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HOW TO DO THINGS WITH DOCUMENTS

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Abstract

This essay is a contribution to social ontology, drawing on the work of John Searle and of Hernando de Soto. At the center of the argument is the proposition advanced by de Soto in his *Mystery of Capital* to the effect that many of the entities which structure our contemporary social reality are entities which exist in virtue of the fact that there are (paper or digital) documents which support their existence. I here develop de Soto's argument further, focusing specifically on the ontological problems raised by a family of new types of social phenomena – exemplified most dramatically in the domain of finance for example in the form of what are called “structured investment vehicles” – made possible as a result of the employment of computer technology in entity creation. I address also Searle's most recent work on social ontology, and conclude with an appendix on the theory of Documentality advanced by Maurizio Ferraris.

1. The New Science of Ontology

Recent financial turmoil has brought to light a menagerie of structured investment vehicles and other “derivative” financial instruments, which were created in the years leading up to the Lehman bankruptcy in 2008. What sorts of entities are these? What kind of thing are you buying, for example, when you buy a “collateralized debt obligation” or “CDO” (Lucas *et al.* 2008)? Nothing physical, it would seem: a CDO is not something able to stand in relations of cause and effect. Yet it is at the same time something whose existence is tied to time and change. Already Plato would have regarded such a combination of properties as something impossible.

Structured investment vehicles seem, in fact, to fall outside the standard philosophical dichotomies of physical and mental, concrete and abstract. They are in some sense normative entities (“obligations”), but at the same time they are entities which can be bought and sold, and which can be aggregated and dissected through processes which enjoy a certain sort of mathematical precision.

Philosophers have thus far shown little interest in understanding the ways in which social reality is hereby becoming augmented through the creation of entities which pose challenges for traditional approaches to ontology because they span the boundary between what is abstract and what is historical. At the same time, however, philosophy no longer has a monopoly on such ontological questions, since ontology is, by degrees, establishing itself as an independent discipline that is allied as much with data engineering as it is with philosophy (Guarino 1998). A simple Google search will reveal that the term “ontology”, today, refers overwhelmingly not to something that might emanate from the brain of Aristotle or Heidegger, but rather to a burgeoning multitude of classification systems and controlled vocabularies created to advance

the processing of data by computers; and in the work of the new applied ontologists entities of these new types are taken very seriously indeed (Rittgen 2007).

The work of such ontologists is a response to the fact that all of the many industrial, governmental and scientific organizations whose operations rest on the use of computers face ever increasing difficulties deriving from their need to combine huge bodies of data – about financial transactions, stolen weapons, oil deposits, or bacterial genomes – deriving from multiple heterogeneous sources. Ontologies are consensus frameworks designed to allow such data to be collected in such a way that it will be capable of being integrated together with other, associated data collected by multiple external groups. Defense and intelligence agencies are heavy users of ontologies in this sense, and so also are the intelligence divisions of financial organizations and the research departments of pharmaceutical companies. There are also university centers of ontology research – and it is interesting (and almost certainly in part one legacy of the realist ontology of Paolo Bozzi (1991)) that Italy has proved to be a world leader in this field, with ontology centers in Turin (<http://www.labont.it>), Trento and Rome (<http://www.loa-cnr.it>)¹.

2. *The Social Act of Promising*

Our focus here is on the ontology of social reality, and for this we need to begin with simple social entities such as claims, obligations and promises. If I promise to pay you 10 Euros tomorrow, then I acquire thereby an obligation and you acquire a corresponding claim. This is an example of how people *do things with words*, not only to convey information, but also to promise or grant or withhold permission. They thereby bring into being entities of new types – not only claims and obligations, permissions and prohibitions, but also marriage bonds, ownership rights, and many more. The latter are not created in one-off fashion. Rather, as Searle made clear in his *Construction of Social Reality* (1995), they are bound together in a variety of evolving networks with other social entities, in ways that have made possible new types of cooperation between human beings.

It was the phenomenologist and legal ontologist Adolf Reinach who first set forth the potential of an approach to the understanding of social reality along these lines (Reinach 1989, Mulligan 1987, Smith 1990). For Reinach, when we perform a speech act – or what Reinach himself called a “social act” – then, if certain background conditions are satisfied, the world itself changes. The performance of a speech act such as promising brings it about that new entities come into being, entities that survive for an extended period of time until their existence is brought to an end, for example through the performance of some other speech act, such as a declaration on the part of the claimant to the effect that he waives his claim.

It might seem that all of this occurs as if by a strange sort of ontological magic. In the case of a simple face-to-face promise, however, we can see how claims and obligations are maintained in existence through the memories, intentions and expectations of the parties involved. Here,

¹ My own role in the development of the new, applied ontology had its seeds in collaborations with Italian philosopher-ontologists such as Roberto Casati, Maurizio Ferraris, Achille Varzi, and especially Nicola Guarino (an ontological *dottore in ingegneria*), who in the early 1990s first opened my eyes to the possibilities of a new discipline at the frontiers of philosophy and computing. Since then I have worked with the growing community of ontologists throughout the world, including serving as Director of the US National Center for Ontological Research, which provides ontology services, *inter alia*, to the US Army and US Joint Forces Command (Salmen *et al.* 2011).

small networks of claims and obligations are able to sustain successful social cooperation because the human beings involved (a) know each other and know each others' reputations, and (b) are able to draw on shared memetic cultural equilibria – what we can think of as local ideologies – concerning for example what the expression of certain words in certain contexts will entail for themselves and for their interlocutors. Just as words have enduring meanings because of such memetic equilibria – corresponding roughly to what Searle (1983) calls the Background of human abilities, capacities, tendencies, and dispositions – so the speech acts performed with their aid have the capacity to create relations of obligation able to link people together in enduring ways.

3. *From Speech Acts to Document Acts*

If, in such circumstances, you incur a debt, then this means that your obligation to repay in the future is tied to expectations relating to the behavior and attitudes of your fellows, by your desire to preserve your good name, and by a host of other psychological factors operating in the sphere of local, face-to-face interactions. Here the debt is tied to a specific initiating event and to specific initiating partners and it is initiated – and thereafter maintained in existence – within this same enduring socio-cultural background.

In larger societies, however, everything changes. For in many contexts the members of such societies have to rely on networks of claims and obligations extending beyond the local sphere and involving parties with whom they will likely never engage in face-to-face interactions. Here psychological factors will not suffice. Memories and intentions fade with time and distance, and so also does the reach of shared cultural agreements for example about the significance of gestures and facial expressions of different sorts in specific social acts.

Matters are made still more complicated by the fact that the obligations (debts) created in the larger society may be bought and sold, and are able in this way to float free of their original partners and of the socio-cultural background within which they were initially incurred. They are thereby able to enjoy an existence of their own, which may span multiple different sorts of social context, and involve multiple different sorts of actors. Documents as they evolved through time thus not only enabled human beings to solve *epistemological* and *deontic* problems caused by shortfalls in the reach of memory and of knowledge of intentions; through being recorded in documentary form debts and other social entities were also transformed *ontologically*².

A document is something that is able to endure self-identically through time. It can be signed and countersigned, stored, registered, inspected, conveyed, copied, ratified, nullified, stamped, forged, hidden, lost or destroyed. Pluralities of documents can be chained together (for example to form audit trails), and combined in other ways to form new document-complexes, whose structures mirror underlying human relations for example of debtor to creditor, of manager to shareholder, of customer to supplier, of claimant to adjudicator, of doctor to patient, and so on. Documents thereby make possible new kinds of enduring social relations and new kinds of enduring social entities together allowing the evolution of entire new dimensions of socio-economic reality. The effect is that private memory traces inside human brains are prosthetically augmented by publicly accessible documents and associated document technologies.

² This transformation has brought not only benefits. Indeed some of the document forms that people have created have had far-reaching damaging effects, as we shall see in our discussion of the ontology of toxic assets below.

As these new documentary practices bring also changes in social relations, including changes in legal and economic systems, they bring into being new social artifacts, such as receipts, money, identity documents, criminal records, as well as signatures, document templates (to be filled in), check-boxes, official stamps, bank accounts, contracts, stocks, shares, mortgages, liens, insurance policies, and credit cards and so forth. The development of such artifacts and of the networks of social behavior and of claims and obligations with which are they associated is then in some ways analogous to the processes of biological evolution (Zamboni 2008).

4. *The Ontology of the CDO*

It is against this background that we need to understand the ontology of entities such as CDOs. In the simplest case a CDO is a type of *mortgage-backed security* (itself defined as a pool of mortgage loans that have been repackaged for sale to investors). Matters are complicated, however, because in the case of the CDO this common pool is divided into tranches with varying maturities and reflecting different levels of risk among the mortgages pooled. The division creates separate pools for different classes of bondholders, who thereby enjoy different sorts of claims in the case of eventual default.

There are also CDOs of other kinds, for example based not on mortgages but on bonds. And most importantly for our purposes here, there are CDOs based in iterative fashion on other CDOs, forming CDO²s, CDO³s, and so on.

5. *Hernando de Soto's Mystery of Capital*

It was the Peruvian economist Hernando de Soto who, in his *Mystery of Capital* (2000), first recognized the pivotal role of documents in the social reality of the extended market economy. Building on de Soto's work, and on earlier collaborations with Leo Zaibert (summarized in Smith and Zaibert 2001), I proposed a theory of *document acts* supplementing the traditional Reinach-Austin-Searle theory of speech acts with an account of the ways in which, by *doing things with documents* – whether made of paper and ink or of patterns of blips in computers – we are able to *change the world* by bringing into being new types of ownership relations, of legal accountability, of business organizations, and other creatures of modern economies, including mortgages, stocks, shares, insurance protection, and financial derivatives (Smith 2001, 2008).

It is documents and the associated systems of document acts that allow our claims and obligations to transcend the local realm of face-to-face interaction. Yet here, too, everything still depends on social agreements and associated culturally embedded codes or ideologies. Now, however, social agreements have a different set of targets, pertaining to the documents and their various transformations, and to the different sets of humans involved in document acts of different sorts. They pertain, for example, to the people in offices of specific sorts, and to the question of who has the authority to fill in, to validate given documents, to determine their legal implications, or to initiate consequent enforcement actions.

Through the creation of documentary records a new formal dimension of economic reality comes into being: a dimension of what we might call *documentary economic objects*. What is commonly called “capital” belongs to this new formal dimension. As de Soto puts it:

Capital is born by representing in writing – in a title, a security, a contract, and other such records – the most economically and socially useful qualities [of assets]. The moment you focus your attention on the title of a house, for example, and not on the house itself, you have automatically stepped from the material world into the ... universe where capital lives.³

Capital is both something abstract – it exists because of certain sorts of document acts (of what Searle (2010) calls “Declarations” and what Reinach (1913) referred to as “*Bestimmungen*”) – but it is also something historical, something that is part of the world of what happens and is the case. The abstract nature of capital allows it to be divided amongst multiple owners while the property itself remains physically unchanged. Pension funds exploit this mathematical divisibility of capital to bring about a state of affairs in which the ownership of capital goods is no longer the privilege of the few. It is part of the historical role of capital to serve as security in credit transactions. It is accordingly not land or buildings, but rather the associated equity – something represented in a legal record or title – which provides security to lenders for mortgages, easements, and other covenants. By adding a codicil to a title deed we thereby certify who has access to the property and under what conditions. We present the title deed to a bank and thereby allow the equity associated with the underlying asset to be set free to be used for purposes of investment in other things. Where the necessary documentation exists, individuals and institutions in different locations can trade unlimited quantities of physical items without the need for anything material to be moved from one place to another or altered physically in any way.

Records and representations constituting the formal property system bring new systems of quasi-abstract entities into existence, which people buy and sell, use to gather information and to create incentives, and to vehiculate a division of labor between people with different sorts of temperament and different sorts of expertise. As de Soto puts it, title deeds, stock certificates, and mortgage contracts, by creating capital, constitute a highly effective means for human beings to discover the most potentially productive qualities of resources. In particular, by unleashing the potential of physical assets in the form of credit, thereby allowing new sorts of ventures and new sorts of risk, and new sorts of sharing of risk, the formal property system gave rise to that quantum leap in human welfare which we associate with the success of Western capitalism.

6. Toxic Assets

Focusing on documents allows us to understand also what went wrong in the credit markets in recent times. In an article in the *Wall Street Journal* (March 25, 2009) entitled “Toxic Assets Were Hidden Assets”, de Soto argues that the real problem was not so much *bad loans* – which had always existed – but *bad documentation*: a situation in which the chain of representations that had earlier anchored commercial paper to the underlying assets was broken⁴.

³ de Soto 2002: 49 ff.

⁴ This is not to deny that for a variety of reasons there were more bad loans than in earlier phases of the business cycle. De Soto’s point, however, is that there is a new sort of epistemological dimension to the problem of resolving the problem created by these bad loans, relating precisely to a shortfall on the side of documentation.

As de Soto points out, “Ever since humans started trading, lending and investing beyond the confines of the family and the tribe, we have depended on legally authenticated written statements to get the facts about things of value” (*op. cit.*). There now exists a global consensus on the procedures that must be followed in order to ensure that the facts relevant to trading, lending and investing are documented in a way that can ensure easy understandability and trust. Here it is the epistemological role of documents that is of importance.

Unfortunately, as de Soto points out, there is one set of documents representing assets that were – and still are – not centrally recorded in this way – namely documents representing derivatives. The result, for this particular class of entities, was a pervasive lack of transparency of information about what grounded the associated debts.

Here once again we see that the system of Western capitalism is structured in such a way that documents serve an indispensable epistemological role. In the case of mortgages, for example, it must be possible to trace back, through the chain of documentary records, to the buildings or land against which loans are secured. In the circumstances that preceded the Lehman bankruptcy, however, the relevant chain of documentation could not be reconstituted, so that those involved were not able to rely upon legally authenticated written statements to get the facts about the underlying assets. We are only now beginning to understand the complex interactions of ontology, epistemology and deontics which are involved in scenarios such as this, in which, by tracking assets in physical reality, documents thereby, to a more or less adequate degree, allow the creation of and thereafter sustain in being quasi-abstract entities dependent on the physical reality that is being tracked.

7. Money

Money, too, was initially structured in this way, consisting in effect of promissory notes expressing claims on corresponding amounts of gold or other physical items. Over time, however, this relation between money and physical assets was gradually loosened. The practice of fractional reserve banking allowed money to be lent by banks to consumers in multiples of the amounts for which underlying assets had been set aside. At the same time, at the level of national banks, the assets set aside began to take the form, increasingly, not of something physical, like gold, but rather of other documentary entities, including money issued by other national banks in other countries. The value of the money circulating as legal tender in each country now therefore rests in large degree on a kind of reciprocal dependence, in which money from country A has value in part because in the vaults of A’s national bank there is money issued by countries B, C and D. There is a parallel here to the reciprocal dependence that underlies the phenomenon of national sovereignty, where country A is a *sovereign nation* because it is recognized by the other sovereign entities which form the community of nations. The system works, in both cases, because there is widespread cultural agreement that the system works. And, *in extremis*, the money system may work, at least for a time, even when a government prints new money that is backed by no assets at all.

8. The de Soto Thesis

We encountered above the problem which arises because a speech act is evanescent, and thus seems not to be able to serve as the physical basis for the temporally extended existence of its products. As we have seen, in small societies and in simple social interactions, this physical basis can be identified with the memory traces and other features of the psychology of those involved. In the more complex social interactions characteristic of large societies, however, such memories will rarely suffice. The need to gather relevant witnesses, for example, and to hear and assess their oral testimony, will set limits to the reach of commitments entered into across both time and space. This is because witnesses die, memories fade, the potential for trust diminishes with time and distance; sometimes, indeed we wish to make commitments which will extend into a time when all of those currently alive will have passed away.

It is for these reasons that we turn to documents – such as wills and testaments, trust agreements, or articles of incorporation – which, by supplementing the powers of memory and intentions, create and sustain the sorts of enduring and re-usable deontic powers which extend beyond the reach of human face-to-face interactions and thereby create and sustain the new and more complex forms of social order which are characteristic of modern civilization.

In my text of 2008 I formulated what I called the *de Soto Thesis*, according to which:

Through the performance of document acts (acts of filling in, registering, conveying, validating, attaching) we *change the world* by bringing into being ownership relations, legal accountability, business organizations, and a variety of other institutional orders of modern societies.

As stock and share certificates *create* capital, so statutes of incorporation *create* companies. As identity documents *create* identities (the sorts of things which can be the objects of *identity theft*), so diplomas create academic ranks. For de Soto, it is the invisible infrastructure created for the management of assets through a gigantic, evolving network of commercial paper documents that is responsible for the phenomenal success of Western capitalism. But we can go further, and assert that documents, both in paper and in electronic form, have created an invisible infrastructure of multiple types of non-physical entities which pervade contemporary social reality.

9. Searle's *Construction of Social Reality*

How, against this background, are we to understand the contemporary philosophical debate around the ontology of social reality proposed by Searle in his *Construction of Social Reality*? Familiarly, Searle's book is built around a premise of naturalism: "the world consists of entities described by physics and chemistry"⁵, and he has remained faithful to this premise, in his fashion, ever since. Human beings are products of evolutionary biology; we are "biological beasts". Social reality, too, from this naturalist perspective, consists of entities described by physics and chemistry. It consists of dollar bills and driver's licenses, presidents and cathedrals, customs posts and supreme court buildings. President Obama is made of molecules, and so also

⁵ I do not wish to deny the sophisticated nature of Searle's naturalism, above all in its treatment of mental phenomena, where Searle allows that entities described by physics and chemistry can have non-physical and non-chemical properties, above all the property of intentionality, which he sees as being irreducible (Searle 1983).

was Prime Minister Berlusconi; and so also are the passports, speeding tickets, parliamentary digests, and price lists posted on the walls of Paris cafés.

Searle went wrong in *Construction*, however, by failing to do justice to the fact that, in addition to such documents made of paper and plastic, there are also documents which belong rather to the digital world of computers. What, ontologically, are we to make of these? How, more generally, are we to understand the ontology of the new sorts of social entities whose existence has been made possible as a result of the workings of computers? As concerns the money in your computerized bank account, Searle himself initially conceived matters as follows:

all sorts of things can be money, but there has to be some physical realization, some brute fact – even if it is only a bit of paper or a blip on a computer disk – on which we can impose our institutional form of status function⁶.

Later, he retracted this view and accepted that blips in computers (like the leather-bound ledgers that banks had previously used) merely *represent* money, in much the way that mortgage documents represent an underlying debt (Smith and Searle 2003).

In making this retraction, however, Searle is caught on the fork of a dilemma. For on the one hand his ontology is designed to do justice to the networks of claims and obligations, property relations and political rights, states, laws and corporations, which form the realm of social reality. But on the other hand such entities – including the money in your computerized bank account – are not “entities described by physics and chemistry”. Rather, they are what I called “free-standing Y terms”, entities resulting from applications of the X counts as Y formula in which there is no physical X to which the Y term in the formula corresponds. Certainly such Y terms are, in the final analysis, *based on* entities of this sort – there can be no money in your computerized bank account if there is no you, and if there are no servers, programmed in certain ways, and into which data has been entered by agents of the bank. But still, because it is not itself an entity described by physics and chemistry, the money in your computerized bank account cannot find a place within Searle’s social ontology. At the same time, however, it seems that, just like the paper money in your pocket, the money represented in computers *is* able to be the bearer of status functions⁷.

10. Searle’s *Making of the Social World*

⁶ Searle 1995: 56.

⁷ As late as 2005, Searle still seems confused about such matters, for example when he allows that status functions can “be constructed, so to speak, *out of thin air*”, as when, for example, through a special kind of declaration performed according to the California laws of incorporation, a corporation “comes into existence”, even where there is “no physical object which is the corporation” (Searle 2005: 15; compare also Hindricks 2008). “The corporation needs to have a mailing address and a list of officers and stock holders and so on, but it does not have to be a physical object. ... There is indeed a corporation as Y, but there is no person or physical object X that counts as Y”. (Searle 2005: 15; compare Smith and Searle 2003: 305-7). A view of this sort is of course incompatible with Searle’s naturalism.

Searle has proposed various strategies to resolve this dilemma. Already in *Construction* he argued that the Y-terms in the X counts as Y formula should actually not be seen as designating social *objects* at all, but rather mere *possibilities of action*:

Social objects are always constituted by social acts; and, in a sense, *the object is just the continuous possibility of the activity*. A twenty dollar bill, for example, is a standing possibility of paying for something.⁸

What we think of as social *objects*, such as governments, money, and universities, are in fact just placeholders for patterns of *activities*. I hope it is clear that the whole operation of agentive functions and collective intentionality is a matter of ongoing activities and the creation of the possibility of more ongoing activities.⁹

There are many problems with this account, not least the ontological unclarity of terms like “placeholder” and “pattern”. A set of more substantial problems can be illustrated by the example of a law, for example a law against trespass in relation to a certain plot of land. How is such a law to be understood from Searle’s point of view? Certainly some reference to possible activities must be included in any coherent account, both to possible activities of breaking the law and to possible activities of enforcement. But how would we formulate this account without making any reference to the law itself?

In Smith and Searle 2003, Searle argued that the X counts as Y formula is itself “intended as a useful mnemonic to remind us that institutional facts only exist because people are prepared to regard things or treat them as having a certain status and with that status a function that they cannot perform solely in virtue of their physical structure”. If the formula is not to be taken ontologically seriously, however, then how can Searle claim so much on its behalf in the context of a highly ambitious *social ontology*?

In his new book, *Making the Social World. The Structure of Human Civilization* (2010), the formula is replaced by a new statement of what Searle sees as “the most general logical form of the creation of institutional reality”, which reads as follows:

We make it the case by Declaration that a Y status function exists in a context C.

As Searle recognized already in *Construction*:

the category of people, including groups, is fundamental in the sense that the imposition of status-functions on objects and events works only in relation to people¹⁰.

⁸ Searle 1995: 36.

⁹ *Ibidem*: 57.

¹⁰ *Ibidem*: 97.

and in *Making the Social World* almost all Y status functions that Searle discusses are indeed assigned to people. If a Y status function exists then some person has one or more positive or negative or conditional powers, as for example when Jim the police captain, as a result of a declaration by his superiors, acquires the power to issue instructions to his constables or to arrest or fine you if you behave in certain ways by filling in the associated forms.

At the same time, however, Searle insists that this reformulation is for clarificatory purposes only, and that in *Making the Social World* he is defending a view which is in keeping with the original theory of *Construction*, including the presence of free-standing Y terms such as corporations and the money in your computerized bank account.

How does Searle overcome the obvious objection that such free-standing Y terms are not physical entities in the sense required by his naturalist presupposition, reiterated in *Making the Social World* as the view according to which the universe “consist[s] entirely of physical particles in fields of force”¹¹? The answer, in effect, is by showing how, for all the major kinds of putative non-physical social object, there are corresponding persons who bear the corresponding status functions and have the corresponding powers. In the case of money, the person is the possessor of the money. In the case of rights, laws, corporations and structured investment vehicles, multiple corresponding persons have specific powers and obligations in mutual correlation and in a rolling fashion – as when the totality of persons whose status functions (as originator, sponsor, arranger, seller, investor, trustee, servicer, asset manager, guarantor, employee of bank, rating agency, government regulator, and so on) together bring it about that, for example, a specific CDO exists. There are, on this Searlean story, multiple persons who are the bearers of the pertinent status functions – and because these persons are entities described by physics and chemistry, naturalism is saved.

The story works, Searle holds, to provide an account even of highly complex social entities because it can be applied recursively:

All human institutional reality, and in that sense nearly all of human civilization, is created in its initial existence and maintained in its continued existence by [this] single logico-linguistic operation. ... [T]he enormous diversity and complexity of human civilization is explained by the fact that the operation ... can be applied over and over ... to the outcomes of earlier applications and with various and interlocking subject matters¹².

The approach can, therefore, handle not only simple cases of claim and obligation, such as the debt John owes Mary in virtue of the Declaration that is John’s promise to mow her lawn, but also cases such as CDOs, CDO²s, CDO³s, and so forth. And given the strong claims made by Searle on behalf of his account as concerns its ability to deal with complex social networks such as marriage or government or commerce, it is no exaggeration to say that Searle’s entire approach stands or falls with the coherence of his account of iterated application here.

Unfortunately it is not yet clear that his account has as yet even been coherently formulated. For what does it mean to say that the operation of making it the case by Declaration that a status function exists can be applied over and over “to the outcomes of earlier applications and with various and interlocking subject matters”? What precisely are these ‘outcomes’ which result

¹¹ Searle 2010: 3.

¹² *Ibidem*: 201.

from the application of status functions and which are themselves such that new status functions can be iteratively applied to them? What, in particular, are the CDO²s, which result from already existing CDOs, and which can themselves serve as the basis for new CDO³s?

How, more generally, does Searle deal, in *Making*, with those Y terms which cannot be seen as the result of the application of status functions to something *physical*, but yet upon which further Y terms can be iteratively based? Certainly if there is money in your computerized bank account then you yourself have certain status functions. And you are a real, physical entity, and so we can understand in what these status functions are based. But what of the money itself? In what are *its* status functions based? The money itself is nothing physical. But what then is it?

Searle's answer in *Making* is formulated only at the very end of the book, and given what he has said earlier about accepting free-standing Y terms into his ontology (for example on p. 20), the passage in question is quite astonishing:

It is [he tells us] a mistake to treat money and other such instruments as if they were natural phenomena like the phenomena studied in physics, chemistry and biology. The recent economic crisis makes it clear that they are *products of massive fantasy*.¹³

Not only money, but also corporations, laws, and structured investment vehicles, do not exist. There are no such entities; rather, it is as if the persons involved – which is to say you and me, and all human beings engaged in complex social interactions – trick ourselves into believing that there are such entities in order to be able to go about their business. In this way physicalism is saved, yet non-physical entities are still allowed to play a central organizing role in Searle's social ontology, but only through the back door of false beliefs on the part of the persons involved.

There are multiple problems with this fictionalist approach. First, it seems that in his justification for his “massive fantasy” conclusion, Searle is confusing the two dimensions of *loss of value* and *loss of existence*. CDOs do not, after all, cease to exist when their value collapses. Certainly total collapse in value for an entity of this sort may lead to some sort of institutional winding down which would in due course imply loss of existence. But such loss of existence is something quite different from what is countenanced on Searle's own view, which consists in the thesis that CDOs never existed in the first place, and that all beliefs putatively directed towards CDOs were objectless, and thus false, from the very start.

Second, even if Searle is right that massive edifices of government, law and economics can function only if, in one or other fashion, the people involved engage in correspondingly massive fantasies, the account of social reality that is implied thereby, and specifically the account of iterative application of status functions, must surely be more complex than that which is provided by Searle himself when he tells us that all human institutional reality is created and maintained in its continued existence by a single logico-linguistic operation, which “can be applied over and over ... to the outcomes of earlier applications”¹⁴. For in some cases we do indeed successfully make it the case by Declaration that a Y status function exists in a context C – the President really does have the powers assigned to him in the Constitution. In other cases, however – for example when we make it the case by Declaration that a CDO³ exists, and that this

¹³ *Ibidem*: 201. Italics added.

¹⁴ *Ibidem*: 201.

new entity is based on CDO² outcomes of earlier Declarations – then neither the result of this Declaration nor the entities on which it is based, really exist; rather, those involved are in some complicated fashion tricking themselves. Searle’s compressed version of the story, in which the distinction between these two sorts of cases is glossed over, falls short of providing the sort of realist ontology of social reality that he himself is aiming to provide.

Third, and most importantly, I and others have praised Searle for his willingness to speak out, John Wayne style, against intellectual nonsense (see Smith 2003 – I was thinking then, of course, of intellectual nonsense à la Derrida). The book jacket for *Making* describes Searle correspondingly as “a dragon slayer” (see also Mulligan 2003). As Searle himself puts it:

If somebody tells you that we can never really know how things are in the real world, or that consciousness doesn’t exist, or that we really can’t communicate with each other, or that you can’t mean ‘rabbit’ when you say ‘rabbit,’ I know that’s false. (Faigenbaum 2001)

And similarly, if somebody tells you that money, or mortgages, or the Italian national debt, *do not exist*, then you know that’s false, too.

Appendix: Documentality

Searle’s problem here was recognized already by the Italian philosopher Maurizio Ferraris in his book of 2005 as concerns what Ferraris sees as the path which takes us from a social object Y back to an underlying physical object X. Certainly it is true that the passage back from Y (the social) to X (the physical) goes smoothly when we are dealing with a single human being – for example with Searle alone in a hotel room. Here there is only one physical object, but many social objects (a husband, an employee of the state of California, an American citizen, a driving license holder). But how, Ferraris asks, are we to deal with entities such as the Italian stock market?

A further problem with Searle’s naturalistic theory of social reality pointed out by Ferraris concerns Searle’s formula “We make it the case by Declaration that a Y status function exists in a context C”. In using the term “we”, here, Searle is drawing on his account of what he calls “collective intentionality”, and which he refers to as the “fundamental building block of all human social ontology”¹⁵. It is collective intentionality, on Searle’s view, which brings about what Ferraris calls the transfiguration of a physical object into a social object, as when Fred becomes transfigured by his university peers into a professor *ordinarius*. But how, Ferraris asks, is collective intentionality to provide an account of those free-standing Y terms which have no foundation in any physical object?

Ferraris himself proposes in his *Documentalità* (2009) a solution to this problem in terms of his own theory of Documentality, a theory that is based in turn on the philosophy of writing set forth by Jacques Derrida in his *Of Grammatology* (1967). Derrida’s writings on writing have been rightly criticized for what seems to be their willful obfuscation. In *Documentalità*, however, Ferraris proposes what he sees as a way of making sense of Derrida by seeing him as key

¹⁵ Searle 2010: 43.

precisely to the problems we face in understanding the ontology of social reality in the way proposed by Searle.

Ferraris begins by pointing to the fact that Derrida dedicated one of his essays (subsequently published in *Margins of Philosophy*, 1971) to the work on speech acts of Searle's mentor J.L. Austin. As Derrida observed in this essay – and this may be one of the very few places where Monsieur Derrida may have come close to a coherent thought – most speech acts are in fact *inscribed* acts – for without records of some sort there is no way in which performatives could produce highly complex social objects such as conferences, marriages, graduation ceremonies, or constitutions. The point is simple, if we imagine a graduation or a wedding or a coronation ceremony in which there are no distributed and signed and countersigned plans and bookings, acts of registration and signed testimonies, then it is difficult to maintain thereafter that a graduate, or a husband and a wife, or a king have been produced.

The Ferraris theory of Documentality now takes Derrida one step further by arguing that in fact *every* speech act is inscribed – since for Ferraris what maintains putative social objects in being are not merely traces on paper, or in the hard drives of your bank's computers, but also traces (“inscriptions”) *in your brain*. Recall our remark, above, to the effect that, through the rise of documents private memory traces inside human brains became prosthetically augmented. Derrida, in Ferraris's eyes, was wrong to claim that “nothing exists outside the text”. For actually, of course, the entire world of physics and chemistry and biology exists outside the text, and independently of every recording. Indeed this world existed for billions of years before texts or recordings (or people) existed at all. Trivially, however, if Ferraris and de Soto are right, the same cannot be said of social objects. The latter depend intimately on the records created by human beings to sustain them in existence, and on the social agreements about what the documents mean and about who has authority to interpret this meaning.

Ferraris therefore proposes a modification of Derrida's slogan, applying it exclusively to the domain of social ontology, in the form of a thesis to the effect that “nothing *social* exists outside the text”.

Against this background, Ferraris advances an innovative approach to social ontology that starts out from the recognition of the important role played by documents in social objects of many sorts, such as money, marriages, divorces, joint custody arrangements, years in prison, tax codes, the Nuremberg Trial, the Swedish Academy of Sciences, economic crises, research projects, lectures and scientific degrees. These are objects which determine the affordances in our environment, today, no less than do stones, trees and coconuts, and they are of greater significance not least because a good part of our happiness or unhappiness depends on them. Of course we do not always pay attention to them (certainly not when advancing philosophical theories of the *Lebenswelt*), and even more rarely do we ask what, for example, computer programs or national constitutions are made of, or what it is which sustains them in being over time. We take them seriously only when they do not work – when the program does not run on the computer, for example, or when provisions in the constitution are suspended through a declaration of martial law, or when we lose our passport or credit card – and we set to searching, paying, phoning, writing e-mails and queuing in all sorts of offices.

Rather than view documents as creating a new layer, or layers, of social reality, thereby adding something new and perhaps in multiple ways *sui generis*, Ferraris proposes a much more radical theory – *of documentality* – which seeks to use our understanding of the special role of paper and digital documents as a key to understanding all of social reality, including the social reality characteristic of pre-documentary face-to-face societies. His theory thus implies the need

to identify, and to formulate definitions of, the properties that, in the different types of cases, constitute the necessary and sufficient conditions for something's being a social object, addressing questions such as: What is a document? In what sorts of ways (using what sorts of technologies) are documents disseminated in a society that is sustained through acts of recording? And most importantly: How are we to understand the pragmatics which underwrites the normativity (including juridical normativity) which obtains in the world of exploding documentality.

We can accordingly formulate:

The Ferraris Thesis of the Documentality of Social Objects:

Through the performance of inscribing acts (acts of signing or of publishing an official document; acts of writing on a hard drive, or on a baby's forehead, or of impressing something upon someone's memory) we *change the world* by bringing into being social objects.

Ferraris is, I believe, on firm ground with a thesis along these lines as concerns the ways in which social objects *come into existence*. When it comes to extending it to provide an account of what *sustains* social objects in existence over time, however, then he resorts to the somewhat cryptic formulation "*Object = Inscribed Act*", even asserting that social objects are *made of inscriptions*. Taken literally, the latter does not make sense. For all the reasons presented above, it does not make sense to assert, for example, that the US Constitution is *made of* tiny oxidising heaps of ink marks on parchment, and matters are helped only slightly if we add together all the printed and digital copies of the US Constitution and assert that the US Constitution is the set or mereological sum of all these multiple inscriptions. In providing a more detailed account, Ferraris asserts that the social object that results from a given social act is "characterized" by being registered on a piece of paper, in a computer file, or in the heads of persons. In this, however, his very doctrine of Documentality seems to be deprived of much of its force – and of its originality – since it would imply that Austin, when he spoke of speech acts was in fact already talking about documents (albeit of only one type: namely those inscribed in the heads of speakers). Ferraris seeks to employ this counterintuitive generalization as a basis for solving one central problem in the theory of speech acts, namely: how can we understand the fact that the mere use of words – for example in signifying agreement, either in speech or, for example, through signing a document or entering a cross in a checkbox on a screen – can have normative effects (Zaibert and Smith 2007). Ferraris talks in this connection of what he calls the "grand divide between *strong documents* (inscriptions of acts), which make up social objects in the full sense, and *weak documents* (recordings of facts), which are secondary derivatives and of lesser importance". His idea seems to be that strong documents inscribed on the brain provide the key to answering questions such as what it is that makes us *subject to laws* or *liable for our debts* because laws, or debts, are themselves *made of inscriptions* – they are, as social objects, *nothing beyond the text*.

Certainly, it is one element of truth in Ferraris's proposal that we need to take account of the brains of the individuals involved in social acts, whether the latter are mediated by speech or by documents. Such acts bring about specific sorts of changes in the abstract world of obligations because they are rooted in systems of mnemonic codes prevailing in the relevant social groupings (Gil-White 2005), and these in turn, of course, are dependent on the right sorts of

evolved traced in the brains of those involved. But how these traces bring about actual obligation, rather than associated feelings, seems still not to have been explained. I am thus far from confident that a solution along the lines proposed by Ferraris – to the degree that I understand it at all – can be made to work. At the same time, however, it is also not clear to me that there is thus far any contribution to social ontology that is in a position to solve this problem.

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