Documents that keep society together:
invoice, lettre de facture, receipt, tax declaration…

At the outset, I would like to thank Tiziana Andina and Giuliano Torrengo, as well as Maurizio Ferraris, for inviting me to speak here. I would like to extend a special thanks to Margaret Gilbert, who I met six months ago in California, for coming to Milano.

I suppose some of you remember the ending to *A Theory of Political Obligation*, by Professor Gilbert. In the brief final chapter, 12.2, Prospect, she constructs over fifty questions and in the end concludes:
“The theory is essentially an analytic theory. Its primary purpose is to explain that and how there can be political obligations in the sense of this book. In setting out this theory, I have not tried to settle all of the many questions it raises, empirical, moral, or indeed, conceptual. Rather, my ambition has been to set such questions in motion.”¹

I will try to put together a few questions, aware of the difficulty of the task and its responsibility, that only good questions announce a change in bad or antiquated laws. Here then, is the first question: can a change in the law (in the general sense, change of rights, contracts, constitutions, charters, edicts, documents, institutions, etc.) also be one of the most important purposes of theory or philosophy? This question can be constructed as a good addition to the sentence Margaret Gilbert just read, which I wrote down: “Perhaps the constitution in question is not written down at all, but simply envisaged by its author.”² It seems to me that this very trivial possibility that a law can be written and erased (or amended), envisaged or questioned, forgotten or broken, can explain the connection or the conditions of an imaginary or factual relationship between the work of Margaret Gilbert and that which Ferraris calls Documentalità, and which is the topic here today.

My basic question, which I will try to further explain and refine with other questions, is whether, above all, very different protocols of documenting and inscribing [inscriptions], declarations, registering and writing down (we are dealing with institutional protocols) can now be a good answer to the question “What keeps society together?” (this question “What keeps society together?” is certainly a form of Searle's project of “getting at the underlying glue that holds human societies together”³). Searle himself uses the plural. Also, paradoxically, it seems that the

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word 'institution' first appeared as a substantive in the plural, and only later in the singular.

Right away I will point to a few problems. First of all, the difference between the law and 'institutional protocols and procedures' is uncertain; secondly, it is always complicated to explain resistance towards the institution (the concept of contre-institution is Saint-Simon's) and justify the construction of a subversive group or alternative institution or society. Or the subversive individual. In law, as in casual usage of the word, one is obliged when something has to be done, regardless of not wanting to, or no longer wanting to. In other words, so as not to betray my temporary membership to this institution (“Seventh European Conference of Analytic Philosophy”) and not to act subversively (anti-social), not to rupture my relationship with you and question the relationships among you (so as not to betray the 'joint commitment') – I ought to act in accordance with the agreement and promises given to the organizer. For example, I ought to elaborate on what I wrote in an e-mail months ago, about the importance of documents that keep society together: invoice, lettre de facture, receipt, tax declaration etc. Further, I ought to stay on topic; and two days ago I promised I would speak a little shorter than planned, because Margaret prepared a slightly longer text. Apart from that, the organizer paid for my travel and stay here. But my obligations are not simply professional and do not only relate to this organism. One of the organizers is a friend of mine, and the other is someone close to me as well. I am also bound to often mention the here-present author, without whose texts I could not argue for my understanding of collective responsibility, or without whose texts, Maurizio's documentalità would remain incomplete. A whole slew of direct and indirect obligations (correct and incorrect) today prevent me from analyzing in detail something that could possibly better explain the problem with the document and

the difference between the document and a promise, a letter and a word, written and verbal obligations.

Justice Renate Winter, president of the Special Court of Sierra Leone, with whom I held a seminar on *jus post bellum*, in Austria this summer, asks a there-present officer of the Austrian military: “In the case that in front of you there is a child soldier of some ten years of age, ready to raise its weapon and kill you, what would you do? Where will you find the answer to this question? What document would you consult?”

The officer retorts by reading from various rule books, codices and conventions. The soldier is a documenting machine. The document immanently precedes every single of his acts. The oath of this officer and his sworn word, his public promise to recognize civilians and differentiate them from soldiers, is only possible after detailed training and instruction. Of course, the instruction and institutionalization continues even after the soldier signed his contract in the presence of others or given his word out loud. Hence it will be very easy to document the potential lapses of this soldier in action, or discover the papers that show all of my own oversights here today.

Although these two examples look different, it seems more important to me to describe their similarity, which far outstrips the difference in sanction (in type of exclusion from group, from society) certainly awaiting me and this soldier. My signing of letters in which I promise to come to Milano, accepting of gifts (the airfare)\(^4\), signature at the front desk of the hotel, collecting of receipts to be

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\(^4\) “To give” the airfare does not necessarily mean to gift it for free, it is not a grant. The Latin *Dare* means the transfer of ownership, a transaction, and not a gift, *donare*. A gift, or for example a 'gifting contract' in the French legal system, signifies that the one who is getting the gift has agreed to accept it or is obligated to accept it.

The existence of such unilateral contracts, where only one side is under obligation, calls into question reciprocity or exchange as the key to every obligation. Is it then possible to speak at all consistently about moral or political obligation, if the differences between continental and Anglo-Saxon law are enormous? For example, in the continental legal tradition...
reimbursed later, etc. – belong to institutional protocols and codifications, the function of which is twofold: these protocols that we usually call transactions (the institution is more a collection of transactions than interactions) actualize and realize the collective or the group (we are together at this table, we work together, build a city together, read, walk, fight to survive together, even sometimes try to die together); also, these protocols constantly evoke the existence of laws and legal obligations (which I will explain presently).

Thanks to the institution, or more generally put, thanks to these often boring documenting games, the law is alive and vocal, or the letter (the paper) “has a voice.” Hence, I think that the law, and following it, the legal obligation is present and constantly evoked in the shadow of a host of obligations that I spoke about and that determine the membership in this group. If I disappoint the organizers (of the group or institution), aside from institutional obligations (obligatio, Hafnung in German), the question of compensation for the damage and payment (obligatio, Schuld in German, debt) is inevitably brought up.

Does this mean that I will shortly get an invoice from the organizers? Can we say that the chain of documents points to the law or strengthens the 'voice' of the tradition a contract is defined as a free wills (agreement) between two or more persons, which has as its object and consequence, the creation of obligation. As opposed to that, in Anglo-Saxon law a contract is understood as a bargain, as an affair, an exchange of payment. This idea of a contract introduces the theory of 'efficient breach of contract,' completely inconceivable in the European understanding of obligation: one side in the contract, after having entered into it, can, upon finding a better engagement and better contract, break the first contract with minimal compensation. Cfr. M. Fabre-Magnan, “De l’obligation en droit,” Conférence, n. 19, 2004, 23-56. 5 Jewish political theory and Jewish Law Theory recognize a clear distinction between Verbal and Written Obligation. A written obligation entitles the creditor to recover payment out of the debtor’s encumbered assets which are in the hands of a third party, a right unavailable in the case of a mere verbal obligation, since the obligation or debt has no kol (“voice”) and does not provide notice that will put prospective purchasers on their guard. In the case of a written obligation, a plea by the debtor that he has repaid the debt is not accepted without proof, as in the case of a verbal obligation. Thus, for example, an undertaking even in the debtor’s own handwriting but not signed by witnesses will be treated as a verbal obligation, since only properly written, witnessed, and signed obligation carries a “voice and constitutes notice.” Bava Batra 175b. Cfr. ed. M. Elon, The Principles of Jewish Law, Jerusalem, Encyclopaedia Judaica, 1975, 244.
law? Or, do often various documents replace the law? What happens if these institutional protocols go missing?

The sentence “our marriage exists only on paper” (I am not sure whether this sentence works in English; this is what it would be in German. “Wir sind nur noch auf dem Papier verheiratet”) marks that our relationship is not confirmed by the contract we signed, and that our marriage is not worth the paper it is written on. One of the main characteristics of the institution, which Hume differentiates from and opposes to the contract (law) – apart from that the institution, unlike the contract, supposes the existence of a third party, and that the institution is coercive because formed by various transformations of violence and force – is its artificial nature, as well as the possibility of incorporating law into a group or to tie together the collective.

Protocols of documentation have to help this process along since to 'incorporate the law or paper into the group,' or to 'realize the collective' really means that the married couple read daily the paper they signed at their wedding, and that soldiers should constantly recite the articles of the Geneva Convention, the Commandments, etc. And not only soldiers.

Still, how is it possible that our marriage exists only on paper? Or conversely, when is a marriage, a group, “simply bad?” Is the idea of a subversive individual, or a subversive group (faction) only a regulative idea that merely preserves and further integrates already existing social groups excluding any subversion?

Allow me, finally, to construct three elementary answers to the hidden danger and uncertainty that issues from this fantasy of the individual or group that is excluded from institutions without founding any new institutions itself.

Since we are dealing with individuals who do not participate (munus) in the

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6 “Some groups are simply bad, and would be better if they changed completely, or ceased to exist.” M. Gilbert, On Social Facts, Princeton, Princeton University Press, 438.
community and do not contribute taxes – they exist on the community's margin, but do not declare their existence – the first clear answer is given by Jean Bodin in hailing the role of the censor. The censor, a pseudo-sovereign, ought to count all the people and all the property of a republic in order to “bannir les vagabonds, faineans, voleurs... on les verroit, les marqueroit, les cognistroit partout.”

Two variations on this answer can be recognized in Saint-Just and in John Searle. The former insists that the passive and indifferent are the real enemies of the revolution, as well as groups of people who band together to work against and oppose the revolution (faction). Saint-Just also predicts the banishment of all who are outside of institutions, for institutions ought to cover the entire space of the republic (anything outside of the institution is the enemy of the revolution).

In “Institutions and Brute Force,” a chapter in Searle's last book, he speaks of the monopoly of violence and coercive powers of the institutions towards those who have “strong motivations to break the rules.” “Many people lie, steal, cheat in various ways.”

The second attempt at an answer (in the form of a chain of very precise questions) can also be found at the end of the book A Theory of Political Obligation. Gilbert here uses her favorite metaphor, a thought experiment, of the island (let us recall a certain Rose, from the book On Social Facts, who has been shipwrecked and is now alone on an island). Gilbert finds a very precise name for a set of people, “hold-outs,” and using questions is trying to announce a future integration of 'residents' and 'hold-outs' into new political institutions:

7 J. Bodin, République, VI, 1, 14.
9 M. Gilbert, On Social Facts, 35.
“Suppose, in any case, that the population of those living on certain island – the “residents” – contains some individuals who are self-styled anarchists – the “hold-outs”. The residents who are not hold-outs are party to a joint commitment to support certain political institutions. The hold-outs refuse to become parties to the joint commitment. Perhaps each lives reclusively in a particular part of the island, and each has explicitly rejected the residents’ invitation to join them in their joint commitment. This is not because there is anything especially immoral about these institutions in particular. The hold-outs simply do not wish to be bound to uphold them. (p. 296)

It seems to me that the third response could, paradoxically, emerge out of that famous definition of obligation (legal obligation) found in Justinian's collection Institutes, which accurately shows the economic and 'transactional' nature of obligation. That is precisely the main reason that I previously announced a complicated task (to remain to the end announced only): invoice, lettre de facture, receipt, tax declaration, to which we could add some other institutions that keep society together, like the balance sheet, credit card, bill of exchange, ledger book, etc. All these papers do not absolutely belong to the same family of documents, but their common thematization could not only revise the term obligation, modifying it and bringing it back to the field of economy (this supposes a completely new reading of Aristotle, as well as the resurfacing of certain of Bodin's positions), but also reconstruct the extant theories of the institution.

“Obligatio est iuris vinculum, quo necessitate adstringimur alicuius solvendae rei secundum nostrae civitatis iura.” (The obligation is the bond of law that forces us towards payment (benefit, prestation,
indemnity) to someone, based on the laws of our city.\textsuperscript{10})

\textit{Vinculum iuris.} Vincula are the shackles or the iron used to hold a prisoner. The law binds – in the republic, island or city, but payment or debt necessarily crosses borders. When Cicero's friend Atticus pays his son's allowance while he is at university in Athens, or when on March 28\textsuperscript{th} 1210, a certain Rubeus de Campo agrees to pay 100 Marks Sterling in London to the count Vivianus Jordanus de Lucques, these transactions certainly hold human societies together.\textsuperscript{11}

\textsuperscript{10} Justinian, \textit{Institutes} (3, I3)
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Starting from the theory of social facts (Durkheim, Gilbert), and the difference between social and institutional facts, my intention is to show the different status of these documents in constituting a group or institution. I will explore the origin of the idea of computation, numbering and inventory (administrative statistics), as well as the idea of egalitarianism and 'proportionality' of taxes as conditions of social peace. Finally, I will address the question of factura (invoice), as well as its derivations that refer to a group that works together and forms its identity through exchange and productivity (faccere, factor). I will try to explain invoices by the fact that “many people lie, steal and cheat in various ways” (Searle) and by discussing the possibility of constituting a subversive group (faction, this being the greatest enemy of the republic and of institutions for Saint-Just too).