IN SEARCH OF THE FUNCTIONS OF THE LEGAL SYSTEM: AXIOMATIC AND METHODOLOGICAL STAGES

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Abstract: The theory of artifacts can be understood as primarily focusing on function when counting something as an artifact. With that starting point, projects aimed at the identification of the function of law contribute to arguments about categorizing law as an artifact. The purpose of this study is to highlight the challenges of this endeavor. Before beginning with search for law-functions, questions about the postulates on the relations between an artifact, law, and function (axiomatic stage) have to be addressed and the proper methodological approach must be found which is capable of addressing the contingency problem (methodological stage).

Keywords: artifact; legal system; function; essentialism; conventionalism; minimum content of law

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1. INTRODUCTION: THE ROUTE PLANNER FOR THE EXPLORER

In 1979, Joseph Raz reported that *"the concept of the functions of law is, quite obviously, of major importance to any theory of law which attempts a general explanation of the nature of law"*.[1] The degree of importance of this concept to the artifact theory of law (ATL), at least according to some versions of this theory, has been promoted from *major importance* to the level of essential importance. This statement becomes *quite obvious* in light of the presumption of some versions of ATL that law necessarily has a function. This emphasis of the concept of functions has led legal theorists interested in ATL to search for the functions of law.[2]

The search for the functions of law can be structured in sequences and this article is a part of the larger project of mapping that structure. In other words, there is a proper

* I am indebted to Kenneth E. Himma and two anonymous reviewers for comments on an earlier draft.

1 RAZ, J. *The Authority of Law: Essays on Law and Morality*. New York: Oxford University Press, 1979, p. 16.

2 See: EHRENBERG, K. M. Defending the Possibility of a Neutral Functional Theory of Law. *Oxford Journal of Legal Studies*. 2009, Vol. 29, No. 1, pp. 91–113; EHRENBERG, K. M. *The Functions of Law*. New York: Oxford University Press, 2016; HIMMA, K. E. The Conceptual Function of Law: Law, Coercion, and Keeping the Peace. In: BURAZIN, L. – HIMMA, K. E. – ROVERSI, C. (eds.). *Law as an Artifact*. New York: Oxford University Press, 2018, pp. 136–159; JOVANOVIĆ A. M. *The Nature of International Law*. Cambridge: Cambridge University Press, 2019.

route an ATL scholar must take when searching for the functions of law following that map. We propose that the route includes the following sequences: 1) axiomatic; 2) methodological; 3) classificatory; and 4) analytical (analysis of proposals for the function of law). The criteria for evaluating this map are the following: (1) the sequences of the route must be visible; (2) different views regarding directions must be clarified; and (3) challenges on the road must be detected.

The goal of this article is to contribute to the development of such a meta-theory. In this contribution the first two sequences of the route will be articulated.[3] The results are intended to clarify the following elements of a theory on the functions of law: the postulates it starts from; the conceptions of law underlying a theory; the purposes of a theory; and the concepts, methods, and classifications that theory uses for identifying the functions of law. The article will also present the main problems that can affect the search for the functions of law at the first two stages.

Before determining the functions of law, in the axiomatic sequence questions regarding the relations between the concepts of an artifact, law, and function have to be addressed (sec. 2). We will refer to issues on functions from the perspective of the philosophy of artifacts. The analysis will present challenges for the thesis that law has a function and clarify the meaning of the term function. Analytical differentiations useful for understanding the concept of function of law will be presented. In the introduction we will mention the differentiation between output (result) function and operative (operation) function. Namely, the prevailing narrower definition of function refers to the delivery of results (outputs) to users. The meaning of function will be broadened in a way to include not only the delivery of results (outputs) to users but also its operative (operation) function. The latter is a term for a structural process contained by some artifacts, e.g., a computer, which enables the production of an artefact's results (outputs).

In the methodological sequence (sec. 3) the conflict between essentialism and conventionalism will be addressed. The set-up for analyzing the analytical and folk concepts of law will be structured in order to clarify their conceptual and methodological insights about law. Next, how the main insights of both concepts can be united through the mental experiment of the museum of law will be presented. The contingency problem is the main concern of the methodological sequence. There are two meanings of the concept of contingency. The first refers to the status of empirical propositions which, in contrast to non-empirical (logical) propositions, are not necessarily true but depend on empirical data which can change.[4] The second meaning of contingency is the impossibility *"to step outside the various vocabularies we have employed and find a metavocabulary which somehow takes account of all possible vocabularies, all possible ways of judging and feeling"*.[5] We are primarily focused on the concept of contingency understood in the first sense but also take into account situations covered by the second meaning. It is easy to recognize the problem of mutual understanding among speakers

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[3] For the analysis of the second two sequences see: KREŠIĆ, M. In search of the Functions of the Legal System: Classificatory and Analytical stages. In: BURAZIN, L. – HIMMA, K. E. – ROVERSI, C. – BANAŚ, P. (eds.). *The Artifactual Nature of Law*. Cheltenham: Edward Elgar, 2022, pp. 47–65.

[4] POPPER, K. *The Logic of Scientific Discovery*. 2nd ed. London and New York: Routledge, 2002, p. 274.

[5] RORTY, R. *Contingency, Irony, and Solidarity*. Cambridge: Cambridge University Press, 1989, p. xvi.

of different legal languages. The same problem can be noticed in interactions involving persons belonging to communities of diverse sub-languages which developed through specific practices of the community sharing *one* legal language. The problem also exists among proponents of contrasting theories about legal languages. Hence, given the definitions of the contingency above, any statement on the universal function of law is faced with counterarguments about the contingency of functions especially when people speak different languages.

2. THE ARTIFACTS, LAW AND FUNCTIONS

It is generally believed that artifacts have functions.[6] In the philosophy of artifacts, this belief is formulated in a way which sometimes expresses the necessary connection between two concepts. This is apparent in the postulate that *"the nature of an artifact lies in its proper function"*[7] and according to which *"one of the defining characteristics of artifacts is that they have functions; they are for something"*.[8] Legal theorists have recently echoed that law is an artifact.[9] Consequently, the claim that law is an artifact implies that law has a function.[10]

The logical justification for law-function link can be presented as:
(1) proposition 1: every artifact has a function;
(2) proposition 2: law is an artifact; and
(3) conclusion: law has a function.

If the function of law cannot be identified, then law is left outside the category of artifacts (at least outside the list of proper artifacts). Scientific curiosity to ascertain whether there exists what a theory claims to exist, and the inclination to either bolster or refute a theory such as the ATL, are good reasons why legal scholars would search for the functions of law. But, before the search for the functions of law can commence, the explorer has to cope with theoretical controversies regarding propositions one and two on which the conclusion that *law has a function* is grounded. The following sections 2.1 and 2.2 are dedicated to these issues.

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6 JUVSHIK, T. Function essentialism about artifacts. *Philosophical Studies*. 2021, Vol. 178, No. 2, pp. 1–22; OLIVERO, I. Function is not enough. *Grazer Philosophische Studien*. 2019, Vol. 96, No. 1, pp. 105–129; *Stanford Encyclopaedia of Philosophy*: *"A standard philosophical definition of 'artifact'– often assumed even when not explicitly stated – is that artifacts are objects made intentionally, in order to accomplish some purpose"* (Hilpinen 1992; 2011). (Artifact. In: *Stanford Encyclopaedia of Philosophy* [online]. 2022 [cit. 2024-08-13]. Available at: https://plato.stanford.edu/entries/artifact/).

7 BAKER, R. L. The Ontology of Artifacts. *Philosophical Explorations*. 2004, Vol. 7, No. 2, p. 102.

8 HUGHES, J. An artifact is to use: An introduction to instrumental functions. *Synthese*. 2009, Vol. 168, No. 1, p. 179.

9 See: EHRENBERG, *The Functions of Law*; BURAZIN, L. – HIMMA, E. K. – ROVERSI, C. (eds.). *Law as an Artifact*. New York: Oxford University Press, 2018.

10 BURAZIN, L. Law as an Artifact. In: SELLERS, M. – KIRSTE, S. (eds.). *Encyclopedia of Philosophy of Law and Social Philosophy*. Dordrecht: Springer, 2019, p. 2.

In this section, we will briefly identify the framework for discussing the first proposition that every artifact has a function. The set-up is shaped by two counterclaims related to the proposition and two main types of vagueness concerning the concept of function.

The philosophical debate on the functions of artifacts has not ended[11] and for legal theorists this means they should be careful when taking final positions. For instance, is it really correct to claim that every artifact has a function? What might seem to most people in principle to be a true statement, in reality might be contradicted by exceptions. In conformance with Karl Popper's response to black-swan problem[12] we should insist on testing this universal claim of ATL. Is it possible that some products of humans have no function at all or that people have an illusion of function which in reality does not exist?

The philosophy of artifacts accepts that some artifacts exist without any real function for society.[13] For instance, we can wonder whether a banana displayed on the wall in a museum has any function? The reply is that this thing is an artistic piece which has the function of inducing an aesthetic experience. However, the banana still might not be seen as an object of art by an audience and consequently for this audience the banana has no function in the context of museum. This point about artifacts of art can be bypassed for the purpose of researching the function of law by assuming that public artifacts that are not primarily artistic have a function.[14] However, we can challenge this thesis as well. It is worth mentioning an ongoing philosophical debate regarding the *phantom function* of some artifacts such as the function of fengshui mirrors to deflect bad qi or the function of rabbits' feet to bring good luck.[15] These examples leave open the possibility that at least some artifacts might not have any real effect although they are believed by their users to have those effects. The problem can be resolved by distinguishing what the thing is really constructed for e.g., the function of a toy for amusement, from what they represent in the use e.g., magic wands. Still, the problem remains in cases where this distinction does not exist.

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[11] See: HOUKES, W. – VERMAAS, P. E. Actions Versus Functions: A Plea for an Alternative Metaphysics of Artifacts. *The Monist*. 2004, Vol. 87, No. 1, pp. 52–71; HOUKES, W. – VERMAAS, P. E. *Technical functions: On the Use and design of Artefacts*. Dordrecht: Springer, 2010; MILLIKAN, R. G. *Language, Thought, and Other Biological Categories: New Foundations for Realism*. Cambridge: MIT Press, 1984; MILLIKAN, R. G. Wings, Spoons, Pills, and Quills: A Pluralist Theory of Function. *The Journal of Philosophy*. 1999, Vol. 96, No. 4, pp. 91–206; THOMASSON, A. L. Artefacts in Metaphysics. In: MEIJERS, A. (ed.). *Philosophy of Ontology and Engineering Sciences*. Amsterdam: Elsevier, 2009, pp. 191–212; THOMASSON, A. L. Public Artefacts, Intentions and Norms. In: FRANSSEN, M. – KROES, P. – REYDON, T. A. C. – VERMAAS, P. E. (eds.). *Artifact Kinds: Ontology and the Human-Made World*. Dordrecht: Springer, 2014, pp. 57–74; PRESTON, B. Why is a Wing like a Spoon? A Pluralist Theory of Function. *The Journal of Philosophy*. 1998, Vol. 95, No. 5, pp. 215–254; PRESTON, B. Philosophical Theories of Artifact Function. In: MEIJERS, A. (ed.). *Philosophy of Ontology and Engineering Sciences*. Amsterdam: Elsevier, 2009; PRESTON, B. *A Philosophy of Material Culture: Action, Function, and Mind*. New York: Routledge, 2013.

[12] Popper, *The Logic of Scientific Discovery*, pp. 3–26.

[13] See: THOMASSON, *Public Artefacts, Intentions and Norms*, p. 59.

[14] EHRENBERG, *The Functions of Law*, p. 137.

[15] See: PRESTON, *A Philosophy of Material Culture*; HOLM, S. The Problem of Phantom Functions. *Erkenntnis*. 2017, Vol. 82, No. 1, pp. 233–241.

For instance, if norm-creators who are also norm-users believe that compliance with a norm on the elimination of bad-luck sailors will bring good luck to a ship then a sailor can willingly accept his death as the inevitable consequence of this norm. The function of the elimination of bad-luck sailors could be explained, according to some rational criteria, as a phantom function in malfunctioning law. But in the context of the society where the norm on the elimination of bad-luck sailors is autonomously applied, the function of sacrificing is perceived by norm-users as the correct function to survive as the society. A legal system based exclusively on such phantom functions is something that could appear in the future.

The phantom functions' problem is an important issue for the ATL but we cannot tackle it here. However, this problem can be temporarily resolved in two steps for the purpose of the project of searching for the function of law. One, the possible irrationality of legal institutions still does not mean that the legal system as a whole does not have a rational function. Two, even if at the end of the search the function of law is judged to be a phantom function, this result does not make the project of searching for the function of law pointless. We first have to identify the function of law to be able to classify it as a phantom function.

In addition to questions about the postulates regarding the existence of the function of a thing, important questions which theory on functions of law must address refer to the concept of function itself.

We have made a distinction between real and phantom functions. Two further distinctions in functions have to be highlighted. We need to determine whether the term *function* refers to the actual effects it produces in a society, or the purpose (the point) of the artifact.[16] According to how most people use the term *function*, it refers to the purpose of an artifact although it is also used to refer to the production of certain effects.[17]

Another ambiguity regarding the term *function* is the following. On the one hand, it can refer to the ultimate purposes and/or effects they have on a society. Here again an additional question arises: whether *function* means one key output-function (necessary for appearance of all other possible functions) or whether it denotes different output-functions of equal importance. On the other hand, the word *function* is used to refer to the functions a thing performs for the production of an abstractly defined output which can then serve different purposes or produce different effects.

For instance, the computer in the Ministry of Justice has the function to detect current local criminals and the function of the computer in the Holocaust Museum is to remind visitors of the past war criminals. Then again, two computers together can be perceived as having the function of suppressing undesirable behavior. At the same time, both objects have a function to process information. What is the function of this artifact?

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[16] On different meanings of "function" see: TWINING, W. A. PostWestphalian Conception of Law. *Law & Society Review*. 2003, Vol. 37, p. 214.

[17] *"It is, I think, admitted on all hands that human purposes and intentions have something to do with the functions of artifacts."* (PRESTON, *Philosophical Theories of Artifact Function*, p. 218). See: definition in the *Stanford Encyclopedia of Philosophy* in note 6. When authors address phantom functions, they deal with the effects of the artifacts. See e.g., note 15.

Although the function of something is usually held by theorists to mean the final result or outcome (output) of the process,[18] it seems useful at least in some cases like the computer to accept the meaning of function as including the operative function. In such cases, the end-result (output) of the artifact can remain undetermined (abstract results perceived to serve in multiple ways). This is especially relevant to law.

2.2 ARTIFACTS AND LAW

The recent account of law as belonging to the genre of artefacts[19] has indicated profound, although sometimes discordant, insights in favor of the thesis that law is an artifact. This claim will not be repeated or questioned in this inquiry focused on functions. However, we will address the important implication of this thesis for the identification of function in the legal context.

That a function is a *function of law* means that the function belongs to law, and since the law is consisted of norms, a function of law also has to be constituted by legal norms. If we claim that all legal systems have the same function, this means that some minimum content of a legal system has to be the same in all legal systems.

The claim that all legal systems have the same norms named as the minimum content of law, does not mean that all other norms that refer to that minimum content have to be the same. Only norms that are necessary for a function to exist have to be the same. For instance, if the function of law is considered to be the control the killing of people, then some norms necessary for controlling such behavior have to exist in the system. At the same time, some legal systems might permit killing of disfavored minorities.

In contrast, some theorists claim that the thesis on law as an artifact implies that the content of law is contingent. Schauer believes that *"the most important feature of artifacts is their contingency"*, and that different cultures may have different concepts of law.[20]

The conflict between these two theses – that law as an artifact has a function and the thesis that law as an artifact has a contingent content – reflects the tension between two methodological approaches to law: essentialism and conventionalism.[21] However, as Twining correctly noticed this tension can be perceived as the result of mixing analytical and folk concepts of law.[22] As it is important for the ATL in general to make the difference between analytical (theoretical) and folk concepts of law,[23] it is even more important for the position of the ATL on functions of law. As we will see below, conventionalism can accept that law is an artifact and deny the thesis on function as a feature of law.

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18 See authors mentioned in notes 2 and 11.

19 See e.g., BURAZIN – HIMMA – ROVERSI, *c. d.*

20 SCHAUER, F. Law as a Malleable Artifact. In: BURAZIN, L. – HIMMA, E. K. – ROVERSI, C. (eds.). *Law as an Artifact*. New York: Oxford University Press, 2018, p. 36, p. 43.

21 On this tension see: TAMANAHA, B. *A General Jurisprudence of Law and Society*. New York: Oxford University Press, 2001.

22 TWINING, *PostWestphalian Conception of Law*, p. 230.

23 See: BURAZIN, L. Practical concepts of Law as an artifact. *Pravni vjesnik*. 2015, Vol. 31, No. 3–4, pp. 65–76.

According to some authors,[24] the concept of law is determined by our linguistic conventions for using the term *law* together with certain philosophical assumptions about its nature which are implicit in those conventions. An analysis of the concept of law is based on those conventions and purports to express necessary truths about the nature of law as our conventions define them. Statements about the nature of law are conditionally necessary in the sense that they flesh out the assumptions that underlie conventions that can change. This clarification of the conceptual analysis could be used to claim that no tension between essentialism and conventionalism exists and that those who claim the opposite have not really understood what it is that conceptual analysists do.

The detailed exposition of the analytical and folk concepts of the nature of law that follows in the next section is also aimed at resolving this tension. Even if we are not successful in achieving that goal, this exposition might be useful for highlighting characteristics of essentialism and conventionalism which can mitigate the tension.

3. FUNCTIONS IN THE METHODOLOGICAL GAP

The search for the functions of law will fall into a methodological gap only if essentialism is understood exclusively as a position that law has a necessary minimum content independent of what those subject to the law consider to be law and conventionalism is understood as the position that law is any social practice recognized as law by those subject to the law. Under the assumption that essentialism gives priority to an analytical concept of law and conventionalism prioritizes a folk concept of law, the analysis of both concepts might identify elements for bridging the methodological gap.

3.1 THE ANALYTICAL CONCEPT

In the context of the identification of the minimum content of law pertaining to its functions, the analytical concept of law refers to the results of the conceptual practices of those who research the nature of law. First in line are legal theorists, but also others e.g., judges and legal scientists when thinking about the features of law as theoretical propositions which, at least in some cases, can influence their own practices of resolving practical problems. We will stress the following distinctions that are important for the construction of an analytical concept: weak versus strong essentialism, local versus trans-local subject of research, deductive versus inductive method, and theoretical versus practical purposes.

The difference between strong and week essentialism refers to our cognition. Strong essentialism corresponds to what Popper means by methodological essentialism.[25] The claim of the minimum content of the legal system expressed in this context means that the content exists independently of any social practice. This position would be considered by opponents to it as the metaphysical trademark of classical theories of natural

[24] See: HIMMA, K. E. *Morality and the Nature of Law*. Oxford: Oxford University Press, 2019, p. 9.
[25] POPPER, K. *The Open Society and Its Enemies*. London and New York: Routledge, 2011, p. 29.

law. Although this kind of legal theorizing suffers from real problems to attract attention nowadays, metaphysical elements can still be found in many other theories. For instance, following some explanations of conceptual analysis,[26] someone could claim there are metaphysical traces in analytical jurisprudence. This explanation could be understood in the following way. What our linguistic conventions do is tie a word we use to a particular concept; the word *law* refers to one antecedently existing concept given our conventions for using the word, but it would refer to another existing concept if the definition changes. However, every possible concept, which includes ones we don't have, could be said to exist in logical space the way numbers do and consequently those concepts, like numbers, exist independently of anything we do.

The proponents of strong essentialism believe that the minimum content of law exists as an absolute category which just have to be discovered. In opposition to this claim, conventionalists argue that it is not possible to understand the nature of law independently of the conventions we use to define it.

A weak essentialism can be understood as the method of stipulating the content of concepts. The minimum content of the legal system, created by humans for specific purposes of better understanding and utilizing the natural and social phenomena that surround them, is an example. This does not mean that the development of a conceptual framework is arbitrary. Among different conceptual frameworks some can serve the purposes of the theoretical practice better than others.

An analytical framework can be developed for investigating local or trans-local phenomena. Local phenomena refer to the features (including functions) which appears in a single normative framework, while trans-local phenomena pertain to features of several different normative frameworks which could share some common features. If the goal of the theoretical practice is to research trans-local phenomena, then the analytical tool has to be adequate for identifying what is common in different local phenomena. It is about developing analytical frameworks that transcend local cultures.[27] This is the point of comparative legal sciences such as comparative constitutional law and comparative criminal law.

The *essential* features (including functions) of the different phenomena can be stipulated, or discovered as strong essentialism claims, by using different approaches. We will mention two main groups of approaches: inductive and deductive.

Some authors[28] have supported the inductive method for identifying the general function of law by aggregating of data related to legal enactments and have advocated for a combination of conceptual analysis and collection of data from social and legal sciences related to enactments. This methodological approach is difficult to implement[29] but it is possible to combine inductive and deductive approaches.

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[26] HIMMA, *Morality and the Nature of Law*, pp. 5–27.
[27] TWINING, *PostWestphalian Conception of Law*, p. 230.
[28] EHRENBERG, *The Functions of Law*, p. 138, p. 144.
[29] Luka Burazin has noticed that Ehrenberg's methodological approach remains only idea in his book and that he has not engaged in the methodological approach he advocates. BURAZIN, L. Legal systems, intentionality, and a functional explanation of law. *Jurisprudence*. 2019, Vol. 10, No. 2, p. 234.

We have to start with stressing the difference between the phase of developing an analytical concept, which can, but does not have to, include an inductive method of collecting data from the phase of testing what was stipulated in the analytical concept by, for instance, exploring the folk concept.

The comparative constitutional law scholar can inductively develop a theory by examining many particular legal orders and based on the data collected categorize 193 state-legal-orders in the world. For instance, they could claim that all of them can be grouped in in the following way: 191 orders containing norms on protecting a specific list of rights, 190 orders containing norms for changing the constitution through a procedure that is more complicated than for changing ordinary statutes, and 177 orders containing norms on judicial review.

The legal theorist can in some way deductively develop types of law or some parts of it e.g., constitutionalized and non-constitutionalized legal orders. This process can include an informed view on the discourse of the comparative constitutional law concerning different models of order, and also contemplation of more abstract concepts such as a *property of norm*. The same deductive approach can be used for developing an analytical concept of law.

Whatever approach is used for developing analytical concepts, they can be formulated in a way suitable for testing according to some criteria. For instance, by inductive methods using updated collected data.

Analytical frameworks can be developed for theoretical purposes exclusively, but they can also have practical consequences when used by legal practitioners. Some authors[30] are opposed to the idea that the conceptual analysis of law has practical consequences. What we claim here is not that the development of legal theories necessarily deals with practical problems as for instance, the science of polish criminal law does. It is only claimed that analytically developed concepts if adopted by those in practice, can influence practical issues.

The practical implications of the theoretical frameworks can be seen with regard to the descriptions of the legal system or its institutions. The explanation of how a theoretical framework of the legal system can influence practice requires separate research. The explanation of how a theoretical framework of legal institutions can influence practice will be clarified here.

We are aware of different arrangements of marriage in different cultures which can still be considered as belonging to the same institution of marriage as described by a theorist. From the theoretical point of view, the question of what makes an arrangement of marriage belonging to an abstract institution of marriage depends on the essential elements of the concept of marriage advanced by the theory and among these elements the functions of marriage could play a role. Now, in some particular legal order, marriage can be defined by legal actors only as the relation between a man and a woman. When saying that legal actors define the term *marriage* we think of legal definitions of marriage which can be found in i.e., Croatian or Polish constitutions or other relevant legal practices.

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[30] HIMMA, *Morality and the Nature of Law*, pp. 18–27.

For instance, Article 18 of the Polish Constitution actually defines what is to be considered marriage and only relationships which fulfil the features of *marriage* can produce legally relevant effects of special care by state: *"Marriage, being a union of man and woman* […] *shall be placed under the protection and care of the Republic of Poland."* Definitions like this can be found in the Croatian Constitution and its enactment is also proposed by some actors in the USA and Russia.

For the purpose of simplification, we can imagine that the definition provided by the legislature becomes, or corresponds to, public opinion. Whether a theorist likes it or not, it is only one man and one woman who can enter the arrangement of marriage in the local community, accepting the definition of marriage as the *union of man and woman*. This definition enables legislatures to provide certain benefits to married people and deprive persons in other types of partnership of such benefits. Of course, it is a matter of interpretation, possibly reflecting different understandings of this legal concept by parliament and the supreme court, about what is to be a reasonable benefit of marriage.

But if a theorist is involved in researching trans-local phenomena of different relations between humans that exist in different cultures, this local definition can be perceived as only one example of the abstract institution of marriage. The purposes of marriage can be different in different linguistic practices. For instance, from the point of view of a religion the function of marriage might be to legitimize sexual relations in the eyes of God, and the point of legal marriage might be to assign specific duties and rights to the parties that encourage the development of stable relationships for the purpose of creating a family. Different cultures see marriage differently, but it can be said that they count as a legal marriage if they serve the purposes defined by the universal legal language. Of course, this statement is necessarily true only from the theoretical point of view.

When a scholar employs the inductive method of comparing different types of marriage, they will find out that the existing concept of marriage *being a union of man and woman* is not accurate and they need a broader concept. But even if the inductive method concludes that marriage in all cultures at the moment exists only as the relation between a man and a woman, they could develop for the purpose of classification a concept of marriage which is more abstract without relying completely on the existing practice of legal cultures but still relying on the existing practice enough not to develop a utopian concept.

On a higher level of abstraction, from the point of view of legal theory we can say that the institution of marriage is the relation between subjects empowered by particular legal systems to establish such a relation by a specific process (how question) that performs the function (why question) of providing facilities for private arrangements between individuals and possibly the redistribution of goods.[31] These functions can result in realization of further social and individual interests or disinterested purposes.

It depends on a legislature's will whether the relations of marriage are to be enacted following the most abstract and broadest concept or the narrower meaning of

[31] On how-why questions see: TUZET, G. A Strange Kind of Artifact. In: BURAZIN, L. – HIMMA, E. K. – ROVERSI, C. (eds.). *Law as an Artifact*. New York: Oxford University Press, 2018, p. 238.

the concept discriminating against some types of partnerships based on idea that such differences ground specific interests and purposes. What theory can offer to practice is, firstly, to develop types of marriage corresponding to all instances of marriage found in different cultures in accord with some criteria (including the functions of marriage) and, secondly, to develop, based on such categorization, models of marriages which might be at the disposition to policy-makers. If the actors accept a theoretical model in their legal practices, we can say that theory has influenced the practice.

3.2 FOLK CONCEPT

The term *folk concept* in legal theory denotes ordinary peoples' beliefs about the nature and content of law. The term is used to refer to the ordinary intuitions people have about the nature and content of law that ground the linguistic conventions for using the term *law*. Conceptual analysis is supposed to flesh out those folk intuitions to the extent that they are coherent.[32] Following this understanding of the term *folk concept of law*, we will use it to stress the difference between concepts developed by legal theorists and those actually used by norm-users (in a broader sense). The approaches to law which prioritize the folk concept as what truly matters in researching the law, shift the focus from the meta-language of theoretical constructions to the language of actual practice which is the subject of theoretical meta-language. We will identify three insights which the gestalt-switch from theory to practice discovers as important for law-functions explorers.

Firstly, insisting on using folk concept correctly reminds us that legal concepts depend on the human mind, on the consciousness of humans if we use the terminology of Alf Ross. The primary and irreducible forms of consciousness are beliefs (conceptive or cognitive) and attitudes (interests). Assuming a given attitude, cognition (beliefs) can direct the action whereas beliefs are shaped by concepts.[33] However, it is important to notice that for an artifact to exist it is enough that it exists in someone's mind. It is not necessary that it exists in the consciousness of all subjects relevant to some practice.

For instance, the banana in the museum can exist as an artifact for the artist although the public in general refuses to recognize the banana as the same artifact as the artist thinks it is. In the same vein, the concept of law can exist in the minds of those interested in the legal theory. Even if it is not present in the minds of those people whose practice the theory describes, it is an artifact accepted by the group (or theoretical school) of legal theorists. On the other hand, it is presupposed that the point of the community that explores the reality is to develop their artifacts with some theoretical or practical purpose regarding reality, and the reality of the legal theory as well as of legal science is the specific social practice of people.

Secondly, the proponents of folk concepts, in opposition to what was noted above, stress the importance of the mind not of legal theorists, but the minds of those who

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[32] See: JACKSON, F. *From Metaphysics to Ethics: A Defence of Conceptual Analysis*. Oxford: Clarendon Press, 1998.

[33] ROSS, A. *On Law and Justice*. New Jersey: The Lawbook Exchange, 2004, p. 299.

participate in the particular social practice. Further, it is important to make distinctions between different groups of norm-users.

Norms are used by professionals (legislators, judges, administrators) performing the functions of law, professionals (prosecutors, attorneys in law) who can activate the functions of law and ordinary citizens who are affected by the law. When talking about folk concepts, scholars are usually focused on ordinary citizens (folk in the narrow sense) although legal professionals have their own concepts in mind that are different from the concepts of ordinary people. For instance, if you ask an ordinary citizen and a judge what are the sources of law or what is discrimination, or a victim, the answers will be different. It could be that both discourses, at least in some areas of experience, belong to the same language but it does not have to be the case for all the experiences of law. The methodological question is which discourse of legal practice is relevant for legal theorists? When talking about a folk concept in this paper, if not explicitly stated to the contrary, we will presume that it covers both professionals and folk in the narrow sense.

Finally, the folk concept stresses the contingent character of law. The contingency thesis can be divided in two parts.

The first part refers to the contingency of the appearance of law which implies that the law, as well as any other artifact, does not have to exist and might cease to exist at some point.[34] If there was no concept of law in the minds of some people, the artifact law would not exist. As stressed above, not everyone must have a concept of law in a community for law to exist as an artifact. Babies don't have a concept of law. But at least some folk or legal theorists have to have that concept.

The second part refers to the contingency of the content of law, that is that different conceptions of law exist in different communities. By distinguishing between these two parts of contingency thesis and focusing only on the second part, we can construct the weak and strong contingency thesis.

The weak contingency thesis can be defined as claiming that most of the content of legal systems in different cultures may be, and usually, is different, but denies the possibility that the overall content of the legal system in one community can be completely different from the contents of the legal systems in other communities. For instance, a theorist could claim that every legal system has to prohibit some acts that breach the peace, and if there is no prohibition on killing innocent people or theft it's not a legal system. All other content can be different in different cultures. The proponents of this thesis can be called weak conventionalists and they could agree with both groups of essentialists.

The strong contingency thesis can be stipulated as accepting the possibility of the existence of *law* in a community with no minimum content of law the same in other communities regulated by law. If no additional constraints were made, this thesis could be formulated as *"*[l]*aw is whatever people identify and treat through their social practice as law"*.[35]

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[34] SCHAUER, *Law as a Malleable Artifact*, p. 36.
[35] TAMANAHA, *A General Jurisprudence of Law and Society*, p. 194.

The proponents of this thesis can be called strong conventionalists. If an essentialist accepts that folk terms are defined by folk linguistic conventions, they could agree that in a trivial sense the strong contingency thesis is correct. But as formulated here, the thesis refers not to different terms for the same thing, but to the completely different content of concepts that, for some reason, are called law according to a strong conventionalist's view. For instance, if citizens of an island have in their consciousness only traditional rules prescribing only transcendental inconveniences for not obeying the rules, while the state's normative system which forbids the use of force does not touch citizen's consciousness, the concept of law of that island culture will not include the concept of sanctions enforced by humans. However, it still should be considered law and not something else.

3.3 THE MUSEUM OF THE LAW

The above insights about analytical and folk concepts of law can be assembled into one method of researching law and exploring the functions of law in particular. Imagine the project of opening a museum of law.[36] This mental experiment seems to be a suitable tool for explaining a method since we start from the presupposition that law is an artifact and that the museum is the usual place where artifacts are displayed for those interested in experiencing them.

The purpose of our museum is to put the legal system before the public as an intellectual artifact whereby physical artifacts serve to present it. To be more precise, the point of this museum is to manifest diverse models of legal orders and to portray what distinguishes this kind of social practice from other practices. We will expand this idea of the purpose of the museum with additional requirements later on through the explication of the story.

In addition to the purpose of the museum stated above, we need in this museum of law, like in any other, a specific classification for systematically distinguishing artifacts and to store them in different units: similar artifacts on the same shelf, and different ones on the different shelves.

Let us focus for a moment on the practice of classifying artifacts in museums in general.

Firstly, let's begin by illustrating what was previously said about weak essentialism.[37] The classification practice for the purpose of a museum fits with the idea of a stipulated *essence* of a thing without touching the tenets of strong essentialism. When using the term *stipulated essence*, this is not to say that a thing such as law really lacks any true essence, but only that humans could have different and possible incommensurable concepts about what is the essence. It could also be the case that we do not share, at least

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[36] The primary objective of *"imagining the project of opening a museum of law"* is to contribute to the *"understanding of a scientist's conceptual apparatus"* (see KUHN, T. S. A Function for Thought Experiments. In: KUHN, T. S. *The Essential Tension: Selected Studies in Scientific Tradition and Change*. Chicago: University of Chicago Press, 1977, p. 242). For more on thought experiments, see: Thought Experiments. In: *Stanford Encyclopaedia of Philosophy* [online]. 2023 [cit. 2024-08-13]. Available at: https://plato.stanford.edu/entries/thought-experiment/.

[37] See page 7 above.

momentarily, common criteria which enables us to make the same decision on what is the *true* concept of a thing. What makes the discussion on the concept of law more complicated is the diversity of methods such as the method of identifying necessary and sufficient properties something needs to contain to be considered as that kind of a thing; or the method of identifying the typical features of a thing, which are not necessarily to be satisfied individually, for something to be considered as a kind of a thing.

We are aware that the artifacts in a museum can be organized in different ways, but the classification cannot be arbitrary.[38] For pragmatic reasons there should be a classification that will enable us to encompass all artifacts which are to be considered belonging to the same concept and separated from those belonging to others. And this classification can be better or worse, depending on the purpose to be realized. There is a requirement that the classification should be comprehensive so as not to lose sight of some of the past or existing artifacts of the kind we are interested in displaying. In addition, the classification should enable the preservation of enough space on the shelf for artifacts of the same kind that up to the moment are still not known but nevertheless can be reasonably expected to appear in the future. However, the classification has to be sufficiently selective to distinguish different kinds of artifacts, otherwise the museum would not be sufficiently informative about the differences among things in the world.

Secondly the practice of classification discovers the role of theorists.[39] This practice is not necessarily based on the account of the popular mind in some particular community because the purpose of the museum does not have to be to present artifacts as the ordinary people in the specific community perceive them. The classification can be based on the understanding of an expert who is knowledgeable in many, if not all, of the artifacts we want to display. In that context the theory involved in higher levels of abstraction can be useful for dealing with all existing and possible future instantiations of the type of artifact. Additionally, it is worth mentioning that the models of theorists on artifacts could be presented in the museum as artifacts.

In general, everything noted about the classification of artifacts in museums is applicable for our museum of law. Let us focus on other insights mentioned in previous subsections.

For the purpose of classifying artifacts of law, an analytical concept of law can be stipulated with the suggestion that the function of law is the *essential* feature of law (weak essentialism).[40] The concept can be developed deductively, but the process can also include the inductive method as much as possible to make conclusions important for defining the concept.[41] The purpose of the museum stipulated at the beginning of this section requires that the concept of law used for classification is not a concept of any particular municipal law or even of all municipal laws. It is a concept of law as trans-local phenomena in the broadest sense.[42]

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38 This idea is based on Kantorovich's conceptual pragmatism. See: KANTOROWICZ, H. U. *The Definition of Law*. Cambridge: Cambridge University Press, 1958, p. 5.

39 See pages 8 and 9 above.

40 See pages 7 and 8 above.

41 See page 8 above.

42 See page 9 above.

In addition to what was already said about the museum, its purpose can be further specified as a theoretical-practical purpose: to achieve a better understanding of law and/or to use an understanding of law in legal practice. Or the purpose can be specified as providing information to legal professionals and/or ordinary citizens. The insights about the folk concept of law[43] are also important for these purposes and especially when resolving the contingency problem.

The contingency problem could be used to argue against the establishment of such a museum.[44] But, the weak contingency thesis does not have to necessarily contradict the project. By fully considering the diversity of the content of most legal systems which depend on particular cultural conditions, the museum is focused on identifying the minimum content of law that is the same in any community ruled by law.[45] If someone would like to reject the idea of the museum of law, the employment of the strong contingency thesis is better strategy since it claims the impossibility of the identification of the minimum content of law.

There are two possible answers to the strong contingency thesis: a) the scientific nature of the posited theory and b) the historical (genealogical) approach to concepts. One reply does not exclude the other, and both rely on the idea of the purpose of the project. In our project of the law museum, we imagine that these two additional purposes – the scientific theory and the historical approach – are both accepted by the directors of the museum.

Accordingly, the first reply to critics is to accept the contingency thesis as the requirement for testing the analytical framework which is a regular constraint for any theory purported to be scientific in a proper sense. The scientific construction of the theory of law includes embedding the property of falsifiability in the set of analytic claims about law.[46] Once the minimum content of the legal system is determined for the purpose of our museum, then we can test whether some normative systems contain the minimum content that is determined to be as *essential* to the law. If the stipulated minimum content of law does not exist in the phenomenon considered by some to be an instantiation of law, then we can correct our classification or remove the phenomenon from the shelf as not relevant for the museum.

The data for testing the analytical framework which presupposes a common denominator for different phenomena called law could be found in folk opinion i.e., whether people in different communities recognize the common denominator that is theoretically presupposed in the social practice which they call *law*. As already noted, the relevant folk group can be ordinary citizens and/or legal professionals.[47]

Until such an empirical investigation of the folk understanding of law occurs, the theorist developing an analytic concept is required only to accept the falsifiability thesis on common features of law.[48] In other words, they have to present the thesis of their

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43 See pages 10–12 above.
44 See pages 10 and 11 above.
45 See page 8 above.
46 See ibid.
47 See pages 8 and 11 above.
48 See page 8 above.

theoretical practice as suitable to be abandoned if the data shows that people in some communities consider something to be law and characteristics presupposed by the researcher to be common are not recognized by that particular culture.

In the context of the purpose of the museum to be based on scientific theories, more or less strict methods could be used for stipulating concepts. The stricter method is to define concepts as a category of necessary and sufficient elements. The more flexible way would be to collect typical features, a method recognized in Wittgenstein's *family resemblance*[49] concept of law which allows important (in combination sufficient) but not individually necessary features of law. In any case, the scientific nature of theories can absorb the strong contingency thesis.

The second response to the strong contingency thesis relies on supporting the constructed concepts by historical data which reveal human nature. Since the purpose of the museum is trans-local in the broadest sense, the researcher will be forced to use existing knowledge on the human development from the very beginning of mankind and this knowledge can be found in the sciences of history.[50] If an analytical framework can be supported with such data, then it might be claimed that features of a particular legal order chosen by any historical community are not completely independent of a *universal* concept of law as developed through human history. For instance, the UN system of law has not appeared out of nowhere. The founding fathers designed this system in light of previous international law models and, more importantly, the concept of municipal law that has existed for centuries.

Historical research can confirm that the concept of law is not contingent although it can manifest in different forms. As a matter of fact, members of a community can use the term *law* for anything, as claimed by strong conventionalists, but something labelled by the word *law* would still not be the law from the perspective of others accepting the concept of law as containing universal content visible through the history of communities governed by law. In the eyes of those that share such a concept, when the *essential* content is removed from the normative system, it stops to be legal anymore. Even when strong conventionalists refer to primitive societies as societies under law to support their thesis, they are still mentioning some features of law e.g., punishment (centralized or decentralized) which can be considered as common to all legal orders in history. What they are criticizing, in fact, refers to analytical jurisprudents who, according to them, claim the necessity of a higher level of development of these features through the establishment of centralized institutions for something to be called law.[51]

Finally, it is important to repeat that the purposes of the inquiries relevant for the museum are stipulated by the directors of the museum before the inquiries about law starts. These purposes are not claimed to be universal requirements for all and every project on opening museums. Consequently, there is no need to investigate whether some requirements for inquiry are universally better than others. The issue of criteria for distinguishing between different inquires, for instance between scientific and

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[49] WITTGENSTEIN, L. *Philosophical Investigations*. Oxford: Basil Blackwell, 1958, p. 32.

[50] This idea is closest to Alf Ross's concept of the 'dynamic sociology of law'. See: ROSS, *On Law and Justice*, p. 23.

[51] TAMANAHA, B. *A Realistic Theory of Law*. Cambridge: Cambridge University Press, 2017, pp. 86, 92.

non-scientific research, might be considered relevant or irrelevant to legal theory.[52] It depends on the purposes of the inquiry. For instance, in contrast to the scientific concept of theory, theory can also be understood as the result of a conceptual practice which is valuable *per se*.

Consider two notes on this understanding of legal theorists' practice as non-scientific conceptual practice. First, since it is concerned only with explaining *our* conceptual practices in a way that such explanations could be evaluated but are not intended to be tested in practice, this strategy seems to avoid the contingency problem. It is true that what a group calls *law* depends on the conceptual practice. However, there are no reasons why this practice should necessarily be uniform and thought to be *our* practice. It could be the case that different groups with different conceptual practices exist and produce concepts, of which at least some are not grasped by national dictionaries. Among these groups, legal theorists could be only one of them. Second, even if legal theorists are actually identifying *our* existing conceptual practice i.e., the conceptual practice of both ordinary citizens and legal professionals without testing their theories, conceptual analysis does not have to be the sole domain for their work. Besides this engagement, there exist other important theoretical practices that are valuable *per se*. The development of theoretical models on possible legal orders is valuable even when not utilized by current legal professionals or ordinary citizens. However, if the model is to be relevant for a discussion on legal problems it has to address the probability and conditions for its implementation.

Both notes show that a non-scientific approach to law, although ignoring the strong contingency thesis, still faces the contingency problem.

4. CONCLUSION

In the previous sections, two sequences of reasoning on identifying the functions of law were revealed, different views enlightening important aspects of each stage were clarified and challenges requiring decisions for moving forward through them were detected. The diversity of propositions on functions were clarified by distinguishing the roles and types of functions found in artifact theories (sec. 2.1) and analytical and folk concepts of functions explained (sec. 2.2 and 3). The main challenges for the project searching for the functions of law recognized in the axiomatic and methodological sequences of inquiry are identified as the function-artifact relation (sec. 2.1) and the contingency problem (sec. 2.2 and 3). We will summarize the main insights and conclusions presented in the previous sections.

At the axiomatic stage, the reasoning starts by accepting two theses.

Accepting the proposition that an artifact has a *function* leads the researcher of law-functions to address counterclaims and clarify what it means to say that an artifact has a function. The two counterclaims are that not all artifacts have functions (the

[52] For critical stand towards such demarcations see: LEITER, B. Legal Positivism about Artifact Law: A Retrospective Assessment. In: BURAZIN, L. – HIMMA, K. E. – ROVERSI, C. (eds.). *Law as an Artifact*. New York: Oxford University Press, 2018, pp. 11–12.

black swan problem) and that not all artifacts have real functions (the phantom function problem). The philosophy of artifacts accepts that the black swan problem can appear in some examples of artifacts, e.g., the artifacts of art. The problem could be caused by the disagreement between the creator of the artifact and the audience. But this disagreement seems not to exist for public artifacts such as law. The phantom function problem could be resolved by distinguishing what the thing is really created for from what it represents by its use. But, as has been shown, the problem remains in cases where this distinction does not exist. However, even if it is proven that some institutions of law have phantom functions, it does not mean that law itself has only phantom functions. To come to such a conclusion, the functions of law have first to be identified. And that means that this possible conclusion does not make the project on searching for the law-function pointless itself. There are several meanings of the term function which can be explained by making two key distinctions: function as purpose *v.* function as effect, and output function *v.* operative function. In the framework of these two distinctions, we can again distinguish real *v.* phantom functions and one key function *v.* several equal-value functions.

The acceptance of the proposition that law is an artifact can lead (depending on other stipulations) to a minimum content of law (MCL) thesis which in the context of functions means that norms that are necessary to exist for a function to exist must be the same in all legal systems. So, the task of the researcher of law-functions is to identify such norms. But before that, they must address the contingent content of law (CCL) thesis which opposes the idea that such norms exist. The conflict between these two theses is the result of the tension between broader conceptions of law and the solution should be sought by the proper analysis of the tension between essentialism and conventionalism.

At the methodological level, positions towards essentialism and conventionalism must be adopted. The proper analysis of the tension between them is based on the set-up for explaining the analytical and folk concepts of law. Within the proposed set-up, the analytical concept refers to the conceptual practices of those who research the nature of law, and the folk concept refers to the conceptual practices of norm-users. Norm-users are ordinary citizens (original version) and legal professionals applying legal norms.

The proposed analytical set-up uses analytical tools for better understanding the relevant conceptual practices. In the domain of analyzing the analytical concept, these tools are differentiations between the following elements: strong essentialism (MCL exists independently of social practice) *v.* weak essentialism (stipulates MCL for specific purposes); local subjects of research (the single normative framework) *v.* trans-local subjects of research (several different normative frameworks); inductive methodology (aggregate data on legal enactments; a combination of conceptual analysis and other sciences providing empirical data) *v.* deductive methodology (developing concepts with an informative view on the discourse of relevant sciences and contemplation on more abstract concepts); and theoretical purposes of the research (no practical implications) *v.* practical purposes of the research (practical implications if theoretical frameworks are used by practitioners). The practical implications of the theoretical frameworks can be at the level of institutions of law (presented in the paper) and at the level of the legal system. If the goal of the theoretical practice is to research trans-local phenomena, then

the analytical concept transcends local cultures. The MCL can be stipulated/discovered based solely on an indicative or deductive method or in combination of these two in a way separating two phases: the phase of developing the analytical concept (which can, but does not have to, include inductive method of collecting data) and the phase of testing what was stipulated by the analytical concept.

The focus on folk concepts is a kind of gestalt-switch from theory to practice. Three important insights can be noted from this shift: legal concepts depend on legal consciousness (human mind); the legal consciousness of those who participate in the social practice researched by legal theorists is crucial; and law has a contingent character. Three notes on these insights can be made. The first note refers to the thesis on the dependence of legal concepts on legal consciousness. The specific concept of the theorists of law, even when not present in the minds of those whose practice the theory aims to describe, can be seen as an artifact of that group of legal theorists. However, it is presupposed that the purpose of that group is to develop their artifacts with some theoretical or practical purpose regarding reality (the specific social practice of people). The second note, in reference to the insight on the importance of norm-users, emphasizes the importance of the distinction between different groups of norm-users. The third note refers to the claim about the contingent character of law. This claim can refer to the contingency of the appearance of law or to the contingency of the content of law (CCL). In reference to the CCL thesis we can differentiate weak conventionalists (most of the content can be different in different cultures but there is MCL) and strong conventionalists (no MCL has to exist; *law is whatever people identify and treat it through their social practice as law*).

The method of researching the functions of law can be based on insights given through the set-up of analytical and folk concepts. These insights can be united through the thought experiment of the project of opening the museum of law (a museum is the usual place where artifacts are exposed). The museum has a purpose and provides a classification of the artifacts (1 and 2 below). It develops analytical concepts important for classification and choosing the proper methodological approach for justification of analytical concepts (3 and 4 below).

(1) Purposes: The general purposes are: (a) to put the legal system before the public as an intellectual artifact whereby physical artifacts serve to present it; and (b) more specifically to manifest diverse models of legal orders and to portray what distinguishes law as a kind of social practice from other practices. Additional purposes (depending on the development of the project) are: (i) the necessary purpose if the nature of law is to be explained to develop the concept of law as trans-local phenomena; (ii) the specific purpose related to targeted audience: a) theoretical or theoretical-practical purpose (better understanding of law; and possibly the use of theory in legal practice); b) the purpose of informing the legal professionals and/or ordinary citizens; and (iii) the possible additional purpose if the justification for analytical concepts is to be provided: to develop a museum based on scientific theories and/or historical approach to concepts.

(2) Classification: Classification is based on stipulated analytical concepts. It should be comprehensive and selective, and it should be based on the appropriate method (e.g., the necessary and sufficient properties method (NSPM); the typical features method

(TFM)). The role of theorists in classification is crucial (expert-based activity; knowledge of many/all relevant artifacts; use of theory for classification; theoretical models that can also be presented as artifacts in museums).

(3) Analytical Concept: The analytical concept of law is stipulated and contains the concept of function of law as the *essential* feature of law (weak essentialism). The concept of law can be developed deductively, but the process can also include the inductive method as much as possible to make conclusions important for defining the concept.

(4) Justification (the contingency problem): Regarding the weak CCL thesis, the museum can recognize the diversity of legal systems but be focused on MCL. Regarding the strong CCL thesis two responses are offered: a) the importance of the scientific nature of the posited theory and testing the analytical framework (testing based on folk opinion: ordinary citizens and/or legal professionals; accepting that methods on the stipulation of concepts in the context of the requirement for the museum to provide scientific theory can be differentiated as stricter methods (NSPM) and flexible methods (TFM)); b) acknowledging the historical approach to concepts (stipulated concepts supported by historical data which reveals human nature; data on human development from the very beginning of mankind (for tans-local subjects of research); and assistance from sciences of history). Two notes on these two approaches addressing the contingency problem were made: the theorist developing an analytical concept of law is required only to satisfy the falsifiability of thesis on common features of law; the analytical framework supported with historical approach can be seen as a *universal* concept of law as developed through human history. Finally, since the purposes of the inquiries relevant for the museum are stipulated there is no need to investigate whether some requirements for inquiry are universally better than others. However, a non-scientific approach to law, although ignoring the CCL thesis, still faces the contingency problem (different conceptual practices; and existence of other theoretical practices, in addition to conceptual practices, that must explain probability and conditions for the implementation of models).

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