

On Legal Artefacts

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Abstract: In this paper, I argue that conventionalised social kinds, including legal institutions like marriage, operate through collective recognition rather than functional realization (the Functionalist View). I propose a Constructivist View where legal kinds are constructed by relevant communities through collective recognition. The central concept I introduce is Social Amendment: the process by which relevant communities collectively recognize new entities as belonging to existing social kinds, thereby expanding kind membership without functional constraints. I demonstrate that social kinds exist on a continuum of conventionalisation, with properties held together by causal mechanisms (real social kinds) or fiat (conventionalised social kinds). Legal artefacts exemplify strictly conventionalised kinds where collective recognition determines the membership of the kind. Using marriage as a case study, I show how this framework resolves the tension between functional and recognition-based approaches to legal kinds. The Constructivist View bridges the artefact theory of law with social ontology, revealing their convergence through conventionalised social kinds. This approach aligns with token-first theories of kind construction and demonstrates how legal institutions evolve through collective recognition rather than functional adaptation, while showing compatibility with existing socio-ontological accounts.

Keywords: social kinds, legal kinds, artefacts, conventionalism, social constructivism

1. INTRODUCTION

There is a growing consensus among legal philosophers that the nature of law can be analysed through the lens of theories of artefacts (Burazin 2015, 2016, 2018;

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Crowe 2014, 2019, 2022; Ehrenberg 2016, 2022; Roversi 2018, 2021, 2023). Some prominent theories of technical artefacts underline the salient aspect of the function of a given artefact. Unsurprisingly, legal philosophers have tried to underpin the function of law as a criterion for recognizing phenomena that are laws from non-laws. For example, Jonathan Crowe has found that the function of law is to serve as a deontic marker: to be law is to mark the possible conduct as prohibited, permitted, or mandated (Crowe 2014, 2019, 2022). Promising as it may be, this account faces numerous objections (Atiq 2020, Tamanaha 2022, Roversi 2019). One of them is the non-distinctiveness of law from other normative phenomena, such as games, etiquette, and morality (Garcia-Godinez 2022). The proper function of law—the function that allows one to say that a given phenomenon belongs to the kind “law”—has presumably yet to be found, if doing so is even possible. Still, Crowe may argue that the function is only one of the elements that helps to determine the kind-membership of law; the concept of law may be needed to supplement the analysis (Law = Function + Concept).

In this paper, I aim to apply the theory of artefacts *not* to the most general law (Ehrenberg 2016, Crowe 2019), legality or legal system (Burazin 2015, 2016), but to legal artefacts, entities generated by law (Roversi 2023: *artefatti giuridici*). Examples of legal artefacts include legal institutions (legal personhood, marriage, contracts), legal officials (judges, clerks), and, in more mundane ways, strictly material legal artefacts (legal texts). While one may argue that these legal artefacts are defined by their social functions, others contend that collective recognition alone determines their identity.

This paper discusses the Functionalist View of legal artefacts. It assumes that the kinds have functions that are decisive, though not sufficient, for the identification of kinds, and a given legal artefact x must be recognized in order to belong to the kind X . I argue that the Functionalist View should be revisited in order to cover so-called conventionalised social kinds. The successful revision will further prove that there is a convergence between theories of artefacts and classical social-ontological analysis. This is the observation made by Corrado Roversi that “[a]n artefact theory can be seen as specifying a socio-ontological account” (Roversi 2019, 41–42).

Nevertheless, according to Crowe: “Collective acceptance, on this view, can transform an appropriate phenomenon into a member of an artifact kind. However, it cannot make just anything into a member of a kind” (Crowe 2019, 166–167). This last statement suggests that there are some limits to conventionalism as applied to legal artefacts. Following Francesco Guala (2016), I will call this sort of issue “Caligula’s problem.”

As I will argue, Caligula’s problem does not capture the so-called conventionalised social kinds for which the paradigmatic examples are legal kinds; kinds of legal artefacts. The legal institution of marriage is used as an example for the kind of legal

artefact discussed in this paper. I argue that in the case of legal kinds, the legal artefacts, there is no function that unifies the kinds in question. I revisit the Functionalist View by eliminating the condition that function is necessary to determine kinds and propose an alternative account, the Constructivist View.

This paper proceeds as follows. Section 2 clarifies the terminological framework by distinguishing between kinds, types, and tokens, concepts central to understanding how legal artefacts are categorized. Section 3 presents the Functionalist View of legal artefacts, examining the functional approach developed by Ehrenberg (Section 3.1) and Crowe's intention-acceptance theory (Section 3.2), before synthesizing their common commitments (Section 3.3) into two core theses about function and collective recognition. Section 4 develops the theoretical foundation for conventionalised social kinds. Section 4.1 establishes that social kinds exist on a continuum, where properties are held together either by causal mechanisms (real social kinds) or by fiat (conventionalised social kinds). Section 4.2 introduces the central concept of Social Amendment; the process by which relevant communities collectively recognize new entities as belonging to existing social kinds, thereby expanding kind membership without functional constraints. Section 5 addresses Caligula's problem as a potential objection to the Social Amendment, arguing that this challenge fails to recognize the crucial distinction between real and conventionalised social kinds, and demonstrating how the Social Amendment operates within practical and social constraints. Section 6 presents the Constructivist View, first exploring how different communities construct and maintain conventionalised kinds (Section 6.1), then positioning this framework within broader social-ontological accounts and demonstrating its compatibility with existing theories of institutions (Section 6.2). Section 7 concludes my paper.

2. KINDS-TYPES-TOKENS

Before proceeding to the main argument, I clarify how this paper uses three key terms that are central to my argument. Throughout this paper, I assume that artefacts are grouped into kinds and that a given kind of artefact is a social kind. Similarly, I undertake that legal artefacts are grouped into kinds; legal kinds, a sub-kind of social kinds. Take marriage as an example of a legal artefact. Marriage is a kind that includes tokens and types of marriage. Tokens are spatio-temporal; they are marriages between specific individuals. Kinds are the general way we categorize marriages. While kind aims to cover various tokens of marriage, it also covers types, particular ways of regulating those tokens; marriages in a hunter-gatherer society, in 20th-century Europe, or in Great Britain in 2023. There are levels of abstraction of the concept of marriage. This is why I will restrict the term "kind" to the most general level of the concept according to some relevant community, "type" (or "sub-kind" or "kind

of kind”) to the particular way of regulating particular marriages, and “token” to the particular marriage between specific individuals. The relation between kinds-types-tokens is an inclusion, transitive relation. If the marriage-between-Tom-and-John is a token of the type marriage-in-UK-in-2025, then it is also a token of the marriage as a kind.

This vocabulary is different from the recent characterization of the division between “institution-types” and “institution-tokens” provided by Guala in (2016). For Guala, the *type-token* distinction lies on the level of spatio-temporality. *Type* is the acontextual general characterization of a given institution, “institution *types* are defined functionally, by reference to their goal or to the problems they solve” (2016, 196). *Tokens* are spatio-temporal manifestations, particular solutions for the set of related coordination problems. While the marriage *type* is understood by my “kind,” *token* marriages are not particular marriages between individuals but spatio-temporal general solutions for the problems that institutions aim to solve (my “types”). Guala’s token of marriage is marriage-in-Great-Britain-in-2023.¹ When referring to Guala’s distinction I will use my vocabulary, noting sometimes the difference in the nomenclature.

3. THE FUNCTIONALIST VIEW

Crowe and Ehrenberg developed artefact theories of law from different perspectives. While Crowe argued that the artefactual nature of law supports some natural law theses, Ehrenberg aimed to demonstrate that the artefactuality of law vindicates positivism. Be that as it may, let me extract common truisms about the kind-membership of legal artefacts that can be found in both of their theories.

Such unified theory of artefactual kinds can be called the Functionalist View of legal artefacts and it is embraced by theories from different legal–philosophical angles. What is more, while their theories apply to the kind law, they independently developed general theories of legal artefactual kinds (or institutionalized abstract artefacts). The theories of artefacts developed by Ehrenberg and Crowe are aimed to be applicable to the concept of law, but they do discuss many other artefacts as covered by those theories: screwdrivers (Ehrenberg 2016), chairs (Ehrenberg 2016), benches (Crowe 2019), planes (Ehrenberg 2016; Crowe 2019), hospitals (Ehrenberg 2016), and legislations (Crowe 2019). This proves my observation that their theories should be applicable also to legal artefacts (e.g., the legal institution of marriage).

¹ I wonder why Guala does not reserve any term for particular marriages between two or more individuals; maybe they are not institutions, they are not solving collective but individual problems.

3.1. Ehrenberg's Functions

Ehrenberg noted that “[i]f it [law] is an artefact, then it is entirely appropriate to understand its nature via an exploration of the social functions it performs or is intended to perform by its creators and users” (2016, 86). Kind membership is then understood by its intended function, as envisioned by the author or recognized by users. Later, Ehrenberg generalised and reiterated this thesis, claiming that “the law is a genre of institutionalized abstract artifact with the implication that the best way to investigate and understand the law is by examining the functions it serves in society” (2016, 193). If one wants to investigate the nature of a given legal artefact, then the social function is the best tool, as law is “the broadest institution whose function it is to generate and/or validate institutions” (2016, 191).

However, the theory under discussion does not imply functionalism. Ehrenberg stated that “any adequate explanation of law must do so in terms of the social functions it performs, without making any extra claims that performance of those functions is either necessary or sufficient for membership in the class of law” (2016, 46). Ehrenberg noted that artefacts can malfunction, and the notion of function implies serving the function not only badly but also not functioning at all (let’s call it *the retail function thesis*). Think about an overused screwdriver that is not able to serve its function of fitting into the head of a screw to turn it. While it does not serve its function, it still belongs to the kind screwdriver. His functions-oriented analysis of artefacts does not preclude the possibility that some other phenomena may also serve the same set of functions. To borrow Ehrenberg’s example, both the kind clinic and the kind hospital are defined by the same set of functions, and some explanation other than functional (e.g., structural) may be needed to provide a clear difference between these two kinds.

According to Ehrenberg, the kind belonging of all artefacts (not only legal) is mediated either by the functional or nonfunctional (e.g., physical, modal) properties of the tokens (2016, 132–138). While he argues, following Amie Thomasson, that some artefactual kinds, like art, are indeed defined nonfunctionally (Ehrenberg 2016, 137), he still rebuts the thesis that the complexity of law’s function makes it difficult to pinpoint the relevant functions for the kind law (2016, 136–139). Though it ought to be remembered that the functions are not understood as necessary and sufficient, and some other properties may be relevant for the individuation of a given kind; “the functions adduced for law are not going to be sufficient conditions for membership in the kind” (Ehrenberg 2016, 147).

Ehrenberg notes that the intention may play a sufficient condition and that the artefact in question should in some way *resemble* the token of a given kind. He provided an example based on decorative furniture. Decorative furniture may be constructed in such a way that it is not fit to sit on, but still, we would say that it

belongs to the kind “chair” because of its resemblance to the paradigmatic chairs and the author’s intention of creating something that belongs to the kind “chair”. “What’s more, when we are attempting to understand a genre of artifacts in terms of the functions that members of the genre have in common, we are not saying that each member must attempt to perform those functions in order to be a member of the kind” (Ehrenberg 2022, 17–18). Still, according to Ehrenberg, the functional features are decisive in recognizing something as of a given kind: “It is not about whether the token is capable of serving its function; it’s about whether an intended audience can perceive it as a member of the putative class, where that class is understood in terms of that function” (Ehrenberg 2022, 35).

What, then, is the best way to detect what is relevant for a given kind function? “We theorists can turn to social scientists and other legal studies researchers to begin the process of cataloging and aggregating the purposes of those tokens, which we collect and further characterize and reduce into a general theory of law” (Ehrenberg 2016, 138). Thus, according to Ehrenberg, kinds are produced within the scientific endeavour. This is then *a token-first approach* because the tokens recognized by communities as members of the kind in question are samples for constructing a general theory of the kind of artefact in question.

3.2. Crowe’s Intention-Acceptance Theory

From a different angle, Crowe proposed to underline some aspects of law that may be problematic when taken at their face value for a theory of artefacts. Note that Ehrenberg’s theory was primarily focused on law as a result of the laws that are implemented in a specific legislative procedure. Crowe pinpoints that some laws and other artefacts are not made in the specific procedure, and authorship or the author’s intention (or concept, or function) cannot be properly ascribed. He proposed the “intention-acceptance theory” of artefacts, according to which:

Something counts as an artifact of kind K only if (1A) it is created with the intention that it be a K (the Intention Condition), or (1B) it is collectively accepted as a K (the Acceptance Condition), and (2) it meets the success conditions for being a K (the Success Condition) (Crowe 2019, 168).

Thus, something can belong to a given kind of artefact even if it does not have a specific author who intended to produce something of that kind. Nonetheless, Crowe embraced the Success Condition. To belong to the given artefactual kind in question, something must perform the function(s) characteristic of this kind, at the least poorly. The Success Condition as applied to an artefact demands that the putative token of a

given artefactual kind has the nomological ability (“constitutively capable” (Crowe 2019, 170; Crowe 2022, 42–44)) to perform the (proper) functions: *the wholesale function thesis*. Ehrenberg, as noted, assumes that token laws can both malfunction (have defects) and fail to serve the functional characteristics of the kind of law: *the retail function thesis*. Crowe does not overtly give an answer to the question of how the functions are to be detected. He notes only that:

[t]he intention-acceptance theory, as applied to institutional artifacts, suggests that something counts as law only if (a) members of the relevant social group have in mind a concept of law that includes its characteristic function and a range of other salient features and (b) the thing in question is collectively accepted as largely complying with that concept (2019, 173).

Is Crowe following the token-first approach? Are tokens recognized by communities as members of the kind in question, samples for constructing a general theory of the kind of artefact in question? I have doubts about this because of the concept of the Success Condition.

Mere authorial intention cannot transform a seriously flawed attempt to create a particular kind of artifact into a success. The author must produce the right basic type of thing to be a member of the kind. A similar point applies to collective acceptance. Something that is constitutively incapable of being a bench cannot become a bench through collective recognition. It does not matter if everyone thinks something is a bench, if it is the wrong type of thing to be one (2019, 167).

Hence, a community ought to follow the concept of a specific kind of artefact when identifying something as a token. This represents *the kind-first approach*. This claim can be made more universal by saying that a scientific theory of a kind of given artefact—e.g., the definition of the artefact in terms of its functions—is relevant for recognition of whether some putative token is of a given kind. A similar understanding is followed by Guala and Hindriks: “the adjudication of borderline cases must be informed by comparisons of explanatory power and inductive potential [of kinds]” (Guala, Hindriks 2020, 17).

3.3. The Synthesis

Let’s combine the two theories to try to find some common ground. The crucial theses of the Functionalist View about legal artefacts are:

1. Kinds of legal artefacts are (partially) defined by the function their tokens serve (*wholesale* (Crowe) or *retail* (Ehrenberg) variations of the thesis);
2. If something is not collectively recognized as a member of a given legal artefactual kind by a relevant community, then it is not a member of that kind (*token-first* (Ehrenberg) and *kind-first* (Crowe) approaches)

As I argue below, while thesis 2) in the form of a token-first approach is true for the legal artefacts, thesis 1) is false. Or, in a more modest way, *thesis 2) is sufficient for identifying tokens of a specific kind*.

Legal artefacts are conventionalised social kinds, so their properties are not causally but conventionally joined. While it is true that “the creators of the token law (...) do need to have some end in mind for its creation” (Ehrenberg 2016, 138), it does not follow that the set of functions is what constitutes kinds and every token must be intended to serve a specific function characteristic for this kind. For this reason, I argue that what is crucial is the collective recognition of something as belonging to the kind in question (the thesis 2)).

However, a deeper issue is at play here, which I am unable to address in this paper. The issue is: Who is the relevant community in the case of legal kinds? Someone following Herbert L. Hart (2012) may argue that officials are the relevant community that recognizes something as belonging to a given legal artefactual kind (cf. Burazin 2015, 68–69). However, some, such as Paweł Banaś, argue for a more egalitarian approach:

My position is simply that they [legal officials] play no such role when it comes to metaphysical constitution of legal institutions—and among them legal systems. I actually find this role of officials as limited to (a) being those who enjoy certain degree of authority within a relevant community (i.e. the folk or citizens) as well as (or due to) (b) being those who are supposed to (or happen to) be aware of the contents of law which remain opaque to the “common” members of that community (Banaś 2018, 181).

My argument is agnostic to this problem and embraces both positions. Hence, the concept of relevant community, as applied to legal artefacts, may encompass only legal officials or the whole community of all folks.

4. THE CONVENTIONALISED KINDS

4.1. Degree of Conventionalisation

According to the mind-dependency thesis regarding social kinds, these kinds are dependent on human representations, such as propositional attitudes towards a specific content. Social kinds would not exist had some groups not represented them. This view can be traced back to Searle (1995), who claimed that, analytically, kinds may be subjective (i.e., they depend on propositional attitudes and are mind-dependent) in two senses: metaphysically and/or epistemologically. While he argued for epistemological objectivity of social kinds, he developed a view on ontological subjectivity of these kinds. However, mind dependence and subjectivity may encompass an entire kind or only its tokens.

Khalidi (2013, 2015) differentiated three ways in which social kinds are ontologically mind dependent and showed that Searle's claim that all social kinds are (ontologically) mind dependent is too strong. Merely a part of social kinds along with their instances (tokens) depends on our attitudes. According to Khalidi, some social kinds turn out to be natural kinds (in the way epistemic theories describe them). Legal artefacts are types of social kinds, but not those that can be characterized as "natural kinds." According to Khalidi (2013, 2015), there are three kinds² of social kinds and, as I argued elsewhere, the debate in the artefactual theory of law is whether law belongs to the first, second, or third kind of social kind (Biskup 2024, 20–22).

Social kinds can be real (first and second) or conventionalised (third) kinds. The real kinds are also investigative kinds, as they are discoverable and projectable (namely, we can predict what features the instances of a given kind will have). They are more like natural kinds, as they can be studied empirically and have a causal connection between properties.³ At the other end of the spectrum are (*strictly*) *conventionalised kinds*. These are of the third kind of social kinds: there is no causal relationship between the properties that are relevant for determining the membership to a particular kind, and there is a need for social recognition (attitudes) of both their instances and the kind.⁴ These kinds are strictly conventional, and "[they] ha[ve] arisen as a result of legislative fiat[; they] would not reflect a causal connection between the properties involved" (Khalidi 2015, 107). Giving an example, the most typical third kinds are

² Khalidi himself uses the terminology "three kinds of social kinds."

³ It may then be argued that there are just two kinds of social kind: conventionalised and nonconventionalised, real social kinds. This means that the second and first kinds of social kinds are the same kind after all.

⁴ However, the fiat properties of a given conventionalised social kind can engage in causal mechanisms with some other properties; see (Khalidi 2013, 157).

legal artefactual kinds (or legal kinds) (Banaś 2021), such as a member of parliament, a permanent resident (Khalidi 2015), or a legal marriage.

However, marriage as a social kind can be a real social kind but also conventionalised. In hunter-gatherer societies, marriage patterns emerge from causal mechanisms (functions) rather than legislative fiat. The institution develops because it solves coordination problems around reproduction, resource sharing, and alliance formation (Coontz 2006). These marriages do not require formal recognition by legal officials; they exist because of their functional roles within the social system. There is also a legal marriage: state-defined marriage with specific conventional requirements (licensing, ceremony, documentation) where properties are held together by fiat rather than causal mechanisms (in order to be married, a couple needs to receive a status, rather than be a solution to some set of coordination problems). The same is true about money, which can be considered social money (real kind, like a currency serving the functions of money, like storing value and exchange). Money, however, can also be fiat money, which is a conventionalised form of currency (conventionalised kind).

Given that, for every social kind, the conventionalisation is a continuum, at one end of which there are real social kinds and, at the other, strictly conventionalised kinds. What differentiates them is the degree of conventionalisation. This is a development of Khalidi's view on the continuum of conventionality:

I would conjecture that we can plot social kinds on a rough continuum in terms of their degree of conventionality, from those whose nature is not conventional at all, in the sense that human beings need not have any attitudes towards them for them to be manifested (e.g., recession, inflation), to those whose nature is somewhat conventional, in that it is at least partly determined by specific attitudes that human beings have towards them, though these attitudes are neither strictly necessary nor sufficient for their manifestation (e.g., war, cocktail party), to those whose nature is more purely conventional, in the sense that their existence is almost entirely determined by specific attitudes that human beings have towards them (e.g., permanent resident) (Khalidi 2013, 154–155).

While Khalidi claims that social kinds lie on a continuum, I claim that each social kind may be represented by the degree of conventionalisation: for instance, a real social kind of money (e.g., cigarettes in prison) and a heavily conventionalised social kind of money (the fiat money, currency). We can then differentiate between two types of “glue” that hold properties of social kinds together. These are either causal mechanisms or human intervention (a conventional assignment).

Conventionalised social kinds possess specific conventional features, yet their instances are interconnected within causal patterns. Consider the institution of marriage as an illustration. Assuming that marriage is a legal kind that represents the conventionalised social kinds, it possesses certain explicitly conventionalised features: for instance, marriage involves a dyad with designated privileges such as inheritance tax exemption and social benefit rights. In the United States, one function of marriage is the entitlement to file joint taxes. However, due to joint taxation, marriage can lead to a phenomenon known as the “marriage penalty” under specific income scenarios, resulting in higher tax payments for spouses compared to when they are single. The marriage penalty, understood as a feature of the legal marriage, arises as a (natural) consequence of the U.S. tax system and the conventional features of legal marriage, reflecting the causal interconnection between the two. It is a form of deontic consequence that arises because of the causal interaction between some normative systems: taxation and the institution of marriage. The marriage penalty is a causal feature of conventionalised kind marriage, emerging not directly from a collective recognition but indirectly from the interaction of the legal marriage with other social entities. In many cases, these causal attributes remain opaque, awaiting discovery.

4.2. Social Amendment

How can we know whether a new social entity created by way of (e.g., legal) conventionalisation belongs to a certain kind or some other? In the case of marriage consider:

Rockmarriage. Suppose a state amends existing law and changes the definition of marriage so that it can be a relationship between two persons or between a person and another thing. In that case, someone would be able to marry a rock.⁵

Recall that the Functionalist View holds two theses: 1) function and 2) recognition. According to the function thesis, if something does not fulfil the function of marriage, then it is not marriage. Suppose the function of marriage is procreation, then *rockmarriage* is not a case of marriage.

⁵ For some, the example may be odd, but it is intentionally radical. If you think you cannot follow the argument, substitute ‘rock’ with ‘companion robot.’ Still, one may refer to a British artist Tracey Emin who “married” a stone in her garden in the south of France in 2016. I would like to thank Alyson Price for pointing to that event. See: <https://www.theguardian.com/artanddesign/jonathanjonesblog/2016/mar/22/tracey-emmin-married-rock-love-intimacy>

Note that this may not be the case for conventionalised social kinds: legal institutions. Based on the idea of the degree of conventionalisation, we can say that it all depends on whether people would recognize the *rockarriage* as a case of marriage (assigning the property of “marrying things” to the kind marriage). The functions are not external to the relevant communities, but internal to their classification. That is why it is enough for conventionalised social kinds to be recognized by relevant communities (thesis 2): recognition.

As a particular spatio-temporal realization, *rockarriage* is a type. Is *rockarriage* a type of marriage, or of a completely new institutional arrangement? It cannot be said in advance; it is a matter of contextual factors, and it also takes time. This is why the conventionalised social kinds are fuzzy kinds, because there is a matter of uncertainty. As of April 2, 2025, are *rockarriages* cases of marriage? Definitely not anywhere. Could they be in the future? Yes. This is because, unlike natural kinds, the social kinds can be conventionalised; they are open to future “Social Amendment.”

Social Amendment. When a group of people starts to recognize an entity x as an instance of P , while before it was not socially recognized as belonging to the kind P , and a relevant community accepts (collectively recognizes) x as belonging to the kind P , then they “socially amend” P to include x .

Suppose, once again, a legislative body decides to implement a law that allows a person to marry a rock. Suppose further that the legislative body has some form of intention that this legal entity belongs to the kind marriage. They even call it “marriage.” After the conventionalisation of the properties of marriage to include marriages between a person and a rock, there is uncertainty about whether people will accept it as a kind marriage. Still, one could argue that *rockarriage* should already be considered a member of a legal kind marriage if we follow Hart’s view and consider the recognition of officials sufficient. If one follows Banaś’s egalitarian view and demands the collective recognition of a community of folks, then the story is a little bit different.⁶

⁶ As pointed out by an anonymous reviewer, each view has not only theoretical but also practical consequences. The reviewer gave the example: of a “significant proportion of Islamic marriages in the UK [that] are not civil marriages—people in these marriages see them as genuine whereas legal officials see them as not.” I believe that this example hinges on the legal/non-legal kind difference. While their marriages are for sure social (or religious) marriages, they are not (yet) legal marriages, if no legal officials or judges draw any normative consequences or they are not introduced via a formal procedure (e.g., legislation). So, no Social Amendment can be implemented here, as this process requires prior formal introduction of an entity as a legal kind. Focusing on a common-law system, when a judge will make a precedent judgment and recognize some normative consequences of this social marriage (e.g., for the purpose of social benefits

Conventionalisation of a given entity with the intention of particular kind membership does not guarantee that *Social Amendment* will occur. By the definition of *Social Amendment*, we can see that the conventionalisation of the social kind is not temporally connected with an act of introducing a new entity. This entity must be *socially recognized*, and a particular intention of kind membership must occur in the relevant society. This process takes time. Due to the process of *Social Amendment*, social kinds are contextual. They belong to the given contextually salient community (e.g., a given society or nation). Different communities have different criteria for membership in the kinds (e.g., marriage).

One might argue that the rockarriage is a poor example, so let's concentrate on an actual historical example. Let's examine the distinction between marriage and civil union. As Kees Waaldijk argued (Waaldijk, 2004, 2020), civil unions were a step that facilitated the acceptance of same-sex marriages. In other words, for same-sex marriages to be considered as instances of the marriage kind (Social Amendment), a similar institutional arrangement (civil union) that altered people's attitudes toward same-sex relationships needed to be introduced. The establishment of civil unions contributed to the subsequent Social Amendment of same-sex unions into marriages, but the civil unions themselves do not constitute marriages, as people did not collectively recognize them as belonging to the kind marriage.

The conventionalised social kinds (e.g., third kind of social kinds, legal artefactual kinds) are not constructed in the scientific theories, they may not be defined functionally, and the properties are collectively recognized. Complete scientific theories should consider both real social kinds and conventionalised social kinds. This is a part of the debate between *token-first* and *kind-first* theories, and this debate will be further explained in the next section.

5. THE CALIGULA PROBLEM

What connects many instances of a given kind of legal artefact? As an example, there are more conventional types of marriage, for example, contemporary legal marriages, and less conventional types of marriage studied by anthropologists, like marriage among people in hunter-gatherer societies. Similarly difficult is the problem of institutional identity (Rust 2023).

Let me focus on the example of Western marriage. According to Stephanie Coontz (2016), around the 18th century, there was a major change in the institution of Western marriage. Before that time, marriage was mostly an economic enterprise

or immigration rights), then this social marriage becomes a legal kind and the Social Amendment may additionally occur (either folks' or officials', depending on one's view).

connected with kinship structures, and who married who was decided by elders (economic marriage). After the 17th/18th century, the love revolution occurred: marriage began to be more associated with the choice of future spouses, who started to be more independent from their parents. The question arises: Is marriage before the 17th/18th century, that is, the economic marriage, the same institution as love marriage? Did we instead substitute the old institution of marriage with a new “love” one?

One of the ways to answer that question is Guala’s division between kinds and types.⁷ Marriage before the 17th/18th centuries and love marriage are two different types of the same institution kind.⁸ For if Guala is right and the kind-type distinction is traceable on the level of spatio-temporality,⁹ then my account of real and conventional kinds is an account referring to types and not to kinds. According to Guala, all actual spatio-temporal instances (types) of marriages (like, marriage in Italy in the 13th century or love marriage) are the realization of a higher, in taxonomy, kind: marriage. What glues them together is that they are all instantiations of the same kind. Kind is functionally defined as a set of solutions for related “marriage problems” (e.g., division of labour and economic support), while types are solutions to this set of related problems. The problems are causally related (“constitute a ‘cluster’ in Boyd–Mill sense”), due to a “homeostatic causal mechanism” (Guala 2016, 144).¹⁰ We can also learn about marriages. In many civilizations, societies tend to have a similar construction of solutions to a set of problems: raising children, division of labour, economic support, and inheritance. This causal mechanism guarantees that we can learn something about marriage and provide inferences from one sample of marriage to another.

So far, so good. Yet, what about *rockmarriage*? Imagine once again a society, for some reason or another, starting to speak about marriages between a person and a rock; no function of marriage can be realized here. According to Guala, this would not be an instance of marriage. Kinds are acontextual, atemporal, and not relative to any society and place. They are like Platonic entities. We can be wrong about them

7 I will use here my terminology. It is sometimes difficult to do justice to all possible linguistic frameworks that are relevant in a given domain of inquiry. My division between kind-type-token differs from Guala’s “type-token” distinction. Roughly, Guala’s “type” means the same as my “kind,” and his “token” is what I mean by “type.” Guala does not reserve a specific term for my tokens, e.g., for marriages between particular people (Guala 2016).

8 Joshua Rust in (2023) implicitly suggests surpassing Guala’s kind-type distinction in the context of the institutional identity of marriage.

9 See criticism in (Hauswald 2018).

10 A similar view, namely that social kinds have features instantiated by underlying causal mechanisms and the features are combined in the homeostatic property cluster, is defended in (Mallon 2016) and applied to some social kinds (especially the first and second kinds of social kinds) in Khalidi (2013).

(fallibilism), but we cannot change them. They are not up to us. We can imagine a new function that a *rockarriage* would serve; for example, imagine people started to think about marriage as a relic of the past, a historically unjust, heteronormative, and patriarchal institution. A government takes the first step to convince other people that marriage is nothing special and what counts is the practice of our relationships. People start to bring their things, including rocks, and marry them in front of an official to show their lack of social acceptance for the old institution of marriage.¹¹ The function of this marriage is reflexive: to devalue the traditional marriage.

Guala calls this sort of difficulty “Caligula’s problem” (Guala 2016, 186, 190–191). He inquires whether Caligula could appoint his horse as a senator. There are limits to such legislative actions, as the senate seat is reserved for a man, not an animal. It is a *prima facie* argument against the view that *rockarriage* can be an instance of marriage. When Caligula appointed his horse a senator, he turned this institution into something else. The same is true about *rockarriage*, which is just called “marriage” but does not belong to the kind “marriage”.

This reasoning is supported by the thesis about the scientific-oriented practice of categorization. According to that view, kinds belong only to the scientific realm and are discovered by scientists. It is additionally argued here that “[i]f the inclusion of Caligula’s equine senate in the class of democratic assemblies led to significant explanatory loss (without corresponding inferential gain), then there would be good reasons to exclude it from the institutional [kind] senate” (Guala, Hindriks 2020, 17).

This reasoning is applicable to those social kinds that, on the continuum of conventionalisation, are closer to real social kinds. Their properties are joined by causal mechanisms, so the “explanatory loss” is significant when construing the kinds. However, not all social kinds are real, the properties of conventionalised social kinds are joint by fiat. What is the explanatory gain (or loss) when applied to those kinds of social kinds? Every branch of science may have a different concept of explanation when construing their kinds. For instance, “[t]he categories that are of primary interest to the anthropologist, human geographer, historian, or archeologist are the categories that were used and understood and relevant to the lives of the people studied” (Thomasson, 2017, 63). So, the task for the interpretative branch of the social sciences is to study the transparent properties of a given conventionalised social kind. However, there is also a task for more positivist social scientists, economists, and some non-interpretative types of sociologists who seek some patterns in our social world across communities

11 This idea of the subjective character of marriage is suggested by Clare Chambers: “In the marriage-free state the term ‘marriage’ would have no legal significance. The state would not regulate the term, nor would it provide laws that dealt specifically with the creation and dissolution of marriages. ‘Marriage’ would be a term like ‘friendship’” (2017, p 2–3).

and aim to uncover causal patterns in which a given social kind can fall. This task is searching for real social kinds across different communities. Social scientists have particular criteria, and what should be done to determine how scientists construe kinds is to study their practice of individuation of kinds. It may be the case that inductive power is a key element of individuating scientific kinds. Nevertheless, even functionally speaking, some types of marriage, such as marriages between dead people, marriages with parts of the body, economic marriages, love marriages, contemporary marriages, and same-sex marriages, may have little to do with each other because they belong to different levels of conventionalisation and different times and places. What unifies them as a scientific kind is the actual practice of social scientists, who call them “marriage.”

According to Guala (and Hindriks), kinds (kind) are only creations of scientific practice (only scientific kinds are kind, other classifications do not constitute kinds, but, for instance, “categories”), and our epistemic values can guide us on whether a given instance belongs to one kind or another. Note, however, that some important scientific kinds are construed based on the actual practice of relevant communities (e.g., an anthropologist studying marriage practices in a particular society). The creation of kinds does not pertain just to position in the scientific hierarchy. Kinds are distinguished by *relevant communities*. When we create the kinds, we may have some other reasons than epistemic ones. Especially in the case of conventionalised kinds, communities can create their own kinds for particular interests. These kinds are not scientific kinds but can be called “folk kinds” when they are created by people for particular reasons or “legal kinds” when they are created for the purpose of legal or social regulation of some sphere of life. Still, it is debatable whether only legal officials are the relevant community here (Hart) or the whole community of folks (Banaś).

If we allow that kinds are not only an outcome of a scientific discourse, then in the case of *rockarriage* people in the imagined society could *socially amend* the social kind marriage to include marriages among people and rocks. This would be a case of a new type of social kind marriage that is strictly conventionalised. For society *x* at the time *t*, the legal kind marriage includes *rockarriage*.

Would it be included in the general (or universal) social kind marriage? I believe so. Marriage can be arbitrarily created; yet our scientific kind marriage would not be gerrymandered and arbitrarily constructed, as it would have to reflect the actual practice of a given society of including *rockarriages* into legal and social marriages. The same is true about Caligula’s horse senator. Whether the horse could be a senator depends on the relevant community’s (e.g., other senators) recognition in the process of *Social Amendment*.¹² The process of social recognition may be mediated by the

12 Recall that strictly conventionalised kinds have their properties not causally but conventionally related. As Khalidi observed, we can also imagine a given country demanding that its citizens are able

functions of a given kind. That is why the relevant community might not accept the horse as a senator. Along the same vein, the relevant community may not accept rockarriage as a case of legal or social marriage. This is an empirical question and cannot be settled in an armchair way.¹³ However, note that one hundred years ago it was practically impossible for the UK to introduce same-sex marriages, just as it is still not practically possible for many other societies. To achieve this, some social change is needed; it is not a metaphysical question, only a practical one. In this sense, our institutional concepts evolve, and there may not be a unified, a-contextual, and general definition that captures this concept atemporally. What is important is the subscription to the chain of past ascriptions of certain phenomena as marriages: the history of deliberation about a given kind.

Guala's distinction between kinds and types may represent something true about real social kinds. The strictly conventionalised kinds, such as legal artefactual kinds, cannot be defined functionally, as many properties of the strictly conventionalised kinds are not causally but conventionally related. Guala and Hindriks proposed that the relation between tokens, types, and our scientific theories of kind should be thought of as *kind-first*. They argued that "the adjudication of borderline cases [types] must be informed by comparisons of explanatory power and inductive potential [of kinds]" (Guala Hindriks 2020, 17).

However, I agree with Brian Epstein that "a good part of what individuates the general institution of marriage on planet earth is the actual tokens and practices of actual marriages" (Epstein 2015, 171). Our theory of kind marriage should take into account that our kinds are individuated based on the actual practices of marrying, and the very kind is something that social scientists construct based on the data instead of the general theory of kind, like function realization. Let's call this the "*token-first*" approach.

Guala, similarly to the Functionalist View of legal artefacts, wanted to unify all the kinds in terms of their function realization. This story can be true about some types of marriage, especially types of those nonconventional real social kind marriage (e.g., type marriage in a hunter-gatherer society). When conventionalisation occurs, function realization is not the best tool to detect kinds. What counts, according to the presented account, is people's acceptance of the instances and types of marriage as belonging to the kind marriage (*Social Amendment*).

to swim 100 meters, associating this feature with the kind of citizenship. This property of citizenship is not causally connected and is also not explainable by functions of citizenship. Yet, it would be a case of a conventionalised kind citizenship (Khalidi 2013, 2015).

13 Some empirical guidelines on the way communities categorize legal artefacts can be found in (Roversi et al. 2013).

A similar problem arises regarding the legal artefactual kind, such as legal personhood. This kind now includes tokens such as animals and even rivers, although the latter cannot perform certain forms of agency that were critical for natural persons as legal persons in the past (cf. Kurki 2019, Banaś 2021). Kinds evolve, and this evolution is an effect of social negotiation of meanings and the process of Social Amendment.

Rico Hauswald also argued against the functional individuation of kinds, but focused on the notion of static or stable functions, claiming that marriage is the case of a changing kind.

Problems or functions that are now included in the marriage-cluster could become insignificant, and others may be added to the cluster, but we have not the slightest idea what they will be. For these reasons, I do not think that we can have a theory that tells us which marriages can exist. Maybe we can have a theory that tells us which isotopes of uranium can exist (Hauswald 2018, 605–606).

He argued that changing social kinds evolve along our social needs and environment. Hauswald raised a question about the criteria of identity for marriage, that is, “‘how far’ a kind can move through the MSP¹⁴ without ceasing to exist. In other words, how different could a future practice be for it to still count as a marriage?” (Hauswald 2018, 606). He stipulated that there is probably no answer to such a question.

Particular tokens and types of marriage, similarly to species, some other case of changing kinds, alter their properties (the region in MSP) at different times. Every way of differentiating kinds (the demarcation of kind based on the accumulation of properties) involves a conventional element. According to Hauswald’s proposition, the changing kinds are also time sensitive, as they change with changes in their properties (Hauswald 2018, 605).

6. THE CONSTRUCTIVIST VIEW

The Constructivist View holds: (1) legal artefacts are conventionalised social kinds whose properties are held together by fiat rather than causal mechanisms; (2) kind membership is determined by collective recognition through Social Amendment; (3)

14 Where MSP stands for “a multidimensional space of properties,” which is defined as a space “in which every dimension represents a property, all existing individuals are recorded, we observe that these individuals will be distributed neither homogeneously nor randomly. Rather, in some areas, there will be many individuals, while other areas remain empty” (Hauswald 2018, 602)

functions may influence recognition but are not metaphysically necessary for kind membership. Let me unpack this by discussing the concept of “relevant community,” as well as contrasting this view with other socio-ontological accounts.

In a nutshell, social kinds are realized by social entities, their tokens and types. I proposed a view on legal artefactual kinds that is constructivist. It means that legal kinds, whatever they are, are constructed by (relevant) communities. Consequently, the very categories (kinds) are artefacts. I have argued that applying the Functionalist View to the conventionalised social kinds is not possible, as one would have to reject the central claim about the saliency of function in detecting the kinds. Conventionalised social kinds resist functional analysis. We are left then with the second thesis, that “If something is not collectively recognized as a member of a given legal artefactual kind by a relevant community, then it is not a member of that kind (token-first and kind-first approaches).”

6.1. Kinds and Communities

Who does construct the conventionalised kinds? I suggested two options: communities by their collective acceptance of *x* as an instance of a kind *X*, and especially social scientists for the purpose of scientific inquiries. This is not yet the full story. Kinds are also constructed for different purposes by other communities: lawyers, students, and laypersons for their particular purposes. That is why in the definition of the *Social Amendment*, I used the term “relevant community.” Some of the kinds may be more useful (e.g., in terms of their use in explaining some things or in predicting the future), some less useful. Yet, they are always anchored to communities and their interests (which is why, in many cases, the function of kinds may be salient for a particular classification). We use scientific classifications and sometimes, for administrative and legal purposes, there is a reference to scientific classifications because we believe they somehow reflect the nature of things. Sometimes, there is the reverse relation; ethnographers or anthropologists try to reflect on how a given community constituted their kind (e.g., marriage).

Social sciences, including critical social theories, enhance the level of social self-understanding of the communities. We are starting to realize “that the forms of law and human society were at bottom merely humans, not natural necessities but things actually made by men, and hence things which could be unmade and remade” (Hart 1982, 26). The *rockarriage* is a case in point. A society with the type *rockarriage* deliberately breaks the chain of assigned functions and properties of marriage. I have argued that such *rockarriage* should be counted as belonging to the kind marriage in a given society if the process of Social Amendment occurs. Social scientists should then revisit their theory about marriage, and it may change the scientific picture of

the kind marriage. Kind membership in the conventionalised social kinds as legal artefacts depends on people's attitudes and their practices: the token-first approach.

6.2. The Constructivist View and Other Social-Ontological Accounts

Although I discussed the institution of marriage extensively, I did not define the concept of an institution or my understanding of it. I focused more on marriage as a concept that is fundamental to the institution of marriage. I believe the major collective-acceptance-based accounts of social institutions have a concept-dependency account of institutions, such as Raimo Tuomela's norm-practice system theory. What is more, even the convention-based accounts of institutions could be absorbed by the Constructivist View.

Tuomela is very explicit about the concept of dependency. He introduces the concept of presupposition. For an institution to be considered as such, a collective acceptance of a set of rules, along with the practice of rule-governed behaviour, is important. However, there are significant structural and conceptual presuppositions that must be fulfilled. For something to qualify as an institution of money, there are structural presuppositions that should be met (e.g., a physical object or something representing a physical object), as well as the concept of money that is grasped by the relevant community (Tuomela 2013, 225). Concept presupposes the institution.

The Constructivist View subscribes to the concept-based account of the institution. The idea of Social Amendment expresses this. We have three levels of social entities: tokens, types, and kinds. As I define it, something (a type of token) is of a given kind if the relevant community recognizes it as a member of that kind. For example, suppose the Polish parliament introduced an institution that recognizes mutual rights and obligations between two persons of the same gender. I claim that if people recognize it as belonging to the kind marriage, then parliament has conventionalised the institution of marriage to include same-gender persons within its scope. But it may turn out, whatever the name of the institution ascribed by parliament, that people will resist this change. That there will be no acceptance of same-gender marriages as marriages and, according to my account, the Social Amendment is not successful. Same-gender marriages, in the Polish community¹⁵, would not be considered marriage, since the community's concept of marriage is different.

In the case of conventionalised social kinds, metaphysically speaking, "anything goes." This does not mean that marriage, or any other legal artefact, can be *practically* anything; I argue that marriage, ontologically, could become anything, but there are various practical and psychological constraints. The Constructivist View may

15 It all depends on how we define the relevant community: as legal officials (Hart), or folks (Banaś).

encompass the theories of institutions as conventions (like the one proposed by Guala and Hindriks) as the practical-empirical, rather than metaphysical, theory of kinds.

Functions are not metaphysical but rather a practical constraint on Social Amendment. Functionalism may be inherent in how we categorize particular phenomena as belonging to a given kind. Institutions as conventions or rules-in-equilibria may provide an excellent philosophical and social-scientific reconstruction of how social scientists and even individuals perceive their kinds of institutions. That is why functionalism may be necessary to the theory as a practical constraint on social kinds. Because we think functionally, we categorize our kinds based on their functions. This, however, is an empirical claim. My aim was to demonstrate that, only metaphysically speaking, legal artefactual kinds are not functional. We do need further studies on institutional changes and how they affect scientific and folk classifications. It is not settled that we can think functionally; for instance, an alternative view would hold that people categorize things by their prototypes (Rosch 1973).

Functional reasoning is supported by the fact that many societies have had the same types as other societies (and, accordingly, their conventionalisation occurred in the same way), or because the same pragmatic, economic, or coordinative reasons prevailed as an argument for the particular type of conventionalisation. In contrast, different mores, moral values, and political considerations may lead different societies to conventionalize marriage differently. Here, functional reasoning will not serve its purpose of explaining the structure of a given kind. Social sciences, including critical social theories, enhance communities' social self-understanding; it is called the *debunking project* (Haslanger 2012). It gives communities a form of agency in construing social kinds differently than in the past, because they start to realize that the social powers are in their hands, not in the hands of gods or nature.

The Constructivist View, with its mechanism of Social Amendment, describes a process called by Ehrenberg the "recycle" of artefacts, yet it cannot be seen as a mere modification of Ehrenberg's view; it has more radical consequences. Note that there is an underdetermination in Ehrenberg's conception of whether radical changes in the function of a given artefact are possible (that is, what are the limits of the recycling). There is a vague distinction between malfunctioning artefacts and ones that have been recycled. Note further that even if the radical change of the function is possible, it is not the function that is determinative for my account, as the collective recognition of something as belonging to a given kind is crucial for kind membership. Hence, the function of a given kind is not its identity criteria.

Corrado Roversi's account of legal artefacts (2023) is closest to the one defended in this paper. Roversi defends a so-called ART formula that says: "an artifact is its deliberative history, that is, a diachronic development of human intentions that have as their origin a creative process, as their content the artefact's interaction plan, and

as their support the fact that this interaction plan is based on a real mechanism of functioning” (Roversi 2023, 82, my translation). The functions of artefacts are covered in the “interaction plan” as intended or actual use of the artefacts (Roversi 2023, 86–92). Still, the mechanism in charge of the identity criteria of the artefacts is “deliberative history” (*storia deliberativa*), which includes collective recognition of something as belonging to the given kind, interactions with the artefact, or intended and actual ways people use the artefact (Roversi 2023, 125). While the ART formula consists of many elements, at the end of the day, Roversi’s account focalizes on collective recognition:

The problem of contingency requires a metaphysics of legal institutions not to be too demanding on the requirements of rationality in their construction, since they may result from projects that are arbitrary (...) [A]ll that is necessary for the institutional artefact to exist is a deliberative history: but there is no guarantee that this deliberative history is based on rational intentions (Roversi 2023, 127, my translation).

The Constructivist View defended here can be seen as providing one mechanism among many needed for a full picture of artefacts, and the view is modest by providing an ontological mechanism for kind-membership, the Social Amendment. While pure functionalist theories of artefacts are incompatible with the Constructivist View defended by me, Roversi’s historical-intentional theory (*teoria storico-intentionalistica*) starts from the same premises, that social recognition (or acceptance) is crucial for kind membership. Note that my account focuses on the synchronic aspect of recognizing particular entities as belonging to a certain (artefactual) kind. Roversi’s theory, by accounting for deliberative history, provides a good tool to characterize the legal kinds; that in order to know what it takes to be of a certain legal kind (e.g., marriage), one needs to study the whole history of particular social recognitions and acceptances. This aligns well with the proposed token-first approach of studying legal kinds defended in this paper. Social Amendment explains one crucial mechanism in the deliberative history of legal artefacts: the mechanism by which collective recognition shapes the development of legal artefacts over time.

7. CONCLUSIONS

Legal artefacts are those artefacts that are made in the context of law. They include such phenomena as legal rules, legal institutions, legal officials, and material legal artefacts. It is assumed by the Functionalist View that the nature of a given legal

artefact can be tracked by referring to its function. According to the Functionalist View:

1. Kinds of legal artefacts are (partially) defined by the function their tokens serve (*wholesale* or *retail* variations of the thesis);
2. If something is not collectively recognized as a member of a given legal artefactual kind by a relevant community, then it is not a member of that kind (*token-first* and *kind-first* approaches)

Pace such view, the legal kinds are conventionalised social kinds, their properties, including the functional properties, are joined by fiat. What counts as the proper touchstone for recognizing whether a token or a type belongs to a given kind is the relevant community's recognition of this token as belonging to a given kind (*Social Amendment*—thesis 2) is sufficient. What follows is that the functions are irrelevant in answering the metaphysical question: to which legal artefactual kind does a given phenomenon belong?

I provided an example of a legal artefact, legal marriage. I argued that even a putative type of marriage, namely the *rockarriage*, that is not able to serve the traditional functions of marriage belongs to the kind marriage if recognized by a relevant community as marriage. This is a token-first approach to constructing the theories of legal artefacts (and other conventionalised social kinds). First, we should gather multifarious examples that were recognized by communities as members of the given artefactual legal kind and then proceed to construct a fallible theory. The theory is fallible because a community may recognize a new instance that is not foreseeable by the theory. The theory should give justice to social practice, not the other way around.

There is an orthogonal debate about legal artifactuality that cannot be settled here: whether law is a real (natural) kind or a social construct (Biskup 2024): whether law is a conventionalised or non-conventionalised (real) kind. In this paper, I remained agnostic on that debate. While legal artefacts are conventionalised social kinds, the very law (or legal system) may be a real social kind, which has some bundled features unified by a causal mechanism and may be “discovered” and cannot be changed by fiat. It is then a debate between legal conventionalism, that “[l]aw is whatever people identify as and treat through their social practices as ‘law’ ” (Tamanaha 2001, 166), and treating law as a real social kind (though with no essential features): “If, for naturalistic reasons, laws with certain shared features independently emerge in human communities or are copied to meet the same needs, an argument can be made that certain manifestations of law are types of natural kinds” (Tamanaha 2022, 25).

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REFERENCES

- Atiq, Emad H. 2020. "Natural Law and the Nature of Law (Review)." *Notre Dame Philosophical Reviews*.
- Banaś, Paweł. 2018. *Truth and Truth-Makers in Legal Discourse*. PhD Thesis, Jagiellonian University. URL <https://ruj.uj.edu.pl/server/api/core/bitstreams/b61b8803-1ced-4a2f-8dba-c37807bea28b/content>.
- Banaś, Paweł. 2021. "Why Cannot Anything Be a Legal Person? A Critique of Kurki's Theory of Legal Personhood." *Revus* 44.
- van der Bergh, Jeroen, and Sigrid Stagl. 2003. "Coevolution of economic behaviour and institutions: towards a theory of institutional change." *Journal of Evolutionary Economics* 13.
- Biskup, Bartosz. 2024. "Two Senses of Law as an Artefact." *Monash University Law Review* 50 (3).
- Burazin, Luka. 2015. "Practical Concepts of Law as Artifact Kind." *Pravni Vjesnik* 31 (3–4).
- Burazin, Luka. 2016. "Can There Be an Artifact Theory of Law?" *Ratio Juris* 29 (3): 385–401. URL <https://doi.org/10.1111/raju.12134>.
- Burazin, Luka. 2018. "Legal Systems as Abstract Institutional Artifacts." In *Law as an Artifact*, edited by Luka Burazin, Kenneth E. Himma, and Corrado Roversi, 112–135. Oxford: Oxford University Press.
- Chambers, Clare. 2017. *Against Marriage. An Egalitarian Defence of the Marriage-Free State*. Oxford: Oxford University Press.
- Coontz, Stephanie. 2006. *Marriage, a History: How Love Conquered Marriage*. New York: Penguin Books.
- Crowe, Jonathan. 2014. "Law as an Artifact Kind." *Monash University Law Review* 40 (3).
- Crowe, Jonathan. 2019. *Natural Law and the Nature of Law*. Cambridge: Cambridge University Press.
- Crowe, Jonathan. 2022. "Defects and Failures in Legal Artifacts." In *The Artifactual Nature of Law*, edited by Luka Burazin, Kenneth E. Himma, Corrado Roversi, and Piotr Banaś, 37–46. Cheltenham: Edward Elgar.

- Ehrenberg, Kenneth M. 2016. *The Functions of Law*. Oxford: Oxford University Press.
- Ehrenberg, Kenneth M. 2022. "Intentions in Artifactual Understandings of Law." In *The Artifactual Nature of Law*, edited by L. Burazin, K. E. Himma, C. Roversi, and P. Banaś, 16–36. Cheltenham: Edward Elgar.
- Garcia-Godinez, Miguel. 2022. "Law and Its Artifacts." In *The Artifactual Nature of Law*, edited by Luka Burazin, Kenneth E. Himma, Corrado Roversi, and Piotr Banaś, 128–146. Cheltenham: Edward Elgar.
- Guala, Francesco. 2016. *Understanding Institutions: The Science and Philosophy of Living Together*. Princeton: Princeton University Press.
- Guala, Francesco, and Frank Hindriks. 2015. "Institutions, Rules, and Equilibria: A Unified Theory." *Journal of Institutional Economics* 11 (3).
- Guala, Francesco, and Frank Hindriks. 2020. "Institutions and Functions." In *Institutions in Action: The Nature and the Role of Institutions in the Real World*, edited by T. Andina and Bojanic, 9–19. Cham: Springer.
- Hart, H. L. A. 1982. *Essays on Bentham: Studies in Jurisprudence and Political Theory*. New York: Oxford University Press.
- Hart, H. L. A. 2012/1961. *The Concept of Law*. 3rd ed. Oxford: Oxford University Press.
- Haslanger, Sally. 2012. "Social Construction: The 'Debunking' Project." In *Resisting Reality: Social Construction and Social Critique*. New York: Oxford University Press.
- Hauswald, Rico. 2018. "Institution Types and Institution Tokens: An Unproblematic Distinction?" *Philosophy of the Social Science* 48 (6).
- Khalidi, Muhammad Ali. 2013. *Natural Categories and Human Kinds*. New York: Cambridge University Press.
- Khalidi, Muhammad Ali. 2015. "Three Kinds of Social Kinds." *Philosophy and Phenomenological Research* 90 (1).
- Kurki, Visa. 2019. *A Theory of Legal Personhood*. Oxford: Oxford University Press.
- Mallon, Ron. 2016. *The Construction of Human Kinds*. Oxford: Oxford University Press.
- Rosch, Eleanor. 1973. "Natural Categories." *Cognitive Psychology* 4 (3).
- Roversi, Corrado. 2018. "On the Artifactual—and Natural—Character of Legal Institutions." In *Law as an Artifact*, edited by L. Burazin, K. E. Himma, and C. Roversi, 89–111. Oxford: Oxford University Press.
- Roversi, Corrado. 2019. "Law as an Artefact: Three Questions." *Analisi e Diritto* 2.
- Roversi, Corrado. 2021. "Law as an Artifact: An Assessment." In *Italian Philosophy of Technology: Socio-Cultural, Legal, Scientific and Aesthetic Perspectives on Technology*, edited by S. Chiodo and V. Schiaffonati, 129–147. Cham: Springer.

- Roversi, Corrado. 2023. *Artefatti giuridici. Il diritto tra intenzione, storia, funzione*. Torino: G. Giappichelli Editore.
- Roversi, Corrado, Anna M. Borghi, and Luca Tummolini. 2013. "A Marriage is an Artefact and not a Walk that We Take Together: An Experimental Study on the Categorization of Artefacts." *Review of Philosophy and Psychology* 4 (3).
- Rust, Joshua. 2023. "Institutional Genidentity." *Journal of the American Philosophical Association* 10 (4): 1–20.
- Searle, John. 1995. *The Construction of Social Reality*. New York: Free Press.
- Tamanaha, Brian Z. 2001. *A General Jurisprudence of Law and Society*. New York: Cambridge University Press.
- Tamanaha, Brian Z. 2017. *A Realistic Theory of Law*. Oxford: Oxford University Press.
- Tamanaha, Brian Z. 2022. *Sociological Approaches to Theories of Law*. Cambridge: Cambridge University Press.
- Tuomela, Raimo. 2013. *Social Ontology: Collective Intentionality and Group Agents*. New York: Oxford University Press.
- Waldijk, Kees. 2004. "Others may follow: The introduction of marriage quasi-marriage, and semi-marriage for same-sex couples in European countries." *Judicial Studies Institute Journal*.
- Waldijk, Kees. 2020. "What first, what later? Patterns in the legal recognition of same-sex partners in European countries." In *Same-sex families and legal recognition in Europe*, edited by M. Digoix, 11–44. Cham: Springer.