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The artifactual duality of architecture and its ontological implications for legal protection.

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ABSTRACT

This paper analyzes the peculiarity of some architectural works being artifacts designed to on a par perform typically divorced functions. Like technical artifacts, they are primarily intended to fulfill specific practical functions related to our everyday life. Simultaneously, some of them are intended to primarily perform an artistic function as well. This artifactual duality involves relevant challenges for determining their ontological nature and normative issues related to their legal protection. The practical and artistic functions of an architectural artifact may occasionally come into conflict and its owners often decide to modify it for a better fulfillment of its practical functions. Architects sometimes feel harmed in their moral rights qua artists when those modifications are unconsented. As we shall see, the doctrine of moral rights strongly suggests ontologically categorizing architectural works as concrete particulars. However, the artistic function of architectural works motivates the view that they are to be protected by intellectual property law too. The problem is that the objects protected by intellectual property law are intangible entities that motivate their categorization as artifact types, which is inconsistent with seeing architectural works as concrete particulars. As a solution, the plausibility of categorizing architectural works as artifact types will be explored as an ontological account that may reconcile architects' aims and intuitions regarding both moral and intellectual property rights over their works.

Keywords: aesthetics; architecture; artifacts; intellectual property; moral rights; ontology.

1. Introduction

Architectural works are a peculiar kind of artifacts. They are many times designed to perform *on a par* functions that typically come apart. On the one hand, they are created with the intention to perform *practical functions* that are characteristic of technical artifacts. Residential buildings are meant to provide us with shelter and comfort, and train stations to protect us from bad weather conditions while waiting

for our next journey. Concert halls are supposed to provide us with good acoustic conditions to attend a musical performance. Bridges are designed to help us to cross from one bank of a river to the other. These and myriad other practical functions are desirably fulfilled by architectural works. From this viewpoint, they can be properly seen as *technical artifacts*: their components are structured to perform a practical function, and the impact on our lives of performing that function is obtained in virtue of that structure (cf. Kroes 2012). A concert hall and a bridge are differently structured so as to fulfill their functions and, insofar as their reason of being is what they are for, their different intended functions explain why those architectural artifacts are structured in the different ways they are.

On the other hand, however, architectural artifacts are often intended to perform an *artistic function* on a par with their practical functions. This artistic function can be understood as a *symbolic-cognitive* one, in which the cognitive dimension is of an aesthetic sort: it involves literal and metaphorical exemplification of properties,[1] and it cannot be detached from the perceptual experience of the materials and their configuration because the architectural artifact, as a symbol, does not transparently[2] denote what is symbolized, admitting of multiple and contrasting interpretations (cf. Goodman 1985, 645–8; Capdevila-Werning 2013, 89–91). Accordingly, the artistic function of architectural artifacts cannot be straightforwardly assimilated into that of cognitive artifacts, like maps, diagrams or textbooks, which are designed to make 'cognitive tasks easier, faster, more reliable, or possible at all' (Heersmink 2021, 580).[3] The artistic function of architectural artifacts can be otherwise understood as an *aesthetic function*. Following Nick Zangwill's (2007, 36) view, one could think that those architectural works that

[1] For instance, brutalist buildings literally exemplify some properties of concrete, like its solidity and firmness, while the *Stata Center* at the Massachusetts Institute of Technology metaphorically exemplifies being a green building insofar as it is environmentally friendly without being itself of green color (Capdevila-Werning 2013, 90). For a definition of metaphorical and literal exemplification, see Goodman (1968, 52–6 and 85–95).

[2] The reason is that architectural objects, qua works of art, tend to be syntactically and semantically dense: a minimal modification in the architectural object (e.g., in color, dimensions or materials) may change the symbol's identity or its refence (see Goodman 1978, 67–69).

[3] For simplicity, I have characterized the symbolic-cognitive function in Goodmanian terms but, of course, other cognitivist accounts of artistic functions are consistent with the distinction between architectural artifacts and cognitive artifacts drawn here. For instance, along the lines defended by James O. Young (2001), one may think that architectural works artistically mean by *illustratively representing* the things they symbolize. In this view, the relation between the representation and what is represented is determined by the audience's balance of similarities and dissimilarities while experiencing the artifact. By contrast, what maps, diagrams and textbooks represent is determined by specific conventions, which make cognitive tasks easier: they are semantic representations according to Young's view.

perform an artistic function would be artifacts whose function is to have aesthetic properties intended to result from non-aesthetic ones. Alternatively, this artistic function can also be seen as an *experiential function*, i.e., that of providing us with a special kind of experience, an experience valued for its own sake. By their components and structure, many skyscrapers pursue an experience of sublimity in the spectator, whereas neoclassical buildings are designed to generate an experience of harmonious beauty. This way, architectural works could be seen as *experiential artifacts*, 'technical artifacts that perform the function of generating experience in virtue of their structure' (Terrone 2024).

Regardless of whether the artistic function of an object is cognitively, aesthetically or experientially characterized, it typically diverges from the practical functions fulfilled by ordinary technical artifacts. The reason is that these functions are associated with different goals and values that are usually unconnected to each other. That this is so can be easily illustrated with an example. A urinal is an artifact whose function is to facilitate the relieve of human physiological needs related to urine. The value of a urinal as a member of its kind (i.e., its primary value as a urinal) is to be a good means to that end. The better a urinal fulfils this function, the better the urinal is qua urinal. By contrast, Marcel Duchamp's *Fountain* is a work of art containing a urinal that no longer plays that role. The *Fountain*'s urinal is performing here an artistic function. Its value as a member of its kind (i.e., its primary value as a work of art) is to be a good means to the end pursued by an artistic function.[4] Here, the better the urinal artistically symbolizes, exhibits certain aesthetic properties arousing from non-aesthetic ones or elicits an aesthetic experience, the better the urinal is qua artwork. To this end, it is indifferent if the *Fountain*'s urinal fulfils better or worse the practical function of relieving human urinary needs. The examples could be multiplied in this regard. Many think that Mozart's *Symphony No. 41* and Géricault's *The Raft of the Medusa* perform no practical functions but are some of the greatest works of art of all time. Being a good means to perform a practical function is irrelevant for their value as members of their kind. Of course, I can value Mozart's *Symphony No. 41* for keeping me focused while writing a paper, and I can use *The Raft of the Medusa* to cover the broken glass on my window. But these practical functions are not the primary aims for which those works were created and do not explain how we appreciate them qua artworks.

The case of architecture is special because, in some cases, artistic and practical functions are meant to be performed by the architectural artifact *on a par*. Some

[4] Notice that this claim does not imply that artistic value is instrumental value. Indeed, cognitivists, aestheticists and experientialist may construe artistic functions in a way that artistic value is a kind of intrinsic or final value (cf. Bell 1987; Morris 2007; Gorodeisky 2021; Gentry 2023).

works of architecture are expected to maximize simultaneously both functions, and such maximization is the value of those works as members of their kind.[5] When Santiago Calatrava designed the *Zubizuri Bridge*, a pedestrian structure of concrete, steel and glass that connects the two banks of the River Nervión in Bilbao, he intended it to facilitate the everyday transit of Bilbao's citizens. But, at the same time, he intended it to be an artwork, endowing the architectural artifact with features that diverge from its practical functions and whose purpose is to confer it style and originality, two qualities most admired in works of art (cf. Kivy 1995, 123). The public also expected an adequate fulfilment of both functions by the *Zubizuri*. That both functions, artistic and practical, are typically dissociated but valued on a par in cases like this is illustrated by the fact that the balance between them is not easily achieved and so they occasionally conflict. Calatrava privileged the artistic function in designing the bridge with a glass floor that harmonically contributed to the overall appearance of the object. This element, however, made the bridge unwalkable on rainy days, which was seen as a demerit of Calatrava's work, despite full recognition of its aesthetic value.

This dual nature of architectural artifacts motivates important challenges for two interrelated domains that are the focus of this paper: the ontology of architectural artifacts and its consequences for their legal protection. Conflicts between artistic and practical functions have motivated legal disputes about the *moral rights* of architects. As we shall see, architects sometimes feel that either their reputation as artists or the integrity of their artistic work are harmed when, without their consent, the buildings they designed are modified, or even destroyed, for the sake of more effectively carrying out their practical functions. The protection of architectural artifacts in light of architects' moral rights suggests that they are *concrete particulars*. Lawsuits on this matter assume this view about the ontological nature of architectural works, which is firmly grounded in intuitions concerning the artistic and practical functions of architectural artifacts. At the same time, however, the artistic function of architectural artifacts qualifies them as things to be also protected

[5] The sort of cases that this paper is concerned with is this in which the architectural artifact is conceived as a work of art, where the maximization on a par of both practical and artistic functions is the chief value of works of this kind. This contrasts with two alternative kinds of cases. First, luxury clothes, like a mink coat, pursue aesthetic goals along with practical ones. However, a mink coat is valued for maximizing aesthetic qualities on the condition of satisfying to a *certain degree* the practical function of protecting us from cold weather. As Christine Korsgaard (1983, 185) observes, 'the people who want mink coats are not willing to exchange them for plastic parkas, if those are better protection against the elements'. Second, ordinary non-artistic architecture is the converse: it is valued for maximizing practical functions (protection, isolation, acoustics, etc.) on the condition of satisfying to a certain (usually low) degree an aesthetic function.

under intellectual property law. But we will see that the objects protected by intellectual property law are of an intangible nature that suggests their categorization as types, i.e., as abstract and multiply instantiable entities. As objects protected under intellectual property law, architectural artifacts would be *artifact types*, which is inconsistent with seeing them as concrete particulars. This inconsistent ontological picture that emerges from the two-fold function of architectural artifacts leads us to an apparent dilemma: either these objects are protected under moral rights or intellectual property law, but not both, which implies that part of architects' aspirations and intuitions concerning their rights are ungrounded and hence illegitimate.

The aim of this paper is to explore a conciliatory solution for this dilemma examining in more detail the connections between the ontological and normative issues involved. By means of different examples of legal cases, §2 will introduce the doctrine of moral rights and examine the motivations that emerge from it to categorize architectural artifacts as concrete particulars. In §3, the grounds of this ontological thesis will be questioned by examples showing that architectural works, even unbuilt ones, are protected under intellectual property law. The introduction of fundamental notions about intellectual property and copyright will substantiate the idea that the kind of things protected by intellectual property law are intangible objects capable of having multiple instances, which will motivate the view of architectural works as artifact types. The remainder of the paper will be devoted to exploring the extent to which this ontological thesis is plausible. In §4, the account of architectural works as artifact types will be developed, motivating it from salient aspects of architectural practice and examining ways in which it can accommodate intuitions that *prima facie* support the view of architectural works as concrete particulars. Finally, §5 will analyse plausible options to conciliate the thesis that architectural works are artifact types with the intuition of architects' having moral rights over their works.

2. Architects' moral rights, legal disputes and ontology

It is not always easy to reconcile both aspects of the dual function of architectural buildings. As anticipated in §1 with Calatrava's example, their artistic and practical functions may occasionally come into conflict. An element that contributes to the object's fulfilment of its artistic function may occasionally prevent it from properly performing its practical functions. When those conflicts arise, the owners or users of the architectural artifact sometimes decide to modify or replace the disturbing element to better adapt the artifact to its practical functions. And, since the intended practical functions are a technical artifact's *raison d'être*, when the architectural

artifact has lost its intended practical functions to a significant extent, the owners sometimes decide to remove it.

Quite often, however, architects do not simply see themselves as the creators of a technical artifact that serves our everyday life, but also as creators of a work of art. They occasionally feel harmed either in their reputation *as artists* or in the integrity of their *artworks* when their designed buildings are altered without their consent. As a result, legal disputes over such issues are not uncommon. Raj Rewald sued the Indian Trade Promotion Council for demolishing the *Hall of Nations* in New Delhi that he designed to commemorate the 25th anniversary of India's independence (cf. Sandhu 2019). Stefano Boeri, who was commissioned to design the *Casa Bosco* in Milano, filed a complaint against the builder Agnoletto SRL for 'transforming an arcade in a canteen, violating thus his work's integrity'.[6] Jean Nouvel felt harmed in his moral rights when his instructions were not followed during the completion of the *Philharmonie de Paris*. In his view, there were 'absurd decisions' involved in its completion that 'martyred' his work.[7] This was also the case of Calatrava, who sued Bilbao's Council for modifying the *Zubizuri* bridge years after its construction because he understood that this violated his 'moral right to the integrity of his work'.[8]

The issue at stake in these disputes is the *moral rights* of architects over their works. Moral rights are a special kind of rights –natural rights– that authors, and hence artists, have over their creations just in virtue of being their authors. As Karen Gover (2018, 1) observes, they 'protect the special interests that an author has in her work insofar as it is her personal creation and expression'. The doctrine of moral rights is more entrenched in continental Europe and encompasses five fundamental rights (cf. Young 2021, 79). The author has the right to the *integrity* of her work, i.e., to her work being protected against any unconsented modification. She also has the right to *attribution*, i.e., the right of being correctly identified as the author of her work. Moreover, she has the rights to *disclosure* and *withdrawal*, namely, the rights to determine the conditions under which her work is published and removed from public display, respectively. Finaly, she is entitled to *resale royalties*, i.e., the right to a compensation for subsequent sales of her work at a higher price.

The doctrine of moral rights promotes a particular view about the ontology of artworks. The motivation for this doctrine is the idea that there is a special bond between the artist and her work, and hence, 'ultimately, it assumes that harm to the

[6] Ordinary Court of Milano, decision 1568/2018.
https://drive.google.com/file/d/1MtHpVEPVcJPU_ACMWaln3wgSVfPO3nlT/view?pli=1

[7] https://www.lemonde.fr/architecture/article/2018/01/07/jean-nouvel-mon-meilleur-outil-de-travail-c-est-mon-lit_5238397_1809550.html#auBW5KifbR1AVjZe.99

[8] Vizcaya's Provincial Court, decision 120/07.

work is, in fact, a form of damage to the author himself' (Rajan 2011, 7). An intuitive attempt to make sense of this idea comes from what Karen Gover (2018, 22) labels the *emotivist account* of authorship. Drawing from Hegel's *Philosophy of Law*, the emotivist account sees artworks as extensions of the artist's personality, namely, as something that expresses the artist's most intimate psychological states. This is why legal scholarship generally assumes that, as Mira Rajan (2011, 4) puts it, 'moral rights are based on the idea that an author is personally invested in his or her work'. The emotivist account captures the motivation for the doctrine of moral rights and easily justifies why artworks deserve a special legal protection: insofar as an artwork is an extension of its author, any harm done to the artwork amounts to a harm done to its author.[9] A simple way of thinking that artworks are things that can be harmed –and hence, that deserve legal protection from possible harm– is to see them as *tangible objects*. Tangible objects can be modified, displaced, eroded or even destroyed because they can enter into causal relations. The simplest way of categorizing tangible objects is not as abstract objects, which are usually seen as causally inert entities whose existence is not spatiotemporal. Instead, tangible objects are more easily categorized as *concrete particulars* –i.e., as non-repeatable entities that are spatiotemporally extended and located–, and this is why the doctrine of moral rights tends to treat the objects under its purview as concrete particulars.

This tendency manifests in the lawsuits mentioned above concerning the modification of buildings for practical purposes without the architect's consent. The parties involved in such legal disputes usually assume that the architect is the author of a work and that this work is an architectural artifact whose ontological nature is that of being a concrete particular.

Years after completing the construction of Calatrava's *Zubizuri Bridge*, Bilbao's Council decided to remove a section of railing and create an access walkway to the *Isozaki Towers*. Calatrava sued Bilbao's Council for partially modifying the *Zubizuri*. He considered that the modifications implemented in the tangible bridge 'altered' and 'violated' his work.[10] Vizcaya's Provincial Court ruled in favour of Calatrava. First, the court understood that the legal issue was motivated by a conflict between three rights concerning *the same object*, namely, the tangible object that spans

[9] Alternative accounts of the main motivation of moral rights can be found in recent debate. The idea that there is a special bond between the artist and her work can be explained, for instance, in terms of the responsibility that the author carries on the work's final features (Livingston 2005) or in terms of the expression of artistic freedom (Gover 2018). Nonetheless, the emotivist account remains as the most widely assumed view in legal scholarship and jurisprudence, as the cases analysed in this section will reveal.

[10] https://www.nytimes.com/2007/10/31/arts/31arts-CALATRAVASUE_BRF.html?searchResultPosition=1

the River Nervión: Bilbao City Council's right of ownership of that object, Calatrava's moral right as the author of the architectural work, and the public's right to have pedestrian traffic across the river facilitated. Second, it acknowledged that Calatrava's work is artistic and original, and that the modifications altered it. The court ruling is explicit on this:

> [The City Authorities and other responsible parties] modified his work, altering one of its sides and extending it with another footbridge whose prestigious author has a style in the art of architecture absolutely different from that of the appellant, which necessarily implies that the appellant's work is irretrievably affected and his moral right to the integrity of that work violated.[11]

And third, the court concluded that Calatrava's moral right for the integrity of his work can be annulated neither by Bilbao's Council ownership right nor by the public interest of Bilbao's citizens. As such, Bilbao's Council was sentenced to pay 30.000€ as compensation to Calatrava.

A philosophically interesting aspect of this case is that both the court's verdict and Calatrava's complaint consider that any modification made to the tangible object that spans the river constitutes an alteration of Calatrava's work. This conclusion follows from the assumption that Calatrava's work *is* a concrete particular, namely, the tangible object made of concrete, steel and glass that spans the River Nervión. If Calatrava's work is identical to this tangible object, any alteration of the latter amounts to an alteration of the former. And given the doctrine of moral rights, according to which authors are personally invested in their works, an unconsented alteration of the work constitutes a harm to its author.

The same ontological assumption is at work in the case of Rewald's *Hall of Nations*. Rewald sued the Indian Trade Promotion Council arguing that the demolition of the building he designed was a violation of his right to the integrity of his work. The defendants, in turn, argued that the right to integrity 'is limited to distortion, mutilation or other modification of the work', but has no application 'when a work ceases to exist' (Sandhu 2019, 599). The court understood that the legal issue arose from a conflict between the architect's moral rights over the tangible building and the property rights of those owning the land on which the building was erected. In this case, the court did not rule in favour of the architect: since artists' moral rights are statutory and the ownership right is constitutional in India, the court concluded that the constitutional right prevails over the statutory. But all parties involved in the dispute assumed that Rewald's artwork *was* the tangible object erected on the Pragati Maidan complex in New Dehli. And, again, this is an instance of the general assumption that an architectural work is a concrete particular.

[11] Vizcaya's Provincial Court, decision 187/09, my translation.

The cases of Jean Nouvel's *Philharmonie* and Stefano Boeri's *Casa Bosco* are similar in nature. Both architects complained that the buildings they designed were not completed following the instructions they prescribed in their respective projects. As such, they considered that the integrity of their works was violated because the buildings that were constructed lacked the properties prescribed by the architects. Once again, the plaintiffs assume that their works are the concrete particulars that, in these cases, were defectively constructed.

A common assumption in all these legal disputes about the violation of the moral rights of architects is that their work is an artifact whose ontological nature is that of being a concrete particular. Under this assumption, the unconsented modification of the concrete particular, or a departure from the architect's instructions for its construction, is seen as a violation of the architect's moral right to the integrity of her work. The divergences in the courts' verdicts mainly concern the normative weight of architects' moral rights. In the Calatrava case, the court considered them more fundamental, prioritizing the protection of the artistic function of the architectural artifact over the protection of its practical functions. By contrast, the converse holds in the Rewald case. Although it would be interesting to see how this normative conflict between the artistic and practical functions could be elucidated, that is not in the scope of this paper. Instead, the focus will be on the ontological idea, assumed in the legal disputes, that architectural works are concrete particulars. Is this assumption sufficiently motivated? Is it adequate to the dual character of architectural artifacts? These questions will be explored in the next section.

3. Questioning the ontological assumption

As we have seen in §2, legal disputes arising from the conflict between the artistic and practical functions of architectural artifacts tend to assume that architectural works are concrete particulars. An important motivation for this ontological assumption comes from the doctrine of moral rights. According to this doctrine, an artwork has a special bond to its author insofar as it is an extension of the author's personality. This justifies the legal protection of the artwork because any harm to the artwork is a harm to its author. For this idea to make sense, artworks must be the kind of things that can be harmed, and a simple way to describe their ontological nature accordingly is as concrete particulars. If the doctrine of moral rights is true, then, an architectural work is a concrete particular.

One might find metaphysically obscure and empirically dubious the premise that artworks are extensions of the artist's personality, and different criticisms have

been addressed to it.[12] So, one might be tempted to wonder if there is any independent ground apart from this premise that might substantiate the view that architectural works are concrete particulars. This alternative motivation can be found if we attend closely to the dual function performed by architectural artifacts.

The intended practical functions of an architectural artifact are typically concerned with issues bound to a specific place and society. The materials, dimensions and structure of a train station to properly perform its practical functions are very different in a small village or a large city, in a mountainous area or a plain, in a rainy region or a dry one. What matters to us is that *this* tangible object, located at *this* place, adequately performs its intended practical functions. Similarly, the artistic function of the architectural artifact is typically linked to a specific place and society. A train station can be intended as a cultural symbol of the region where it is located or to aesthetically harmonize with its surrounding environment. Indeed, there is an important consensus that (at least some) architectural works are *site specific*. This means that an architectural work is essentially bound to a specific location in the sense that the work's aesthetic or artistic properties (leaving aside the question of whether there is a difference here) supervene on the work's relationships with its physical or cultural environment (cf. Goodman 1985; Carlson 2000; Graham 2003; Capdevila-Werning 2013).

Despite this robust intuition that supports *prima facie* the thesis that architectural works are concrete particulars, there is a fact concerning their artistic function that defeats this idea. Originality and style are two highly appreciated values in the artistic function of an architectural artifact and are associated to the skills of the architect qua artist. The protection of these values from their appropriation by another artist makes architectural artifacts objects protected under *intellectual property law* and *copyright*. However, as we shall see, intellectual property law tends to treat the objects under its purview as types, namely, as abstract entities that admit of multiple instances. If so, the architectural work qua object protected under intellectual property law will be identified with a type, which is inconsistent with seeing it as a concrete particular.

As authors of architectural artifacts, architects are concerned with the protection of their works' originality and style against their appropriation by another person. In a letter to the editor of the magazine Architectural Record in 1982, the American architect George Ranalli smartly stated that 'it is extremely flattering to

[12] See Gover (2018, 24 and ff.). Notice that this skepticism does not question the basic idea of moral rights insofar as other accounts have been offered for it (see footnote 9). True enough, the emotivist account of Hegelian inspiration continues to be widely assumed in the legal domain, as revealed by the examples described in §2.

feel that you influenced someone, but extremely unpleasant to find someone making a quick gain from your own long labors'.[13] Crucially, what underlies Ranalli's statement is the idea that 'a person who labours to create an object has property rights of the object by virtue of (...) her labour', an idea that, according to Justine Pila (2017, 68), 'underpins the nature of IP [intellectual property] subject matter as artifacts'. This is only one motivation for the idea that an artifact, in virtue of resulting from a human creative act, deserves special protection as intellectual property. Pila (2017, 68) identifies two further motivations: intellectual property rights help to 'encourage the creation and dissemination of objects of value for society', and they 'reward those who labour to create objects in recognition of the value of (...) the resulting objects'. These motivations apply to architectural artifacts. As we have seen in §1, architectural artifacts bear different social values in virtue of their practical and artistic functions, and hence, their protection seems to be motivated by the very purpose of intellectual property law.

And this is what architects have done. In September 1979, a project by Marcel van Rooijen was exhibited at the Pompidou Centre in Paris and subsequently published in its catalogue. A year after, Hardy Holzman Pfeiffer Associates, a recognized New York architectural firm, submitted a project for the construction of the MOMA building in Los Angeles that had substantive structural similarities with van Rooijen's. As a result, van Rooijen's lawyer announced a lawsuit against Hardy Holzman Pfeiffer Associates.[14] A second, more recent and striking example is the following. Thomas Shine was a master's student at the Yale School of Architecture. As a student, Shine developed a project entitled the *Olympic Tower* that he submitted in 1999 to a jury invited by the Yale School of Architecture, which had the famous architect David M. Childs as one of its members and who fervently praised Shine's project. Four years later, in December 2003, Childs presented at a press conference his project for the *Freedom Tower*, the tallest building in the reconstruction plan for the World Trade Center in Manhattan. Then, Shine noticed that, as stated in the court's ruling, the design of the *Freedom Tower* 'is substantially similar to the form and shape of *Shine '99*, and that it incorporates a structural grid identical to the grid in *Olympic Tower*, as well as a facade design that is "strikingly similar" to the one in *Olympic Tower*'.[15] As a result, Shine sued Childs for infringement of copyright, although later the two parties reached an agreement before the case went to trial.

[13] Cited in https://www.nytimes.com/1983/03/17/garden/architectural-imitation-is-it-plagiarism.html

[14] See https://www.nytimes.com/1983/03/17/garden/architectural-imitation-is-it-plagiarism.html

[15] https://casetext.com/case/shine-v-childs

A common feature of the two cases just mentioned is that none of the architectural works was actually built at the time of the architects' complaints. Their claim was not for legal protection of a material building, a tangible object with a specific location, for there was no such tangible object. This suggests that the architectural artifact, qua intellectual property, is not the concrete particular that results from following the instructions of the architect's project. This phenomenon is not exclusive of unbuilt architecture. The architect Zaha Hadid sued the Chongqing Meiquan company for copyright violation. She noticed that significant visual and structural elements of her *Wangjing Soho Complex* in Beijing were reproduced in the *Meiquan 22nd Century* in Chongqing. Her claim was not for protection of the tangible buildings erected in Beijing, but against the illegitimate reproduction of some elements of her *Wangjing Soho Complex* by the Chongqing Meiquan after, her team supposes, 'getting hold of some digital files or renderings of the project' of it.[16]

In all these cases, the object for which legal protection is claimed is an *intellectual* creation, which is an intangible object, namely, the architectural artifact encoded –or fixed, in legal terminology– in the architect's project. And this fits the fundamental aim of intellectual property legal regulations, which, according to Pila (2017, 7), is 'to promote and reward the creation and/or introduction to the public of certain intangible objects of perceived value to society (...) in addition to protecting the rights and interests of creators'. But, if this is so, what is the ontological nature of the architectural artifact, seen now as an intangible thing protected by intellectual property law?

Before answering this question, a potential objection should be considered. A careful reader might still be unconvinced of the idea, inferred from the analysis of the previous architectural cases, that the object protected by intellectual property law is an intangible thing. The concern may arise if we draw an analogy with paintings.[17] Let us imagine that Salvador Dalí, a Picasso fan in his youth, assimilated all Picasso's sketches for the *Guernica* and came up to paint a work strikingly similar to the *Guernica*, appropriating most of its distribution of forms and colors in Picasso's style. And let us suppose that Picasso felt Dalí's appropriation extremely unpleasant, who made a quick gain from Picasso's labor that was decisive for his meteoric rise. This would be a case of intellectual property that the legal world can go with it. However, our careful reader would stress that this by no means entails that Picasso's *Guernica* is an intangible entity, but the concrete particular that Picasso painted, and so we might think that the same holds for architecture.

[16] https://www.dezeen.com/2013/01/02/zaha-hadid-building-pirated-in-china/

[17] I am very grateful to two anonymous referees of this jornal for suggesting this point.

Despite its intuitive appeal, a closer examination of this case can provide us with two strong reasons of why the analogy does not work. First, what Dalí appropriated is not the tangible thing that Picasso painted. He was not cutting a part of Picasso's canvas and pasting it in his new work. Instead, he appropriated the pattern of colors and shapes of Picasso's *Guernica* by reproducing (using) it in his work. If the *Guernica* is a concrete particular, and concrete particulars are not repeatable entities, the object at issue protected by intellectual property law is not the *Guernica*. It is rather something intangible associated with the *Guernica* that can be used by means of reproducing it, i.e., a repeatable entity. Probably, this suggests a problem for paintings: either they cannot be protected by intellectual property law –Picasso created two things, the tangible *Guernica* and its intangible pattern, and what is protected is the latter but not the former– or we should revise our ontology about paintings. However, the intellectual property of paintings is not the focus of this paper.

The second reason of why the analogy does not work has to do with a fact that will be developed in §4, but about of which I will anticipate something here. By contrast with the painter, the architect hardly ever creates the tangible thing that bears the properties that are relevant for the appreciation of her work. Picasso created the tangible *Guernica* making a series of brushstrokes on a canvas. But an architect, like Hadid, does not make the analogous in architecture. She neither operated an excavator nor laid the foundations for the *Wangjing Soho Complex*. Instead, she fixed her work in a project by means of encoding a series of instructions for other people making the tangible thing that bears the relevant properties for her work's appreciation. By contrast with Picasso, whose manipulations of the medium of painting resulted in a tangible thing that has the relevant properties for the appreciation of the *Guernica*, Hadid manipulations of the architectural medium resulted in an intangible entity that is repeatable –as the *Meiquan 22nd Century* case shows– and that she fixed in a tangible thing –a file in her computer– that does not bear the relevant properties for appreciating her work.

Once dispelled this concern, let me come back to our previous question: what is the ontological nature of the architectural artifact as an intangible thing protected by intellectual property law? To this aim, let us consider first some general points about the subject matter of intellectual property. It is important to stress that, to protect the values of originality and style of an author's works from appropriation, copyright is a right at the core of intellectual property legal systems. Copyright is held by the 'authors of literary and artistic works' and, in its basic form, is their 'exclusive right of authorizing the reproduction of these works, in any manner or form' (Berne Convention, Art. 9). According to this definition, first, since copyright is a right held by the author of a work, the objects protected by copyright must be

authored works, excluding things whose existence 'cannot be attributed to one or more natural persons' (Pila 2017, 67). Of course, insofar as copyright is not a natural but an economic right, it can be sold to a third party, but this does not annulate the initial condition of the protected thing being an authored work. And second, the definition implies that the objects protected by copyright are things that admit of multiple reproductions in items in which, totally or partially, a same pattern occurs. In other words, the authored work protected by intellectual property law is a *repeatable* entity.

There is a notable consensus in the literature on the thesis that the ontological category that best captures the features that characterize the nature of the objects protected by intellectual property law is the category of types (Pila 2017, 72; Hick 2017, 89; Young 2021, 44). More precisely, as Pila (2017, 179) emphasises from the point of view of intellectual property law, an authored work is an *artifact type*. As a type, the authored work is an abstract entity –an entity that has no spatial location but that exists in time–[18] individuated by the condition –a set of properties– that must be satisfied by its properly formed tokens –usually,[19] concrete particulars that instantiate the properties that individuate the type. As an artifact, the authored work is not an eternal type –a type that exists at all times–, but a type that has temporal origin as a result of human intentional actions aimed at creating it.[20]

One might think that there are other ontological candidates that stand in a good position to account for entities that are authored (i.e., creatable) and repeatable. It is not the aim of this paper to discuss this concern in depth, but we may easily come up with reasons that substantiate why the thesis that the works protected by intellectual property law are types is the default position. First, nominalist and perdurantist accounts explain a work's repeatability by seeing the work as a set or fusion of its performances (cf. Goodman 1968; Caplan & Matheson 2006). But the intangible dimension of the objects protected by intellectual property cannot be reduced to the tangible items that, like a work's performances, bear the relevant properties for the appreciation of the work. The reason is that unperformed works of music and theatre, for instance, are protected by intellectual property law. For such, a work only needs to be fixed in some tangible medium (a score, a script, etc.), but the fixation needs not to be a reproduction of the work (i.e., a tangible item that has the properties that are relevant for the work's appreciation). Second, some Aristotelian accounts argue that created repeatable artworks are structural universals, i.e., complex multiply instantiable properties that begin to exist with their

[18] For an explanation of how types exist in time but not in space, see Dodd (2007, 42–49; 92–94).

[19] But not always. A type can have other types as instances. For an explanation, see Puy (2019 & 2022).

[20] For an explanation of how types can have temporal origin and be creatable entities, see Puy (2020), Irmak (2021) and Friedell (2021).

first instantiation (Fisher 2023). But, again, this view is unable to explain how unperformed works can be protected by intellectual property law, since no structural universal exists uninstantiated. Third, idealism is the view that identifies repeatable works with ideas, i.e., 'systems of appropriately related token mental states' (Cray & Matheson 2017, 705). However, as the Article 2 of the WIPO 1996 Copyright Treaty declares, 'copyright protection extends to expressions and not to ideas'. Of course, without a closer examination, these difficulties are not conclusive against the ontological views considered. However, the thesis that the objects protected by intellectual property law are artifact types is *prima facie* free of these problems, what motivates to take it as the default position and explains the consensus noted above.

This ontological view of authored works that emerges from the framework of intellectual property fits *prima facie* well certain art forms. It is intuitive to think that a work of Western classical music is a type of sound sequence events whose properly formed tokens are the musical performances that satisfy the condition that individuates that type (typically, the set of sonic properties that determine a certain sound sequence) (cf. Dodd 2007). Similarly, it is not unplausible to think that a novel is a type individuated by the properties that determine a certain linguistic or textual structure whose properly formed tokens are the printed copies of the novel that satisfy this condition (cf. Hick 2013). Both, works of music and novels, are objects protected by copyright, and their more intuitive ontological categorization is as artifact types. As we have seen, architectural works are also authored works protected by copyright. If so, and assuming the default position about the nature of the kind of thing that can be protected by intellectual property law, the architectural work should be an artifact type.

However, this ontological account of architectural works suggested by seeing them as objects protected by intellectual property law collides with the view, encouraged by the site-specificity intuition and the doctrine of moral rights, that they are concrete particulars. Two relevant questions arise at this point. First, is the ontological categorization of architectural works as artifact types plausible, and hence, is their protection by intellectual property law justified? Second, is this ontological categorization consistent with the protection of architects' moral rights over their works? These two questions will be the focus of §4 and §5, respectively.

4. Architectural works as artifact types

The acknowledgment in §3 that architectural artifacts are authored works protected by intellectual property law has led us to categorize them as artifact types. It is important to notice at glance that the ontological view suggested by the framework of intellectual property invites us to see architecture as an ontologically complex art form. Architecture is an art form that, under this approach, encompasses at least two

distinct kinds of entities that can be objects of aesthetic and artistic appreciation: artifact types, on the one hand, which are abstract and multiply instantiable entities, and artifact tokens, on the other hand, which are concrete particular entities.

With this in mind, a plausible ontological account of architecture that can be drawn with these tools can be summarized in the following thesis: an architectural work is *an artifactual type of material configuration*, that is, an artifact type whose properly formed instances are those artifact tokens that are material configurations satisfying the condition specified in the architect's project to perform certain practical and artistic functions.

In the previous claim, 'architectural work' refers to the authored architectural work, namely, the thing created by the architect. The cases of *Rooijen's v Pfeiffer* and *Shine v Childs* discussed in §3 suggested that this thing, over which special rights are claimed, is not a tangible object, for none of the architects' work was materially realized at the time of their lawsuits. This intellectual, and hence intangible, nature of these architects' creations is captured by the category of types: they are abstract entities that, as such, lack both spatial location and spatial parts. Moreover, an artifact type, i.e., a type that comes into existence at a certain time as a result of human intentional actions, does not ontologically depend on its tokens. Artifact types can be seen as brought into existence by means of an act of indication (Levinson 2011; Howell 2002) and, in the case of architecture, this act of indication can be easily identified with the architect's final presentation of the project. Alternatively, artifact types can be thought as coming into existence with the existence of the first of its embodiments –i.e., concrete particulars that enable the generation of tokens of the type (Walters 2013)–, and the architect's project seems to be a plausible candidate for being such an embodiment. Otherwise, artifact types can be seen as non-causally created, taking them to be ontologically dependent on other facts (Irmak 2021), such as the completion of the architect's creative process. In any case, there are plausible alternative proposals stating that an artifact type may exist without there being any tokens of it. This sufficiently captures the idea that the architectural work is an intangible entity that comes into existence at a certain time without requiring material realization to exist.

Remarkably, the view of architectural works as intangible creations is not an outlandish idea arising from odd cases like *Rooijen v Pfeiffer* and *Shine v Childs*. These cases merely highlight a crucial feature of the architectural practice that supports this idea and that was anticipated in §3. They just help us to notice that most architectural works designed to perform an artistic function belong to what Nelson Goodman (1968, 113–114) referred to as '*two-stage*' art. Applied to architecture, this means that, once the architect's labor is complete, the work requires a tangible realization for a full appreciation of the work's artistic value.

An analogy with works of Western classical music may be helpful here. There, in a first stage, a composer creates a musical work, typically by means of specifying a set of instructions in a musical score for properly performing that work. Once the composer is done with her work, performers, in a second stage, materialize that work in sounds with musical instruments following the composer's instructions written in the score. A similar phenomenon arises for a significant number of architectural works. In a first stage, the architect creates an architectural work by specifying in a project a set of instructions for how to properly construct that work. In a second stage, construction workers materialize the work using various tools (excavators, saws, torches, formwork, trowels, etc.) while following the architect's instructions.[21] Calatrava did not create with his hands the tangible bridge that you can find in Bilbao: he wasn't digging dirt, making anchors, sawing and welding steel beams, or balancing glass panels. He, like Rooijen and Shine, created an intangible intellectual thing by means of specifying in his project the instructions for constructing the *Zubizuri*, and, as we have seen, this intangible thing can be effectively accounted for by the ontological category of artifact types.

The distinction between artifact types and tokens captures a second important implication of architecture being, in many cases, a two-stage art. As a two-stage art, the architectural artifact requires a tangible realization for fully accomplishing its artistic functions and being appreciated to the utmost of its potential. The aesthetic experience of architecture is taken to be multimodal and extended through time, involving seeing the work's form and space, hearing its acoustics and haptically perceiving some qualities of its materials (cf. Capdevila-Werning 2013, 92). This sort of experience, which involves grasping response-dependent properties, is possible only if the architect's work is tangibly realized, and this is indispensable to achieve the architectural artifact's artistic function. We observed in §1 that three possible conceptions of this function are either to see the architectural artifact as an experiential artifact designed to elicit an aesthetic experience or exhibit some aesthetic properties, or to see it as performing a symbolic function of an aesthetic sort. Accordingly, even if the architectural work is an intangible entity, the appreciation of its artistic functions requires the work to be tangibly realized in a second stage, which implies that architectural works are *for*

[21] Of course, the borderline between the two stages is not neat since, as Antoni Gaudi's *Sagrada Familia* paradigmatically illustrates, many architects modify their project as the construction of the building advances. But, first, this does not invalidate the analogy with musical works: it is not uncommon for a composer to modify her score in virtue of the performers' feedback during the rehearsals before the work's premiere. And second, it does not erase the distinction between two stages, one whose outcome is an intellectual creation (the authored work), and another whose outcome is a tangible object (a musical performance and a tangible building, respectively).

construction, the end products of this art form being tangible realizations of the architect's work.

The artifact type/token distinction offers an account of this phenomenon. First, it is not eliminativist about the tangible dimension of architecture, viewing tangible buildings as artifact tokens in which the architectural work is instantiated. And second, it explains the relevance of the tangible building for full achievement of the architectural work's functions. This is so because one of the hallmarks of types distinguishing them from other kinds of abstract entities, like properties, is the transmission of predicates from the properly formed tokens of a type to the type they are instances of (cf. Dodd 2007, 17). The property of being red is not itself red. However, insofar as it is true that the properly formed tokens of the Union Jack are red, white and blue, the type of the Union Jack is red, white and blue. This way, the tokens of an artifact type play a fundamental role in our epistemic access to the type. We gain access to a type by means of deferred ostension from its tokens. If a child does not know what the Union Jack is, I can point to a token of it and say: 'This is the Union Jack'. My pointing to this token is a direct ostension to it but, given the transmission of predicates to a type from its properly formed tokens, it is a deferred ostension to the type of the Union Jack. The same applies if the child asks me what the *Zubizuri* is: I can take her to Bilbao and, pointing to the tangible bridge, say: 'That is the *Zubizuri*'. My pointing to the tangible bridge is a deferred ostension to Calatrava's authored work, the intangible intellectual thing he created, and by means of seeing, touching and walking over the tangible bridge, the child can grasp how Calatrava's authored work accomplishes its intended practical and artistic functions. The distinction between artifact types and artifact tokens thereby explains the relevance of the tangible dimension of architecture and why a tangible building (an artifact token) is an important focus of aesthetic attention.

Despite these appealing explanatory insights, one might suspect that there are two major obstacles to the plausibility of the thesis that architectural works are artifact types. One is related to the intuition, introduced in §3, that architectural artifacts are *site specific*, a feature that *prima facie* deals badly with the idea that they are artifact types. If an architectural work is an artifact type, it is a repeatable entity whose properly formed tokens are tangible objects that occupy exclusive spatiotemporal regions. This suggests that a same architectural work can only have multiple properly formed tokens at different spatiotemporal regions because two tokens overlapping at the same spatiotemporal region cannot satisfy the condition that individuates the type. The problem is that this seems inconsistent with the idea that an architectural work is essentially bound to a specific location, the core idea of the site-specificity intuition. A change in the work's location implies, on this view, a change in its identity, no longer being the same work. This line of argument is

reinforced by the fact that we typically call 'replicas' or 'imitations' the alleged repetitions of an architectural work located at non-overlapping spatiotemporal regions. The *Tour Eiffel* in Las Vegas is generally considered a replica of the *Tour Eiffel* located in Paris, the original. This suggests that we do not treat the *Tour Eiffel*'s repetitions as occurrences of one work, but as copies, and hence as works different from the original. Accordingly, site-specificity seems to undermine the motivations to identify architectural works with artifact types because they would not be repeatable entities.

However, a closest examination of the intuition about the site-specificity of architectural works might assist us in resisting this conclusion. Indeed, there may be a good reason to think that the site-specificity of architectural works is consistent with their being repeatable. And a plausible candidate is that the possibility of multiple realizations at *different locations* is not a necessary condition for an architectural work to be repeatable. A necessary and sufficient condition, instead, is that an architectural work may have multiple tangible realizations and that those realizations count as occurrences of the same work.[22] Architectural works can satisfy this condition.

To see this point with a more intuitive appeal, let us imagine that a meteor completely destroys the current tangible realization of the *Zubizuri*. Let us suppose, additionally, that Bilbao's Council decides to build a new bridge at the same location scrupulously following all of Calatrava's instructions specified in his project. The result would be a bridge, perceptually indiscernible from the tangible realization of the *Zubizuri* when it was inaugurated in 1997. However, the materials are new, even if of the same kinds as those prescribed in Calatrava's project. In this scenario, we may be discouraged from viewing this new bridge as a copy of the old one and hence as an architectural work different from Calatrava's *Zubizuri*: the construction of the second tangible bridge was not a matter of mimicking, copying or imitating the first tangible bridge, but rather of accurately following the instructions for construction specified in Calatrava's project. Construction workers behave much like musicians accurately following the score's instructions to produce a properly formed performance of a musical work (cf. Wicks 1994, 165). This motivates the intuition for viewing this second tangible bridge as a *reconstruction*, and hence as a second tangible realization, of Calatrava's *Zubizuri*, revealing it as a repeatable entity capable of having multiple occurrences. Of course, one might think that the intuition elicited by this case is not strong enough, because probably not all people will share it. However, if the alternative is to say that architectural works are not a kind of thing

[22] A similar idea has been anticipated by David Davies (2010), who takes the property of being repeatable to be a modal one.

over which architects may claim intellectual property rights and to deny the strong intuitions for this discussed in §3, a reasonable balance suggests the charitable acceptance of this reply in favour of the thesis that architectural works are artifact types.

A second major obstacle for embracing this thesis concerns the relevance of the history of production of the tangible realization and the age of its components for the aesthetic appreciation of the architectural work. An old building, like the *Parthenon*, might be said to have *age value*: we experience it as something *genuine*, i.e., as something that arouses a 'thrill' or 'wonder' insofar as it affords a sense of *being in touch with the past* that it 'embodies' or 'exemplifies' (cf. Korsmeyer 2016, 222–3; 2019, 162; 2023, 394). In Carolyn Korsmeyer's (2019, 23) lemma, when perceiving such a genuine object, 'the past is gathered into an aesthetically perceptibly present'. This sort of valuable aesthetic experience is supposed to be afforded by the genuine ruins of the *Parthenon*. From this perspective, a reconstruction of it will never be experienced as something genuine and the thrill of the experience will be faded off. The implication of this approach is that any reconstruction of an old architectural work will never count as an occurrence of it, but as a replica of the original tangible artifact, because its symbolic and aesthetic values associated to its artistic function are different. So, even if the thought experiment about reconstruction is sound with respect to contemporary architectural works, like the *Zubizuri*, it would not apply to old works, which threatens again the appeal to identify them with artifact types.

An easy answer to this obstacle is to bite the bullet and assume an *ontological pluralism* about architectural works, an option previously suggested by Saul Fisher (2016). Concerning our problem, the solution would be to assume that, whereas contemporary architectural works are artifact types, old ones are concrete particulars. After all, our discussion here is concerned with the intellectual property of architectural works, and copyright terms are temporally limited: usually, they expire 70 years after the death of the author. Unfortunately, this answer is not satisfactory because a building does not need to be so old to have age value. *Vallecas Stadium*, built in 1976, is a place where Queen, Metallica and other mythical bands had live performances, and the stadium elicits the thrilling experience of genuineness to many musical fans.

However, there is a good reason to be skeptical as to whether the objection from age value really undermines the thesis that architectural works are artifact types, regardless of their time of creation. It is not clear if what is at stake in the special experience that we get from the *Parthenon* and *Vallecas Stadium* is age value or historical value. Korsmeyer (2016, 222–3; cf. 2019, 79–85) neatly distinguishes both kinds: historical value 'engages quests for information and knowledge about previous ways of life, whereas age value prompts a kind of wonder at the thing itself'. However,

historical value may also ground the experience of being in touch with the past supposedly involved in the special experience of the *Parthenon* and *Vallecas Stadium*. Considering a similar case, Eric H. Matthes (2018, 653) observes that the aesthetic experience of the battlefield at Gettisburg includes the past that this place embodies on the base of historical knowledge, even if many of the memorial weapons at Gettysburg are reconstructions. Analogously, it might well be the case that the kind of wonder that we experience with the *Parthenon* and *Vallecas Stadium* is grounded in historical knowledge. If so, the touch with the past that they afford does not require contact with the genuine tangible buildings, since a reconstruction of the *Parthenon* and *Vallecas Stadium* can do this as well. In light of these doubts, if the alternative is to say that architects have no intellectual property rights over their works and dismiss our intuitions about this, a reasonable balance between earnings and loses would recommend embracing the idea that architectural works are artifact types.

5. Artifact types and architects' moral rights

In the previous section, the most important explanatory advantages of the thesis that architectural works are artifact types have been discussed. Moreover, two major problems that may question the appeal of this thesis have been considered, namely, the fact that architectural works are site specific and that they are appreciated for eliciting the experience of being in touch with the past. These two major problems favour the idea that architectural works are concrete particulars rather than artifact types. In response to each problem, ways in which architectural works' repeatability is consistent with their site-specificity and their power of putting us in touch with the past have been offered. Acknowledging that someone might be unconvinced, the methodological strategy has been to appeal to a balance between earnings and loses: embracing these solutions is more beneficial than not doing so, because the alternative is to identify architectural works with concrete particulars, and hence to identify them with a kind of thing that cannot be the object protected by intellectual property law, dismissing important architects' aims and intuitions in this regard.

However, one might reasonably wonder whether the thesis that architectural works are artifact types does not lead us to the same problem concerning the moral rights of architects. Indeed, as we have seen in §2, the doctrine of moral rights favours the categorization of objects under its purview as concrete particulars to justify their legal protection. And so, by denying that architectural works are concrete particulars, are we not dismissing the aims of architects concerning their moral rights and strong intuitions on this matter? Not entirely. As we shall see next, one of the explanatory virtues of the thesis that architectural works are artifact types is that it can accommodate the intuition of architects having moral rights over their works. This is a compensatory theoretical benefit for the alleged revisionary

character of this thesis over the more intuitive idea that they are concrete particulars: whereas the former supplies us with an explanation of both, moral and intellectual property rights, the latter only accounts for the moral rights of architects.

To see this point more clearly, let us consider again the cases discussed in §2. Calatrava argued that the modifications carried out by Bilbao's Council in the tangible realization of the *Zubizuri* violated his right to the integrity of his work. In a similar vein, Rewald claimed that the demolition of the tangible realization of his *Hall of Nations* constituted a violation of his right to his work's integrity. When an arcade was transformed into a canteen in the final construction of the *Casa Bosco*, and the instructions of the project for the *Philharmonie* were not followed in the final stages of its construction, Boeri and Nouvel complained that the integrity of their works was violated or martyred.

None of these claims are true if architectural works are artifact types. Since a type and a token of it are different objects, and the existence and persistence conditions of a type do not depend on any of its particular tokens, no modification of a work's token alters the work itself. It is thus false that the alterations made by Bilbao's Council to the *Zubizuri*'s token altered, violated or affected Calatrava's work. The work remained intact. The modifications only affected that particular token, which ceased to be a properly formed token of Calatrava's work: it is a concrete particular that no longer satisfies the condition that individuates Calatrava's work qua artifact type. The same applies to the Rewald, Boeri and Nouvel cases: none of their works have been altered or their integrity violated. Only a token of their respective artworks is concerned because it either ceases to exist –the Rewald case– or the tangible realization of the work turned out to be an improperly formed token from the start –the Boeri and Nouvel cases. Accordingly, if architectural works are artifact types, the violation of the moral right to the integrity of the work cannot be invoked in those cases.

However, the thesis that architectural works are artifact types enables us to reinterpret the previous cases in virtue of the violation of other moral rights of the architects involved. The key point to see this requires having in mind the epistemic role, presented in §4, played by tokens with respect to the types they are instances of. To recall it, given the transmission of predicates from tokens to their respective types, we access a type indirectly through its properly formed tokens. Since a type's tokens are concrete particulars, and hence things with which we can directly causally interact, this access is of an experiential sort: by experiencing the token, we experience the type instantiated in it. Accordingly, the tangible realizations of an architectural work provide us, qua tokens of a type, with a knowledge of the work that is not propositional, but rather phenomenal, letting us know what the work is like. And, insofar as the aesthetic experience of architecture involves response-

dependent properties of dimension, texture, colour, luminosity, or acoustics of the work, the kind of knowledge supplied by a properly formed token of an architectural work is indispensable for the work's proper appreciation.

Accordingly, first, when a token is modified to the extent that ceases to be a properly formed token of the target work, like in the Calatrava case, or when it never was a properly formed token of the work from the start, like in the Boeri and Nouvel cases, this token does not provide proper epistemic access to the work. And, in these cases, where the architectural work is site specific, this simply prevents the proper access to the work. If one of the moral rights of architects is the right to disclosure, i.e., to determine the conditions under which the work is publicly displayed, such alterations of a work's token, when they are unconsented, amount to a violation of this right. This is so because those are the conditions specified in the architect's project for something to be a properly formed token of the work qua type and are not satisfied by the altered or imperfectly constructed token. This is a first way in which the thesis that architectural works are artifact types can accommodate the intuition of architects concerning the violation of their moral rights.

Second, when a token is modified or imperfectly constructed such that it either ceases to be or never becomes a properly formed token of the target work, this token provides us with a misleading knowledge of the target work. When the architectural work is site specific, this token prevents us from having a proper understanding of that work and hence from an adequate appreciation of its artistic function. One might suspect that, in those circumstances, we will be mislead in identifying the work because the transmission of predicates from the token to the work qua type is blocked. If one of the moral rights of architects is the right to attribution, the alteration of a work's token in the Calatrava, Boeri and Nouvel cases is suspicious of being an infringement of this right.

There is a feature of types that confirms this suspicion. The fact of types being individuated by the condition to be satisfied by its properly formed tokens makes them *ontologically thin* entities (cf. Dodd 2007, 53–6). This condition is specified by a set of properties that something must have to be a properly formed token of a type. Changing any of those properties modifies that condition, resulting thus in a different condition that specifies a new set of properties that individuates a different type. Now, the tangible realization of the *Zubizuri* currently has a different set of properties than the one specified in Calatrava's project as the condition for something to be a properly formed token it. Since types are ontologically thin entities, this set of properties specifies a different condition than the one specified in Calatrava's project for something to be a properly formed token of a type. In other words, whereas the intentionally unconsented modifications implemented in the tangible bridge prevent it from being a properly formed token of Calatrava's work,

they qualify it as a properly formed token of a different type and thus of a slightly different work than Calatrava's. Consequently, by attributing the current tangible bridge to Calatrava's architectural authorship, Bilbao's council is incorrectly identifying Calatrava as the author of the type of which the tangible bridge in its currently unconsented modified state is a properly formed token, which is a violation of Calatrava's right to attribution. The same phenomenon holds in the Boeri and Nouvel cases, and this is a second way in which the thesis that architectural works are artifact types can accommodate the intuitions of architects concerning the violation of their moral rights.

The Rewald case is different. The removal of the only token of a site-specific work does not imply a neglection of the conditions of the work's display or a misidentification of the target work through an improperly formed token of it, for there is no token at all. Accordingly, the violation of the rights to disclosure and attribution cannot be invoked. Instead, a plausible way of accounting for this case is to think it as a violation of Rewald's right to withdrawal. Since having a properly formed token is the only way in which a site-specific architectural work can be properly displayed for appreciation, the removal of the token being unconsented seems to be a disavowal of the architect's right to set the conditions under his work is to be pulled back from public display. Things would have been different if Rewald's work had been ephemeral architecture. In that a case, the type would have been individuated by a condition demanding its properly formed tokens being constituted by ephemeral materials of an intended limited durability. This not being the case, the demolition of Rewald's *Hall of Nations* can be reinterpreted by the defenders of the view that architectural works are artifact types as a situation in which his right to withdraw his work has been violated.

6. Conclusion

This paper has analyzed the challenges raised by the dual function of architectural artifacts to their ontological categorization and legal protection. On the one hand, their artistic and practical functions make them objects protected by the moral rights of architects, which prompts a view of architectural artifacts as concrete particulars. On the other hand, those functions make them objects protected by intellectual property laws, but the rights covered by those laws only protect intangible things that are best characterized as artifact types. This way, the dual function of architectural artifacts suggests two inconsistent ontological categorizations that raise the dilemma that either the moral rights of architects or their intellectual property rights turn out to be ungrounded. The extent to which the thesis that architectural works are artifact types can offer a conciliatory solution has been explored. A more developed version of this thesis has revealed ways of accommodating strong intuitions concerning the

site-specificity of architectural works and their age value that prima facie supported their categorization as concrete particulars. In addition, the thesis that architectural works are artifact types has been shown to provide a theoretical benefit that may compensate its potential revisionary character: it allows for ways of preserving the intuition that architects have both moral and intellectual property rights over their works. Of course, the conclusions achieved here are limited in scope, not covering the whole of architecture. For instance, they do not apply to architecture that is not two-stage art and is not intended to perform any artistic function. But the hope here is to have at least made a modest contribution to understand the artifactual complexity of architecture.

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