

Document Acts

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Abstract

The theory of document acts is an extension of the more traditional theory of speech acts advanced by Austin and Searle. It is designed to do justice to the ways in which documents can be used to bring about a variety of effects, unavailable in contexts where speech alone is used, in virtue of the fact that documents are continuant entities. This means that documents can be preserved in such a way that they can be inspected and modified at successive points in time and grouped together into various types of enduring document complexes. We outline some implications of the theory of document acts, drawing especially on the groundbreaking work of Hernando de Soto on the role of documents in the domains of law and commerce.

1. Introduction

The theory of speech acts focuses on the ways in which people use words and sentences in overt speech. They do this, familiarly, not only to convey information, but also for a variety of other purposes, from thanking and admonishing to promising and apologizing. In his book *The Mystery of Capital* (2000) the Peruvian economist Hernando de Soto provided an account of the rise of modern civilization as based on what I shall call *document acts* – acts in which people use documents, not only to record information, but also to bring about a variety of further ends,

extending those achievable through the mere performance of speech acts. In the world of commerce, most conspicuously, documents have made possible a vast array of new kinds of social institutions, from bank loans and collateral to stock markets and pension funds. But the theory of document acts has implications which extend also to include many types of phenomena outside the commercial realm, from passports to divorce decrees and from university diplomas to wills and testaments (Smith 2008).

I here present a first outline of the theory of document acts and show how it might be used to provide a better understanding of the role played by documents in the coordination of human actions. Where de Soto draws his inspiration from the ways in which documents make possible new kinds of social relations in the domains of law and commerce, our concern in what follows is with document acts in general, where by 'document act' we mean: *what humans do with documents*, ranging from signing or stamping them, or depositing them in registries, to using them to grant or withhold permission, to establish or verify identity, or to set down rules for declaring a state of martial law.

2. Scope of the Theory

The Oxford English Dictionary defines a document as:

Something written, inscribed, etc., which furnishes evidence or information upon any subject, as a manuscript, title-deed, tomb-stone, coin, picture, etc.

The documents which interest us here, however, do not merely furnish evidence or information; they also have social and institutional (ethical, legal) powers of a variety of different sorts, summarized by Searle (1995) under the heading 'deontic powers'. They play an

essential role in many social interactions, and they can bind people (or groups, or nations) together in lasting ways (which, in the case of wills and testaments, can create obligations that survive even the death of the authors of the documents involved).

The scope of the theory of document acts includes:

1. the different *types of document*, ranging from free-text memos to standardized forms and templates, and from single documents to entire archives and registries, and incorporating all of the various sorts of riders, codicils, protocols, addenda, amendments, appendices, endorsements and other attachments, including maps, photographs, diagrams, signatures, fingerprints, official seals, RFID tags, and other marks with which documents can become associated,
2. the different types of *physical medium or bearer* for a document's content (most important here are paper documents and the electronic documents increasingly being created in their wake)
3. the different sorts of things *we can do to a document* (for example fill it in, sign it, stamp it, inspect it, copy it) and of the different ways in which one document can be transformed to create a second document of another type (for example when a license is annulled)
4. the different sorts of things *we can do* (achieve, effect, realize) *with a document* (establish collateral, create an organization, record the deliberations of a committee, initiate a legal action)

5. the different ways in which, in performing acts involving documents, we may fail to achieve the corresponding ends (because of error, forgery, falsification, or invalidity of a document, because of challenge by an addressee or by some cognizant official)
6. the *institutional systems* to which documents belong (marriage, property, law, government, commerce, credentialing, identification, movement of people, movement and exchange of goods), and of the different *positional roles* within such systems which are occupied by those involved in the performance of the corresponding acts,
7. the *provenance* of documents, including the different sorts of ways in which documents are *created* as products of document acts of special sorts, as when documents with deontic powers are created from out of mere paper through an official act of printing in a parliamentary digest, and the various sorts of ways in which documents are anchored to reality, through the inclusion of photographs, fingerprints, and so forth.

3. From Occurrents to Continuants

Speech acts are evanescent entities: they are *events* or *occurrents*, which exist only in their executions. Documents, in contrast, are *objects* or *continuants*, which means that they endure self-identically through time, and have the capacity to float free from the person or persons who were involved in their creation and to live lives of their own. Documents can also have multiple creators, who may make their contributions to the document at different times. Legal and administrative documents may include portions to be filled in at different times, for example when successive decisions have been taken, or successive meetings held. Documents

may also grow through attachment of appendices or through real or virtual incorporation of other documents.

Searle, in his *Making the Social World* (2010), has attempted to capture one element of what is involved in the theory of document acts with his idea of 'standing declarations', as for example in the case of the promise from the Chief Cashier of the Bank of England 'to pay the bearer on demand the sum of £5' that is printed on a £5 note. But it is not only the capacity to endure that distinguishes declarations captured in and conveyed through a documentary form from declarations made through utterance. No less important are the new continuant dimensions of social reality which arise on this basis. For the capacity of documents to endure brings further the possibility for documents to be stored and registered, and thereby to give rise to a history of changes both in the document itself and in the social reality which falls under its influence. The importance of such changes becomes clear when we consider the list of things we can do to documents, including: sign, countersign, fill in, stamp, copy, witness, notarize, transfer, inspect, validate, invalidate, table, ratify, destroy, draft, propose, amend, revise, nullify, veto, deliver, display, register, archive, shred, lose, falsify, redact, and so forth.

Documents differ from speech acts also in virtue of the variety of ways in which pluralities of documents can be chained together (for example to form an audit trail), or combined to form new document-complexes whose structures mirror relations, for example of debtor to creditor, among the persons and institutions involved. As de Soto shows (2000), the practice whereby title deeds become combined and stored with other documents in the granting of mortgages has made an immense contribution to the advance of Western civilization, effectively by allowing the wealth represented by land or buildings to be set free for purposes of investment.

4. From Face-to-Face Interactions to the Extended Society

The theory of speech acts provides what seems to be a satisfactory explanation of how entities such as debts or corporations *begin* to exist, but the question still arises of what can serve as the physical basis for the *temporally extended* existence of such entities and for their enduring power to serve coordination. In small societies, and in simple social interactions, we might reasonably identify this physical basis with the memories of those involved. In large societies, however, or in what de Soto calls the ‘extended market’, we are typically dealing with highly complex social interactions, involving principals who may enjoy little or no prior personal acquaintance, and with interactions which may evolve through time, and here individual memories will rarely suffice. Our proposal is that, with the growth in size and reach of civilization, the mnemonic powers of individuals have been extended prosthetically through documents in ways which give rise to essential new types of social reality. Documents of different forms, because they support enduring and re-usable deontic powers, have thereby given rise to new and more complex forms of social order. New document forms and associated document technologies have then arisen in tandem with the new sorts of social institutions which they make possible.

As explained at length in (Smith 2011), document acts do not work in isolation from speech acts. Thus acts of creation of the types listed above will typically involve not only documents and document-related acts, but also a plethora of speech acts of various sorts (‘sign here!’, ‘your papers, please’, ...). The success of a document act will depend, too, on the same sorts of felicity conditions as are involved in speech acts of the traditional sort: the person who fills in

the document has to have the authority to do so; she has to do so with appropriate intentions, in the appropriate sorts of contexts, and so forth.

The fact that documents are involved, however, expands the number and range of different sorts of felicity conditions, because it expands the number of different types of persons who play a role, either as authors or addressees of documents, or as witnesses or validators (registrars, solicitors, notaries, executors), and so forth. It thereby also expands the number of ways in which, in the performance of document acts, things can go wrong.

5. Knowledge by Comparison

Speech acts in the local contexts of everyday life are anchored to reality through their immediate connection to author and addressee. Their deontic consequences are anchored to reality typically through the memories of the persons involved. To bring about deontic consequences that can outlast such memories, a document must be anchored to reality in some other way. In the simplest case, an identity document such as a passport is anchored to its bearer through devices such as photographs, signatures, and lists of identifying marks. These encapsulate relevant portions of the history of the creation of the document in visible form. They also allow, in the presence of the bearer of the passport, what we might call *knowledge by comparison* – as contrasted with the more familiar knowledge by acquaintance and knowledge by description – whereby, by comparing bearer with photograph, or by comparing one signature with another, we can acquire evidence for example to the effect that this bearer is who he claims to be, or to the effect that the information contained in this passport is veridical.

The photograph allows the gaining of knowledge by comparison only if it is attached in the right way, which means with the right sorts of signatures, official stamps, watermarks, biometric identifiers, and so forth. Alphanumeric identifiers, especially, then allow a type of virtual attachment between documents through the cross-referencing brought about through the use of common identifiers. The numbers and codes that appear in the passport can be used also in a multiplicity of other documents, for example in records of entry and exit maintained by the immigration authorities. Physically attaching a visa to a passport can in this way have multiple deontic effects: it supports identification of the bearer of the visa; provides evidence that the visa was both legally issued and issued to the person presenting it; and ensures, from both a legal and a practical point of view, that the rules in a given country applying to the carrying of passports are applied automatically to the carrying of visas.

6. The Role of Documents in the Creation of Social Objects

At the heart of speech act theory is a thesis to the effect that we can bring about changes in the world through utterances, for example through declarations such as ‘I name this ship ...’. In *Making the Social World* Searle (perhaps unwittingly) gives this thesis, which he calls ‘the most general logical form of the creation of institutional reality’, an explicitly ontological formulation, as:

[A] We make it the case by Declaration that a Y status function exists in a context C (Searle 2010, p. 13).

As I attempt to show in (Smith 2003 and 2011), it is uncertain whether Searle in fact succeeds in formulating a coherent ontology of the social reality that would do justice to this thesis. This is

because on the one hand Searle hereby embraces the idea that declarations are able to bring into existence entities such as claims and obligations which fall outside the realm of what is investigated by physics; yet on the other hand Searle still embraces a naturalist view according to which:

[B] Everything in the universe 'consist[s] entirely of physical particles in fields of force' (Searle 2010, p. 3).

Searle himself now resolves this problem, in effect, with a get-out-of-jail-free-clause to the effect that 'exists' in [A] is not to be taken literally; rather the entities apparently created by Declaration are not really *created* at all, but are, rather, 'products of massive fantasy' (Searle 2010, p. 201)). The entire social world, it turns out, is on Searle's current view an elaborate, and generally benign, confidence trick, in which all participants are involved both as perpetrators and (though only occasionally – as in the Lehman bankruptcy) as victims.

Searle in *Making the Social World* sees himself as contributing to the scientific understanding of society. As he himself puts it, 'I think it is sometimes possible to do good research without worrying about the ontological issues [of social reality], but the whole investigation gets a greater depth if one is acutely conscious of the ontology of the phenomena being investigated' (2010, 201). In the end, however, it seems that Searle does not, in *Making*, provide an ontology of the most central features of the social world at all.

7. A Modest Proposal

Already in 1913 Adolf Reinach, a Continental philosophy of genuinely scientific stripe, had pointed the way towards a more rigorous treatment of how social entities are brought into

being through Declarations (or through what Reinach calls '*Bestimmungen*') and of the ways in which such entities may transcend the boundary between what is abstract and what is historical (Reinach 1988, Paulson 1987). In a series of papers on Searle's social ontology (2003, 2008, 2011, see also Smith and Zaibert 2001, and Smith and Searle 2003), I have attempted to show how Searle can quite easily address the problems arising from his naturalism by accepting, with Reinach, that there are quasi-abstract entities – or what I have also called 'free-standing Y terms' – which are both (i) such as to lie outside the province of what is described by physics, yet nonetheless, because they are brought into being by declaration, (ii) fully a part of the historical world of what happens and is the case.

The departure from naturalism that comes with the acceptance of quasi-abstract entities is significant, because it contradicts Searle's thesis [B] according to which everything in the universe 'consist[s] entirely of physical particles in fields of force' (Searle 2010, p. 3). But the departure is at the same time modest, and is indeed consistent with other Searlean statements of his naturalist position, for example to the effect that:

[C] while the basic facts of the world are constituted by the material entities studied by physics and chemistry, 'all the other parts of reality are dependent on, and in various ways derive from, the basic facts' (Searle 2010, p. 4),

or that:

[D] when status functions are ascribed to freestanding Y terms, then the latter 'always bottom out in actual human beings who have the powers [connected to the status function Y] in question (Searle 2010, p. 108).'

Even though quasi-abstract entities are not made of physical parts, therefore, they must nonetheless have some basis in the underlying physical reality – above all in actions of the human beings involved – because every quasi-abstract entity is dependent ontologically on physical entities such as people.

Because he holds so firmly to [B], however, Searle is unable to do justice ontologically to the question of how this basis is secured. Consider, for example, the structured investment vehicles encountered in the realm of commerce (Smith 2011). The needed account of such phenomena would need to refer to quasi-abstract entities on every level of a multi-level structure that is itself evolving over time, with the entities on the higher levels being dependent on further quasi-abstract entities on the lower levels (see Figure 1, which charts the interrelations between multiple individual persons, corporations, trusts, government agencies, documents, loan packages, purchase prices, gross proceeds, payments, and distributions involved in the securitization of a mortgage).

Certainly the entire edifice ‘bottoms out’ in the actions and intentional states of the myriad persons involved. But because these actions and states themselves depend on myriad identifications and re-identifications of the quasi-abstract entities involved on the part of myriad individual persons there is no way to paraphrase away the latter in terms of statements referring only to the former (Smith 2011). Hence, to adapt an argument from (Johansson 2011), Searle still owes us an analysis of the quasi-abstract entities in question – be they status functions or corporations or computerized money or collateralized debt obligations or international arrest warrants or gene patent licenses (see Table 1 for further examples) – and he owes such entities themselves a home in his social ontology.

contract creates obligation	stock and share certificate creates capital
statute of incorporation creates company	examination document and diploma create qualification
deed creates privilege	declaration of war creates (initiates) state of war
title deed creates property right and property owner	bankruptcy certificate creates bankrupt
cadastral map creates real estate parcel	rulebook creates rules
statute of incorporation creates corporation	insurance certificate creates insurance coverage
birth certificate creates evidence of birth	receipt creates evidence of payment
patent creates exclusive rights (granted to an inventor)	license creates official permission to perform certain acts
statement of accounts creates audit trail	lease creates landlord/tenant relationship
marriage license creates bond of matrimony	IOU note creates obligation to pay
warning label creates immunity	proxy form creates medical proxy

Table 1: Examples of Documents and Their Generative Powers

8. Creating Quasi-Abstract Entities

As the figure and table above make clear, there are multiple ways in which we use documents to create new sorts of entities. Note that some of the examples do not involve in every case creation *ab initio*; typically, for example, a title deed is a deed that *transfers* title to a parcel of real estate from one owner to another. And just as there are document acts which serve to *create* entities of given sorts, so there are multiple types of document acts which serve to annihilate entities earlier created, as when for instance a divorce decree terminates a marriage, or a notice of employment terminates a relation between an employer and employee.

Standardly, when documents are used to create specific sorts of quasi-abstract entities, they do this according to certain rules, and the entities created themselves then obey certain rules in their turn. The two different sets of rules are interconnected, because they have evolved in tandem with the documents which support them. Documents have in this way contributed to the formation of the modern system of property rights, and to the other systems of quasi-abstract entities described by de Soto, including the systems of commercial obligations (contracts, titles, collateral, credit, testament, stocks, bills, insurance, bankruptcy). Other document systems such as marriage, government, universities were addressed by Searle in *The Construction of Social Reality*, and to these can be added also systems of identity documents (of birth and death certificates and public records offices, of visas, passports, consulates and border posts), of legal documents (of codes of law, summonses, police reports, court proceedings), and of employment documents (employment contracts, pay stubs, tax forms, work orders, performance evaluations, ...). Each such system comprehends, in addition to documents, also other sorts of generic document-related entities such as registries, officials authorized to perform document acts of specific sorts, prescribed channels along which

documents can move (for example through a chain of specified officials for inspection and approval), procedures for checking and filling in and storing and registering and validating documents, and also for educating the users of documents (nowadays also technical devices for scanning documents and for making them available online with and without passwords governing different sorts of read and write access). One and the same document may hereby serve multiple successive social acts as it passes through successive recipients. A delivery note fulfils in succession the role of guiding those involved in delivering an object, of allowing the recipient to attest to its receipt, of allowing the deliverer to document successful delivery, and so forth. The signature on your passport plays three roles simultaneously: in initiating the validity of the passport, in certifying that you attest to the truth of the information represented therein, and in providing a sample of your signature for comparison.

9. The History of Document Acts

The historical dimension of the theory of document acts comes to the fore when we examine the ways in which document systems like those just mentioned have evolved over time in different cultures. Exemplary in this regard are the studies of Michael Clanchy and his associates on how, with the spread of literacy and the evolution of trust in writing in England in the 13th century, there occurred a change in the meaning of 'to record' from: *to bear oral witness* to: *to produce a document*. Clanchy shows how a variety of institutions which had hitherto been the preserve of royal or imperial chanceries were in this period progressively disseminated among the laity, so that by 1300 there were hundreds of thousands of peasants' charters giving English smallholders title to their land:

the use of charters as titles to property made its way down the social hierarchy – from the royal court and monasteries ... reaching the laity in general by the reign of Edward I ... [when] literate modes were familiar even to serfs, who used charters for conveying property to each other and whose rights and obligations were beginning to be regularly recorded in manorial rolls. ... One measure of this change is the possession of a seal or *signum*, which entitled a person to sign his name. (Clanchy, p. 2; see also p. 35)

Clanchy describes how a range of document-related institutions evolved along the way, including: (1) the safekeeping of master copies of documents in central government archives and bishop's registries; (2) the practice of registering deeds of title in towns; (3) letters testifying to trustworthiness; (3) financial accounts; (4) surveys (from the Domesday book, completed in 1086, onwards); and also the practices of (5) dating and (6) signing documents. Clanchy cites Bracton writing in the mid-13th century and documenting the practice of using documents deliberately to extend the powers of unaided human memory: 'Gifts are sometimes made in writings, that is in charters, for perpetual remembrance, because the life of man is but brief and in order that the gift may be more easily proved' (p. 117).

Through developments such as these, English society itself became integrated together in ways that are mediated by the gradual creation and spread of legal, political, commercial and ecclesiastical document systems at different levels, and accompanied by the acquisition of new document-based skills by broadening groups in society, whose members thereby acquired, in Searle's terms, the capacity to realize new kinds of 'we' intentionality, and to occupy new kinds of positional roles within the larger corporate wholes that were gradually evolving.

Analogous accounts of the rise of document systems can of course be provided for other societies too, and de Soto and his co-workers in the Institute for Liberty and Democracy in Lima are documenting the rise of such systems in formerly illiterate cultures of contemporary Africa and elsewhere in our own day (de Soto 2006). Currently, we are all witnessing a parallel evolution of a new set of document-related artifacts and institutions with the rise of digital documents, and with the rise of the mobile phone we are witnessing a transmogrification of the telephone into an instrument not only for the performance not only of speech acts but also of document acts of multiple kinds (Ferraris 2005).

10. Conclusion

I have focused in the above on the ways in which documents have played a beneficial role in the evolution of humankind. But failings in the document culture can also have far-reaching damaging effects, now heightened by the new possibilities of document aggregation and transmission enabled by the computer. For while digital documents, like the paper documents that preceded them, have certainly given rise to vast new beneficial opportunities for mankind, from on-line banking to internet dating, they have also opened up new opportunities for massive failure, as has become all too clear most recently in the events surrounding the Lehman bankruptcy in 2008. Computers themselves are increasingly engaging in document acts, not only in the field of commerce (for example in the the phenomenon of high frequency algorithmic trading) but also in areas such as health care with the rise of the electronic patient record (see for example Bugaski 2009). Indeed one central argument for the creation of a realistic theory of document acts of the sort presented above is that it will allow the creation of an ontology of documents that can be used for computational purposes in the future in a way

which can support a more coherent handling of documents than what has been available thus far (Smith and Ceusters 2006, Smith n.d.).

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