

Mapping Human Rights, Reading the European Union

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Abstract: *The EU's human rights policy has provoked increasing scholarly attention over the last decade. Yet rarely has it been subjected to rigorous analysis in the context of any integration theory. This article is an attempt to rectify the omission. By building on the approach of historical institutionalism, whilst at the same time recognising its analytical deficiencies, a method of reading the EU and interpreting its human rights policies is promoted. Specifically, the article contends that an analysis based on the textual nature of the EU and the configuration of this text through 'institutional narrative' will enable a better understanding of the institutional logic behind the construction of human rights policy. An agenda for research and analysis is thus suggested that might map the development of human rights in the EU and predict the compass of future policy direction more effectively.*

I Introduction

Human rights in the EU is a complex subject within a complex environment. It is definitionally vague and beset by fundamentally opposing outlooks and philosophies. It is also a subject that crosses institutional boundaries so that all the actors in the EU have become involved at some time or another in making decisions and perfecting practices that have a human rights dimension. Even before the notion of 'mainstreaming'¹ became institutionally fashionable, human rights issues would surface across the spectrum of EU activity. It is hardly surprising therefore that attempts to construct a human rights policy in such a multifarious environment have suffered from conditions of confusion, incoherence, inconsistency and lack of direction.²

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¹ The term adopted by the Council in its Annual Report on Human Rights 2001, Council Doc. No. 12163/01.

² For a recent example of a broad examination of these policy defects see Philip Alston *et al* (eds) *The EU and Human Rights* (Oxford University Press, 1999) and in particular the reported agenda of the *Comité des Sages* at 921–927. See also Andrew Williams, 'EU Human Rights Policy and the Convention on the Future of Europe: A Failure of Design?' (2003 forthcoming) *European Law Review*.

Despite this induced state of perplexity, the importance of human rights has grown in both the constitutionalisation of the EU and the construction of its practices. For instance, over the past decade the revised Article 7 TEU has been invested with the promise of an internal scrutiny and enforcement of human rights standards that had hitherto been eschewed in the context of the EU's internal activities. The Council and Commission have promoted more comprehensive transparency in its human rights work. They have also, with the European Parliament, instituted numerous human rights practices across a range of policy areas, the most notable being in development relations,³ in the analysis of those states currently seeking accession to the EU,⁴ and in their determination to counter the spectre of racism and xenophobia.⁵ Furthermore, the adoption of the European Union Charter of Fundamental Rights at the Nice IGC in 2000, the electoral success of right wing political parties in various Member States, the reaction to terrorist events around the world and the effects of globalisation and poverty on less developed countries, have all contributed to set human rights issues firmly at the heart of moves for constitutional reform. Now discussions on the future of human rights and the EU are beginning to emerge in the context of the Convention on the Future of the Union and the draft Constitutional Treaty.⁶ The Laeken Declaration in particular asked whether the EU Charter should be incorporated within the Treaties and whether the EU should accede to the European Convention on Human Rights, both questions prompting affirmative answers from the Convention process.⁷

Ultimately these developments imply that the EU is engaged in a search for clarity on a number of important questions. Specifically, what competence should it have vis-à-vis the Member States both internally and externally? What actions should it oversee and to what extent should it be involved in the development of human rights, their definition, monitoring and enforcement? Can the EU, in fact, aspire to a status as some form of human rights organisation, as Armin von Bogdandy has considered?⁸

To begin to answer these questions an understanding of the EU's past and current human rights practices must first be furnished. An appreciation of how and why the present human rights policies have been constructed is a necessary precondition if reform is to be properly countenanced. Without such a contextual understanding it is difficult to imagine how meaningful change can be instituted or, for the analyst, how future decision-making can be predicted.

It is strange, however, that there have been few serious attempts to carry out such an endeavour. Indeed, rarely has the theme of human rights and the EU been analysed from the perspective of integration theory to explain the trajectories of policy and practice that have clearly evolved. Countless examinations may have been conducted on the general topic, primarily in relation to the jurisprudence of the Court of Justice, but

³ See Marantis Demetrios James Marantis, 'Human Rights, Democracy, and Development: the European Community Model' (1994) 7 *Harvard Human Rights Journal* 1–32.

⁴ See Andrew Williams, 'Enlargement of the Union and Human Rights Conditionality: A Policy of Distinction' (2000) 25 *European Law Review* 601–617.

⁵ Article 13 TEC and its attendant directives have supplemented various initiatives including the creation of the Vienna Monitoring Centre on Racism and Xenophobia.

⁶ See European Council Declaration at Laeken December 2001, EU Bull 12-2001 Annex 1 to Presidency Conclusions and the draft Constitutional Treaty 26/27.5.2003 available at <<http://european-convention.eu.int/bienvenue.asp?lang=EN&Content>>.

⁷ See Article I-7 of the draft Constitutional Treaty *ibid*.

⁸ Armin von Bogdandy, 'The European Union as a Human Rights Organisation? Human Rights and the Core of the European Union' (2000) 37 *Common Market Law Review* 1307–1338.

there is little in the way of a sustained critical approach to the broad sweep of the EU's human rights activity over its history.

One of the reasons for this relative lack of critical analysis may well be the complex nature of the subject. It is not easily compartmentalised, nor is it simply identifiable as the product of Member State governments' preferences. As Joseph Weiler and Philip Alston have observed 'despite the frequency of statements underlining the importance of human rights and the existence of a variety of significant individual policy initiatives, the European Union lacks a fully-fledged human rights policy'.⁹ There is no Directorate-General responsible for all human rights issues, no Commissioner charged with coordinating practice, and no designated human rights budget. One might argue therefore that there is no pattern to be deciphered, no path of integration to follow and no policy as such that can be uncovered. However, this would contradict the evidence. Human rights practices of the EU institutions have certainly matured during the course of its history. The story has been told on frequent occasions.¹⁰ Consequently, the complexity of what may be termed this 'policy field' should not preclude theoretical investigation. Rather, the application of an analytical methodology that can cope with the temporal and institutional nature of the EU's performances as well as explain the evident sense of progression becomes a necessity.

The purpose of this article is to explore one such approach. It does so by first suggesting in Part II that the currently fashionable method advocated in the name of historical institutionalism provides a useful point of departure. Such an approach recognises that 'political development must be understood as a process that unfolds over time'.¹¹ It also operates on the premise that the institutional context of the EU matters. It contends that it is this environment, within which actors make their decisions, that helps *shape* policy choices and establish unwritten 'rules' of doing business that act upon decision-makers so as to constrain their judgement. It is, therefore, possible to determine the coherence that binds decisions and practices to some institutional 'path'. Even in the absence of an apparent and identifiable 'policy' structure, and faced by a seemingly impenetrable complexity, the development of a subject field such as human rights over time can be traced and better understood.

Despite the attractiveness of this approach it is undermined in one important respect. It does not fully explain what places a constraint upon actors that operates across time. It inadequately describes how the institutional context manages to control decision-making temporally, to follow a particular line however imprecisely drawn. Historical institutionalism might point to an awareness of the 'significance of temporal processes'¹² but it does not, perhaps perversely, consider any of the problems associated with the reading of such processes, indeed with the act of reading and composing history. Consequently, the conceptual difficulties associated with attempting to track a

⁹ See Joseph Weiler and Philip Alston, 'An 'Ever Closer Union' in Need of a Human Rights Policy: the European Union and Human Rights' in Philip Alston *et al op. cit.* note 2 *supra* at 7.

¹⁰ Notable examples of this rendition are: Christiane Duparc, *The European Community and human rights*, (Commission of the European Communities, 1992); Manfred Dauses, 'The Protection of Fundamental Rights in the Community Legal Order' (1985) 10 *European Law Review* 399; Andrew Clapham, *Human Rights and the European Community; A Critical Overview* Vol. 1 (Nomos, 1991); and Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials* 2nd edn (Oxford University Press, 1998) 296–348.

¹¹ Paul Pierson, 'The Path to European Integration: A Historical Institutional Analysis' (1996) 29 *Comparative Political Studies* 123–163 at 126.

¹² *ibid.*

sequence of policy decisions by re-constructing a 'path' of action and practice, are ignored. This is a significant analytical deficiency and undermines the likelihood for an effective reading of EU policy development. A revision of the historical institutionalist approach is therefore required.

Part III commences such a revision. It argues that in order to conduct a study of human rights in the EU it is imperative that the relevant context first be properly identified. The institutional nature of the EU provides a working but not necessarily sufficient interpretation. One must also appreciate that for the EU context is also historically determined to an important extent by its 'text'. In this respect the text functions as more than merely a representation of the EU's history. It also acts to provide greater definition of the institutional form and the parameters within which actors perceive they may operate. The text is therefore both the projection of the EU and a vital part of its project, both reflective and constitutive. The text cannot be wholly distinguished from the context for the purposes of investigation.

Part IV follows this line of enquiry to then suggest that it is the organisation or configuration of the text, delivered in the institutional setting of the EU, which helps shape any particular policy field's progress and direction. The text, recording actions and practices, is organised through the operation of what may be termed 'institutional narratives.' These in turn organise and constrain the extent and nature of the institutional decisions contemplated. In adopting such a perspective the *historiographical* aspects of the reading of the EU text/context are drawn into policy analysis in effect refining the historical institutionalist form of investigation.

Finally, Part V explores the consequences of this theoretical stance for the analysis of law and policy in the EU. By appreciating the literary and historiographical aspects of the text it may be possible to read the institutional narratives that have helped shape decisions.

In sum, therefore, the article details how the trajectories of human rights practice can be interpreted and the EU's policy in the field mapped.

II The Institutional Context of the European Union

Since its inception the EU has presented peculiar theoretical problems associated with its description, definition, and development. For it is, in many ways, a phenomenon, an entity that is 'neither society nor nation nor state'.¹³ It has not evolved as an institution or régime in the way that nations of Western Europe have evolved nor has it emerged as a simple product of culture or popular uprising.¹⁴ Rather, it was created through agreement between States and more or less independent actors, albeit ones complicit in those States. Subsequently it has developed both as a product of external intervention (through the influence and practices of Member State governments as well as other actors) and internal initiative (through its institutions).

The novelty of the EU as a political entity has meant that the means by which it has come into being and has since developed have been difficult to identify with any

¹³ Philip Allott, 'The Crisis of European Constitutionalism: Reflections on the Revolution in Europe', (1997) 34 CMLR, at 444.

¹⁴ Hartmut Kaelble, tells the story of the EU as a 'top-down' process rather than a product of social movement. See, H. Kaelble, *A Social History of Western Europe 1880–1980* (Gill and Macmillan, 1987) at 161.

certainly.¹⁵ As a result a wide range of theoretical interpretations has been applied to the subject, in particular to the process of 'integration'. There are those who advocate that the EU has emerged as the product primarily of intergovernmental agreement¹⁶ and those who see it as a developing polity, a structure that has evolved from a gradual process of autonomous assumption of power through a process of 'spill-over'.¹⁷ Others, like Joseph Weiler, claim that the EU is a 'non-unitary' polity¹⁸ or suggest the promise of a post-modern régime.¹⁹ The formation of policy networks, whereby the EU is one focal point for various actors wishing to co-operate with a view to shaping political decisions, has been advocated²⁰ and similarly, the institutional nature of the EU has provided the basis for analysis.²¹

Howsoever conceptualised, one core acknowledgement is implicit. The EU has evolved into an important source of governance, an entity from which emanates decisions and actions, law and regulations that can and do both influence and direct the political and economic endeavour of its constituents.²² Such governance has manifested itself formally through the creation of a legal order and institutional structure reliant upon notions of supremacy, direct effect and direct applicability to give it force. Informally, the level of governance is less transparent but can be inferred from the application both of 'soft law' in certain areas of competence *and* the systems of cooperative action that are channelled through and by the EU institutions. Through the interaction of these formal and informal aspects the EU has come to be recognised as a source of decision-making that warrants engagement in order to shape those decisions.

The difficulty represented by such a complex governance structure has been the interpretation of what have been termed 'patterns of rule', those indicators that suggest a policy of some definition has emerged from the site of the EU that can then be traced so as to better understand decisions already made and predict the likely trajectory for EU action. Matters are even more complex when faced with a policy field, such as human rights, that fails to be easily compartmentalised.

One analytical method promoted with increasing vigour over the past decade is that of 'historical institutionalism.' This 'critique' as Paul Pierson describes it, readily

¹⁵ Indeed, there might be little to be gained by attempting a totalising description. Any exclusionary definition may well prove restrictive in terms of the interpretation of action. Activities that do not 'fit' any description become ignored thereby rendering any evaluation of policy open to the criticism of being falsely constructed.

¹⁶ See for instance A. Moravcsik, 'Preferences and Power in the European EU: A Liberal Intergovernmental Approach' in S. Bulmer and A. Scott (eds) *Economic and Political Integration in Europe* (Blackwell, 1994) 29–80.

¹⁷ The functionalists and neo-functionalists such as Ernst Haas represent such a view. See E. Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950–1957* (Stanford University Press, 1958).

¹⁸ The term employed by J. H. H. Weiler in his classic essay, 'The Transformation of Europe' revised and reproduced in *The Constitution of Europe* (Cambridge University Press, 1999) at 14.

¹⁹ See I. Ward, 'Identity and Difference: The European Union and Postmodernism' in Jo Shaw and Gillian More (eds.) *New Legal Dynamics of European Union* (Clarendon Press, 1995). See also H. Schepel, 'Legal Pluralism in the European Union', in P. Fitzpatrick and J. H. Bergeron (eds) *Europe's Other: European Law Between Modernity and Postmodernity* (Ashgate, 1998) 47–66.

²⁰ See, for instance, M. Castells, *The Power of Identity* (Blackwell, 1997).

²¹ See in particular S. Bulmer, 'Institutions and Policy Change in the European Communities' (1994) 72 *Public Administration* 423–444 and P. Pierson, *op. cit.* note 11 *supra*.

²² By constituents I mean the Member States and all other persons, legal or otherwise, who are directly affected by the EU's actions and decisions.

accepts the complexity of both the EU context and the construction of policy within its domain. It recognises the institutional nature of the EU as one that provides the 'persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain states and shape expectations'.²³ These 'rules' are examined empirically by incorporating 'detailed analyses of particular cases'²⁴ and bringing together 'high-profile politics' with 'day-to-day policy making'.²⁵ In so doing, a governance régime can be re-constructed so as to determine how any particular policy has come to be structured.

Colin Hay and Daniel Wincott have described the nature of this approach as allowing change to be 'seen to reside in the relationship between actors and the context in which they find themselves, between institutional 'architects', institutionalised subjects and institutional environments'.²⁶ Policy choices within such an environment are structured by previous decisions but not necessarily in a way intended by the decision-makers. Rather, 'the trajectory of change up to a certain point itself constrains the trajectory after that point; and the strategic choices made at a particular moment eliminate whole ranges of possibilities from later choices while serving as the very condition of existence of others'.²⁷ Such an appreciation of actors' behaviour is described as 'path dependency'. As Hay and Wincott summarise, actors, 'appropriate a structured institutional context which favours certain strategies over others and they do so by way of the strategies they formulate or intuitively adopt'.²⁸ Decision-makers become wedded to a pattern of behaviour that has been developed over time within an institutional setting by reason, in part, of the sunk costs that make a fundamental redirection of policy unappealing and the future costs of a radical departure from that policy pattern.²⁹

At the site of the EU the nature of the institutional environment has given particular credence to this interpretative method. Pierson identifies a number of specific aspects worthy of note. The extent of the autonomy of the EU institutions (established both through law *and* practice), the political requirement for both long and short term planning at European level, the large range of issues that fall within the ambit of the EU's competence and concern, and the barriers to change effected by the difficulty in negotiating any radical departure from previously negotiated policy decisions, all contribute to the creation of a 'pattern of rule' and the entrenchment of a policy path.³⁰ Consequently the historical institutional method has been employed on numerous occasions to analyse how specific institutions or policies have been formed and continue to develop.³¹

²³ R. Keohane 'Neoliberal Institutionalism: a Perspective on European Governance' in R. Keohane (ed.) *International Institutions and State Power* (Westview Press, 1989) 1–20 as quoted by Simon Bulmer, 'New Institutionalism and the Governance of the Single European Market' (1998) 5:3 *Journal of European Public Policy* at 368–369.

²⁴ Pierson, *op. cit.* note 11 *supra*.

²⁵ Bulmer, *op. cit.* note 23 *supra* at 376.

²⁶ Colin Hay and Daniel Wincott, 'Structure, Agency and Historical Institutionalism' (1998) XLVI *Political Studies* 951–957 at 955.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Pierson, *op. cit.* note 11 *supra*.

³⁰ *Ibid.*

³¹ Pierson himself purportedly applies the historical institutionalist approach to European social policy. Other examples include studies of the EU's integrated Mediterranean Programmes (Marc Smyrl, 'When

Despite the self-professed rigorous nature of this methodology and the persuasiveness of its arguments, it is, as Peterson and Bomberg suggest, more a 'set of assumptions' than a 'proper theory'.³² In particular, it is difficult to discern the rationale that describes *how* actors should act in such a way, and why their agency is so constrained within an abstract 'pattern of rule.' In many respects, it is taken as read, assumed as *a priori* that the complex nature of institutional context helps shape political action. To this end an undue emphasis is placed on the set of negative assumptions that amount to describing the erection of barriers to change. Less attention is paid to those potential undercurrent prejudices and presuppositions that might guide policy direction.

The historical institutionalist view fails in particular to explain and more importantly interpret the construction *over time* of the complex and amorphous policy field that is human rights. For here we have a subject that is influenced by so many shifting issues of politics, economics, morality, and law (amongst others) that it is hard to determine how a rational choice can be perceived to have set a particular pattern of rule in place. The variety of actors who have become involved in the subject (all the institutions have assumed a role in one form or another) and the apparent confusion that has accompanied such uncoordinated activity make the assumption of a 'path' difficult to identify. Although Peter Hall and Rosemary Taylor suggest that historical institutionalism is well suited to embrace not only issues of rational choice but also the 'moral visions about what is good or just that speak to the self-identities of many political actors'³³ no insight is provided as to how such moral visions can be uncovered through analysis. The tools of interpretation offered are simply inadequate to excavate the deeper influences on policy construction. They do not reveal the Union's 'political unconscious' once described by Philip Allott as necessary to understand its 'philosophical and historical significance'.³⁴

Consequently, if we are to define any pattern of rule regarding human rights within this morass, and at the same time more fully understand the nature of the role of human rights within the EU, a more persuasive explanation is required of how the EU's activities have become structured and constrained. This is not to say that the central contentions of historical institutionalism are irrelevant. Rather they require refinement if the approach is to provide a convincing analytical tool. Above all, the means by which patterns of rule become cognisable by the relevant actors *over time* must be considered. Inevitably this means that the *historical* dimension of the historical institutional approach must be given added emphasis. Particularly, the theoretical problems presented by the *construction* and *communication* of a pattern of decisions over the course of time must be appreciated.

The starting point for this endeavour, I suggest, is not the adoption of another transplant of international relations theory. Social constructivism, as advocated by say

(and How) Do the Commission's Preferences Matter?' (1998) 36 *Journal of Common Market Studies* 79–99); EU Treaty reform (Thomas Christiansen, Gerda Falkner and Knud Erik Jørgensen, 'Theorizing EU treaty reform: beyond diplomacy and bargaining' (2002) 9:1 *Journal of European Public Policy* 12–32); and the Court of Auditors (Brigid Laffan, 'Becoming a 'Living Institution': the Evolution of the European Court of Auditors' (1999) 37 *Journal of Common Market Studies* 251–268.)

³² John Peterson and Elizabeth Bomberg, *Decision Making in the European Union* (Macmillan, 1999) at 21.

³³ Peter Hall and Rosemary Taylor, 'The Potential of Historical Institutionalism; a Response to Hay and Wincott' (1998) XLVI *Political Studies* 958–962 at 961.

³⁴ See Philip Allott, 'The The European Community is not the True European Community' (1995) 100 *Yale Law Journal* 2485–2500.

Jeffrey Checkel, may well identify the failure in all forms of institutionalism (rational choice, historical and sociological) to demonstrate 'how European institutions can construct, through a process of interaction, the identities and interests of member states and groups within them' but the proposed examination of the 'learning and socialization' of actors and the creation of the 'normative side of Europeanization'³⁵ still fails to explain *how* this interaction institutes a pattern of rule over a long period of time. Merely to rely upon detailed interviews with some actors engaged in the subject together with a wide spread of documentation does not provide the necessary theoretical tools for interpretation. However valuable these efforts are there is still missing a deep consideration of the *means* of policy communication adopted by the EU. Inevitably this turns us to a consideration of the EU's 'text'. For here lies vital source material for any policy analysis.

III The EU as Text

Perhaps because of its *sui generis* character, or possibly the fact that it has evolved without a general social movement or popular uprising, the EU has appeared to look to self-constituting means to project its existence, decisions and policies. From its inception, it has been recorded and projected as a polity through an increasingly sophisticated and comprehensive documentary archive. This may now be the product of a desire for transparency (witness the vast internet programme that has been created and the commitment to greater transparency in the draft Constitutional Treaty)³⁶ but in truth the transmission or communication of policy has always occurred largely through published text. Indeed, there is some argument for saying that the EU has become primarily a textual enterprise, a 'print community' that has arisen as such in the absence of any mass movement that could otherwise ensure its development through social practice.³⁷

The existence of this print community may be borne out by the preference that has been accorded to text in the life of the EU. Since 1957 a mass of literature concerned with its creation, its history, its development, and its practices has been produced. Largely the assumed responsibility of the Commission, although all of the EU organs contribute, the EU regularly generates remembrances of its progress and explanations of its purposes as well as simply recording the 'output' of the EU's institutions. Rather than through public displays that herald its presence in European life and seek to promote its ambitions the EU's project(s) have been *published*.³⁸ Consequently, the EU's political field and identity have been defined and promoted through its textual projections. Even when non-textual projections, such as the ritual that might be ascribed to the regularly held Intergovernmental Conferences, parliamentary sessions, the holding

³⁵ Jeffrey Checkel, 'Social Construction and Integration' (1999) 6:4 *Journal of European Public Policy* 545-560, at 548.

³⁶ See respectively <<http://europa.eu.int/>> and Article I-49 Draft Constitutional Treaty note 6 above.

³⁷ There are intended echoes here of Benedict Anderson's consideration of 'print capitalism' that played a vital role, he claims, in creating nations as 'imagined political communities.' See, B. Anderson, *Imagined Communities* (Verso, 1991).

³⁸ Timothy Garton Ash has pointed out that the 'EU has no public drama. The nearest one gets to political theatre is at important summits . . . but they are largely reported as international diplomatic fencing matches.' News Review *The Sunday Times* 6.5.2001 at 6.

of Europe Day, or the European flag, have been employed invariably the message is confirmed and communicated through text.³⁹

The EU's text, therefore, provides the documentary environment out of which policy flows and patterns of rule can be identified. In this sense, the text can be viewed as not only representing constituting acts but also as acting in itself as a collective act of constitution. Deliberate and cumulative, the text provides the most complete historical record of decisions, practices and attendant reflections that have been projected in the EU's name. It records and represents the constitutional events and discourses that have moulded the EU and the actions undertaken.⁴⁰ Equally, it performs a function. In essence, it serves to establish a constitutional presence, representing those institutions already described as formal (law and regulation) and informal (practice, precedent, convention, and prejudice) that influence policy makers. The text thus establishes the conceptual boundaries for possible action. It is both *reflective* of the EU institution and *generative* of its actions.

The nature of the text as described is indicative of a close relationship between context and text. Appropriately enough for an exercise in history, which the reading of policy necessarily entails (after all what is policy if not the writing of history—the history of decisions and practices that are deigned to be unified when defined as such), this view takes its cue from historiography. Dominick LaCapra, in particular, has suggested that, '[f]or the historian, the very reconstruction of a "context" or a "reality" takes place on the basis of "textualised" remainders of the past'.⁴¹ Equally, as Fredric Jameson points out, the 'text' may liberate us 'from the empirical object—whether institution, event, or individual work—by displacing our attention to its *constitution* as an object and its *relationship* to the other objects thus constituted'.⁴² Text and context can therefore be seen for the EU as connected constructs, each informing on the other.

For this reason the EU text provides a conduit for interpretation and understanding. LaCapra suggests that text can possess both documentary and work-like aspects. 'The documentary situates the text in terms of factual or literal dimensions . . . The worklike is critical and transformative'.⁴³ The text is, therefore, in the words of Hayden White, a 'process' not simply a 'product'.⁴⁴ It represents (and, in a formative and circular sense, acts upon) a network of relations that is its subject. Policy is also susceptible to this circularity of interaction between text and practice. The term 'policy' might even be utilised as shorthand for the political manifestation of the textual nature of constitution and representation. It suggests a course of action that evolves over time and assumes a formation that enables a classification to be ascribed to a particular field of activity. The very naming of a policy, or subject area such as 'human rights',

³⁹ The annual celebration of Europe Day is a case in point.

⁴⁰ In this respect it also incorporates the work of 'Europeanists' in so far as academic commentary is embraced by and within the institutional text.

⁴¹ Dominick LaCapra, 'Rethinking Intellectual History and Reading Texts' in Dominick LaCapra and Steven Kaplan (eds) *Modern Intellectual History: Reappraisals and New Perspectives* (Cornell University Press, 1982) 47–85 at 50. Some discussion concerning the problem of the distinction (or lack of it) between context and text can be found in Hayden White, *The Content of the Form* (The Johns Hopkins University Press, 1987) 185–213.

⁴² Fredric Jameson, *The Political Unconscious; Narrative as a Socially Symbolic Act*, (Methuen & Co, 1981) at 297.

⁴³ LaCapra, *op. cit.* note 41 *supra* at 52–53.

⁴⁴ Hayden White, 'Method and Ideology in Intellectual History' in LaCapra (ed.), *op. cit.* note 41 *supra*, at 280–310.

is tantamount to a textual intervention that both mirrors a political choice and acts as a means of ring-fencing a subject. Articulations that can then be ascribed to that policy, act so as to establish an authorised version of decisions that sanctions and helps confine the past and future institutional discourse in the designated field. It is the text that provides the concrete constraining forces on both activity and discourse to which historical institutionalism alludes. For the EU, therefore, which has generated an unheralded amount of projections in textual form, the vitality of the text must be recovered in any analysis.

Importantly, the interpretation of text as a constitutional operation is tacitly, if not explicitly, acknowledged on a number of levels within the EU itself. The development of a concept of *acquis communautaire* reflects the institutional desire to organise and present the text as both constituting and constitutional. It records a textual history and prescribes the future actions of the EU and those operating within its system in a constantly evolving and *re-volving* process. Even though the *acquis* may be subject to various interpretations, to the extent that Knud Erik Jørgensen feels able to conclude that 'there are several meanings of *acquis* in circulation',⁴⁵ the very adoption of the concept illustrates the institutional preference for text as a constituting force. The text may be of indeterminate extent but there remains nonetheless a strong suggestion that the EU's governance emerges from a discernible textual base. Article 2 (formerly Article F) TEU refers to the objective of the Union 'to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may be revised'. A link between the *acquis* and policy is thus made explicit. The requirement that the *acquis* be adopted by acceding states as a precondition of entry to the EU is further recognition of such an interpretation.⁴⁶

Notwithstanding the above, it would be inadequate to rely upon any specific notion of the *acquis* to provide the limits to textual investigation in relation to any particular policy. The concept continues to occupy contested territory and any arbitrary definition would be subject to dispute. Although it may be restricted to the full body of law that has been produced by the EU this would not adequately take into account 'soft law' initiatives or more general discursive practices engaged in by actors within the EU. Consequently, it is the *whole* of the EU's text that must be considered in any policy analysis not a restricted understanding of the *acquis*.

Inevitably this moves us far beyond the narrow confines of the 'history-making decision' or EU law. This would be manifestly too restrictive, particularly given the need to chart not a designated set of policy documents but the *policy flow*. In other words, law and history-making decisions can only provide snapshots of evolving courses of action. Their examination alone cannot uncover the processes that give rise to those decisions or indeed their day-to-day application. Nor will they reveal those EU practices that implement, contradict or ignore the decisions. In order to uncover the richness of the EU text and its reflective and constitutive functions we have to consider the law *and* the rhetoric, the legislation *and* the pronouncements that precede decisions and

⁴⁵ Knud Erik Jørgensen, 'The Social Construction of the *Acquis Communautaire*: A Cornerstone of the European Edifice' (1999) *European Integration Online Papers* Vol.3 No.5 at <<http://eiop.or.at/eiop/texte/1999-005a.htm>>.

⁴⁶ See Agenda 2000 'For a Stronger and Wider Union' EC Bull Supp 5-1997 and the subsequent agreements entered into between the EU and the states seeking membership of the Union.

interpret them, the institutional procedures *and* the practices recorded. Each part is potentially relevant and contributes to the text and context and thus provides the source material, the remainders of the institutional past, for reading the EU and the development of its policies.

Admittedly the above analysis may be interpreted as a partial clarification of the historical institutionalist methodology. Some authors have, in effect, already accepted the importance of expanding policy analysis to a wide spectrum of textual projection.⁴⁷ However, recognising the importance and role of the text is only the first step for establishing a working method of analysis. There still needs to be an appreciation of how any policy field like human rights comes to be defined as such *within* the text and how patterns emerge that influence future action. In this respect, it is not simply the text *per se* that is of concern. The *means* by which it is organised also has a significant part to play. In other words, how policy is *configured*, brought together and rendered understandable by and within the text.

The nature of this configuration has as much to do with the writing of history in and through the institutional text as it does with the character or complexity of the institutional setting or the practices within it. I argue that it is the operation of narrative that provides this cognitive organisation. More specifically, it is the 'institutional narrative' formed over time that represents the configuration of policy to render it distinct and to set prescribed boundaries of action.

IV Institutional Narrative

Narrative has been identified as a universal means of communication. Roland Barthes describes it as 'international, transhistorical, transcultural'.⁴⁸ It acts as a powerful means of making sense of complexity particularly within the confines of a text. It is also a process of integration. Narrative mediates and combines ideas and the perception of events and actions into an understandable, digestible, and manageable whole. It can be 'understood as the human endeavour to make sense of history by telling a story'⁴⁹ operating to assimilate disparate phenomena and thus explain them. Consequently, it has been described as an instrument of power, or as Peter Fitzpatrick has suggested 'a simple mode of mastery characteristic of the West'.⁵⁰ At an extreme level, in the words of Jean-François Lyotard, a meta-narrative may be formed, denying alternative stories and *prescribing* discourse.⁵¹

⁴⁷ See for instance, Antje Wiener, 'Assessing the Constructive Potential of Union Citizenship—A Socio-Political Perspective' (1997) *European Integration online Papers* Vol. 1 No.17 at <<http://eiop.or.at/eiop/texte/1997-017a.htm>> makes a virtue out of examining the discursive practices of the EU institutions. So too does a 'social constructivist' approach. See in particular, Thomas Christiansen, Knud E. Jørgensen and A. Wiener, 'The Social Construction of Europe' (1999) 6:4 *Journal of European Public Policy* 528–544.

⁴⁸ R. Barthes, *Image, Music, Text* (Fontana Press, 1977) at 79.

⁴⁹ R. Kearney, 'Between Tradition and Utopia; the Hermeneutical Problem of Myth' in D. Wood (ed.), *On Paul Ricoeur: Narrative and Interpretation* (Routledge, 1991) at 66.

⁵⁰ There is a presumption in Fitzpatrick's analysis that the 'use' of narratives has been the focus of domination in Western modernity. He does not preclude the universal potential through such a perspective. See P. Fitzpatrick, *The Mythology of Modern Law*, (Routledge, 1992) at 42.

⁵¹ See J-F. Lyotard, *The Postmodern Condition: A Report on Knowledge*, G. Bennington and B. Massumi (trans) (Manchester University Press, 1986).

The demonstration of the power of narrative has been keenly observed in the writing of history. Hayden White has advocated that narrative in historical discourse serves, 'to transform into a story a list of historical events that would otherwise be a chronicle'.⁵² In this guise, narrative explains 'past structures and processes' by drawing together otherwise unconnected events and actions and projecting them as a sequence of causes and effects.⁵³ Paul Ricoeur went further to contend that narrative is a fundamental method for enabling the passage of time in human experience to be understood and explained.⁵⁴

At a collective level narrative may also be used as a continuing and common source of reference that legitimates, in particular, a political institution's existence, history, and project(s).⁵⁵ It acts as a means for communicating a collective sense (or knowledge) of identity and direction. In other words, institutional narratives *organise* or configure an institution's text so as to transmit, disseminate, and render comprehensible a collective enterprise. An 'institutional logic' then becomes applied to the text, a logic that is 'auto-centric' and self-sustaining. It is in this sense that I suggest 'institutional narratives' are formed. Stories of origin, continuing legitimation, and collective identity formation act not only to constitute a political institution but also to 'sanction and sanctify' its continuing existence and actions.⁵⁶

Such a process has been similarly described by J. G. A. Pocock in his portrayal of the role of 'sovereignty and historiography' in the context of a national community. These factors he describes as being 'a voice controlling one's present and a voice controlling one's past' respectively.⁵⁷ The combination he suggests may be a 'necessary means by which a community asserts its identity and offers an identity to the individuals composing it'.⁵⁸ Correspondingly, the institutional narratives operate to govern an institution's past and present through a process of 'integration' or what has been termed 'emplotment' in relation to literary or historiographical narratives.⁵⁹ In this respect the term 'integration' signifies less European integration theory than the integrative processes of narrative described by Roland Barthes. He suggests that the 'complexity of a narrative can be compared to that of an organization profile chart, capable of

⁵² White, *op. cit.* note 41 *supra* at x.

⁵³ White, *op. cit.* note 41 *supra* at 43.

⁵⁴ See in particular, P. Ricoeur, *Time and Narrative Volume 1* K. McLaughlin and D. Pellauer (trans) (The University of Chicago Press, 1984). Ricoeur makes a powerful argument that, 'time becomes human to the extent that it is articulated through a narrative mode and narrative attains its full meaning when it becomes a condition of temporal existence' at 52.

⁵⁵ It may also do the same for social or other institutions but my concern is with the political in the EU context.

⁵⁶ This echoes Pierre Bourdieu's description of the use of ritual to 'sanction and sanctify' social organisations. See P. Bourdieu, 'Rites of Institution' in *Language and Symbolic Power* (Polity Press, 1992) 117–126 at 119. We might also refer to examinations on the development of nations for similar insights. See, for instance, A. Smith, 'The Nation: Invented, Imagined, Reconstructed?', in M. Ringrose and A. J. Lerner (eds) *Reimagining the Nation*, (Open University Press, 1993) in which, at 16, he indicates that, 'later generations of a particular community are formed in their collective life through the memories, myths and traditions of the community into which they are born and educated'. I suggest that all are forms of narrative in essence.

⁵⁷ J. G. A. Pocock, 'Deconstructing Europe', in P. Gowan and P. Anderson (eds), *The Question of Europe* (Verso, 1997) at 308.

⁵⁸ *Ibid.*

⁵⁹ See in particular, Ricoeur, *op. cit.* note 41 *supra*.

integrating backwards and forwards movements'.⁶⁰ Thus 'integration guides the understanding of the discontinuous elements'.⁶¹

Equally, the institutional narratives may also be interpreted as re-enforcing and instilling authority in the political institution as well as those who narrate the stories in its name. As White relevantly alluded with regard to the writing of history, narrative assumes a role for 'dominant social groups . . . in controlling what will pass for the authoritative myths of a given cultural formation'.⁶² Institutional narratives have the capacity (and the function) to connect the authority of the past, the reality of the present and the potential of the future. They link ideas about a collective past with a 'horizon of expectancy'.⁶³

In this sense, therefore, institutional narratives (often in the form of myth or invented tradition) seek to transcend time so as to portray the institution and its policies as a continuing and existing project. As a consequence there is then imposed a tendency to define the limits of all subsequent discourse and action within the institution's domain in accordance with those narratives. Although they will alter shape over time they will maintain a coherence that is rather like an autobiography of a living individual, a work in progress, one that is constantly under review but always based on the story that has been formed thus far. Policy and practice will be constructed within these narrative boundaries.⁶⁴ The exact nature and content of individual decisions made will not be entirely predetermined but in the absence of some form of rupture or revolt they are likely to remain within legitimated margins.

This is not to say that oppositional or contradictory narratives cannot be told or heard within or by an institution at the same time. There is still scope for negotiation and external influence. But the extent to which that is permitted depends on the degree of tolerance that is built in to the institutional structure. Without such tolerance, which might be characterised in the political field by the degree of democratic structures in place, oppositional narratives and counter-narrative decisions become difficult to forge. In this sense, all succeeding narratives are captured to a greater or lesser degree.

Turning specifically to the EU, I suggest that institutional narratives have developed that *do* make sense of the EU's articulations and practices as well as its own existence. Historians and commentators do not alone provide these narratives although they may contribute to the discourse. Rather the actors operating within the EU produce and reproduce narratives of the institution through the official text. As regards individual policies the same applies. The EU's human rights activities are made comprehensible (although not necessarily coherent) by and through the institutional narratives at work in that field. They appear both in the separate formal institutions (such as the Council and Commission) and as elements within other more defined policy fields, such as development, accession, or home affairs. They also arise more generally within the whole

⁶⁰ R. Barthes, 'Introduction to the Structural Analysis of Narratives' in *Image Music Text* (Fontana, 1977) at 122.

⁶¹ *Ibid.*

⁶² White, *op. cit.* note 41 *supra*, at x.

⁶³ Richard Kearney uses a similar formula in interpreting Paul Ricoeur's work on myth. See Kearney, *op. cit.* note 49 *supra* at 62.

⁶⁴ J-F. Lyotard showed a similar appreciation in relation to societies. He contended that narratives 'allow the society in which they are told, on the one hand, to define its criteria of competence and, on the other, to evaluate according to those criteria what is performed or can be performed within it'. The same holds true, I would suggest, for the institution. See Lyotard, *op. cit.* note 51 *supra* at 20.

story of the EU, which is in a constant state of refinement as one can witness from the literature produced by the Commission.

This perspective encourages the EU's human rights archive to be seen as more than a mass of loosely connected and disparate data projections. Rather it would be more profitably viewed as organised along structured lines. Any and all projections are subjected to an institutional interpretation that is centrally informed by the sense applied by the direction and form of the institutional narratives that have evolved. The narratives may never stay static, always being affected by the addition of each new textual projection, but they nevertheless follow a path that is dependent to a greater or lesser extent on all the text that has gone before. Once this is appreciated the prediction of a possible spectrum of future developments is made more possible.

It is in this sense that the precepts of historical institutionalism, and to some extent social constructivism, are clarified. Indeed the idea of 'path dependency' becomes more understandable as a result. Rather than rely on a vague explanation for constrained behaviour the notion of institutional narratives affecting the general direction and form of any policy field describes the means by which the EU's text acts on both the conscious and subconscious levels of the decision-makers. Admittedly, other influences will be applied to individual actors (their own prejudices, normative understandings, social conditioning) but the power of institutional narrative will operate as a distinct force within the context of the institutional setting. Thus actors then follow not a precedent or a prejudice alone but rather a story, always subject to interpretation at the margins but centrally understandable as a continuing narrative, one which is contributed to and therefore subtly altered with each action and decision that occurs. Consequently, any given policy field, in this case human rights, may only be understood in depth if the institutional narratives that configure the text are uncovered. This requires a method of analysis that will unlock the importance of textual representation and indicate the narratives unfolding over time within the EU.

V Excavating the Institutional Narratives of Human Rights

The interpretative exercise suggested above involves a reading of the text that does not (indeed must not as I have already indicated) privilege the history-making decision or even the applicable law that has developed. Rather, one must look to *both* the formal and informal representations relating to human rights that are apparent in the text to determine the institutional narratives that have evolved. In this respect the investigation is genealogical in nature.

In looking to a genealogy one inevitably evokes a Foucauldian notion of investigation.⁶⁵ But I am more concerned with the rigour of examination that Foucault presumes than the reasoning that accompanies it. In this respect, the approach also 'requires patience and a knowledge of details'.⁶⁶ More importantly perhaps, it requires a reading of materials beyond those institutionally designated as 'relevant'. Those 'assemblages' evident in the EU's text as they relate to human rights need to be included. In other words, 'the systems of classification; administrative practices and principles;

⁶⁵ See in particular, M. Foucault, 'Nietzsche, Genealogy, History' in *Language, Counter-Memory, Practice* (Cornell University Press, 1977) 139–164.

⁶⁶ *Ibid.* at 140.

laws and juridical practices; theories; strategies, and programmes of governance⁶⁷ that are produced within and by the EU. Thus the form and content of the text provides the material from which those narratives emerge. In particular, the possibility of determining the undercurrents (or 'rules of the game' according to the historical institutionalists) that have influenced the narratives' form and direction(s) presents itself. The surface of the text must be dislodged and the underlying tensions and contradictions revealed. In so doing the practice of a deconstructive genealogy (more elusively advocated by Jacques Derrida) takes form.⁶⁸

Inevitably this involves awareness not only of the political and social context, suggested by the social constructivists amongst others,⁶⁹ but also of the *literary* aspects of the text, specifically the presence and importance of rhetoric, the semiotic character of adopted terminology, and meanings hidden in the text. In this respect, rhetoric should be understood not in the pejorative sense but rather as the art of persuasion or the effective use of language.⁷⁰ For here is the means by which messages and therefore understandings of policy aims, content and direction may be promoted both within the EU and beyond its strict institutional borders. The consideration of rhetoric may also reveal some of the problems, pressures and perspectives that have been assumed or applied by decision-makers from time to time.

Looking to rhetoric also unlocks the performative use of language adopted by the EU's text. Dominick LaCapra, albeit discussing intellectually significant texts, highlights the importance of this facet. He claims that rhetorical devices of 'composition and arrangement point to internal contestations or ways texts differ from themselves in their functioning and interaction with contexts, for texts in variable ways may combine symptomatic, critical, and more "undecidable" relations to given signifying practices'.⁷¹ Similarly, they may indicate the 'manner in which documents "process" or rework material in ways intimately bound up with larger sociocultural and political processes'.⁷² In short, rhetoric, particularly when the subject of repetition, may be representative of the influences that affect decision-makers. Its interpretation can thus reveal those influences that have arisen over the course of a policy construction that no end of interviews of present-day actors will be able to disclose alone.

This all points to the need to re-read the text, appreciating the role rhetoric plays in both the formation of policy and its analysis, so as to uncover the political unconscious that lies beneath. Thus, the rhetoric that appears in the relevant text emerging from the EU's institutions and actors or agents *are* relevant for an investigation of the human rights policy field.

The designation and adoption of specific words, terms, names, nomenclature, and slogans within the EU's print community can also provide indications of intent and understanding that can inform on the nature and scope of any articulated or practised

⁶⁷ M. Dean, 'A Genealogy of the Government of Poverty' (1992) 21:3 *Economy and Society* at 216.

⁶⁸ See J. Derrida, *The Other Heading: Reflections on Today's Europe* (Indiana University Press, Bloomington 1998).

⁶⁹ For a collection of articles on social constructivism see (1999) 6:4 *Journal of European Public Policy*.

⁷⁰ The argument for a concentration upon sources of history other than the traditional historical text and to examine 'discourse and rhetoric' with equal attention has been articulated by a number of historians. See in particular H. Kellner, *Language and Representation* (University of Wisconsin Press, 1989).

⁷¹ Dominick LaCapra, *History & Criticism* (Cornell University Press, 1985) at 38.

⁷² *Ibid.*

policy area.⁷³ This will not be without its difficulties, however. One must appreciate the fact, as Thomas Diez has suggested, that language meanings ‘cannot be fixed’ nor can they be disassociated from political or social context.⁷⁴ Nor indeed can they be considered as unambiguous. Paul Craig and Gráinne de Búrca make the point that the ‘inherent ambiguity’ of language employed in the Treaties ‘is used in part because of its capacity to contain or mediate very different views amongst the Member States about the nature of the enterprise in which they are engaged’.⁷⁵ Nonetheless, the interpretations adopted by those States do not detract from the power of discourse that helps structure the practices and subsequent discourse of the EU as a political entity in its own right.

The text of the EU cannot be treated as ‘closed’ however. It does draw on external references, although these references may be articulated and thus subsumed and altered within the text. This holds true particularly for the subject of human rights, which has created a dynamic, evolving language in international and national political relations over the past fifty years that in turn has informed, and been adopted by, human rights language utilised by the EU. Consequently, the language of human rights has always been subject to contestation and negotiation.⁷⁶ Terms such as ‘universalism’, ‘indivisibility’, even ‘human rights’ have acquired meaning in the EU that is not only shaped by international discourse but also by the EU’s own interpretation applied to these terms. Gráinne de Búrca may infer that the critiques applied to ‘rights talk’ have yet to reach the EU but I would suggest the adopted or altered meanings do reflect and in turn reflect upon the EU’s engagement and policy choices in these matters.⁷⁷

Furthermore, an appreciation of the semiotic importance of terminology, the corpus of words, and phrases adopted by the EU that have been made the subject of repetition,⁷⁸ can assist in identifying narrative themes of meaning that might otherwise be forgotten or ignored. The very fact of a term’s acceptance through re-iteration (and indeed the discarding of a term) may demonstrate a choice that reflects the motivations behind the conjunction between term and action. Admittedly, such terms might be unstable, changing meaning over time, but this does not render their analysis irrelevant. Indeed, semiotics provides the impetus for scrutiny regardless of the apparent waywardness in meaning. Concern with such matters therefore introduces the possibility

⁷³ This point has been made by Thomas Diez, who has subjected ‘Euro-speak’ to discursive analysis from a number of perspectives. See T. Diez, ‘The Politics of Integration Discourse’ (1999) 6(4) *Journal of European Public Policy* 598–613. However, it is not the intention to privilege the ‘politics of integration discourse’ referred to by Diez (at 612) as they might appear in critiques of the EU. Rather, the discourse emanating from the institution must be accorded equal if not greater attention.

⁷⁴ *Ibid* at 611.

⁷⁵ P. Craig and G. de Búrca, *op. cit.* note 10 *supra*, at 46–47.

⁷⁶ One only has to consider the battle lines drawn over terminology at the United Nations during the composition of human rights treaties and declarations to appreciate the extent of this. See, for instance, the debate that has raged over the existence and/or content of a ‘right to development’ covered in H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (Clarendon Press, 1996) 1112–1127.

⁷⁷ G. de Búrca, ‘The Language of Rights and European Integration’ in J. Shaw and G. More (eds) *New Legal Dynamics* (Clarendon Press, 1995).

⁷⁸ It is the reiteration of terms that transforms them into a form of ‘authorised’ language. This might be called ‘Euro-speak’ in the EU context (which Diez adopts, see Diez, *op. cit.* note 73 *supra*) or, more generally, an institutionally adopted terminology.

of the uncovering of a 'politics of discourse' as Diez contends, that in turn may assist in the understanding of the potential field of any given policy.⁷⁹

The interpretation of the literary aspects of the EU text on human rights, as traced over the course of the EU's development, will enable a theory of the key components of the institutional narratives to be constructed. A working hypothesis may then be devised that can be tested against future textual additions. In other words, it will be possible to map those themes (or plots) that have been transcribed through the text so as to define and predict the limits of discourse and action in the field.

Clearly, this method requires long and detailed textual examination. For this reason the analysis of human rights policy inevitably lies outside the scope of this article. Nevertheless, a number of key narrative facets can be identified that provide a focus for research and analysis.

First, the history of how human rights were introduced into the EU's discourse must be re-examined. The orthodox account confirms that they were not present in the founding treaties and their relevance was judicially denied for a decade. But this fails to explore the mythic nature of the narrative that was constructed when respect for human rights began its institutional role as a general principle of EU law. Nor does it consider the implications of such a constructed narrative. Re-tracing the steps of this founding story is a pre-requisite for a more effective evaluation of the origins of the EU's institutional position(s) and the subsequent development of human rights policy.

Second, the influence of an institutional imposition of a discourse of European Identity must be considered. This explicitly incorporated a human rights dimension into both the nascent foreign affairs of the EU and the internal regime. The effects of a distinction between each sphere, characterised by the adoption of a notion of citizenship internally and a more general concept of human rights externally, requires interpretation to determine the nature of competing narratives that have arisen subsequently.

Third, the definitions that can be ascribed to human rights must be drawn out. Continuing the examination of the external/internal variations the competing understandings of human rights, their sources and interpretations, whether they include collective notions or are steadfastly linked with an individualistic interpretation, have effected the development of both judicial interpretation and institutional practice. Any narrative analysis must place these matters of definition in context.

Fourth, the practices of scrutiny and enforcement that have been instituted in the different fields of EU competence need to be examined and compared. These reflect the seriousness with which the EU treats human rights in the various spheres and the institutional boundaries for action that have been prescribed.

Fifth, and overarching each of these key themes is the central institutional ambiguity that persists in the distinction that is made both in discourse and in practice between the treatment of human rights within the EU and outside. Various commentators and European institutions have identified such a problem but to date no comprehensive analysis of the condition has been forthcoming. Following the development of this core distinction would be a key task of the institutional narrative analysis advocated in this article.⁸⁰

⁷⁹ Diez, *op. cit.* note 73 *supra*.

⁸⁰ For a contribution to this inquiry see A. Williams, *The EU's Human Rights Policies: A Study in Irony* (Oxford University Press, forthcoming).

VI Conclusion

The above discussion has been directed to establishing a framework for analysis of a complex subject. It looks beyond current methods of European studies whilst building on some of the tenets of historical institutionalism and to a lesser extent social constructivism. Although this is largely a question of methodology, it entails an approach that looks to the text as both the source and the subject of policy. In turn this requires an understanding of the performative and reflective nature of institutional writing that not so much obviates the need to examine action as acknowledges its textual nature and rendition. Practice and text at the site of the EU are highly interwoven and this is a key understanding for analysis.

The bulk of alternative approaches to EU policy study may not be so specific about this connection but they operate with it as an unspoken order of things. The text and the institutional narratives that organise it will always provide crucial conditioning factors in the making of decisions. In other words, every decision made in relation to human rights in a particular area will be made in the context of the narrative that has preceded it. More than mere reference will be made to the relevant text. A reading of previous documents will take place that by its very act will ensure an assimilation of the narrative that has developed to that point. There will be the reiteration of past precedents, the adoption of established phrases and terminology. In doing so at both a conscious and unconscious level decisions will be constrained by the existing narrative. And with each reading and each decision, the story will subtly evolve, ever changing, albeit slowly, within general parameters.

The historical and literary reading of the EU's text to determine the shape and direction of policy is therefore an essential condition of analysis particularly when one is dealing with such a complex subject as human rights. Any deeper understanding of their role within the EU relies upon such a reading. In its absence the movement for any form of coherence and consistency may be unnecessarily prejudiced rendering the current trend for constitutional definition at best an irrelevance and at worst a contribution to, rather than reform of, well-established conditions. The authenticity of the EU as an institution serious about human rights matters may therefore be forever in question.