

Diplomatics: New Uses for an Old Science (Part II)

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Record-writing must depend on some kind of interesting segregating procedure by which two things, a record and the 'world' are, first, differentiated from each other and, then, related to each other so as to make the one, ideally, 'about' the other.¹

The revolutionary intuition of the seventeenth century diplomatists was that, if records are about the world, to gain an understanding of the world through the record requires following the same procedure which governs record-writing: first, to differentiate the record from the world; second, to relate them to each other. This intuition dramatically changed the scholar's approach to research, and gave rise to the modern philological and historical disciplines.

The only instrument which the founders of diplomatics had for understanding the world was constituted by isolated records, namely deeds of land issued by royal and imperial chanceries and preserved by various monasteries, not fonds, which were inaccessible to them because of the secrecy of archives at the time of the absolute monarchies. A small window on the world. Still, a window with a good perspective. Thus, they considered a single record, traditionally called it a document (from *doceo*, to teach), and tried to define it according to its nature.² In doing so, they discovered that such nature is a whole composed of interrelated but very different groups of elements, and isolated those groups in order to analyze them. Some of the elements belonged to what the document was about, which was termed *fact*, others to the physical and intellectual makeup of the document, which was termed *form*, and still others to the procedure which brought the fact into the document, which was termed *documentation*.

At this point it was clear to the early diplomatists that to make the world speak through the document requires distinguishing "as a matter of boundaries, limits," between "the outside (what the record reports), and the inside (the record, the word)."³ Thus, they separated the world from the document, and identified, first, what to look for (the elements of the outside), and second, what to look at (the elements of the inside). In the process of defining the elements of the outside, they recognized that the two broad groups of elements which they had termed fact and documentation, and which comprised all the world their sight could embrace, were actually

two conceptually when not chronologically distinct moments: the *moment of action* and the *moment of documentation*. This recognition represents the latest and most sophisticated development of diplomacy, and the methodology of criticism derived from it is what enables us to extend diplomatic enquiry to contemporary documents.⁴

The present article begins the analysis of the *moment of action* by defining the fundamental concepts of fact and act, and examining the relationship they have with the document.

The Fact, the Act and the Function of the Document in Relation to Them

Every social group ensures an ordered development of the relationships among its members by means of rules. Some of the rules of social life arise from the ad hoc consent of small numbers of people; others are established and enforced by an “institution,” that is, by a social body firmly built on common needs, and provided with the means and power to satisfy them.⁵ The latter rules are compulsory; their violation incurs a sanction or penalty. A social group founded on an organizational principle which gives its institution(s) the capacity of making compulsory rules is a juridical system. Thus, a *juridical system* is a collectivity organized on the basis of a system of rules. The system of rules is called a *legal system*. A legal system is a complex paradigm containing many divisions and subdivisions. It can be broken down into *positive law* (as set out in the various legal sources — legislation, judicial precedent, custom — and literary sources — either authoritative, consisting of statutes, law reports, and books of authority, or non-authoritative, such as medieval chronicles, periodicals, other books), and all the other *conceptions and notions of binding law* (natural law, morality, orthodox religious beliefs, mercantile custom, Roman/Canon law). Because a legal system includes all the rules that are perceived as binding at any time and/or place, no aspect of human life and affairs remains outside a legal system. For example, even the most spiritual form of love is penetrated and ruled by ethics, natural law, morality, religious beliefs, customs, and expresses itself according to them.

Each juridical system differs from all others and itself varies over time. Since the beginning of civilization, both human conduct and natural events take place within one given juridical system.⁶ Within any such system, both exist as *facts*. Facts whose occurrence has not been consciously foreseen by the juridical system within which they take place are qualified as *juridically irrelevant*. Facts which are contemplated in the body of written or unwritten rules on which the system is based, that is, in its legal system, are qualified as *juridically relevant*. An example may help to clarify this concept. A man receives a newly born child from the hands of the mother and holds him on his knees. Such a gesture, in the Canadian juridical system, shows affection, tenderness, and pride, but is juridically irrelevant because the system attaches no consequence to it. In contrast, in the juridical system of ancient Rome, that gesture meant that the man recognized the child as his own, and was juridically relevant because it had the consequence of legitimizing the child. This is in fact the origin of the word “genuine” (from *genua*, that is, knees), meaning true, legitimate. Therefore, a *juridical fact* is an event, whether intentionally or unintentionally produced, whose results are taken into consideration by the juridical system in which it takes place.

As mentioned before, a juridical fact can arise either from a human or from a natural cause. The first category includes such facts as a discovery or a manslaughter. For example, while heading west towards the Indies, Columbus discovered a new continent. Such a discovery, although accidental, under a principle established by the Spanish legal system, entitled the Crown of Spain, which had financed the expedition, to the property of that land. As well, if a driver accidentally kills a child running after a ball across the road, he becomes subject to penal justice. The second category includes such facts as the natural death of a person or a flood, which may be followed, respectively, by the transfer of title to the property of the deceased person, and by compensation for damage. Natural facts may produce effects contemplated by the system either of themselves or in combination with human conduct. For example, the passage of time is a natural fact that, connected with the action or omission to act of a person, has juridical effects.

Among human facts in general, the special type of fact which results from a will determined to produce it is called an action or *act*. The operation of will distinguishes an act from any other general fact. Therefore, all acts are also facts, but only facts generated by a determined will are acts. Fact is the *genus*, act is the *species*. When a juridical system takes into consideration in its body of rules not only the effects of human conduct but also the will determining it, we call that conduct a *juridical act*. In the Roman example of the baby on the knee, if the purpose of the father's conduct was to legitimize the baby, it was a juridical act; if instead it was just a gesture, although with juridical consequences, it was only a juridical fact. Moreover, the same human conduct, in the same juridical system, can be a juridical act in relation to some effects, and a juridical fact in relation to others. For example, a father's recognition of a child as his own is a juridical act inasmuch as the father intends to confer his own surname on the child, but is a juridical fact inasmuch as the father has to provide sustenance for that child (this is a juridical effect of the recognition but probably not the one primarily intended).⁷ In other words, an act is a fact originated by a will to produce exactly the effect that it produces. If such an effect has a juridical nature, the will has generated a juridical act. One last example. The *fact* is: I speed in front of a school where a police car is stationed. This fact has five possible connotations:

- A) Will: I want to arrive home early. Effect: ticket. Connotation: *juridical fact*
- B) Will: I want to create an alibi for myself at that given time. Effect: ticket. Connotation: *juridical act*
- C) Will: I want to arrive home early. Effect: early arrival (Police do not notice me). Connotation: *juridically irrelevant act*
- D) Will: no will. I did not see the school sign. Effect: ticket. Connotation: *juridical fact*
- E) Will: no will: I did not see the school sign. Effect: early arrival. Connotation: *juridically irrelevant fact*

Among acts in general, two categories can be distinguished: 1) acts directed to purposes immediately related to society at large, and 2) acts having effects that interest individuals or specific groups. The former category is said to take place in the sphere of public law, the latter in the sphere of private law.⁸ The distinction

between public and private sphere is conditioned over time by historical and political events. In fact, the social "institution" which governs the juridical system may decide at any time that some purposes which were formerly of private consequence have to be considered of public interest, or vice versa. This is because that institution, which is in a position of sovereignty, determines the criteria on the basis of which public interest is distinguished from private. For example, in Italy, in 1877, the first left-wing government decided that primary education was a matter of public concern, and gave the state full responsibility for its administration. Therefore, all acts connected to such administration, which were formerly of a private nature, became public. This type of circumstance, however, does not change the fact that, in any legal system, at any given time, there is a well understood distinction between a public and a private sphere.⁹

Within the category of private acts we further distinguish between a mere act and a transaction. A mere act is an act in which the will is limited to the accomplishment of the act, without the intention of producing any other effect than the act itself: effect and act coincide. We may consider again the above example of speeding in front of a school. If we add to our perspective the dimension offered by mere acts, that same fact has two other possible connotations:

- F) Will: I want to speed because I enjoy it and I do not care about a possible ticket.
Effect: I enjoy it. Connotation: *juridically irrelevant mere act*
- G) Will: I want to speed because I enjoy it and I do not care about a possible ticket.
Effect: I enjoy it although I get a ticket. Connotation: *juridical mere act*

By contrast, a transaction is a declaration of will directed towards obtaining effects recognized and guaranteed by the juridical system. In a transaction, a person administers his/her own interests with other persons. Therefore, a transaction is an expression of autonomy of a physical or juridical person, who self-disciplines his/her own conduct in a binding way.¹⁰

The distinction between mere act and transaction is not operative in the sphere of public law, where acts can only assume the diplomatic configuration of transactions, because the will which generates them aims to promote the general interest of society.

Any act, to exist, must be manifested and, consequently, perceived (or at least be perceivable). This outward form of the act can be either oral or written. Diplomats are interested in those acts which take a written form and result in documents.¹¹ The written form of an act can be either required or discretionary. The requirement of a written form exists in two circumstances: 1) when an act is of such a kind that can come into existence only by means of a document, and 2) when an act which takes an oral form needs a document as proof of its existence. In the former case the document is the act; in the latter, the document refers to the act. A document is also said to refer to an act when neither of the above conditions exists, and the written form is therefore discretionary.

Diplomatists have traditionally subdivided all documents into categories defined by the purpose served by their written form. In the diplomatics of medieval documents only two categories were identified. If the purpose of the written form was to put into existence an act, the effects of which were determined by the writing itself (that is, if the written form was the essence and substance of the act), the document

was called *dispositive*. Examples are contracts and wills. If the purpose of the written form was rather to produce evidence of an act which came into existence and was complete before being manifested in writing, the document was called *probative*. Examples are certificates and receipts. In the case of dispositive documents, the written form required for the existence of the act was defined *ad substantiam*; in the case of probative documents, the form required for providing evidence of the act was defined *ad probationem*.

The first diplomatist to approach the matter scientifically, Heinrich Brunner, resurrecting a terminology widely used in medieval documents, called the dispositive document a *charta* and the probative one a *notitia*, and made an attempt to define their respective characteristics. He considered subjective wording (with the author of the act in the first person) to be typical of the *charta*, and objective wording (with the author of the act in the third person) to be typical of the *notitia*. Moreover, studying the evolution of the most common contract in the Roman world, the *stipulatio* (agreement between debtor and creditor), Brunner generalized that documents pass in time from a probative to a dispositive value. According to this theory, while in the first periods of documentation all documents are probative, later on most of them are dispositive.¹² In very general terms, Brunner's theory is valid, at least with regard to the documents of the Middle Ages which he considered. However, it tends to blur the fundamental difference between the two categories of documents: whereas in a probative document the moment of the action precedes the moment of its documentation (for example, a birth takes place and produces effects before its entry into the birth register), in a dispositive document, the two moments are simultaneous and indistinguishable other than conceptually (for example, a sale takes place when and only when a contract of sale is completed), to the point that, in positive law, dispositive documents are usually called "acts."¹³

The inclusion of all documents in two categories can be considered valid in relation to medieval documents, notwithstanding the objections presented by some diplomatists.¹⁴ In fact, nearly all medieval documents resulted from juridical acts (as defined earlier) for which the written form was required either *ad probationem* or *ad substantiam*. Furthermore, whether the will determining the act belonged to one or more persons, only one document was issued which referred to the act or put it into effect, although it could be copied or re-issued many times.

With the diffusion of education, the growing accessibility of writing instruments and materials, the development of communication systems, the increase of business activity, and the rise of complex bureaucracies, two things happened. First, people began to create documents for the purpose of communicating facts, feelings and thoughts, asking for or providing opinions, preserving memories, elaborating data, and so on. Therefore, an ever decreasing proportion of written documents came to originate from juridical acts and presented a required written form. Today, most documents are about facts, often juridically irrelevant, and their written form is discretionary. Secondly, juridical acts, and specifically those defined as transactions, began to result from a combination of related acts, juridical and non-juridical, each of which produced documents. As a corollary, many documents came to refer to the same act.

The consequences of those two circumstances for diplomatic classifications and, ultimately, for diplomatic analysis, must be examined.

The first circumstance directly concerns the diplomatic categorization of documents in relation to the function they serve. It is not possible anymore to say that written documents are either dispositive or probative, but documents of those two types continue to be created in large numbers, present the same essential characteristics identified by diplomatists of medieval documents, and are easily recognizable among all other documents. We may say that dispositive and probative documents together constitute the class commonly, and inappropriately, called "legal records."¹⁵ What about all the other (that is, non-legal) documents, the written form of which is discretionary? We can still use diplomatic concepts and methodology, and categorize those documents according to the function they serve, that is, on the basis of their relationship with facts and acts. If we do so, we can identify two categories which comprise all non-legal documents. The first includes the documents constituting written evidence of an activity which does not result in a juridical act, but is itself juridically relevant. We may call them *supporting* documents. The second includes the documents constituting written evidence of an activity which is juridically irrelevant. We may call them *narrative* documents. Now, what happens if we try to analyze diplomatically those two categories of documents? Inevitably, we have to adapt the methodology of diplomatic criticism to the new circumstances. In fact, in the criticism of dispositive and probative documents, we define and evaluate types of documents by their formal characteristics and formation procedures as they relate to the legal system. The legal system is a very precise reference point to which we can relate directly when examining legal documents. This is not possible when we analyze the documents of the other two categories, either because they are evidence of a continuing process which, although juridically relevant, does not result in a definite final act, or because they are evidence of a juridically irrelevant process and/or fact. However, we can still make indirect connections with the legal system, that is, we can make reference to the dispositive and probative documents issued within the same legal system in which the non-legal documents under examination have been created. We can define and evaluate types of non-legal documents by analogy, that is, by identifying first the common formal characteristics which they share, and second, the characteristics that each type of non-legal document has in common with a similar type of legal document.

Let us now consider in a schematic way the four categories comprising all documents:

- 1) documents constituting a juridical act (dispositive);
- 2) documents constituting written evidence of a juridical act which was complete before being documented (probative);
- 3) documents constituting written evidence of a juridically relevant activity which does not result in a juridical act (supporting);
- 4) documents constituting written evidence of a juridically irrelevant activity, whether or not such an activity will end up in a juridical act (narrative).

There is more to the above categorization than a clear-cut distinction between legal (1 and 2) and non-legal documents (3 and 4). If we reflect on the kind of documents included in each category, we may realize that the first two embrace the major part of those documents which in North America are defined as *records*, while the

last two consist mainly of those documents which in North America are called *manuscripts*. Records arise from administrative activities which manifest themselves in series of acts. Those acts and their documentation are governed by written or unwritten rules of procedure, which are revealed in the forms of the records. Manuscripts, on the contrary, are the result of activities whose nature embodies a significant measure of individual freedom, which is clearly revealed in the forms of the resulting documentation. The qualification of a document as a record or as a manuscript does not depend on the nature of the creator (public or private) or on its collective or individual character (organization or person). It depends on the type of activity generating it; and because an activity is qualified by the will producing it and the effects determined by it, a document is either a record or a manuscript according to the will creating it and to the effects it is meant to produce. Therefore, the same creator, depending on his/her purposes, may produce either a record or a manuscript.

For example, a university professor has four basic functions (teaching, research, administration, and service to the community), and a private life. In each of those five areas, he or she creates both records and manuscripts, that is, documents of all the four categories described above. As examples, let us examine the first two functions. The teaching function involves a number of activities resulting in documents: 1) giving classes, which may produce teaching notes (manuscripts, supporting); 2) giving assignments, which may produce descriptions of the assignments and evaluation documents (records, dispositive); 3) examining students, which may produce registers (records, probative) and evaluation documents (records, dispositive); 4) exchanging ideas with colleagues on course outlines, bibliographies, etc., which may produce correspondence (manuscripts, narrative); 5) borrowing books from libraries, reserving books for students' consultation, ordering books in the bookstore, which produces a large number of certifying documents and receipts of orders (records, probative); 6) participating in the examination of theses, which creates minutes, deliberations, original copies of theses signed for acceptance, notes with the questions to be asked, and so on, that is, documents of all the four categories. The research function may involve: 1) examination of sources, resulting in research notes (manuscripts, supporting); 2) production of a draft of a book (manuscript, narrative); 3) production of the original according to contract (record, dispositive); 4) correspondence with the publisher (manuscript, supporting); 5) contract with the publisher (record, dispositive); 6) acknowledgement of the receipt of the book by the publisher (record, probative); and so on.

Having established that the typology of documents is determined by the nature of the activities generating them as qualified by will and purposes, and that, therefore, a thorough understanding of those activities is vital to an understanding of the resulting documents, we can turn our attention back to the acts.

Focusing on acts will allow us to analyse the second circumstance or condition characterizing modern documentary production: the fragmentation of juridical acts in many related but autonomous juridical and non-juridical acts, each resulting in written documents. This condition is largely traced to the rise of bureaucracy, whose influence on documentary production has been enormous in both the public and the private sphere. Many businesses and private organizations are in fact structured, and function, like large bureaucracies. As Stanley Raffel puts it, with the rise of bureaucracy, the real world came "to be shaped by the very idea of recording

it It is not that records record things but that the very idea of recording determines in advance how things will have to appear.”¹⁶ Consequently, the world started to be seen as a series of witnessable and extractable facts which, transported into the record, became identical with the record. This evolution was determined by the circumstance that a bureaucrat, as user of the record, wants to achieve in his/her use of the record the reality of the fact without participating in it. Therefore, bureaucracy first divides the world into facts, then requires the recording of them, and finally transforms each record into a fact, into something which can be treated as self-sufficient, ready for use. Because bureaucracy cannot think about the record, it needs to be able to listen to the record. “All bureaucracy can be seen as an attempt to create a method for the reduction of contingency, imperfection, and error, an attempt which is represented in the bureaucrat-as-user’s effort to reduce his participation in the reading of the record.”¹⁷

Bureaucracy adopts two methods for assessing the record as a fact. The first method is indirect. Instead of deciding whether records mirror facts, bureaucracy decides whether record-writers are reliable. If the writer is reliable, the user can identify him/herself with the writer, that is, with the witness to the fact. To be able to rely on record-writers requires controlling them in a number of different ways. Raffel identifies four ways: 1) restricting the privilege of record-writing to professionals (of course, record-writers are those who sign records and/or are responsible for them); 2) imposing sanctions on record-writers by requiring signatures, so that the bureaucrat has a record anyway, either a record of the fact or a record of who failed to report the fact; 3) instituting procedures, that is, giving responsibility to each writer for reporting only a portion of a fact, and/or increasing the number of those who report the same fact, so that what their records will have in common will be the true fact; 4) making different purposes concurrent, that is, making the same record serve a number of different users: instead of the number of writers, the size of the audience is increased, so that the writer cannot tailor the message to the audience.

The second method for assessing the record is direct. Rather than being concerned with the truthfulness of the record, bureaucracy focuses on its completeness. Records can be assessed in terms of standards other than their effectiveness in mirroring facts, that is, they can be assessed in terms of forms. This evaluation amounts to redefining the *record* as *a visible fact at which the user is present*. If a record possesses all the various bureaucratically necessary forms and those forms are complete, the user can achieve complete passivity and treat the record as a thing which is showing him/her what it is. Completeness is the major standard in terms of which records are actually assessed. Any manual, directive, or circular related to record-making emphasizes, not that records should be truthful, but that they should be complete. Completeness is the bureaucrat’s way to the real. How? Let us take as examples two elements common to various record forms: signature and date. By requiring a signature, bureaucracy asks writers to declare by signing that their records mirror the facts. The declaration that a record is adequate becomes the fact for the user. The signature gives responsibility to the writer for his/her words; therefore the user does not need to check the record against the fact, because the signature shows and legally establishes where the responsibility lies. The signature is the fact. By requiring the indication of the place and time in which a record is written, bureaucracy transforms the record into the fact, because the mention of a topical

and/or chronological date captures the relation between writer and fact, and this relationship becomes one of the things the record speaks about: a fact belonging to the past can be known by the record-user if the relationship between the person who writes about it and the fact itself is localized in space and time.¹⁸

The facts bureaucracy deals with are of any kind, but the facts bureaucracy is directly involved in are of a very special kind; they are juridical acts directed to the obtainment of effects recognized and guaranteed by the system, that is, they are transactions. The necessity of examining the characteristics of bureaucratic transactions for an understanding of records bureaucratically produced is made clear by Raffel's analysis of the relationship between bureaucracy and records. It can be further strengthened if we consider a few words written in a different context, for different purposes: "Records are recorded transactions. Recorded transactions are information, communicated to other people in the course of business, via a store of information available to them."¹⁹ This statement defines records only indirectly as information. Their being information descends from the fact that they are recorded transactions. Moreover, their being recorded transactions qualifies the type of information which they are. They are not just recorded information, but conveyed information. The author of the definition, the United Nations Advisory Committee for the Coordination of Information Systems, is so conscious of its implications that it feels the need to explain further: "This definition ... is consistent with the concept that a record is created by an official action of receiving or sending information. Both paper based records management and electronic records management must distinguish between the hour-to-hour or day-to-day changes in a draft of an official document and records sent or received by the organization. In both situations making an entry in a bookkeeping journal, a case file, a database, or even a 'memo to the file' is creating a record even though the information is not 'sent,' because others are intended to receive this communication at a later date. Each system must distinguish official from purely private information; thus jotting a note about an expenditure or change of address on a loose slip of paper or in an electronic memo pad to remind ourselves to make such an entry at a later time is not a record-transaction, and hence, not a record."²⁰ This statement has enormous implications. The United Nations is a bureaucratic organization, which like any organization functions by means of transactions. These transactions take place by means of documents which, as Raffel pointed out, must be reliable and complete, so that they can be identified with the transactions they are about. Therefore, documents which are reliable and complete, that is, able to convey information, capable of being used in a transaction, and of reaching the purposes for which they have been produced, are transactions. This species of documents are called records. Records are recorded transactions. As a consequence, recorded information, or documents, which do not present the above characteristics, are not records. They are still documents, though, and may be very significant documents, because they reveal the creative process of producing records, that is, of carrying out a transaction. This writer does not believe that the committee, making the distinction between them and the records, aims to re-create the medieval dichotomy between the archives-treasure, made of chosen documents, mainly dispositive and probative in original form (think of *Le Trésor des Chartes*), and the archives-sediment, made of interlocutory documents, mainly drafts and notes, produced constantly and progressively in the conduct of affairs. Referring to a very different operation, the committee is saying to a bureaucratic organization

that, to acquire and maintain control of its documentary material, it is vital that both its record creators and its record managers make a distinction between the documents resulting from a *procedure* and those resulting from a *process*. If a procedure is the body of written or unwritten rules whereby a transaction is effectuated, and comprises the formal steps to be undertaken in carrying out a transaction, the documents resulting from it are one with the transaction, and must be identified as such since their creation, so that they will not be confused in the future with those generated by processes. In fact, a process is a series of motions, or activities in general, carried out to set oneself to work and go on towards each formal step of a procedure. The documents resulting from a process are preparatory, incomplete; they are the instruments necessary to set the stage. They are not meant to be communicated, and may be as precious to the scholar as they are irrelevant to the bureaucracy. The committee calls records the products of procedures and, in the manual, does not consider the products of processes. Undoubtedly, there are good reasons: the work is directed to an organization which, because of its bureaucratic nature, cannot be interested in non-records; the guidelines refer to the management of electronic documents, among which the non-records are often just scattered pieces of unrelated information; and the focus is on current documents, both for the needs of the organization and for the practical problems presented by the specific medium.

For diplomatic purposes, we will continue to call non-records “written documents,” as defined by diplomatics. We will not call them just “recorded information” as opposed to “communicated information,” because diplomatics does not focus on content, but on context and forms. Therefore, “documents” are the *genus*, “records” are a *species*.

In order to continue the verification of the applicability of diplomatic principles and methodology to modern and contemporary documents, and, at this particular point, to documents created by bureaucratic organizations, it is necessary to review the characteristics of bureaucratic transactions. For reasons of simplicity, the transactions will be called “acts,” and their documentary result will be called “documents.”

Bureaucratic acts can be classified into various groups:

- 1) when the power of accomplishing the act is concentrated in one individual or organ we have a *simple act*; if the organ comprises a number of individuals we have a *collegial act*. In the latter case, just as in the former, the will to produce the act is one will, because the collective will of the single members is manifest in one deliberation with one purpose;
- 2) when the power of accomplishing the act belongs to two or more interacting parties (individuals, public bodies, states, state-and-individuals), we have a *contract*. Notwithstanding the difference in motivation and interests between the parties, their wills converge in one, aimed at producing the one act;
- 3) when the accomplishment of the act depends on many manifestations of will, either of the same individual or organ (at different times), or of many different individuals or organs, we may have:
 - a) *collective acts*, produced by the identical wills of different individuals or organs, and resulting in one document (for example, a circular signed by a number of ministries);

- b) *multiple acts*, produced by the will of the same individual or organ but directed to different individuals or organs, and resulting in one document (for example, a document giving merit increases to a number of employees);
- c) *compound acts*, composed of many different acts produced by the same individual or organ or by a number of individuals or organs, but all essential to the formation of some final act of which they are partial elements. The partial acts may concern the same or different subjects and may respond to convergent or contrasting interests, but each results in documents, which are all necessary to the formation of the final document: the final product of the compound act.

Compound acts can be further divided into:

- *continuative acts*, when the same individual or organ needs to manifest the same will more than once in order to produce the final and definitive act, so that the partial acts constituting the compound act are all identical, but the documents resulting from them are not (for example, a City Council's three subsequent deliberations of the same by-law);
- *complex acts*, when different individuals or organs, which may have different motivation and interests but pursue the same function, produce a number of simple acts having the same content, all necessary to the accomplishment of the final act (for example, the series of approvals necessary to the appointment of a Dean);
- *acts on procedure*, when the final act derives from a series of different acts (which may be simple or compound, collegial or collective, in sequence or parallel), produced by a number of different individuals and/or organs, which have equal or different motivation or interests and accomplish different functions. However, all these partial acts have the common aim of making possible the accomplishment of the final act (for example, the procedure needed to create a new curriculum of studies).²¹

The above classification of acts shows a panorama of the "world" very different from the one seen by the diplomatists looking through the window of the medieval record. If we imagine this new world (a modern juridical system) as a city, we can still see in it, as in medieval times, quite a number of one-family homes (simple acts), homes in which the families of the sons share multi-level space with that of the father (collegial act), duplexes or villages of townhouses built by a consortium of families (contract), apartment buildings (collective acts), homes for poor or old people (multiple acts); but we also see bus terminals, railway tracks, airport radars, that is, a great number of constructions which cannot be understood on their own (partial acts) because they are only one element of a much larger whole, a transportation system (compound act). Now, it is true that a one-family home cannot tell us everything about the city (the juridical system) of which it is part, but it can reveal a lot about the family living in it (the will, the effects), its environment (the "institution"), and its social rules (the legal system). What can railway tracks reveal? Well, among other more specific things, they reveal that they are part of a greater whole, and this fact compels us to look for the rest.²²

The writer chose to compare a juridical system with a city because concepts may be more understandable if made visible. However, such a simile is not entirely

appropriate, because acts need not result in visible, concrete things. Herein lies the only significant difference between the juridical system described by diplomatists of medieval documents, and the modern and contemporary one. The categories of acts which bureaucracies since the Renaissance accomplish, in both the public and the private spheres, have always existed. However, in the Roman Republic, the Carolingian Empire, and medieval city-states, each of those acts, whether simple, collegial, contract, collective, multiple or compound, produced one and only one document. It often preserved within its text the memory of partial acts contributing to the formation of the final act, and of their determining wills. This could happen because the partial acts were oral: a written form was not required for them to exist. The authority or reliability, in Raffel's terms, of the author of the document manifesting the final act was such that a simple mention in that document of related partial acts in oral form was a sufficient proof of their existence.

Therefore, the diplomatic concepts referring to juridical and legal systems and to facts and acts, the diplomatic theory of a distinction between the moment of action and the moment of documentation, and the diplomatic principle that each document is linked by a unique bond to the activity (be it fact or act, juridically relevant or irrelevant) producing it, a bond qualified by the function served by the document, are still valid and able to guide the diplomatic analysis of modern and contemporary documents.

From the continuing validity of the conceptual foundations of diplomatics descends the continuing validity of its methodology for the analysis of documents bureaucratically produced. However, when applying the methodology, we must be prepared to deal with consequences unforeseen by the founders of the discipline, that is, we will have to find ways of taking that methodology much further.²³ The early diplomatists identified the elements of the outside world we have to look for in a document, with the assumption, based on the then known reality, that it is possible to go directly from the document to the entire fact generating it. Their methodology presupposed that there is a bilateral relationship between each document and the fact it is about, so that if a fact, (A), is manifested in written form, the document resulting from it, (B), will guide us directly to the fact: A-->B-->A. This direct, exclusive, bilateral relationship exists only for a limited number of documents in modern bureaucracy. For example, we can see it in a last will or a receipt, that is, in the purely private parts of bureaucratic transactions. If a man expresses in writing his wishes about the destination of his properties after his death, the resulting document mirrors all the fact: last will (which is a juridical act). But, what about the fact: inheritance? As well, if one pays a membership fee to the Association of Canadian Archivists, and obtains a receipt, that document mirrors all the fact: payment (again, a juridical act). But, what about the fact: becoming an ACA member? Therefore, applying diplomatic methodology to modern and contemporary documents, we will find ourselves faced with multilateral relationships, in which each single fact manifests itself in a fragmented documentary form, and each document guides us not only to a small portion of the fact it is about, but, possibly, to a chain of other documents and/or facts. The bond which links a document to the activity producing it is still unique, but is probably not the only relationship that such a document has. Remember those constructions in the modern city, the meaning of which could be captured only by examining their complementary parts? The single

document of the Middle Ages might be the dossier of modern times. We will examine this possibility at the end of this series on diplomatics.

Readers of this article should consider the fact that, in the near future, all the professional work of archivists may focus on the subjects which have been discussed: the juridical system, the fact, the act, the will, the effects. Can you hear the echo of Hugh Taylor's words? "Their impact [the impact of letters] is not assessed ... on the basis of content but on the action of writing ... Increasingly, the act or decision which informs the conduct of affairs grows closer in time to the document that records it ... Electronic communication ... can become a continuous discourse without trace, as both act and record occur simultaneously with little or no media delay or survival. Words once again become action oriented."²⁴ However, because there can be no acts without actors, the third article of this series will discuss the persons concurring in the formation of acts and documents, and the nature of documents in relation to those persons.

NOTES

- 1 Stanley Raffel, *Matters of Fact* (London, Boston, and Henley: Routledge and Kegan Paul, 1979), p. 17.
- 2 See: Luciana Duranti, "Diplomatics: New Uses for an Old Science," *Archivaria* 28 (Summer 1989), p. 15.
- 3 Raffel, *Matters of Fact*, p. 19.
- 4 See: Duranti, "Diplomatics," p. 14.
- 5 In a modern country such an institution is the entire organization of the state; in a primitive tribe it is the chief or the council.
- 6 Of course there are exceptions even to this quite general rule. In Canada, nine provinces, two territories and the federal state function on the basis of the "common law" legal system, while Quebec is organized in accordance with principles associated with the "civil law" legal system. This means that, in Quebec, the same conduct or event is subject, at different levels, to two different juridical systems, which recognize each other.
- 7 The English legal system gives a definition of "act" reflecting the diplomatic concept: "An act is an effect produced in the external world by an exercise of the power of a person objectively, prompted by intention, and proximately caused by a motion of the will" (*Black's Law Dictionary*, Revised IVth ed., s.v. "act," p. 42). It is implied that the system considers as acts only those the effects of which are relevant to the system itself, that is, the juridical acts.
- 8 Paola Carucci, *Il Documento Contemporaneo. Diplomatica e Criteri di Edizione* (Roma: La Nuova Italia Scientifica, 1987), p. 39.
- 9 See: Gerald Gall, *The Canadian Legal System* (Toronto, Calgary, Vancouver: Carswell Legal Publications), p. 19.
- 10 The English legal system provides a definition of a transaction which reflects the diplomatic concept: "an act ... in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered." (*Black's Law Dictionary*, s.v. "Transaction," p. 1668.)
- 11 Once again, the term "written" is used by diplomatists in its broadest sense, as illustrated in Duranti, "Diplomatics," p. 15.
- 12 Heinrich Brunner, *Zur Rechtsgeschichte der römischen und germanischen Urkunde* (Berlin, 1880), pp. 20-21. Brunner's historical theory is endorsed by Hugh Taylor in "'My Very Act and Deed': Some Reflections on the Role of Textual Records in the Conduct of Affairs," *The American Archivist* 51 (Fall 1988), p. 459.
- 13 In English civil law an act is also defined as "a writing which states in legal form that a thing has been said, done or agreed." (*Black's Law Dictionary*, s.v. "act," p. 42.)
- 14 As an example, see Alain de Bouïard, *Diplomatique générale* (Paris, 1929), p. 48.

- 15 Such a class remains, in fact, undefined in British law. If we take the closest legal terms, that is, "legal evidence" and "legal title," we can see that they refer to anything which is admissible in court. (See *Black's Law Dictionary*, pp. 1040, 1042.) Therefore, because anyone can attribute to the term "legal records" any preferred meaning, this writer chooses it to mean "records resulting from juridical acts for which a written form is required, either *ad substantiam* or *ad probationem*," thus closing the vicious circle: dispositive and probative documents are legal records, which are dispositive and probative documents.
- 16 Raffel, *Matters of Fact*, p. 48. Writing about the documents produced by bureaucracy, this writer will use the term "document" and "record" interchangeably. In fact, all bureaucratic activities are aimed to the production of juridical acts. Therefore, all documents bureaucratically created are records, even if the opposite is not true. The term "bureaucracy" is used here to refer to any kind of administrative apparatus presenting a structure similar to that of government bureaucracy, be it a church, a business, a university or other.
- 17 Raffel, *Matters of Fact*, p. 78.
- 18 *Ibid.*, pp. 48-116.
- 19 United Nations Advisory Committee for the Co-ordination of Information Systems, Technical Panel on Electronic Records Management (TP/REM), *Electronic records guidelines: a manual for policy development and implementation* (Fifth Session of ACCIS, 18-21 September 1989), p. 10. These guidelines constitute the first part of the final report of the ACCIS Technical Panel on Electronic Records Management (TP/REM). The full report includes three other sections, namely: "Glossary for electronic archives and records management"; "Standards paper (Integrated systems management of official records and documents in United Nations organizations: a requirement of the 1990s)"; "Report of the TP/REM survey on E* management (Paper on technical integration)." The guidelines, as well as the other three sections of the full report, can be requested at ACCIS Focal Points (Geneva and New York).
- 20 *Ibid.*
- 21 Carucci, *Il Documento Contemporaneo*, pp. 42-43. The formation process of documents resulting from compound acts will be examined in some detail in the fourth article of this series.
The creation, in this classification scheme, of a distinct category for "acts on procedure" may appear to be contrary to the previous suggestion that all bureaucratic transactions are based on procedure. However, in the context in which that suggestion was made, the term "procedure" is used in its general meaning, while here it is used in its technical meaning of machinery set up by legislative means (legislation, regulations, directives) for carrying on a given transaction.
- 22 Of course, a large part of the greater whole will always escape diplomatic examination, no matter how thoroughly it is conducted. Broad political, ethical, intellectual, and generally societal questions can find only partial answers if we limit ourselves to the study of the formation and inner constitution of documents. This was strongly felt when diplomatics was first applied, and is the reason why, from diplomatics, all historical and philological sciences developed, including archival science. This is also the reason for which diplomatics constituted the foundation of, and later was fully incorporated in, individual historical and philological disciplines.
- 23 Remember that, in relation to the documents of categories n. 3 and n. 4, that is, to the *species* of documents commonly called "manuscripts," the writer talked about adaptation of methodology. Instead, in relation to bureaucratically produced documents, she does not think that diplomatic methodology should be adapted.
- 24 Taylor, "'My Very Act and Deed,'" p. 468.