Legal artifactuality revisited. Two senses of law as an artifact.

Law is an artifact.

This short statement raises nowadays many important questions concerning the nature of law. Brian Leiter even claims that "[t]hose who might want to deny that law is an artifact concept are not my concern here; the extravagance of their metaphysical commitments would be subjects for psychological, not philosophical investigation". What do ordinary objects like chairs or spoons have in common with so complex things as laws? Those serendipitous remarks reflect the modern view of the world: that the concept of law is not something naturally existing, God-given, independent of human activity, but rather contingent. Yet, the alleged legal artifactuality has many faces.

This project aims **to study the very claim that law is an artifact and how legal philosophers use the concept of artifact in their philosophical investigations.** By hypothesis, the concept of artifact has (at least) two orthogonal, but not synonymous meanings. **One is an artifact as contrasted with natural kind and another is an artifact as an object created intentionally by an author to serve some purpose.**

What does it mean that law is not a natural kind? Our beliefs about the properties of a natural kind X are not relevant to its successful description, and we may be wrong about the proper characterization of the natural kind X or even be unable to characterize 'what X is'. Take the 'water' as an example. From the first act of labeling some liquid as 'water', for years, people had been using the term „water" to refer to transparent, tasteless liquid. With an extensive development of chemical analysis, it was shown that what was being meant by „water" had its chemical formula 'H_20'. Water, it turns out, may not be transparent, tasteless, and actually may not be a liquid, but *essentially* water is H_20. Did the concept of water change after this discovery? Rather it didn't, water is just what it is and we may fail to recognize its nature. Although many legal philosophers tried to make out a case for claims that law has an essence and we may fail to recognize it, it is rather not the case.

Some have started to apply various theories of artifacts when studying law. The most common, so-called historical intentional theory, describes artifacts, roughly speaking, as human creations that serve some purpose. Applying to law, we may tentatively claim that law is created by humans to serve some purpose. However, there are laws with no purpose, aren't there? How does this claim explain many types of law? Are all laws created by human beings?

Those two approaches I tentatively labeled as the weak and the strong sense of artifact. The first sense is activated when a philosopher contrasts law with natural objects and, by doing that, tries to answer questions: is there any essence of law? how can we be substantially wrong about the nature of law? in what sense is law mind-dependent? how does our very activity of studying law shape its content? The later, strong sense, appears when one applies some specific theories of artifacts (i.e. from the philosophy of technology) to claim that law is such-and-such. In other words, someone has either a bottom-up (she studies instances of artifactuality of law and builds upon them more general claims) or top-down approach (she applies to law one complex and ontologically committing theory of artifacts).

To elucidate this ambiguity, I will apply a method of corpus analysis. It will help detect and clarify the multifarious contexts in which the concept of 'artifact' in legal-philosophical literature appears. By hypothesis, while **the strong sense of law as an artifact is translatable to the framework of social ontology and has few theoretical outcomes**, the weak sense of artifact is ubiquitous in modern legal-philosophical literature and, properly understood, can be implemented by both legal positivists and non-positivists. **Elucidating this 'proper understanding' of the weak sense of artifact is another aim.** By hypothesis, this weak sense is strictly connected to the so-called "social source thesis", which is rather accepted by every reasonable legal philosopher.