

Constitutive Rules: The Manifest Image and the Deep Image

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Abstract

Social objects originate from constitutive rules. But there are two ways of explaining the relationship between them. I call them “Manifest Image” and “Deep Image”. The former depends on Searle’s interpretation of social reality and it is based on collective intentionality; the latter is the one I support and it is based on documentality. Indeed, recordings and documents are sufficient to explain how and why social world exists. There is no need to use such a vague notion, as that of collective intentionality, in order to give a useful account of society. Documents can do it better, especially with the help of the process called *emergence*, as the case of money clearly shows.

Keywords: Social world, Documentality, Intentionalism, Emergence.

1. Introduction

Constitutive rules are rules that constitute social objects. For instance, the rules of tennis constitute the game of tennis, and the rules of the Italian constitution constitute Italy as a state. But constitutive rules do not arise from nothing. Where do they come from? According to Searle (1995 and 2010), constitutive rules are an outcome of collective intentionality. However, Searle himself acknowledges that collective intentionality in turn needs to rest on something non-intentional, which he calls “the Background”. Yet, as Rust (2009) pointed out, Searle finds it hard to explain what the Background really is and how it really works. Furthermore, it is debatable whether the Background limits itself to support collective intentionality or, instead, can produce social objects on its own (cf. Terrone and Tagliafico 2014). Finally, there might be other factors that ground social reality over and above collective intentionality and its Background (cf. Epstein 2015).

In this paper, I will argue that there is a layer of recordings and documents that grounds constitutive rules and therefore social objects at a deeper level than that of collective intentionality. I will state that recordings and documents are the cornerstone of the empirical background that warrants the production of social objects through constitutive rules. In this sense, I will propose to move from

a “Manifest image”, i.e. a conception of social reality based on collective intentionality, to a “Deep image”, i.e. a conception of social reality based on recordings and documents.

There is nothing more wrong than the idea posited by Vico—and by many after him—that nature is obscure because it is God’s work, while society is transparent because it is man’s work. First of all, it is unclear where nature ends and society begins; secondly, most of us surely find it hard to conceive of ourselves as the men who created society. In fact, our relationship with society is no different from our relationship with nature: that is, one of competence without understanding. If we throw a stone up in the air we move to dodge it even before learning the law of gravity, and we promise, we bet, and write wills based on vague, and often wrong, notions of law and society. If that is the case, there is nothing strange about the fact that we may often be surprised by social reality, which may reveal hidden aspects (after all, the surplus value was unknown to both capitalists and workers, as well as economists, until Marx discovered it).

The structure of society is not transparent to its members any more than the structure of consciousness is transparent to its subject. The fact that those things are the closest to us is anything but an advantage: it’s rather a case of something being “a little too obvious”, like the purloined letter of Poe’s novel, which for that very reason escapes our observation and conscience. That is why, to answer the question (paradigmatic for social ontology) of what constitutes money, i.e. gives the value of money to a piece of paper, one cannot point to some evidence, but rather has to solve a riddle—or at least try to do so. One needs to rip a veil that hides the whole sphere of social normativity: What is a constitutive rule, i.e. what is the secular sacrament that transforms a human being into a doctor (authorized to cure), a licence holder (authorized to drive), a recipient of a call-up paper or a payment order (required to show up to the barracks or to pay)? . Interestingly, in all these cases there is indeed a piece of paper involved—although, of course, the paper might be replaced with plastic, metal (still in use for money), tattoos, distinctive and picturesque signs of all sorts, or simply recordings on a computer or a mobile phone. To solve a riddle, one must first of all understand the terms involved. Thus, in order to figure out what grounds constitutive rules, I will highlight their dependence on recordings and documents. I will do so by analysing two possible conceptions of social reality, which I will call the Manifest Image and the Deep Image, respectively.

2. Manifest Image

“Manifest Image” does not mean “false image. In fact, it is tempting to see society and its objects, including money, as the outcome of our intentionality (money has value because we think it does, laws apply because we think they do). From this perspective, the most direct and intuitive way to explain the functioning of money and social reality as a whole is intentionalism, whose most illustrious interpreter is indeed John Searle.¹ For Searle, the constitutive rule of social objects is “X counts as Y in C”: X (the physical object, e.g. a piece of paper) counts as Y (social object, e.g. a banknote) in context C, because of collective intentionality. That is what I will call the Manifest image. Searle’s intentionalist perspective has a twofold structure. Its first element is the claim that social reali-

¹ Searle 1995 and 2010.

ty is constructed by us. In fact, when one reflects on our relationship with money, titles, works of art, etc., one might feel that these objects are socially what they are because we collectively decide that they are, indeed, money, titles, works of art. The second element is the thesis that this “us” manifests itself as collective intentionality (a close relative of Rousseau’s general will, of Montesquieu’s spirit of the laws, and, after all, of the spirit in the Christian and Hegelian sense). In this sense, the manifest image may meet some fundamental intuitions. For instance, when we pay, we may have the impression that both us and the recipients of our money share the conviction that money has value because we believe so.

However, the manifest image leaves a few things unexplained. First of all, it is unclear what is meant by “collective intentionality”: a vague notion that seems to not only cover obvious cases of sharing actions (“how about we take a walk?” “let’s have a coffee”) but also chimerical constructs like the general will. It is also unclear what its spatial-temporal location would be, provided there is one. Instead, it is very clear what individual intentionality may be—something that can be shared and coordinated with others on the basis of a document. All in all, collective intentionality is but a legal and philosophical fiction comparable to the generalizability test of the Kantian moral imperative: when the court issues a ruling “in the name of the Italian people” it is acting as the representative of a collective intentionality? Of course not: it simply means that the decision is not arbitrary, and is taken in compliance with the law. Likewise, expressions such as “the Court ruled” do not express collective intentionality, but simply a decision (taken by majority or unanimously), that is, the numerical predominance of individual intentions.

Secondly, the intentionalist perspective does not account for negative entities, such as debts—it is difficult to find a physical X corresponding to the negative social Y.² The same difficulty applies to electronic money. If I pay with my cell phone, is the physical X the phone? If it is then the same object has two prices: a sales price and a variable price, which manifests itself through its purchasing potential, which could hardly be considered a property of the phone as a physical X.

Finally, collective intentionality interprets society in terms of harmony and consensus rather than in terms of conflict, disagreement, contradiction: and yet the latter is the way in which social reality has always appeared to us, from the *Iliad* to today. Society, as well as normativity (laws, obligations, institutions, rules, prohibitions), does manifest itself not only in consensus but also in conflict. Indeed, norms are mainly perceived when they are in conflict with our instincts and our immediate dispositions, clashing with what we would like to do. And collective intentionality only explains some situations in which normativity is weak: a walk or a picnic, not a board of directors, a high command or a court. The same sharing of collective intentions that seems to unite the members of a football team or the musicians of an orchestra is the result of a document-based normativity: in the first case the coach presenting the game schemes and the constraints imposed by the rules of football, in the second the director (whose presence would be completely useless, like that of coaches and generals, if there really was collective intentionality) and the sheet music.

² Searle and Smith 2003.

It is not surprising that the manifest image should face the same difficulties as the social contract in politics, and as dualism in the theory of the mind. These difficulties become particularly notable in the case of money, whose structure would be divided into a spiritual part that is in us (the value attributed to money), and into a material and accidental part that is outside of us. Intentionality would be acting as a collective pineal gland, called to link the immaterial (the value, the social object) with the material (the piece of paper, the physical object). In short, the manifest image undoubtedly explains certain social acts—there is no question that a parliament constructs something when promulgating a law (even though it is worth noting that the form of the law and its context are already there, and therefore it isn't an absolute construction). However, this intentionalist explanation, if applied to the whole social reality, seems to be no less mythological than an explanation of morality for which the ten commandments are actually the manifestation of God's will to Moses.

In fact, there are many empirical circumstances disproving the intentionalist explanation. First, the obvious difficulty that it is impossible to determine when and how the "invention" of money actually took place. Secondly, the even greater difficulty of clarifying the nature of collective intentionality, which carries the burden of proof. Thirdly, and most importantly, the intentionalist explanation makes money a fragile invention which could be rejected at any time by the mere end of consensus. But, in fact, this is false. The reduction (not disappearance) of monetization in the Middle Ages was not the result of consensual agreement, but depended on the rarity of coins, which were no longer able to cover the amount of real exchanges. Also, the enemy's money is still valid in times of war (as Wittgenstein's father well knew, investing his capital in the titles of the Entente).

Also, whatever collective intentionality wants, or does not want—and provided such a unitary feeling exists—when a state prints too many banknotes people do not become richer (as they should if the value of money depended on collective intentionality) but poorer, and money loses value. Indeed, although everyone agrees that 1,000 marks is a lot of money, why is it that they can suddenly be worth nothing, and one has to switch to banknotes like 100,000, or 1,000,000? It would seem that we are dealing with a collectively masochistic intentionality, rather than with a collective intentionality. Lastly, if collective intentionality determined the value of money, it would be impossible to explain phenomena such as financial crises. Neither the latter nor natural phenomena can be controlled. Yet, there is a single and significant difference, which relates to their different deep structure: namely, that the disappearance of collective memory and documents would put an end—albeit dramatically, meaning the end of civilization—to a financial crisis, but it would not be able to stop the rain, nor to question the law of gravitation.

3. Deep Structure

To move to the deep structure, I invite you to act like the fool of the famous Chinese proverb: do not look at the moon, but at your finger. In this case, do not look at the mind and the wonderful representations it contains, let alone at collective intentionality (provided you can find it), but rather look at the notes you have in your wallet or the change tinkling in your pocket. It is worth noting that in Searle's intentionalist formulation of the constitutive rule, "counts as"

can easily be translated into “stands for,” which is the character of the symbolic relationship. From this perspective, social objects created in this way are all symbols, but of what? Of the Fort Knox Gold? Of course not. Of the ideas you have in your head? Neither, as you can have a lot of money but a few ideas, and vice versa. Of what, then? What if they were not symbols, but real objects, that, *far from representing states of mind, are actually able to produce them?*

There are two main theses following from the idea of the deep structure. The first is that collective intentionality does not exist; instead, there is an often-conflicting social interaction that is made possible by the use of documents (both in the strict and in the broad sense: institutions, rituals, transmitted behaviours) that coordinate individual actions and intentions. The second is that money exerts its prestige on individual intentions without any intervention of collective intentionality—for the very good reason that a non-existent entity has no causal value—and based on the sole force of what I call “documentality”.³ By this term I do not mean the sphere of the intentions that exist in our mind, but that of social recordings, from the promise onwards, which exist both out of our minds—in archives, wallets, cell phones—and in them, but as external elements: think, for example, of our memory of a word given, which is no longer entirely ours (unlike what happens to so many other thoughts that belong to us and only to us).

The documentalist explanation—that is, the deep structure—is structured in two theses: the first is that documentality is the necessary condition of social reality, which cannot exist without documents; the second is that documentality is the sufficient condition of social reality: if there are documents, along with beings biologically identical to us (in particular, endowed with sensibility and memory), there is everything that makes up social reality, including individual and collective intentionality. The documentalist explanation, just like the intentionalist one, depends on the theory of speech acts⁴: there are acts that do not just describe or prescribe, but actually construct objects: a marriage, a debt, a holiday, a war. Only, instead of taking the consistency of the act (its ontological status) to depend on the physical objects that are transformed into social objects, it posits that the transformation of the act into an object depends on recording, according to the formula: *Object = Recorded Act*. The social object is the result of a social act (involving at least two people, or a person and a delegated machine) that has the characteristic of being recorded—thereby acquiring the permanence typical of objectivity—on any physical medium. This, among other things, easily accounts for negative entities: debts are noted in the column of giving, just as credits are in the column of having.

The crucial role of recording is very clear in the case of money. I have a note in my hand, and I can pay the bill at the restaurant. I can do so also with a debit card, with a cell phone, or photographing a barcode on the bill. What do these operations have in common? The fact that there are recordings—analogue or digital codes on my account, analogue or digital memories in my pockets—like paper tickets, plastic cards, or even a phone, which can do a lot of things precisely because it has a lot of memory, which results in a great computational capacity. So, money is a form of recording. In fact, all money can be traced back to this origin and function—and anything that can accomplish this function can act as money. There is *no change* in terms of the nature of money occurring be-

³ Cf. Ferraris 2005, 2009, 2014.

⁴ Austin 1962.

tween a note, a card and pure memory: what occurs is rather a revelation of what money really is, namely the recording of a numerical value that, through recording itself, acquires economic value. Certainly, to be a *valid* recording has to reflect the economic value of the merchandise transferred or service rendered, not just *any arbitrary* recording. Yet, this just shows that a recording cannot function on its own. Rather, it needs to be included into a wider network of recordings, including those in people's minds (cf. Terrone 2014a, 2014b).

If we understand that the essence of money is recording (according to the rule Object = Recorded Act, which is particularly clear with banknotes, where the act is a relation between the central bank and the anonymous holder of the money), we can also understand why, before banknotes, people used coins (perhaps of gold, a material that does not rust), or shells, or salt sacks: all discrete portions that can be counted, generating an archive; that can be subdivided, facilitating payments; that can be kept in a limited space (for this reason only, by the way, coins are better than salt bags). This shows that the constitutive rule that makes money what it is requires much more than collective intentionality. In fact, constitutive rules require a background of empirical conditions, which come from the role that recording plays in the production of these rules. Constitutive rules are not just a matter of intentionality but also—indeed, first of all—a matter of matter. In this sense, the power behind money, recording (the genetic principle of the form), is the principle underlying social normativity as a whole. According to what we have just said, documentality is the principle of responsibility, which in turn originates normativity—indeed, and more exactly, it is what Montaigne and Pascal called “the mystical foundation of authority”. In this sense, the essence of money is manifested in the bitcoin, and retrospectively the bitcoin makes the value of the gold coin, of gold, and of salt real. The digital currency, in fact, is nothing but the memory trace of a transaction, a pure document that has no external rooting, if not a secure and public record (the blockchain) that registers the transaction and acts as its guarantor.

This, like other empirical facts, proves the validity of documentalism. Society cannot do without inscriptions and recordings, archives and documents, and without the arche-technology of writing, which is the prototypical form of recording. Moreover, without recording there would not and could not be legal institutions, obligations, guarantees and rights. So, justice would never have been fully realized, as it is intrinsically social. Documents do not only act as regulators in the economy and in the legal sphere, but are the producers of values, norms, cultures, conflicts, up to determining (through education and imitation) individual intentionality and allowing (through sharing) for collective intentionality. Despite appearances, it is the document that creates the value, not the value that produces the document: gold is not worth it because it is gold, but because it has characteristics (the same ones that make it a useful metal in jewelry) that make it a durable and malleable document medium. Documents, in this sense, are the cornerstone of the empirical background of constitutive rules.

4. Pentecost or Emergence

The contraposition between intentionalism and documentalism implies a metaphysical problem. Considering (collective and individual) intentionality as a primitive leads us to embrace what I call “Pentecostal meaning”: that is, postulating the existence of a meaning previous to and independent of the forms in

which it is expressed and of the ways in which it is imprinted—that is, the psychological and social equivalent of Cartesian dualism. This view involves pattern of this kind: in the mind there are meanings that are expressed through words, which in turn are represented in writing. So, meaning might exist even if unexpressed, and, most importantly, meaning has no genesis: it has always existed or has fallen from the sky. This model is found in most theories of man and of society. For instance, it is often postulated that there is an in-itself, human nature, which is alienated by external conditions, usually associated with technology, and which must be restored through a return to human nature as it really and naturally is. In such a theory of society, the origin of the social world is placed precisely in collective intentionality, which manifests itself through a contract from which society originates.

Indeed, from the intentionalist perspective, money and its normative power are a variation of the social contract: it is agreed to give value to a piece of paper, or gold, a shell or a salt sack, just as it is agreed to regulate society in a certain way. The counterpart of this approach, in theory of the mind, is the postulate of a *res cogitans*, distinct and independent from the *res extensa*. All of this is based on a precise topology: meaning, spirit, idea, and consciousness are inside; signifier, letter, expression, and action are outside. Conversely, the documental-ist explanation calls for an emerging meaning (meaning comes from act and recording) instead of a Pentecostal one (meaning precedes act and recording). If Pentecostal meaning is conceived as independent and anterior to expression and recording, emergent meaning, on the contrary, recognizes its dependence on both, and proposes a Copernican revolution that consists in overturning the traditional structure and conceiving intentionality (the spirit, the idea, the will, and the purpose) as successive and derivative, rather than as prior and foundational, compared to the forms of fixation (the letter, the expression, the norm). More radically, the deep structure shows that *documentality is a condition of intentionality*. Surely, written symbols need minds in order to acquire meaning, but minds themselves require some forms of fixation, which in the contemporary debate in cognitive sciences and the philosophy of mind have been characterized in terms of mental files (cf. Recanati 2012 and Terrone 2017 for an application to social ontology). From this perspective, the claim that intentionality requires documentality can be interpreted as the claim that intentionality requires the deployment of mental files, which are the mental counterparts of documents.

This change of perspective overcomes the difficulties raised by the manifest image, and in particular it answers the question why, if social reality is constructed, it is so difficult to change it. The answer is precisely that the manifest image hides an essential point: *the fact that social objects are constructed does not mean that social reality is constructed*. Like money, society is not constructed, but emerges. Above all, society is not just a human fact.⁵ Society is not simply composed of humans, but includes dimensions other than human (animals, for example), or superhuman (myths, which are constitutive elements of the social world). Such dimensions are the structures that make us human. If it is difficult to imagine non-human animals investing in the stock market (but not exchanging banknotes!), it is even more difficult to imagine that our forms of social organization (dominance structures, elementary kinship relationships, taboos) have no relation of continuity with our animal past. Likewise, it is difficult to

⁵ For a criticism of anthropocentric social ontology cf. Epstein 2015.

imagine a human social activity that would not be decisively conditioned by its technical forms of realization. And recording, as I have argued above, is the most basic technical form of realization that grounds social reality.

So, money, very simply, is a document like any other: it's like a passport, for example, and shares its complicated decorations and characteristic colours (blue for Americans, red for Europeans, green for Arabs, as far as passports are concerned, that is). With a passport a state authorizes a citizen to expatriate (so it was originally) and with a banknote it authorizes her to buy. Since the citizens who want to buy are far more numerous than those who want to expatriate, there are more banknotes than passports. And since money goes from hand to hand, banknotes are "on bearer", as exchanges are made quickly, and possibly by illiterate people—in most countries (albeit with the significant exception of the United States) banknotes have different size and colour, so that money could be defined as the documents of those who cannot read. Here is another important sense in which documentality contributes to the empirical background of constitutive rules, as far as the rule that turns a piece of paper into money exploits the empirical features of this very piece of paper. In addition, both with passports and with banknotes, the state does not invent anything new, but merely gives a paper form to ways of fixating acts and quantifying value that originated in our animal past and whose evolution coincides with the evolution of human cultures.

Ultimately, if one focuses on the Manifest image of social reality, one may have the impression that collective intentionality is almost almighty as far as it can create social objects at will by simply stating the corresponding constitutive rules. Yet, if one shifts one's attention onto the Deep image, as I have tried to do in this paper, one can acknowledge that the creation of social objects through constitutive rules has much deeper roots, which on closer inspection reveal to be documents and recordings.

References

- Austin, J.L. 1962, *How to Do Things with Words*, Cambridge, MA: Harvard University Press.
- Epstein, B. 2015, *The Ant Trap: Rebuilding the Foundations of the Social Sciences*, Oxford: Oxford University Press.
- Ferraris, M. 2005, *Dove sei? Ontologia del telefonino*, Milano: Bompiani; Engl. transl. *Where are you? Ontology of the Mobile Phone*, New York: Fordham University Press, 2014.
- Ferraris, M. 2009, *Documentalità. Perché è necessario lasciare tracce*, Roma-Bari: Laterza; Engl. transl. *Documentality. Why it is necessary to Leave Traces*, New York: Fordham University Press, 2012.
- Ferraris, M. 2014, *Mobilitazione totale*, Roma-Bari: Laterza.
- Ferraris, M. 2016, *Emergenza*, Torino: Einaudi.
- Recanati, F. 2012, *Mental Files*, Oxford: Oxford University Press.
- Rust, J. 2009, *John Searle*, New York: Continuum.
- Searle, J.R. 1995, *The Construction of Social Reality*, New York: The Free Press.

- Searle, J.R. 2010, *Making the Social World: The Structure of Human Civilization*, Oxford: Oxford University Press.
- Searle, J.R. and Smith, B. 2003, "The Construction of Social Reality: An Exchange", *American Journal of Economics and Sociology*, 6, 2, 285-309.
- Terrone, E. and Tagliafico, D. 2014, "Normativity of the Background: A Contextualist Account of Social Facts", in Gallotti, M. and Michael, J. (eds.), *Perspectives on Social Ontology and Social Cognition, Series: Studies in the Philosophy of Sociality*, Dordrecht: Springer, 69-86.
- Terrone, E. 2014a, "Traces, Documents, and the Puzzle of 'Permanent Acts'", *The Monist*, 97, 2, 161-78.
- Terrone, E. 2014b, "Che cosa esiste fuori dal testo?", *Rivista di Estetica*, 57, 101-20.
- Terrone, E. 2017, "The Band of Theseus. Social Individuals and Mental Files", *Philosophy of the Social Sciences*, 47, 4-5, 287-310.