

## **Value in Law Concept and Applications within the Legal System of the EU**

### **Abstract**

This paper seeks to show a connection between epistemic facets of human language and political aspects of law. It will be tried to show how concepts, which have epistemic functions in the language system, may have both an evaluative and founding function in the legal system of the EU. Thanks to the circular relation “system of concepts-system of language-system of law”, the latter will be capable of adapting to the development of the social community in which it belongs, i.e. the European Union. In addition to this, the aforesaid relation would also allow the legal system to cooperate in the improvement of its (European) *milieu*.

### **Introduction**

This presentation concerns a doctoral research which is still in progress. Due to this, the purpose of the paper will be only to summarise some issues which could be relevant in a debate about possible perspectives for the EU.

Values-as-concepts<sup>1</sup> and the Legal System of the EU have been chosen as a background of this presentation.

A legal system includes values which reflect purposes and decisions of the organised society they have been built by. These values are expressed by concepts.

The first part of the present paper aims to briefly present these bold features of a legal system, i.e. concepts and values as well as and their interactions.

Concepts are expressed by words. The epistemic function which concepts possess in their system becomes an evaluative and validating one in the system of law. Due to this, concepts could represent a bridge between the system of language and the system of law.

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<sup>1</sup> About the difference between concept-of-value and value, cf. J.E. HEYDE, *Wert. Eine philosophische Grundlegung* (Value. A Philosophical foundation), Kurt-Stenger Verlag, Stuttgart, 1926, p. 15 ff.

A system of law can modify the concepts it includes. These modifications should adapt the concepts to the purposes of the legal system, up to a “new creation” of these concepts themselves. Nonetheless, these modified concepts are also expressed by the system of language; therefore, it should recognise and re-adopt their new form.

Since the conceptual background of a community is built and expressed by its system of language, the inclusion of the modified concepts will modify its original system of concepts as well. The consequent modification of the concept-of-value will give rise to the so-called circular relation between system of language, system of concept and system of law.

This paper seeks to sketch – secondly – how a concept, i.e. the concept-of-value, can connect the system of language and the system of law and cooperate in their improvement as well.

The European Union and its development represent a challenge for both a political theory and for a philosophical perspective of language and law. Given the difficulties the EU is called upon to tackle, it could be helpful to lead a theoretical, and thus more sober, analysis of them.

The purpose of the research this paper is based on is the application of a theoretical point of view on some practical issues concerning the EU.

The final section of this presentation tries to depict how the blended effect of both practical, political decisions and theoretical reflections could concur to a possible improvement of a structured society, as the EU should be.

## **1. Concepts and Values: Shared Vocabularies**

Concepts could be understood as a quite steady vocabulary and values as a quiet variable – even though not short-term – one<sup>2</sup>. The former would allow for the expression of mutual values, the latter would allow for a sort of condensation of mutual needs, interests and inclinations<sup>3</sup>.

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<sup>2</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU* (Europe as community of values. A theological-ethical inquiry on EU's political self-understanding), Nomos Verlag, Baden Baden, 2009, p. 218 and C. BRÜLL, “Sprache als Werkzeug diskursiver Konstruktionen kollektiver EU-Identitäten. Der Verfassungsdiskurs als Ankerpunkt einer Analyse” (Language as instrument of discursive constructions of collective EU's identities. The constitutional discourse as core of an inquiry), in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertegemeinschaft in der EU?* (Europa's values. Constitutional patriotism and community of values in the EU?), LIT Verlag, 2006, p. 264 ff.

<sup>3</sup> Ivi, p. 163, but also C. SCHMITT, “Die Tyrannei der Werte – Einleitung” (The Tyranny of Values – Introduction), in *Säkularisation und Utopie. Ernst Forsthoff zum 65. Geburtstag* (Secularisation and Utopia), Kohlhammer, Stuttgart/Berlin/Köln/Mainz, 1967, p. 39

## 1.1 Concepts<sup>4</sup>

It has been said that the system of language and the system of law can be related by means of the system of concepts. Moreover, concepts would allow the legal system to consider and respect the needs of its social background. According to this, it would be worthwhile to explain how concepts can achieve this result. The core of the explanation is the epistemic function of concepts in the language system.

Epistemology can be briefly described as the study of the possibilities of human knowledge. What matters, here, is researching the relations between human beings and both their internal and external world. In order to research these relations, concepts have been understood as the tools which allow humans to participate in them.

Concepts are special tools, i.e. mental ones. A second peculiarity of concepts will be the controversial definition of their origin, development, application and purposes.

Speaking of concepts as tools, they could be called primary ones. This means that concepts allow for the building of all the skills humans possess in order to relate each other.

As far as the existence of concepts is recognised and accepted, they can also represent a passage between theory and praxis. The analysis of concepts begins with ontological issues, proceeds researching the origins of knowledge and comes finally to the debating of the structures of the external world.

There are various interpretations of “concept”. In the framework of the present research, concepts can be considered either as dispositions or as entities. The latter definition concerns an ontological inquiry of concepts, the former one refers to their function.

Focusing on the function of concepts, they would connect world and human beings. This way, concepts could be understood as dependent on humans<sup>5</sup>. Nonetheless, humans depend on concepts

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<sup>4</sup> i.a., J. L. AUSTIN, *Philosophical Papers*, Clarendon Press, Oxford, 1961; T. BORSCHKE (Ed.), *Klassiker der Sprachphilosophie. Von Plato bis Chomsky* (Classics of the philosophy of law. From Plato to Chomsky), C.H. Beck, München, 1996; J. A. FODOR, *Concepts. Where cognitive sciences went wrong*, Oxford Univ. Press., Oxford, NY, 1998; G. FREGE, *Funktion, Begriff, Bedeutung. Fünf logische Studien* (Function, Concept, Reference. Five logical studies) (Ed. G. Patzig), Van den Hoeck&Ruprecht, Göttingen, 1980; G. GABRIEL, *Grundprobleme der Erkenntnistheorie von Descartes zu Wittgenstein* (Fundamental issues of Epistemology from Descartes to Wittgenstein), UTB, Paderborn/München/Zurich/Wien, 1993; P. HANNA/B. HARRISON, *Word and world. Practice and the foundation of language*, Cambridge Univ. Press, Cambridge UK, 2004; L. E. LOEB, *From Descartes to Hume*, Cornell Univ. Press, London, 1981; C. PEACOCKE, *A study of Concepts*, The MIT Press, Cambridge, Mass., 1992; A. ROSS, *Kritik der sogenannten praktischen Erkenntnis* (A criticism of the so-called practical knowledge), Meiner, Leipzig, 1933; L. WITTGENSTEIN, *Tractatus logico-philosophicus, Philosophische Untersuchungen* (Philosophical investigations); *Midwest Studies in Philosophy*, XIV, Univ. Of Notre Dame Press, Notre Dame, 1989

<sup>5</sup> Or, more precisely, on the human purpose to reach knowledge.

as well: only concepts can allow them to achieve their purposes. Without concepts, no relation with the world and other human beings would be possible.

A human has been understood as always linked to his fellow man and his (physical and mental) worlds. Only this way can he entirely develop his skills. With this background, a human could not realize itself without concepts, i.e. without the tools which permit the interaction with his *milieu*.

If a subject always relates to an object<sup>6</sup>, these relations could be analysed by their shared features. Concepts can be understood as some of these.

The most significant issue, which always has to be kept in mind, is that concepts are expressed by words.

All the explanations concerning the system of concepts should be set within a system of language. Only languages can form and structure human thoughts. Only within a system of language can those relations be analysed, which allow for the definition of concepts. If the system of concepts gives the individuals the tools to interact with their *milieu*, the system of language structures and reproduces this *milieu* itself.

It could be said that the epistemic function of concepts can apply only within a system of language. This issue will be tackled in the second part of this paper.

## 1.2 Values

“Value” looks like a compass used by the human beings as social animals, that is, as beings living in an organised society. There seems to exist something which makes the word so indispensable it has also to be also used when the humans exercise their legislative capacity.

Values have been variously studied and described, from ancient times up to the contemporary philosophy. Furthermore, they have been analysed in other fields, e.g. economy and sociology<sup>7</sup>.

Values can be understood either in a moral or in an ethical way. They are certainly relevant as broad guidelines for private purposes or decisions. In spite of that, in a social context the values that matter are those which could be said to be shared ones.

Shared values, i.e. values the most part of a society agree<sup>8</sup> with, constitute the framework of all

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<sup>6</sup> This object can also be another subject.

<sup>7</sup> Cf. e. g., K. BAIER, “The conflict of value”, in LASZLO/WILBUR (ed.), *Value Theory in Philosophy and Social Science*, Gordon and Breach Science Publishers, 1973, pp. 1-11; C. SCHMITT, “Die Tyrannei der Werte – Einleitung”, op. cit.

<sup>8</sup> This topic will be analysed later.

private values. Shared values can be defined as primary<sup>9</sup> and they should also allow for the realisation of private ones<sup>10</sup>.

Primary values express interests and aspirations of a certain society. This way, they define and differentiate it in respect to other societies.

Two further issues appeared in the inquiry on values: the distinction between “being” a value and “having” a value and the distinction between “being” and “being valid”. Considerations about value judgements should be also added to the aforesaid distinctions.

These three issues should be mentioned, because they are the framework for the risk of subjectivity, arbitrariness and of a consequent high relativity of values. These risks could be related to a split between values and their historical and social context<sup>11</sup>.

### 1.3 The Concept-of-Value

It has been said that, in a social *milieu*, values should be understood as primary ones. Only this way can values tackle the risks of subjectivity and arbitrariness and respond to the needs of the society as well. However, how can values express these needs?

The problematic definition of values shows that they are not something concrete. In spite of that, they are neither subjective nor arbitrary<sup>12</sup>.

In order to analyse values, the «evaluating subject»<sup>13</sup> has to be always taken into consideration. Primary values summarise evaluations the most part<sup>14</sup> of evaluating subjects agree with. Thanks to this «general subjectivity»<sup>15</sup>, both subjectivity and arbitrariness could be avoided.

Concepts have been presented as primary and shared tools, which allow humans to interact in their social *milieu*. At the same time, values guide human beings in responding to needs, interests and

<sup>9</sup> For a point of view which differs a little bit from the present interpretation, cf. A. BERLEANT, “The experience and judgment of values”, in LASZLO/WILBUR (ed.), *Value Theory in Philosophy and Social Science*, op. cit., p. 30

<sup>10</sup> As a theoretical foundation of this interpretation cf. F. BAMBERGER, *Untersuchungen zur Entstehung des Wertproblems in der Philosophie des 19. Jahrhunderts* (Studies on origin of the problem of values in the philosophy of the 19<sup>th</sup> cent.), vol. I. Lotze, Max Niemeyer Verlag, Halle, 1924, p. 78 ff.

<sup>11</sup> A. BERLEANT, “The experience and judgment of values”, in LASZLO/WILBUR (ed.), *Value Theory in Philosophy and Social Science*, op. cit., p. 27

<sup>12</sup> J.E. HEYDE, *Wert. Eine philosophische Grundlegung*, op. cit., p. 44 ff.

<sup>13</sup> A. BERLEANT, “The experience and judgment of values”, in LASZLO/WILBUR (ed.), *Value Theory in Philosophy and Social Science*, op. cit., p. 28.

It has to be noticed that the inquiry on value judgements and their relations with the values-as-concepts concerns, above all, this issue. Another issue with this topic refers to the role of value judgements. Do they give rise to values or do values express themselves by value judgements? Cf. R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 158 ff.

<sup>14</sup> A subsequent question could obviously concern the meaning of “majority”. Some reflections about this issue will be sketched in the following pages.

<sup>15</sup> F. BAMBERGER, *Untersuchungen zur Entstehung des Wertproblems in der Philosophie des 19. Jahrhunderts*, op. cit., p. 78

inclinations.

If concepts are tools enabling one to act socially, they can also be understood as shared features enabling one to express common needs and interests. With that in mind, concepts represent a shared code (primary) by which values can be expressed.

The attempt will be to show how primary values have – in an organised society – the same function concepts usually have.

#### *1.4 Values as Concepts*

Value could be defined as the shared and mildly elastic instrument an organised society owns in order to express its needs, interests and inclinations.

In a social field, values should be something capable of improving people's lives<sup>16</sup>. If this were the case, than values would become goals, which could guide the political decision-making<sup>17</sup>. In order to fulfil this purpose, these goals should be shared ones<sup>18</sup>. Under these circumstances, values have to refer to some general kinds of «super individual reason» the individual participates in<sup>19</sup>. Thanks to this, values can express some mutual guidelines for acting.

Remarkably, values differ according to the society they have been produced by.

Values have different degrees and kinds, just as concepts<sup>20</sup> do. The formers express human intentions, while the latter represent human shared tools.

Human intentions can be shared, but they have not to be.

Shared intensions, i.e. shared (primary) values, show typical features of a society. It is worthwhile to repeat that, this way, values mark the identity of a society but separate it from other social groups as well. Furthermore, conflicts of values can also rise within the same society<sup>21</sup>.

Conflict of values are the core of various and relevant critical points of view concerning values and their inclusion in a legal systems<sup>22</sup>.

<sup>16</sup> This definition borrow some features from economical points of view on the concept of value.

<sup>17</sup> W. HALLSTEIN, *Die europäische Gemeinschaft*<sup>4</sup> (The european community), Econ Verlag, Düsseldorf/Wien, 1973, p. 49

<sup>18</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 47

<sup>19</sup> F. WAPLER, *Werte und das Recht* (Values and Law), Nomos Verlag, Baden Baden, 2008, p. 77

<sup>20</sup> Cf, i.a., D. PFORDTEN von der, *Suche nach Einsicht. Über Aufgabe und Wert der Philosophie* (Searching for knowledge. On duty and value of philosophy), Meiner, Hamburg, 2010 cap. VII

<sup>21</sup> N. RESCHER, “The study of value change”, in LASZLO/WILBUR (ed.), *Value Theory in Philosophy and Social Science*, op. cit., p. 17

<sup>22</sup> Cf. The well-known critical point of view of C. SCHMITT in *Die Tyrannei der Werte* (The Tyranny of Values) but also T. RENSMANN, “Grundwerte im Prozess der europäischen Konstitutionalisierung. Anmerkungen zur Europäische Union als Wertegemeinschaft aus juristischer Perspektive” (Fundamental values in the european

It has to be noticed that values, as guidelines for acting, seek realization. Their classifications allow for this.

Different kinds of classifications or hierarchies characterise different kinds of societies. These hierarchies could be said, by an economic term, to be “elastic” ones.

“Elastic” means that they react to the changes of the communities they represent and in which they belong.

Since values are expressed by concepts, primary values can recognise and show social changes.

Due to their epistemic function, concepts should fit with the community in which they belong.

Nevertheless, they need a quite long time to recognise the modifications which can occur in this community. This way, concepts would avoid a too high relativity within the hierarchies of values.

Concepts would represent some features of the shared knowledge<sup>23</sup> of a community; (primary) values would represent shared needs, interests and inclinations of an organised society.

Primary values as shared purposes of a society refer to a temporal dimension, which concerns both the present and the future. They provide some usable starting points or useful changes which should be recognised by the society as a whole.

Concepts, in turn, relate to a shared knowledge, which takes place in the past and in the present as well. The conceptual background allows for the building of new perspectives in consideration of past situations.

## **2. System of Language, System of Concepts, System of Law: Inquiry into a Circular Relation**

So far, both concepts and values have been set against a social background. Concepts refer to the shared knowledge of a *community*, values refer to shared needs, interests and inclinations of an *organised society*. Both communities and organised societies are social contexts. In such contexts, something should allow the connection of the individuals. Languages could represent a possibility to achieve this connection.

The existence of a legal system, however, points out the difference between the two aforesaid social backgrounds. An organised society has been understood as a community which provided itself with a legal system. According to this, a legal system might seem the final step of the development of

constitutional process) in D. BLUMENWITZ/G.H. GORNIG/D. MURSWIEK (Ed.), *Die Europäische Union als Wertegemeinschaft* (The European Union as community of values), Dunker&Humblot, Berlin, 2005, p. 70

<sup>23</sup> “Knowledge” means here the comprehension of the whole system of relations between humans and their (physical and mental) worlds.

human social aggregations. This second section aims to show that a legal system is not a conclusion but rather just a phase of this development.

System of language, System of concepts and System of law are in a circular relation. This relation should continuously improve each system and, therefore, their social background as well.

### *2.1 The Role of the System of Language*

Concepts can be expressed only by words. This definition, which has been previously given, is based on the relevance of a system of language in building shared backgrounds.

It can be briefly said that only languages can allow both the building and the recognition of shared contents. Only by means of languages can those contents be thought, grasped and expressed which have been defined as tools for achieving knowledge, i.e. concepts.

Even though each particular system of language entails relevant difficulties<sup>24</sup>, only the system of language in its general form allows for the expression of concepts. Due to this dependence, neither concept nor values – if values are understood as concepts – could be *a priori*<sup>25</sup> or immutable.

Since each community refers to a particular system of language, each organised society could have its specific hierarchy of values.

Being expressed by concepts, values reflect the different historical, political and cultural features of the system of language these concepts refer to. Furthermore, for each individual uses a particular system of language, there could be almost as many hierarchies of values as individuals. This could give rise to conflicts of values. However, these conflicts are not just an obstacle. They represent also a possibility. A strategy to deal with this chance will be sketched soon<sup>26</sup>.

The risks of bare subjectivity, arbitrariness and high-relativity have been related to a split between values and their historical and social context. These risks could be avoided by relating concepts (and, consequently, values) to their social background.

A system of language entails various historical, political and cultural features. For both concepts

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<sup>24</sup> Which system should be used? Who decides which system is the correct one? Are there dominant systems? These are just some examples of the questions which could arise concerning systems of languages.

<sup>25</sup> C. BRÜLL, “Sprache als Werkzeug diskursiver Konstruktionen kollektiver EU-Identitäten. Der Verfassungsdiskurs als Ankerpunkt einer Analyse” in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertegemeinschaft in der EU?*, op. cit., p. 261

<sup>26</sup> Cf. 2.3 *The role of the System of Law*



and values fulfil their task within this system and by it, the system of language seems to be the unavoidable social background they should be referred to.

The aforesaid risks could therefore be tackled by the link between system of concepts and system of language.

## 2.2 *The Role of the System of Concepts*

The problems concerning (hierarchies of) values as guidelines for political decisions could be handled by relating them to their social background, i.e. their system of language.

Concepts, by their steadier construction in the system of language, would soften a too high relativity within the hierarchies of values. In addition to this, the development of an evaluating general subjectivity in this system could avoid subjectivity and arbitrariness in organising these hierarchies.

These corrective procedures would apply by a discursive practice. According to this, concepts can be used in order to define values only in a «hermeneutical space». Only in such a space, can new experiences<sup>27</sup> and disagreements be taken into consideration.

By interpreting values as concepts, disagreements, new experiences and the problem of the majority can be tackled. What Claudia Attucci calls «process of reciprocal horizontal justification» could apply thanks to concepts.

Concepts would be – in a theoretical way – those «implicit assumptions» which would make it possible to understand disagreements<sup>28</sup>.

As epistemological tools, concepts make knowledge possible. Knowledge entails also understanding diversity. A different stance could be understood by the recognition of those shared contents it was based on, i.e. concepts. New experiences could also be tackled this way.

This does not mean that disagreements and new experiences will be always accepted, but they could be at least understood. Only due to this understanding, will it be possible to develop a real discursive practice.

The discursive practice – although highly problematic – could help in increasing the involvement of the public in the discussion of primary values. Thanks to the recognition of more points of view, those majority which first defined the primary values of the society can be enlarged. This way, the problem of the majority could also be tackled.

<sup>27</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., pp. 174-5

<sup>28</sup> C. ATTUCCI, “European values and constitutional traditions in the EU charter of fundamental rights” in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertegemeinschaft in der EU?*, op. cit., p. 254 ff.

### 2.3 *The role of the System of Law*

Discursive practices have been defined as highly problematic. A relevant issue about them concerns the realisation of their outcomes. Due to the permanent openness of the hermeneutical and discursive practice, it could be difficult to achieve an applicable final result.

Thanks to its principle of legal certainty, the legal system comes into play in order to deal with this issue.

A legal system should represent a reliable set of guidelines<sup>29</sup> ruling on human actions in order to achieve some results. If this system aims to be something more than a bare transcript of prescriptions or, worst-case, an instrument of domination, it should also be shared.

It could be supposed that the purposes of a shared legal system should reflect needs, interest and inclinations the most part of the society agree with. According to this, primary values as purposes leading organised societies should be included in the legal system of these societies.

This inclusion is based on, at least, a twofold reason. Firstly, primary values allow for the defining the society which builds the legal system. Secondly, (primary) values-as-concepts allow also for the sharing of at least some fundamental features of this system.

### 2.4 *Clues of a Circular Relation*

It has been said that primary values refers to an organised society. Such a society would arise when a community gives itself a legal system. Nonetheless, in order to create a shared legal system, some primary values should be already available. This could be a *petitio principii* but could also show the link between the system of concepts and the legal system. Furthermore, this circularity affects the influence of the legal system on discursive practices. It could reveal the possibility to also improve the system of law by its connection with the system of language and the system of concepts.

Values should seek their realisation and the legal system could fulfil this purpose, for it can

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<sup>29</sup> The topic of the features of a legal system is a wide one. It suffices here to say that the legal system has not been understood as a bare set of norms.

About this topic, cf. also D. PFORDTEN Von der, *Rechtsphilosophie. Eine Einführung* (Philosophy of Law. An Introduction), Verlag C.H.Beck, München, 2013, p. 32 ff.; “On Obligations, Norms and Rules”, in M. ARASZIEWICZ (Ed.), *Problems of Normativity, Rules and Rule Following*, Springer, Cham, 2005; “About Concepts in Law”, in J. HAGE/D. PFORDTEN Von der, *Concepts in Law*, Springer, Dordrecht, 2009

crystallize the mutable outcomes of discursive practices in its positive codifications. This way, the legal system would contribute to the realisation of values and to the application of discursive practices.

However, a legal system is also made up of norms. Against the background of this research<sup>30</sup>, norms could be interpreted as explaining how one should (or should not) act in order to achieve some goals. As features of a legal system, norms represents also the will of those they refer to<sup>31</sup>. These interested ones should be, at the same time, those which contributed to the creation of the legal system itself.

Norms can represent the will of those they refer to thanks to the concepts the norms contain<sup>32</sup>. The epistemic function which concepts have within the system of language becomes an evaluative and founding one in the system of law<sup>33</sup>.

Due to the epistemic function of the concepts they are expressed by, values can found the system of law. At the same time, this epistemic function will allow for the evaluative function which the norms also have.

The new functions the concepts take on within the legal system could deeply modify them. According to this, their new meanings in the system of law could not fit anymore with their original meaning.

Nonetheless, it has to be kept in mind that concepts should always be understood against a hermeneutical background. The link between concepts and their social background cannot be broken, otherwise, all the risks concerning values would again arise.

This could provide the starting point of the circular relation “system of concepts-system of language-system of law”.

Even though the legal system is a very relevant stage of this relation, it is nevertheless impossible to isolate it. Its capacity to contain the variability of values is limited.

Concepts should come back again in the system of language. Only in and through this system can those discursive procedures apply, which allow for the adjustment of values according to the society they have been expressed by. Obviously, if the system of law aims to achieve its purposes, it should also recognise and accept these further modifications of its concepts. If the legal system embraces these further modified concepts, it could also adapt them again according to its aims. This would

<sup>30</sup> This research refers to democratic political systems.

<sup>31</sup> D. PFORDTEN Von der, *Über Begriffe im Recht* (On Concepts in Law), ARSP, 98, IV, 2012

<sup>32</sup> Ibidem

<sup>33</sup> Ibidem

entail another modification, which would again begin the exchange between system of concepts, system of language and system of law.

The circular relation should be a timeless one. Only this way can the three system constantly cooperate both to their improvement and to the improvement of the society in which they belong.

### **3. Values in the Legal System of the European Union**

The attempt is now to connect the theoretical analysis with some issues concerning the European Union. This link could help in developing its legal, political and social structures. If it were not the case, this theoretical inquiry could at least allow for a better understanding of them.

The analysed issues concern the definition of the EU's identity, an inquiry on its roots as well as the problem of a shared language.

It will be tried to explain how the inclusion of values-as-concepts in the treaties of the European Union can be helpful in tackling the previously mentioned issues. The circular relation "system of concepts-system of language-system of law" will be the unavoidable framework of this explanation. It has been supposed that only in this framework the European Union could improve itself responding to the needs of its members.

#### *3.1 A Controversial Self-Definition*

Analysing the European Union through the concept of value, a main dispute arise. This controversy concerns the comprehension and self-comprehension of the EU itself.

The problem focuses on the difference between two different interpretations. On the one hand, the EU could be understood as a community of values<sup>34</sup>; on the other hand, it could be interpreted by means of the so-called constitutional patriotism<sup>35</sup>.

However, this paper tries to show how some practical improvements could be achieved through a theoretical inquiry. With this in mind, it would be worthwhile to take into consideration a current situation, without further conjectures.

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<sup>34</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit.; D. BLUMENWITZ/G.H. GORNIG/D. MURSWIEK (Ed.), *Die Europäische Union als Wertgemeinschaft* (The European Union as community of values), op. cit.

<sup>35</sup> H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertgemeinschaft in der EU?* (Europa's values. Constitutional patriotism and community of values in the EU?), op. cit.

Shared or common values have been already included in the legal system of the European Union<sup>36</sup>. Under these circumstances, the European Union should be at least referred to them.

This analysis will concern the inclusion of values in the legal system of the EU and the interpretation of the Union as a community of values.

The first question about the aforesaid inclusion refers to its purposes. This issue implies also a second one, which concerns the contents of the values which should be included.

### *3.2 Tackling the First Issue*

It could be said that the inclusion of shared or common values allows for a definition of the European Union. Moreover, this inclusion allows also for its self-definition. Thanks to the interpretation as community of values, the EU could be understood and could understand itself as well.

“Community” refers to a political community, i.e. a socially created, discursive realised and continuously improving community<sup>37</sup>. Within such a community, values become objective guidelines for the decision-making<sup>38</sup>.

This is relevant due to the difference between community and organised society which has been sketched above. According to the interpretation of “community” as “political community”, “community” could be understood as “organised society”. This way, the role of values would be clearer.

Since values become objective guidelines for the decision-making, they have to be included in the legal system. The objectivity, which values should have, could be achieved through this inclusion.

It has been shown that the legal system can deal with the risks implied by the concept of value. Furthermore, this system can also allow for the realisation of values. Within a legal system, values fulfil a double function. They both define a political community and provide it with guidelines for the decision-making.

It has to be noticed that if a community refers to some national heritage, within the members of this

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<sup>36</sup> Cf. Charter of fundamental rights of the European Union; Treaty of Lisbon; Treaty of Amsterdam

<sup>37</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 203

<sup>38</sup> V. BALLI, “Europäische Werte in Praxis?” (European values in praxis?), in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertgemeinschaft in der EU?*, op. cit., p. 165; W. HALLSTEIN, *Die Europäische Gemeinschaft*, op. cit., p. 49

community there could be no identification as citizens. They could only achieve a cultural identity<sup>39</sup>. This community won't be a political one.

An identification with a cultural background could allow for the recognition of shared concepts but would not suffice for the expression of primary values.

In order to be expressed, primary values require shared concepts as well as some corrective practices. These practices can apply only within the circular relation which connect system of concept, system of language and system of law.

While a system of language, as a social background of a *community*, could suffice to express shared concepts, shared values need also a legal system in order to be realised. It could be said that a cultural identity could refer to a *community* but could not refer to a political community, i.e. to an *organised society*.

Since the European Union would be supposed to be such a society<sup>40</sup>, a different kind of identification should be achieved.

Moreover, a cultural identity, although important, would not avoid a possible conflict between a national entity and a supranational one.

The European Union – as a supranational entity<sup>41</sup> – handles the possibility of this conflict thanks to some peculiarities<sup>42</sup> which concern the application of its legal system. On the contrary, the EU as cultural community would not be provided with a shared legal system. Only by this system, however, could the EU tackle one of its most relevant problems.

It could be concluded that an identification as citizens should be achieved in order to define a political community. This identification can be achieved through the political values<sup>43</sup>.

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<sup>39</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 123

<sup>40</sup> V. BALLI, "Europäische Werte in Praxis?" (European values in praxis?), in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertegemeinschaft in der EU?*, op. cit., p. 165; W. HALLSTEIN, *Die Europäische Gemeinschaft*, op. cit., p. 164

<sup>41</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 187; C. WIESNER, "Die Identität Europas und die Balance zwischen partikulären und universalen Werten" (Europa's identity and the balance between particular and universal values) in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertegemeinschaft in der EU?*, op. cit., p. 210

<sup>42</sup> E.g. the implementation of the European treaties through the particular, national legal systems Cf. T. SHMITZ, "Die Charta der Grundrechte der Europäische Union als Konkretisierung der gemeinsamen europäischen Werte" (The Charta of fundamental rights of the European Union as realisation of the shared european values) in D. BLUMENWITZ/G.H. GORNIG/D. MURSWIEK (Ed.), *Die Europäische Union als Wertgemeinschaft* (The European Union as community of values), p. 85

<sup>43</sup> R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 123

These values should be called political due to the normative function<sup>44</sup> which they fulfil. Being included in the legal system, they could and should be realised. This way, they become objective guidelines for the political decision-making.

The inclusion of primary values in the legal system of the European Union could allow for its definition and self-definition as political community. Being a political community, the EU could deal with some difficulties which it is called upon to tackle.

### 3.2 Tackling the Second Issue

The (primary) values which have been included in the European treaties could be not supported<sup>45</sup> by all the members<sup>46</sup> of the European Union. Nonetheless, these members – as citizens – should share these values .

This split between being a citizen of an organised society and being a member of a community does not imply any inconsistency and could be explained thanks to the relation between the system of concepts and the content of the primary values<sup>47</sup>.

The content of primary values represent the minimal but fundamental core of a political community. Being expressed by shared concepts, primary values should be recognised by the members of the *cultural* community. At the same time, (primary) values-as-concepts should be expressed by the members of the *political* community.

Primary values are expressed by shared concepts, therefore they should be at least understood by the members of the community in which these concepts have been produced.

This understanding represents a starting point for the discursive and corrective practices which have been discussed above<sup>48</sup>. There could also be some values which could be not shared: they won't be primary ones. They could define a community, but not to a political one.

If values were not included in the European treaties, there would be no possibility to tackle the important issue of the European roots. Without the relation “system of concepts-system of

<sup>44</sup> In a legal system, values fulfil also those functions which have been described above. Cf. “2. System of Language, System of Concepts, System of Law: Inquiry into a Circular Relation”

<sup>45</sup> Cf. R. MANDRY, *Europa als Wertgemeinschaft. Eine theologisch-ethische Studie zur politischen Selbstverständnis der EU*, op. cit., p. 100 ff.

<sup>46</sup> It could be asked who are the real members of the EU.

<sup>47</sup> Cf. 2.2 *The Role of the System of Concepts*

<sup>48</sup> Ibidem

language-system of law”, the risks which have been referred to values would arise again. This time, however, they would arise in a community. According to this, and without the inclusion of values in a legal system, there would be no possibility to apply any corrective practice.

Shared concepts, and not any cultural heritage, represent the core of an organised society. The problem of the cultural roots of the European Union could also be tackled thanks to the very contents of primary values.

### *3.3 Shared Vocabularies, again.*

Within the legal system of a political community, primary values have to fulfil a *normative* function. This could make the differences of languages within the European Union a *normative* difficulty<sup>49</sup>.

The absence of a shared language, i.e. of a shared social background, could prevent the expression of shared values as well as the expression of some guidelines for the decision-making. Under these circumstances, the (self-) definition of the European Union would be impossible. However, this deficiency could be avoided: concepts and values, as shared vocabularies, could overcome it. The issue of languages' difference within the EU could also be handled this way.

Concepts and values can fulfil this purpose because they are based on the languages. The language, in its general form of a social background, allows them to respect both cultural and political communities. It has been said that values are not immutable. The contents of primary values should be related to the circular relation between system of language, system of concept and system of law. According to this, these contents should always reflect the identities of the members of the community. At the same time, they should also represent its political identity.

The epistemic function which concepts have makes the values understandable. They do not depend on a particular language anymore. Primary values will depend on a core of shared concepts which relate the humans and the world beyond their contingency. It has been shown how the relation system of language-system of concept-system of law can deal with this contingency in order to achieve an improvement of the three systems.

Thanks to their epistemic function, shared concepts, as content of the primary values which have been included in the treaties, could overcome the lack of a largely shared language.

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<sup>49</sup> C. WIESNER, “Die Identität Europas und die Balance zwischen partikulären und universalen Werten” (Europa's identity and the balance between particular and universal values) in H. HEIT (ed.), *Die Werte Europas. Verfassungspatriotismus und Wertegemeinschaft in der EU?*, op. cit., p. 212



#### **4. Conclusions**

The attempt of this paper was to show how some theoretical reflections could help in dealing with some practical issues. The paper focused, above all, on the circularity of the relation “system of concepts-system of language-system of law”.

According to this, the values-as-concepts and the legal system of the European Union have been used in order to connect the theoretical inquiry of the aforesaid relation with a practical, political challenge.

Against this background, it could be said that this so-called circular relation both requires and justifies the inclusion of values(-as-concepts) in the european treaties.

The timeless process of improvement which this relation represents comes into play in order to tackle some relevant topics of the dispute on the European Union.

Unfortunately, not all the most important issues of this discussion could be analysed here. The topics which have been chosen, e.g. the dichotomy national entity/supranational entity, the roots of the EU or the difference of languages, have been also only sketched. The aim of the paper was rather to suggest a way to handle these issues in order to achieve a better understanding.

The impossibility to break the circular relation between system of concepts, system of language and system of law implies the impossibility to divide the legal and political constructions from their social background.

It could be concluded that this impossibility can also imply the impossibility to separate a political praxis from the theoretical reflections on it.

The relation “system of concepts-system of language-system of law” could represent a tool enabling one to explain, develop and improve the social constructions of the human world.

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