicity's sake I shall not pay attention to extended constitutive rules.

(i) *Constitutive Rules of Legal Persons*

The constitutive rule of an institutional legal concept denoting a certain *type of legal person* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of

entities that can act on the one hand and the category of legal régimes itself on the other.

Example: The articles 2:64 and 2:66 of the Dutch Civil Code provide that the public limited company is a legal person with an authorised capital that is divided in transferable shares, which is incorporated by a notarial charter or instrument of merger.

(ii) Constitutive Rules of Legal Objects

The constitutive rule of an institutional legal concept denoting a certain *type of legal object* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of entities that can serve as the objects of (trans)actions on the one hand and the category of legal régimes itself on the other.

Example: In art. 3:1 Dutch Civil Code ‘property’ (*goederen*) is defined as a legal category consisting of the subcategory of ‘things’ (*zaken*) and the subcategory of ‘patrimonial rights’ (*vermogensrechten*). Art. 3:2 provides a definition of ‘things’ as physical objects that are susceptible to human control. In addition art 3:6 provides a definition of ‘patrimonial rights’ as rights that are, separately or together with another right, transferable or that purport to bring the holders material gains. Patrimonial rights are thus conceptualised as legal institutions with the additional feature of being ‘transactable’ on a par with physical objects.

(iii) Constitutive Rules of Legal Qualities

The constitutive rule of an institutional legal concept denoting a certain *legal quality* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of properties of subjects on the one hand and the category of legal régimes itself on the other.

Example: Art. 40(1) German Basic Law: “The *Bundestag* shall elect its President, vice presidents and secretaries.”

(iv) Constitutive Rules of Legal Status

The constitutive rule of an institutional legal concept denoting a certain *legal status* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of properties of objects on the one hand and the category of legal régimes itself on the other.

Example: Art. 115a(1) German Basic Law: "The determination that federal territory is being attacked by armed force or that such an attack is directly imminent (state of defence) shall be made by the *Bundestag* with the consent of the *Bundesrat*."

(v) Constitutive Rules of Personal Legal Relationships

The constitutive rule of an institutional legal concept denoting a certain *personal legal relationship* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of connections between subjects on the one hand and the category of legal régimes itself on the other.

Example: Art. 6 Vienna Convention on the Law of Treaties: "Every State possesses capacity to conclude treaties." Art. 26: "Every treaty in force is binding upon the parties to it."

(vi) Constitutive Rules of Legal Configurations

The constitutive rule of an institutional legal concept denoting a certain *legal configuration* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of connections between objects on the one hand and the category of legal régimes itself on the other.

Example: Art. 5:72 Dutch Civil Code: "Easements can come into existence by establishment or prescription."

(vii) Constitutive Rules of Objective Legal Relationships

The constitutive rule of an institutional legal concept denoting a certain *objective legal relationship* projects a juridico-causal relationship between a category of perfect legal judgments projecting certain legal régimes with the form of connections between a subject and an object on the one hand and the category of legal régimes itself on the other.

Example: Art. 5:1(1) Dutch Civil Code: "The right of ownership is the most comprehensive right a person may have in a thing."

The schedule below presents a survey of the seven kinds of institutional legal concepts distinguished in the preceding analysis.



<http://www.springer.com/978-1-4020-0186-4>

Legal Institutions

Ruiter, D.W.

2001, XII, 228 p., Hardcover

ISBN: 978-1-4020-0186-4