

The Foundations of Europe: A Critical Discourse Analysis of the EU Constitution

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Abstract

Setting rules and defining sanctions is the primary function of law. However, many contemporary laws, in particular laws about culture and language, lack this function. In the EU, these provisions typically concern policy areas outside the Union's jurisprudence, such as culture, education, and the Union's general values. These are provisions through which European identity is defined; their proportion in the EU's treaties reached its peak in the Constitution. There have been hardly any critical linguistic analyses of the text itself although law, by definition, represents, shapes, and codifies the values and ideologies of a society: law is the central site of power and regulates all discourse. Combining a linguistic analysis of transitivity and a discourse analysis of intertextuality, this paper aims at showing precisely how the Constitution is invaded by fragments of political discourse on European identity. The goal is to demonstrate how laws which do not regulate behaviour make beliefs and ideologies appear as accepted knowledge and universal truth.

Keywords: European Union, EU Constitution, Critical Discourse Analysis, Language and the Law

1. Introduction

Defining rules and sanctions is the primary function of law. However, many contemporary laws, in particular laws about culture and language, lack this function (see Amselek 1986: 113, 126). In the European Union, these provisions typically concern policy areas outside the EU's traditional sphere of activity, such as culture, education, and the Union's general values. The proportion of such provisions in the EU's founding treaties reached its peak with the *Treaty establishing a Constitution for Europe*; this development has paralleled a growing interest in European identity on the part of scholars (see, e.g. Bauman 2004) and EU bodies (e.g., International Research Associates INRA 2001) alike. The *Constitution* has been widely discussed both in scholarly literature and in the media; however, there have been hardly any critical linguistic or critical discourse analyses of the text. Yet, law, by definition, represents, shapes, and codifies the values and ideologies of a society: law is the central site of power (Foucault 1976: 118) and regulates all discourse. Thus, a corpus consisting of legal texts cannot be but representative of the phenomena the analysis aims at deciphering.

This paper combines a linguistic analysis of transitivity with a discourse analysis of intertextuality by using theoretical devices provided by the French tradition of *analyse du discours* and *théorie de l'énonciation* (Adam 1999, 2005; Ducrot 1984; Foucault 1969, 1971, 1976; Maingueneau 1991; Mazière 2005) as well as tools provided by the Anglo-Saxon traditions of systemic-functional grammar (Eggins 1994; Halliday 2004; Caffarel 2006), and critical discourse analysis (Hodge and Kress 1991; Simpson 1993; Fairclough 1989; Fairclough and Chouliarki 1999). The paper aims at showing how

the *Constitution* enters in contact with discourses and text types untypical of law and EU law, thus raising fundamental questions about the discourse type and discourse genre of law. Another goal is to demonstrate how laws which do not regulate behaviour make ideologies appear as accepted knowledge and universal truth. Indeed, while law is the ultimate discourse of the will to truth (cf. Foucault 1969), the question arises as to whether it is powerful enough to bring into being a new European identity.

The paper starts with a brief history of the *Constitution*. Subsequently, it describes the most important theoretical notions on which it draws and the methodology it uses. Finally, the paper provides an analysis of key passages of the *Constitution*, i.e. passages most closely related to European identity, and discusses the repercussions the findings might have on the theory of discourse and ideology.

2. A brief history of the EU Constitution

There are three main categories in EU law: primary legislation, international agreements, and secondary legislation. The three founding treaties, *Treaty establishing the European Community* (hereinafter *EC*), *Treaty on European Union* (hereinafter *EU*), and the *Treaty establishing the European Atomic Energy Community*, form the core of primary legislation; they have been amended 15 times by different treaties and other acts. Primary legislation is binding to the member states (art. 299.5-6 *EC*) and has to be compatible with national constitutions (art. 299.1 *EC*). Today, primary legislation consists of approximately 2,800 pages in 17 different treaties and acts (Piris 2006: 56). One of the aims of the *Constitution* is to simplify this complex system.

Principles, as opposed to legally binding *rules* (see Dworkin 1977 and 1986 for these terms), started to proliferate in EU primary legislation with the 1987 *Single European Act* and the 1992 *Treaty on European Union*. The genesis of the *Constitution* was triggered by the Declaration 23 on the future of the Union, included in the 2000 *Treaty of Nice*. Among other things, this declaration recommended ‘a simplification of the Treaties with a view of making them clearer and better understood without changing their meaning’, a more precise division of powers between the Union and the member states, and a decision about the status of the Charter of Fundamental Rights of the Union, adopted in Nice in December 2000. Concrete steps were taken by the December 2001 European Council which stressed the need to make the EU more democratic, transparent, and efficient and decided to establish a Convention on the Future of Europe composed of representatives from the European Parliament and the European Commission, as well as national parliaments and governments. In addition, observers and alternates representing social partners and several EU committees participated in the Convention’s activities. The European Council of December 2001 had mentioned the drafting of a constitutional treaty as a possible outcome of the Convention; indeed, the Convention eventually became a constitution-drafting body. An Intergovernmental Conference started its work in October 2003 in order to reach an agreement on the final text, in particular with the aim of rendering it compatible with existing EU and national legislation. The Conference approved the text in June 2004 (see Piris 2006: 38-55 and Milton and Keller-Noëllet 2005 for a more detailed analysis).

At the time of this writing, the *Constitution* has been approved by national parliaments in thirteen member states and by a referendum in two states. Referenda

held in France in May 2005 and in the Netherlands in June 2005 disapproved of the text. The German presidency of the EU during the first half of 2007 has set the revival of the Constitution as one of its goals, while at same time admitting that a real breakthrough is not likely (see, e.g. Deutsche Welle 2006); in fact, no concrete decisions can be made before presidential elections in France in April-May 2007.

3. Discourse, ideology, and the language of law

For the purposes of this paper, discourse is understood as a practice organizing systematically the objects of which it talks. A discursive formation, on the other hand, consists of the regularity between such objects and the types of act (*énonciation*) in which they emerge (Foucault 1969: 53, 67). The goal of discourse analysis, then, is to determine why a certain fragment of discourse (statement or *énoncé*) and no other has appeared in a given place in a given time (ibid. 39). Examples of statements in this sense would include saying ‘Europe is united in diversity’, before and after the *Constitution*. Indeed, the clause meaning or grammatical meaning (*sens* in Foucault’s terms; *signification* within the theory of *énonciation* [see, e.g. Benveniste 1974, Ducrot 1984] and in subsequent work within French discourse analysis) of this clause is the same in 2003 and in 2004. However, its discourse meaning or contextual meaning (*sens*) is quite different because the discursive formation behind the conditions of its coming into being has changed. As a result, produced before and after the *Constitution*, this clause constitutes a different statement (*énoncé*). Discourse thus appears to be a context-based restriction of meaning of all individual language use (Mazière 2005: 10), or ‘language use conceived as socially determined’ (Fairclough 1989: 22).

Ideology, within this theoretical framework, consists of a systematic network of beliefs (or ‘a systematic body of ideas, organized from a particular point of view’; Hodge and Kress 1991: 6) which needs discourse as its medium of expression. Thus, we cannot study ideology directly, we can only study discourse, for ideologies are reified or materialized in discourse. An example of an ideology is the idea of a new European identity, examples of discourses include legal discourse and political discourse.

Discourse types (or briefly, discourses) therefore correspond to a particular discursive formation and take the form of different discourse genres (see, e.g. Adam 1999: 85). And while the genre of a text can be defined by examining its finality or intention, several discourse types can appear within the same text. The distribution of prototypical sequences within a text, on the other hand, determines the *text type* of a text: descriptive, proscriptive, narrative, and so forth (Adam 2005). And while there is a close connection between a discourse type, a discourse genre, and a text type, these do not form a uniform matrix: within one genre, there can be texts pertaining to several text types; within one discourse, there can be texts assigned to several genres and text types. Discourses, genres, and text types thus form a complex network of interdiscursivity and intertextuality.

Law can be both a *discourse type* and a *discourse genre*. However, in traditional approaches to law and language, law is considered to be ‘an autonomous text’ (Goodrich 1987: 34). And since language is the ‘medium, process and product’ of law, many legal scholars believe in the existence of a specific language of law (Maley 1994: 11); they argue that the relation between legal language and reality is different from that of ordinary language and reality (Grzegorzcyk 1986: 185-186). From the

structural point of view, legal texts appear to have a specific form (Maley 1994: 19), and the particularities of the syntax and vocabulary of law have been widely studied, often with the aim of simplifying legal jargon.

On the other hand, Amselek (1986: 109) notes that many of Austin's (1975) examples of performativity come from legal discourse, and acknowledges that the particularity of legal discourse does not come from the locutionary component of language, but rather from the illocutionary force. Grzegorzczuk (1986: 188-9) also points out that the illocutionary force of an utterance such as 'X has killed Y' is different depending on whether it is uttered by a judge or jury or in 'normal' circumstances. In other words, the statement 'X has killed Y' does not originate from the same discursive formation when uttered by a judge and by a layperson. Thus, while the typical lexical and syntactic features of legal texts contribute to defining their characteristic text types and their genre, law would not be a discourse genre if certain conditions - the Austinian felicity conditions (Austin 1975: 14-5) - were not fulfilled.

However, although linguistic features are not the most salient characteristics of legal discourse, a linguistic analysis is an essential part of discourse analysis. Indeed, texts are meaningful only because they actualize the meaning potential of the linguistic system; the study of discourse therefore needs to include the study of the grammar without which the text could not have a material existence (Halliday 2004: 658). One of the many possibilities for conducting such an analysis is to study process types and participants, thus concentrating on the transitivity system within the experiential metafunction of the text, as developed within systemic functional grammar.¹ The remainder of this paper provides a transitivity analysis of the process types of certain key passages of the EU *Constitution* and acts related to it by interdiscursive chains.

4. Analysis of transitivity

The systemic functional grammar of English (see, e.g. Halliday 2004) distinguishes between material, behavioural, mental, verbal, relational, and existential processes. *Material* processes, which can be either creative or transformational, are processes of happening (being created), creating, changing, doing, and acting. In a prototypical case, they describe outer experiences, i.e., things that are going on outside the speaking subject. *Mental* processes, on the other hand, are processes of seeing, feeling, and thinking; they typically describe inner experiences, i.e., processes of consciousness. *Behavioural* processes represent 'outer manifestations of inner workings', they are thus on the borderline between material and mental processes. *Relational* processes are processes of symbolizing, of having an identity, and having an attribute; they generalize, relate one thing to another, identify, and classify (Halliday 2004: 170-172). Thus, both inner and outer experiences can be construed through relational processes, i.e., as processes of being rather than doing or sensing (ibid. 211). *Verbal* processes describe saying and meaning, i.e., 'symbolic relationships constructed in human experience and enacted in the form of language'; they are on the borderline between mental and relational processes. On the borderline between relational and material processes are *existential* processes, 'by which phenomena of all kinds are simply recognized to 'be''. While there are prototypical examples for each process type, the categories are essentially fuzzy (ibid. 170-172). Indeed, Caffarel (2006: 65) presents the different process types succinctly as follows: processes of *doing* (material and behavioural), processes of *projecting* (mental and verbal), and processes of *being* (existential and relational).

At least one participant is present in each kind of process: an *actor* and/or a *goal* in material processes, a conscious *behaber* in behavioural ones, and a conscious *senser* and possibly a *phenomenon* in mental processes. In verbal processes there is a *sayer*, optionally an *addressee* and/or ‘*verbiage*’; in existential processes, there is an *existent*. Often, but not always, the primary categories in each category conflate with the traditional notion of ‘subject’, reserved for the interpersonal metafunction within systemic-functional grammar. As for relational processes, the situation is somewhat more complicated: there is a *carrier* and an *attribute* in attributive processes and an *identified* and an *identifier* in identifying processes (ibid. 173), one of which typically functions as the ‘subject’ as well.

The category ‘object’ of traditional grammar can therefore correspond to a *goal* (material processes, e.g., ‘It [the EU] shall combat social exclusion and discrimination’, art. I-3.3 *Constitution*), a *phenomenon* (mental processes, e.g., ‘It [the EU] shall respect its rich cultural and linguistic diversity’, ibid.), or a *receiver* (verbal processes, indirect object, e.g., ‘A Member State which decides to withdraw shall notify the European Council of its intention’, ibid., art. I-60.1). The traditional category of ‘attribute’ or ‘predicative’, in relational processes, corresponds to an *attribute* (attributive relational processes, e.g. ‘These values are common to the Member States’, ibid., art. I-2), or an *identifier* (identifying relational processes, e.g. ‘The Union’s aim is to promote peace, its values and the well-being of its peoples’, ibid., art. I-3.1). In addition, non-compulsory participants, such as the *circumstance*, can appear in any process type.

The distribution and mixture of different process types gives a particular flavour to a text and contributes to determining the *text type* and the *discourse genre* to which it pertains. In addition, the transitivity grammar ‘construes a particular world view’ specific to the text in question (Halliday 2004: 174, 283): it inscribes the text within a particular *discourse type* by encoding *ideologies* in the textual grammar.

Part I of the *Treaty establishing a Constitution for Europe* starts with a long title dedicated to the ‘definition and objectives of the Union’; it includes eight articles on the establishment of the Union, the Union’s values and objectives, fundamental freedoms and non-discrimination, relations between the Union and the member states, Union law, legal personality, and the symbols of the Union. art. I-2, labelled ‘The Union’s values’, presents the foundations of the Union as follows:

1) The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

A preliminary analysis indicates that the foundations are described as a material process of the creative kind in the passive voice (‘is founded’) and as a relational process of the attributive kind (‘are’). Besides, there is an elliptical existential process (‘values of’ implying that there *are* values) and another existential process in a subordinated relative clause (‘prevail’). ‘The Union’ functions experientially as the goal of the clause; at the same time, it takes the interpersonal role of the subject and, therefore, modal responsibility. There is no explicit *actor* (agent) in this clause; the long list of ‘values of respect for’ functions as a *circumstance*. On the other hand,

although the process is presented as self-engendering, one could argue that the actor is in fact implicitly present in the circumstance (cf. Caffarel 2006: 62). Indeed, it is difficult to distinguish the actor and the goal in abstract processes (Eggins 1994: 196), for the foundations of an abstract entity cannot but consist of a lexical metaphor.

Similar process types appear in the preamble of the Charter of Fundamental Rights (Part II of the *Constitution*): ‘Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law’.

In the *EU Treaty* of 1992, the foundations appear on two occasions. First, according to the article 6.1 of this treaty, ‘The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States’. The process is thus a material one of the creative type, ‘the principles of liberty, respect for human rights and fundamental freedoms, and the rule of law’ functioning as a circumstance on which the process takes place; it can also be interpreted as the implicit actor.

The other occasion on which the *EU Treaty* mentions the foundations of the Union (art. 1) is quite different from the *Constitution*: ‘The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty’. The most striking difference concerns the choice of the circumstantial element, i.e., the actual foundation of the Union. In addition, while the process is once again a material one of the creative kind, the verb is preceded by the modal verb ‘shall’, typical of legal discourse in legally binding provisions, i.e., provisions providing norms, provisions which are *rules* rather than *principles*. The corresponding passage in the *EC Treaty* (art. 23.1) uses the same modifier:

2) The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between the Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

The transitivity structure of this passage is therefore somewhat more complicated: there is one main clause consisting of a material process of the creative type including the modal verb ‘shall’ and the circumstance ‘upon a customs union’, further expanded by two relative clauses encoded in attributive relational processes (‘shall cover’, ‘shall involve’), the latter of which is expanded by yet another degree (‘having’). In addition, grammatical metaphors, presenting a dynamic process as a static noun, are salient in the second relative clause (‘prohibition’, ‘adoption’); they enable the shift from a material process to a relational one.

Similar creative processes with the verb ‘base’ and the modifier ‘shall’ appear on several occasions in the *Constitution*, for instance: ‘Any common price policy shall be based on common criteria and uniform methods of calculation’ (art. III.228.2) and ‘The common commercial policy shall be based on uniform principles’ (art. III-315.1).

Thus, there seems to be two kinds of foundations of Europe. First, there is a *normative foundation* expressed by the verb ‘base’ accompanied by the modal verb ‘shall’ and a circumstance consisting of an explicit nominal syntagma comprising just one noun. Second, there is a *foundation in principle*, expressed through a clause with the verb ‘found’ and a circumstance consisting of a long list of items, including nominalized processes and relational subordinate clauses, occasionally further expanded through

relational clauses. While both ‘found’ and ‘base’ are transitive verbs and can thus have both an actor and a goal, only goal is explicitly present in all the examples; in all of them, the goal also fulfils the interpersonal function of the subject, in all of them the goal and the subject also fulfil the textual function of the theme. However, it is only when the circumstance of the clause comprises a long list of values and principles that the circumstance can be interpreted as being in fact an implicit actor.

5. Towards the materialization of ideologies

While the *EC Treaty* presents the Customs Union as the basis of the Union encoded in a creative material process, the *Constitution* (art. III-151) encodes the Customs Union in an attributive relational clause: ‘The Union shall comprise a customs Union [...]’. On the other hand, the presence of the modifier ‘shall’ clearly makes this provision a rule. The presence of the modal verb expressing obligation therefore appears to be more important than the clause type in indicating the legally binding character of a provision: rules can appear in any clause type as long as the modal verb is present (see Williams 2006 for a discussion of the modal verb ‘shall’ in legal English)

Besides, ‘found’ and ‘base’ are far from being synonymous. In fact, ‘base’, in EU law, appears to mean ‘derive’ rather than ‘found’: ‘The anthem of the Union shall be based on the ‘Ode to Joy’ from the Ninth Symphony by Ludwig van Beethoven’ (art. I-8 *Constitution*). Comparison with other language versions corroborates this interpretation: ‘é extraído do hino à Alegria’ (Portuguese), ‘se toma del Himno a la Alegría’ (Spanish), ‘enstammt der Ode an die Freude’ (German), ‘est tiré de l’Ode à la joie’ (French), ‘är hämtad från Hymn till glädjen’ (Swedish), etc.²

The Finnish version, however, encodes this passage in an identifying relational process: ‘hymnin perustana on ote Oodi ilolle’; thus encoding the idea of extraction in a noun meaning ‘basis’ or ‘foundation’. While the structure of Finnish is quite different from Indo-European languages, this translation is not coincidental. Indeed, the classification as material of process types such as ‘is founded on’ and ‘is based on/upon’ in the passive voice is ambiguous. In fact, although the verb is a prototypically material verb of the creative kind (referring to the bringing into being), past participles of material verbs can actually function as attributes in relational processes (Halliday 2004: 226). Thus, rather than obscuring meaning because the agent is not explicitly expressed (cf. Hodge and Kress 1991; Muntigl et al. 2000: 14), such constructions can obscure the difference between a dynamic process and a static state and the distinction between actors, goals, carriers, and attributes.

Thus, there appears to be a movement from materiality towards relationality, i.e., a shift from dynamic action towards static relations. Many language versions in fact present some of the passages under scrutiny here clearly as relational processes: ‘La Unión tiene su fundamento en las Comunidades Europeas’ (art. 1 *EU* in Spanish), ‘Grundlage der Gemeinschaft ist eine Zollunion’ (art. 23 *EC* in German), ‘Grundlage der Union sind die Europäischen Gemeinschaften’ (art. 1 *EU* in German), ‘Yhteisön perustana on tulliliitto (art. 23 *EC* in Finnish), ‘Unionin perustana ovat Euroopan yhteisöt’ (art. 1 *EU* in Finnish) and ‘Unionin perustana olevat arvot ovat ihmisarvon kunnioittaminen, vapaus, kansanvalta, tasa-arvo, oikeusvaltio ja ihmisoikeuksien kunnioittaminen [...]’ (art. I-2 *Constitution* in Finnish).

In Spanish and Portuguese, the clitic pronoun ‘se’ enables to present the seemingly material process as explicitly self-engendering: ‘La Comunidad se basará en una unión aduanera’ (art. 23.1 *EC*), ‘La Unión se basa en los principios de libertad,

democracia, respeto de los derechos humanos y de las libertades fundamentales y el Estado de Derecho [...] (art. 6.1 *EU*), ‘La Unión se fundamenta en los valores de respeto de la dignidad humana, libertad, democracia, igualdad, Estado de Derecho y respeto de los derechos humanos’ (art. I-2 *Constitution*) ; ‘A União funda-se nas Comunidades Europeias’ (art. art. 1 *EU*), ‘A União funda-se nos valores do respeito pela dignidade humana, da liberdade, da democracia, da igualdade, do Estado de Direito e do respeito dos direitos’ (art. I-2 *Constitution*). In fact, the Finnish infix ‘-u-’ can also be interpreted as a marker of self-engendering: ‘Unioni perustuu jäsenvaltioille yhteisiin vapauden, kansanvallan, ihmisoikeuksien ja perusvapauksien kunnioittamisen sekä oikeusvaltion periaatteisiin’ (art. 6.1 *EU*).

While such differences raise several questions related to the meaning of EU law in different language versions and the definition of European identity as an ‘idiom’ of translation (cf. Balibar 2003; Eco 1994), the fact that the French text uses ‘L’Union/La Communauté est fondée (sur)’ in almost all the instances analyzed here, whether rendered by ‘found’ or by ‘base’, with or without ‘shall’ in English, with or without a clitic pronoun in Portuguese and Spanish, raises even more fundamental questions concerning the translation, the interpretation, and the meaning of EU law.³ For example, significant differences between the Estonian, Finnish, Swedish, and English versions of the *Constitution* (art I-11, analyzed by Nemvalts 2006) appear to indicate that the Estonian and Swedish texts are based on the French version whereas the Finnish text is closer to the English version which in this case levels down some of the distinctions made in the French text (see Blomquist 2006 for more examples of EU translations).

The inclusion of provisions consisting of principles rather than of legally binding rules does not alter the nature of EU law as a discourse genre drastically: if the principles were left out, the text would still be part of EU law: the goal would still be to regulate. However, rather than regulating behaviour, providing norms, and defining the sanctions resulting from the disobedience of these laws, provisions that consist of principles regulate opinions and provide normative definitions of concepts with no material existence – they materialize ideologies. And when an ideology such as European identity enters a discourse genre with a high degree of materializing power such as law, EU law, or EU constitutional law, it has more chances of becoming generally accepted knowledge and being naturalized (see Simpson 1993: 6 for this term). Finally, once an ideology has been reified in such a powerful discourse, its further reiterations in other discourses, including discourses from which it originates, are more powerful. For why most statements are doomed to oblivion and disappear as soon as the act in which they appear is over, others get repeated over and over again: these are discourse types which generate new acts because they remain to be said anew—they become sources of performative reiterativity (cf. Derrida 1972: 365-93). Religious, legal, juridical, and, to a certain extent, literary texts, are examples of such discourses (Foucault 1971: 24; see also Maingueneau 1991: 20-21).

Thus, when political discourses such as the discourse on European identity are included in EU law, this movement transforms the status of the statements of which it consists: they no longer pertain exclusively to political discourse but also to juridical discourse—they become what Maingueneau (*ibid.* 138) labels ‘authoritative citations’. While the clause meaning of these statements may not have changed, their discourse meaning is quite different: they no longer just *refer* to Europe and the European Union— they effectively *define* both Europe and the European Union.

The inclusion of these undoubtedly important items in EU law—items more humane than the traditional, legally binding provisions which dictate the rules of trade and other policy areas of primary importance—can be seen as empowering. But such codification and empowering also means becoming part of a network of power and defining the concepts for good. Indeed, while there is no single legitimate origin for a statement (cf. Maingueneau 1991: 18), central positions reside within law; law seems to have become the ultimate discourse of truth (cf. Foucault 1971) by its very ability to provide authoritative definitions of things which exist only in our minds.

6. Conclusions

To state that relational processes are ‘pushed the furthest in registers of science, administration, business, and the law’ (Halliday 2004: 214) is linked to the stereotypical, traditional view of law as a discourse genre characterized by its precision. Thus, according to the *Joint Practical Guide* (European Communities 2003: 10-18) for those involved in the drafting of EU law, in order to guarantee the ‘equality of citizens before the law’ and ‘legal certainty’, the drafting of legislative acts should be ‘clear, easy to understand and unambiguous’, as well as simple, concise, and precise. The fact that legislation is binding in several languages is a particularly important concern: terms as simple as possible should be used, synonyms and different expressions for the same idea, as well as illustrative clauses, avoided. The *Joint Practical Guide* also recommends that ‘elliptical turns of phrase or short cuts are to be avoided’ and ‘the grammatical relationship between the different parts of the sentence must be clear’. Thus, the *Constitution* drafted by the European Convention had to be corrected by a Working Party of Legal Experts ‘for reasons of legal certainty’ because it contained ambiguities, inconsistencies, lacunae and incorrect drafting; the revision was based on documents drafted in French (Piris 2006: 50-51).

Many analysts have discarded as erroneous the idea of legal discourse being prototypically precise (see, e.g. Gibbons 2003, Charnock 2006, Janicki 2006); through my analysis of meanings encoded in the *textual* grammar, I hope to have shown that this appears to be the case also in EU law. And yet, part I of the *Constitution*, from which most examples analyzed in this paper come, is the easiest to read and fits best the goal of making EU law more easily accessible to the citizens (Piris 2006: 58-60).

According to Piris (2006: 133), ‘the provision on the Union’s values is not only declaratory’: future member states have to respect these values in order to join the Union; current member states can be sanctioned if they do not respect the EU’s values. However, I would argue that it is virtually impossible to sanction a current member state for the lack of respect of these values: while art. I-59.2 of the *Constitution* does provide for a procedure of enacting a European decision on such a matter, it requires the unanimity of all twenty-five member states regarding the *existence* of a serious breach of the values specified in art. I-2. Besides, principles do not convey specific rights to persons; rights and principles only apply to EU law and EU institutions, as well as to the implementation of EU law in the member states. True, EU citizens might have difficulties in understanding all these nuances (Piris 2006: 136, 138, 142).

Presenting the existence of values behind the foundations of the EU as a seemingly material process, i.e., as a dynamic happening in time, rather than a static relation, could give the impression that these values are the outcome of EU action. Indeed, while relational processes always require two participants, encoding a phenomenon as

a material process provides the advantage of emphasizing the goal as the only real participant of the process. In all the examples discussed in this paper, this participant is the European Union. And while passive constructions do not necessarily require an agent, i.e., a doer, the fact that the goal takes the interpersonal function of the subject can give the impression that the doer behind the deed is the European Union. Indeed, the passive voice and the blurring of the boundaries between relational and material processes are needed in order not to make too salient the role of the implicit actor embedded in the circumstantial element. Thus—somewhat paradoxically—the categorizations, generalizations, and definitions typical of relational process become more compelling when they are presented as action, as happening now, rather than as already existing states.

Law, in modern societies, is always written and codified. Writing increases the symbolic value and perceived or imagined power of any text: highly codified and canonical texts, such as law or sacred texts, are thus believed to be more powerful than any other discourse, even when they do not contain explicit rules and sanctions. Legal texts have this materializing force even when the directive function of law is not clear, as is the case in the examples discussed in this paper. The fact that these statements are codified as law and ‘performed’ by the relevant authorities therefore makes them more powerful than the simple act of uttering them in an ordinary context. The enacting of principles in legal discourse therefore provides normative definitions of concepts and codes of thinking—it materializes ideologies. Europe’s values and principles are no longer part of a vague political discourse on European identity and the destiny of the continent; they have become the source of authoritative citations.

¹ An exploration of all the metafunctions is not possible here due to space limitations. The results of the present analysis should therefore be considered preliminary. Grammatical metaphors and agency in particular need more investigation.

² The sources of other language versions of the Treaties are not included in the bibliography; they can be easily retrieved on the EUR-LEX website (<http://eur-lex.europa.eu/en/index.htm>).

³ While English uses ‘shall’ in exacting terms of binding acts, French uses the present tense (European Communities 2003: 11).

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