

# On the Meaning of Democracy in the European Union

Jaanika Erne  
University of Tartu

**Abstract.** Using some of Immanuel Kant's ontological categories, and the categories of meaning, the author shows some methodological difficulties met when defining democracy in EU law: the difficulties with categorization because there do not exist complete systems of categories but categories differ and give different research outcomes; with the concept of democracy that is founded upon the recognition of the very absence of any definite foundation and is a multidimensional concept having among others legal and political dimension; with law and politics being autonomous systems with distinct discourses and understandings of categories; with the EU lacking its own legal definition of democracy, which is but in the EU's political acts. The article shows the turning point from empirical (doing, legal practice) to explaining (theory) at the time a researcher poses the question "Why?".

**Keywords:** democracy, EU, meaning, categorization.

The first part of the article discusses Immanuel Kant's classification of categories, the turn to the categories of meaning, and the postmodern understanding of the necessarily contingent nature of categorizations. Having worked with conceptualizations on the borders of law and politics, I have looked for a link between legal and political (see Kennedy 1980) that are the sides of the same society (Lefort 2007). The second part of the article tries to infer something about the concept of democracy in EU law based on the seven categories selected according to the contemporary flexible understandings of categorization. I show the methodological difficulties that arise category-by-category when trying to explain something related to a particular category. The conclusions are: a) that one cannot explain a political concept based on the objective validity of categories (true about any concept because of the absence of the final ground), and b) that asking for the meaning of democracy requires categories of meaning that cannot be objectively fixed either. The main conclusions are that the legal practice (as empirical) and theories (as asking for meaning or political theories) are autonomous. For the reason empirics in itself cannot explain empirics (Waltz 1979:4), the structure of an empirical analysis can only circle – at best, one could compare an EU legal definition with a meta-definition. Unfortunately, both - an EU legal definition of democracy and a fixed meta-definition of democracy are absent, and one could confirm that democracy “is founded upon the recognition of the very absence of any definite foundation” (Marchart 2007).

For these reasons, a researcher has to ask for meaning or make meaning, going beyond empirics. If empirics consists of undetermined concepts, only the broadest research units are available. In the spheres of knowledge and political, as they have progressed over the last 2000 years, categories have been considered the most abstract research units under which to organize thoughts (Thomasson 2019).

Therefore, the article derives from the Kantian ontological categories as the anchoring points for analysing the principle of democracy. At the same time, the Kantian categories are limited in explanation because they do only allow circling around a certain aspect of contingency. – For example, when we answer the “What?” question, we are constrained with “What?”, when we answer the “Who?” question, we are constrained with “Who?”, and so forth. This seems similar to Kenneth Waltz’s observation that we go around according to the pre-composed rules of research about how to answer a particular question but at the moment we want to understand the reality or explain the research object situated in reality, we are constrained and actually cannot say anything true about the research object (1979). While ontological categories deny the relative normativity of international law (Fastenrath 1993), the article shows how an empirical research turns into an evaluation at the point a researcher poses the question “Why?”, which was directly excluded from the Kantian ontological categories, maybe because of the fear that the question “Why?” would open the door to speculation and meaning-making?

#### I. CATEGORIZATION BY IMMANUEL KANT AND THE TURN TO THE CATEGORIES OF MEANING

The Kantian categories have been named ontological categories because although Kant distinguishes between the metaphysics of experience (one can name it also as the world of experience or nature, theoretical philosophy, “how things are”, appearances, subjectivity, empirics, facts) and the metaphysics of morals (practical philosophy, beliefs of how things ought to be) in his understanding of categories, he does not ask for meaning even when he talks about judgment.

Kant divided categories into four respects. Under each respect, there were three alternative classifications that categorized objects not meanings, for example: quantity (universal,<sup>1</sup> particular,<sup>2</sup> singular<sup>3</sup> - which bring to three corresponding categories under the first group of Kantian categories: quantity – unity, plurality, and totality) (Thomasson 2019). The second group of Kantian categories consists of quality (with subcategories: reality, negation, and limitation) (Thomasson 2019). The third group constitutes of relation (explained as: categorical, hypothetical, disjunctive - with subcategories: inherence and subsistence,<sup>4</sup> causality and dependence,<sup>5</sup> and community (Thomasson 2019).<sup>6</sup> The fourth group constitutes of modality (with subcategories:

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1] All swans are white.

2] Some swans are white.

3] Swan Cygmund is white.

4] Substance and accident.

5] Cause and effect.

6] Reciprocity.

possibility, existence, and necessity) (Thomasson 2019). For Kant, this allegedly was an exhaustive table of categories (Thomasson 2019). The critique has included the general doubt as to whether an exhaustive categorization would reveal itself to a human being whose thought is in constant change, while much of the human thought has proven wrong throughout history. A common answer can be that a human decision should be made according to the best evidence available.

Edmund Husserl supplemented the Kantian ontological categories with the categories of meaning (Thomasson 2019). The distinguishing point between Kant and Husserl was that the categories of objects as formal essences find their expression in meaning.

Husserl distinguished between the categories of objects (ontological categories that exist as a matter of empirical fact – the descriptive formal categories that categorize objects not meanings), and categories of meaning (as the way one can think about objects).

Similarly to Isaiah Berlin's method of beginning by answering the question "What does x mean?" (Berlin 2013), Husserl suggested deriving ontological categories from the categories of meaning because "pure truths concerning meaning can be transformed into pure truths concerning the object" (Thomasson 2019). The approach to know what something means prior to verifying that something, places asking for meaning before the investigation of its truth (Berlin 2013). That way, context is important because it can give meaning to the object of a conversation. On the other hand, the term "meaning" has also ambiguous and wide meaning containing seeminglessness, relativity and our knowledge of facts (empirics) being clearly limited by interpretation (Berlin 2013). So, when we understand concepts as post-foundationalists, we do not only give meaning to them but we also make meaning (see also Schiappa 2003).

The attempts to build an exhaustive system of categories allegedly fell out of fashion in the 20th century with the understandings that increasing the number of categories would in itself not explain anything (Waltz 1979, 115), i.e. there cannot be one correct system of categories due to human subjectivity. So, postmodern research allows many different and changing sets of categories, which do not constitute a single fixed system in the contemporary understanding. The broadest categories are space and time. What concerns the rest, then different authors have offered their own differing classifications. For the reason there is no requirement to be exhaustive, a researcher is allowed to build his/her system in research on only some categories. The main categorization in this article is based on the seven questions: "Which?", "Where?", "When?", "How?", "Who?", "What?", "Why?" that with the exception of "Why?" associate with the Aristotelian and Kantian systems of categories – with the names "categorical", "spatial", "temporal", "procedural", "identitatorial", "substantive" and "justificatory". "The justificatory contains both explanation and interpretation. These seven categories constitute the logical tool for the analysis in this article.

## II. ANALYSIS OF THE CONCEPT OF DEMOCRACY IN EU LAW BASED ON CATEGORIZATION

### 2.1. *Categorical*

This is a question about understanding of democracy, about naming of it, its limits, values and theories. The question: which democracy is being analysed?

The valid Treaties of the European Union (EU) directly mention democracy,<sup>7</sup> representative democracy,<sup>8</sup> participatory democracy,<sup>9</sup> deliberative democracy,<sup>10</sup> democracy in EU external relations,<sup>11</sup> youth democracy<sup>12</sup> (see also Chalmers 2008). It is possible to infer from EU law also direct democracy (referendum,<sup>13</sup> citizens' initiative<sup>14</sup>), constitutional democracy,<sup>15</sup> statutory democracy,<sup>16</sup> EU's internal democracy,<sup>17</sup> input democracy,<sup>18</sup> output democracy,<sup>19</sup> individual(citizen's) democracy,<sup>20</sup> member state democracy,<sup>21</sup> national democracy,<sup>22</sup> democracy at the EU level,<sup>23</sup> parliamentary democracy, liberal democracy,<sup>24</sup> and many other types of democracy (Erne 2011). It is difficult to exhaust the list because, firstly, also other indirect types of democracy can also be inferred from the EU Treaties, and secondly, a measure for claiming the exhaustiveness of a list of the types of democracy is absent. But although it is possible to collect empirically and discuss many other labellings of democracy in EU law, regardless

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7] Preamble, Articles 2, 21 TEU; Preamble CFREU.

8] Article 10 TEU.

9] Articles 15, 165 TFEU.

10] Articles 16, 20 TEU; 284, 330 TFEU; Protocol 1 on the Role of National Parliaments in the EU Legislative Procedure, Protocols 3, 4, 9 TEU, TFEU.

11] Article 21 TEU.

12] Article 165 (2) TFEU.

13] Protocol 16 TEU, TFEU.

14] Articles 11 TEU; 24 TFEU.

15] Some provisions on democracy can be found in the constitutive treaties of the EU, therefore one can talk of constitutional democracy in this context.

16] As far as one can claim that democracy is directly or indirectly present in statutory law.

17] Democracy in the internal affairs of the EU.

18] The term "input democracy" characterizes member state participation in the pre-legislative and legislative activities because by such participation the Member States add value to the EU democratic processes.

19] Protocol 1 on the Role of National Parliaments in the EU Legislative Procedure.

20] There are only two political communities (two entities) represented in EU representative democracy: European citizens, and national governments.

21] Member state-based (national government) democracy in the EU. For further discussion of the concept, see, for example, Fossum 2010.

22] The term refers to how democracy is structured within the EU.

23] As opposite to member state democracy.

24] Based on the liberal theory of democracy.

of occasional correspondence with understandings of democracy in other political units, there are no fixed definitions but ruptures in meaning(s) and disconnections what concerns the concepts beyond the EU. Therefore, gathering the labellings in itself neither defines nor explains democracy.

The list afore of various different appearances of democracy in EU law contains many hybrid concepts. Some hybrid concepts in the EU Treaties contain opposition, e.g., representative democracy/direct democracy. Some hybrid concepts in the EU Treaties contain opposites, e.g., “representative” and “democracy” in “representative democracy”, similarly to “Christian” and “democracy” in “Christian democracy” (the decision to crucify based on an the expression of a democratic will). Sometimes such constructions additionally disrupt the meaning of a concept that may already be contested. Such opposites are not illogical because in a hybrid concept only one component is democracy while the other component is an adjective that can have different meanings. The linguistic appearance is similar to the logical exercise in which one has to make sense of “trees”: “apple trees”, “cherry trees”, and so forth, where “tree” is the constant concept. - In the example of democracy, “democracy” is the constant concept, whereas the adjectives vary. When defining a concept, the characteristics of a concept do not disappear but are substituted by a variable, whereas the constant is always broader than the variable. A concept with a variable is more precise, therefore all the hybrid concepts of democracy are deducible to “democracy”. Based on Waltz (1979, 55) and his definition of a system as a set of related variables, it is possible to conclude that variables have been added to democracy in the EU Treaties with the aim to specify the content of the concept for the EU.

The concept “democracy” and the concept “representative democracy” are not equal concepts but distinct. The types of democracy (e.g., “representative democracy”) cannot fully define democracy although they can say something about the content of democracy. Which is similar to the paradox of the Kantian ontological categories - that a researcher can say something about the logical principles according to which the variables are (re)placed but cannot get beyond that logic. Moreover, this logical circle does not allow a logical deduction that the concept “representative democracy” is a specific concept of “democracy” and therefore must have the same general characteristics as the concept of “democracy”. Nor does it allow EU democracy to be a specific concept of democracy that therefore should have the same general characteristics as the concept of “democracy”.

A legally situated concept could be compared with other legally situated concepts. But since the EU Treaties do not contain a valid legal definition of democracy, a methodological possibility for a law essay about democracy in EU law would be to simply enumerate the types of democracy in the texts of the valid EU Treaties as in the EU treaties as they have historically progressed. An alternative for a law essay that would wish to remain empirical without getting directly into politics, would be compare the EU principle of democracy with the United Nations General Assembly’s functional

definition of the essential elements of democracy that constitutes the normative standard for the EU as a meta-concept referred to in EU law.

I have to confess that it is difficult to find any better alternatives to these two approaches writing a law essay about democracy in EU law, without getting into politics or policy-making. At the same time, in the current situation where all legal definitions of democracy are partial and one final metadefinition of democracy is absent - it is easy to see why there are doubts as to whether an undetermined meta-concept of democracy could constitute a good frame for analysing society, decision making, and governance.

What concerns examining the EU principle of democracy in the light of values then values have been considered weak categories for theorizing.

There are also theories of democracy that could help to create models (categorize). For the reason theories define democracy sufficiently clearly – in a way that allow one to say something about the presence/non-presence of its features in EU law – they are considered stronger than values. The problem with theories is that although they can give different qualitative understandings of democracy, they create limited models because they posit preconditions for democracy. For the reason no EU act directly refers to any theory of democracy, the theories would also constitute a weak basis for a legal comparative research.

## 2.2. Spatial

The space where democracy takes place for the purposes of this article is EU law. One can approach the space synchronically - comparing the types of democracy in valid EU law, or/and diachronically by trying to trace the concept in its development in the history of EC/EU law.

Under this category, an option could be to discuss the *demos/demoi* of the EU with its multi-level identities because democracy is among others referred to in the Preamble of the Charter of Fundamental Rights of the EU (CFREU), which contains besides the EU citizens' rights also everyone's rights, and that way, the EU constitutional principles are not constrained with the EU level but reach beyond it to the levels of the member states and international. It seems impossible to understand democracy in the CFREU without explaining the context of the CFREU as the evolution of human rights in the EU that consists of long discussions about the relationship of the EU citizens' rights with rights in internal law and in the European Convention of Human Rights (ECHR).

For the reason EU law mentions democracy as an EU guiding principle in accordance with the principles of the Charter of the United Nations (Charter of the UN), it creates a legal link through which EU law and the Charter of the UN become the interacting units and also the principles of the Charter of the UN form part of the EU *acquis* and offer a tool for comparing the understanding of democracy in the EU Treaties with the understanding of democracy in the Charter of the UN. That way, the two democracies (of the UN and the EU) are supposed to coincide, while their

interpretation and application would also require the researcher to investigate the *travaux préparatoires*, the working documents of the Convention on the Future of the EU, the White Paper on the Treaty establishing a Constitution for Europe, commentaries, Explanatory Note to the CFREU, also writings of the publicists and case law would assist here, although there would still remain “grey” areas would remain.

### 2.3. Temporal

This is a category about time. Temporalization opposes to the ideas of eternal stability and repeatability of categories. As the social phenomena are viewed as processes, concepts change as history progresses (Marchart 2007).

Reinhart Koselleck has connected the notion of temporalization with historicization (Marchart 2007, 54). One can situate the EU principle of democracy in time, placing the beginning of the conceptual tree of EU democracy in the idea of Europe before 1951, followed by the appearance of the word “democracy” in the Treaties in 1992 with the Treaty establishing the European Community,<sup>25</sup> the 1994 Agreement on the European Economic Area,<sup>26</sup> the 1997 Treaty of Amsterdam, the 1997 Treaty on EU,<sup>27</sup> the Treaty of Nice of 2001,<sup>28</sup> and so forth. - Step-by-step, democracy has gained space in the EU Treaties. And it went further – the Preamble of the Draft Treaty establishing a Constitution for Europe (Draft TCE) identified and named EU constitutional democracy and proposed a legal definition of democracy for the EU: “democracy means that power is in the hands not of a minority but of the greatest number”. The Preamble of the Draft TCE also mentioned equality of persons and freedom, and the wish of the reunited Europe to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world. For the first time in the EU’s history, the constitutive Treaties were to have a separate section with the title on democracy as the Draft TCE contained in Articles 44-46 in Title VI “The democratic life of the union” the principle of democratic equality and its legal definition (Draft TCE Art.44), the principle of representative democracy and its legal definition at two levels - as citizens’ representative democracy and as member states’ representative democracy, while referring to parliamentary democracy, elections, participative democracy, and citizens’ representation through political parties (Draft TCE Art.45); and to the principle of participatory democracy with mentioning civil society organizations and the citizens’ initiative (Draft TCE Art.46). The text of the

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25] Article 130u Treaty establishing the European Community (Maastricht Treaty) in the context of development cooperation, saw as the general objective of the EU development and consolidation of democracy and the rule of law.

26] Preamble Agreement on the European Economic Area (EEA Agreement). Democracy is mentioned also in the Declaration by the Governments of the EFTA States on Article 103(1) of the EEA Agreement but with regard to the EFTA states.

27] Preamble, Treaty on European Union (Treaty on EU).

28] Article 181a (1) Treaty of Nice.

Draft TCE that was published in the Official Journal of the EU in the year of 2003 included as its Part II the codification of human rights for the EU that referred to democracy (Preamble). The CFREU has grown out of this Part II. Article III-193 (1) of the Draft TCE in Title V addressing the EU's external action mentioned democracy as an EU guiding principle in accordance with the principles of the Charter of the UN.

The Draft TCE, which was aimed at reconceptualizing EU law did not enter into force. A revised Treaty establishing a Constitution for Europe (TCE) was adopted and published in 2004 but this Treaty did not enter into force either. The TCE contained provisions similar to the Draft TCE provisions, although some provisions were extensively revised. For example, absent was the legal definition of EU democracy, while the Chapter on democracy was maintained but was renamed as "The principle of democratic equality", and contained in Articles I-45-I-47 TCE the principle of democratic equality (directly labelled as "the principle of equality of EU citizens" in Article I-45 TCE); the principle of representative democracy and its legal definition at two levels - as citizens' representative democracy and as member states' representative democracy; also reference to parliamentary democracy, elections, participative democracy, and citizens' representation through political parties (TCE Art.I-46); preserved was the principle of participatory democracy, whereas "civil society associations" was replaced by "representative associations and civil society"; included was the citizens' initiative (TCE Art.I-47). As the TCE of 2004 did not enter into force, there was a "reflection time" during which period was worked out the Treaty of Lisbon that incorporated many re- and new conceptualizations from the Draft TCE and the TCE. The Treaty of Lisbon was adopted in 2007 and entered into force on 1 December 2009. The Treaty of Lisbon stressed in its Preamble the democratic legitimacy of the EU, and made amendments: Democratic equality was not explicitly mentioned in Article 1a TEU, instead one can read: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights". The Treaty of Lisbon includes a specific section "On Democratic Principles" materialized in Title II TEU "Provisions On Democratic Principles" in Articles 8 (8a-8c) containing the principle of the equality of the EU citizens, representative democracy consisting of citizens' direct representation at EU level in the European Parliament, and member states' representation in the European Council by their Heads of State or Government and in the Council by their governments (TEU Art.8A), participatory democracy (TEU Art.8A(3)), political party representation, representative associations (TEU Arts.8B(1) and (2)), citizens' initiative (TEU Art.8B(4)), national Parliaments (TEU Art.8C). Amendments to the general provisions of the EU external action generally remained as they had appeared in the TCE what concerns democracy (TEU Art.10A). "[E]ncouraging the participation of young people in democratic life in Europe" was added as in the Draft TCE and TCE. A solidarity clause was added.

Each stage of the EU legal development has been politicized – i.e., the legal meaning of the EU has been made by politicians. Therefore, a conclusion could be that an analysis

of the legal evolvement of the concept of democracy would also require extensive work with the EU policy documents that fix the discussions concerning what to include in or exclude from the EU Treaties, with the *travaux préparatoires*, Convention on the Future of the EU documents, the White Paper on the TCE, commentaries, Explanatory Note to the CFREU, the writings of the publicists and case law, etcetera.

Methodologically, one can still see a circle: the historical is itself the (ever-changing) condition for the presence to emerge. The historical as identifiable facts is empirical but we cannot say much about the content of presence based on this empirics. Not to mention that we approach history subjectively. That way, a time-situated approach can only assist in understanding a concept as a process. But not as a process in evolution that presumes that reality in growing in precision (i.e., growing the specific out of the general, or the future out of the past) because there are political disruptions. So, even if there would exist a single meta-concept of democracy, these disruptions would not allow one to synthesize the EU democracy out of it.

It is the privilege of the legal researchers to write only about the types of democracy expressly present in the valid EU Treaties, and to compare only the black letter appearances of the types of democracy in EC/EU law. Because inclusion of also the derivative types of democracy would already require an explanation, and an external anchoring point for explanation. Because of the absence of legal links, and as the legal choices in the EU depend on the political leadership of the EU, the use of any theory of democracy theory as an anchoring would become weak theorizing for a lawyer, compared with the use of the preparatory legislative texts, case law of the European Court of Justice (CJEU), and even the EU law publicists.

#### ***2.4. Procedural***

This category asks how to approach the concept of democracy. The choice of a method depends on how the democracy under observation has been limited because democracy can function from an agora to legalized democracy. A research about the legal formulations of democracy in the EC/EU Treaties can become a descriptive enumeration of only the types of democracy or a comparison of them.

As mentioned before, a research could also infer the types of democracy from the EC/EU Treaties. Such an approach would require more explaining and an external anchoring point for explaining.

A research could be a symbolic construction - meaning that a research could describe certain models in the framework of certain decision systems, e.g., in the framework of EU law (as n1), or in the frame of the major theories or understandings of democracy (as n2). Here, problems begin with already the fact that in a legal or/and political research one cannot state that a general concept of democracy means a meta-concept of democracy, and consequently, that the concept of democracy in the EU Treaties is a derivative specific concept. A danger with using general concepts of

knowledge in political (including legal) modelling is that when one says that B can only build on (or follow) the knowledge about A, one constructs mathematically, but in reality A does not certainly guarantee that B will follow it. That way, (de)construction of a meta-concept cannot in itself explain EU law because a historically evolving meta-concept of democracy cannot explain the politicized EU concept of democracy.

A related but distinct question is whether a contemporary concept necessarily needs to be based on the historical understandings of the same concept. Already St Augustine concluded that it actually needs not because each time has its own understandings and concepts of justice (Saint Augustine 2008). In that sense, one could ask what is the use of conceptual history analysis in politicized areas?

It is interesting that there seems to be a contradiction between the earlier thought of Augustine and a later(!) Marxist understanding that new structures operate based on previous structures and reflect the old structures more and more adequately – Karl Marx understood concepts as successive evolution but his dialectical method applies toward science, not politics (Rosental 1948).

### *2.5. Identitarian*

A general understanding is that a theoretical approach depends on the selected literature theorizer-by-theorizer. A literature review can be used as a frame when discussing whether something is/is not a democracy. The theorizer chooses whose ideas constitute the specific democracy or a suitable theory.

There are many sources available for external approach. Some databases: the Oxford English Dictionary, the Stanford Encyclopedia of Philosophy, ProQuest, Jstor – define in a way that approximates ideologies (Gagnon 2019). This may be called ideology control and implies that refers to politicization. But the labelling as a “Western concept” is not identical with the labelling as a “politicized concept” because the understanding may simply depend on the intellectual background of a particular author. Maybe for that reason, for example, Joseph H. H. Weiler has searched for the meaning of *demos* and *polity* from also political theories (Weiler 2011:28). At the same time, the EU treaties do not refer to any political theory or author. And even if they did, the theories are always dynamic and, therefore, the understandings of *demos* and *polity* would always be in flux.

At the first sight, a comparison of a Eurocentric meta-concept of democracy with the EU’s own concept of democracy would seem as a reliable possibility for finding connecting points for analysis. In practice, such comparison is very complicated because one single Eurocentric meta-concept of democracy is absent. For example, Joseph H. H. Weiler refers to international, supranational and infranational levels of analysis of concerning European democracy (2011:28) and to different general democratic theories, such as the traditional democratic theory, the consociational theory, the competitive elites model of democracy, the federalist

model of pluralist democracy, the neocorporatist model of democracy, the American and British models of democracy, and so on (Weiler 2011:33-44). From the EU perspective, such an approach would require defining EU's own democracy based on EU preparatory acts, policy texts, case law of the ECJ/CJEU, writings by EU law publicists, etcetera.

What concerns the EU's own legal concept of democracy, it was defined by the Convention on the Future of the EU, composed of the representatives of the EU and member states institutions and civil society, and the representatives of the acceding member states, convened with the aim of revising the EU Treaties as the constitutional convention of the EU, and to propose the Treaty amendments as the basis of the 2004 intergovernmental conference (because the procedure of the amendment of the EU Treaties consists of cooperation of the intergovernmental conference and the following European Summit). As a result of their work, the definition of EU democracy was written into the Draft TCE (mentioned above) that did not enter into force. That way, the EU does still not have a valid legal definition of democracy.

The documents of the Convention on the Future of the EU, which have not exactly rewritten the contentious discussions around the policy issues it worked with, allow identification of the people responsible for the amendments in these documents. Therefore, an important source to begin with for understanding the EU's own concept of democracy could be to consult these people, their writings and references. Would it be useful? - Without this link, one can well observe (trace) the development of democracy as written in EU law, and can discuss the general concept of democracy with its many meanings. A comparison of the EU's principle of democracy with any general societal and political concept would in any case be complicated because of strong political influence.

## *2.6. Substantive*

This categorical question is concerned with the content of a specific kind of democracy under research, too, but the difference is in substance not in a categorical form. The question is: What does the democracy in question discuss (focus on)?

When one can neither understand the meaning of democracy nor define it, one cannot participate in this discussion. In that sense, this question is also related with meaning, more specifically, meaning-making, which is always a matter of choice and agreement. Paraphrasing Heidegger: There is no universal thing - only points of agreement (Heidegger 1962). This reminds also of Kant's warning that empirical knowledge is not absolutely true. Therefore, in the case of political concepts important is also the question of Leadership. Kenneth Waltz has said that the frame of understanding is set by the composer of a manual (Waltz 1979).

## 2.7. *Justificatory*

"Why?" is the only question among the seven discussed in this article that asks for an explanation of democracy. In this way, the question "Why?" is different from the other questions. Explaining is a foundationalist method.

Sometimes there are limits to explanation. For example, legal concepts are autonomous with regard to general concepts, while politicized concepts require specific methodology.

Claude Lefort explains that the spheres of law, power and knowledge should be kept autonomous because the merging of these spheres would constitute a totalitarian attempt to centre a society around a single ground of legitimation (Lefort 2007, 105).

## 2.8. *The Results Based on Immanuel Kant's Ontological Categorization*

In the absence of the correct meta-concept of democracy, and the connecting links between a democracy theory and valid EU law, I began my analysis of EU democracy with a choice of seven categories derived from Immanuel Kant's system of 12 categories and its critique.

The conclusions are that for the EU, the concept of democracy has been developing in the EU *acquis* (the Treaties, secondary acts, case law of the ECJ, the working documents of the Convention on the Future of the EU, etcetera) under the frame of the United Nations General Assembly's definition of democracy as referred in the EU's secondary acts. The recognized EU publicists (for example, Weiler, Fossum, Eriksen, etcetera) focus on EU democracy through specific sectors - for example, civil society, the rule of law, policy making, decision making, democracy deficit, division of powers, interparliamentary cooperation, inter-institutional cooperation, vertical and horizontal separation of powers, electoral regimes, direct elections, political rights, political accountability, exercise of state power, the governmentality *vs.* government debate, EU governance debate, etcetera. The UN acts have the similar functional approach - the UN General Assembly has not defined democracy as such but has defined what it considers as the essential elements of democracy. According to Waltz, similarity in itself in a political structure does not mean uniformity, even if it means similar effects (Waltz 1979, 87, 88). Going deeper into any of these sectors would mean a separate sectoral research, while a general focus on democracy could be lost into details.

The frame derived from the Kantian ontological categories and their critique offers a measure for approaching the principle of democracy in EU law. The Kantian ontological system of categories teaches that for evaluation, one has to go beyond the Kantian categories and ask for the meaning of democracy. The meaning of the EU's principle of democracy should be discussed in the light of the UN General Assembly's definition of the essential elements of democracy, because there is no formally fixed meta-concept of democracy other than the one formally agreed upon in the UN framework to which concept the EU has formally consented. For the reason the Draft TCE did

not enter into force with its legal definition of EU democracy, the legal definition of democracy is only emerging for the EU in the process of its reconstitutionalization. From the viewpoint of validity, the draft and preparatory documents may have only explanatory value in certain circumstances, for example, they might commonly be used to explaining an already validated norm. Although the post-Lisbon *acquis* did grow out of the Draft TCE and the TCE, the latter two documents by virtue of having not entered into force can hardly amount to soft law that a lawyer can use in interpretation of valid law.

### CONCLUSIONS

The article discussed the limits of defining the principle of democracy in EU law based on the Immanuel Kant's ontological categorization and its critique.

Although a correct metadefinition of democracy and a correct system for systematizing things into categories are absent, the author of the article does not accept the solution that one cannot actually say anything when trying to explain a non-existent thing using a non-existent method. In Marchart's opinion such could amount to anti-foundationalist nihilism, existentialism or pluralism, all of which assume the absence of any ground and would result in complete meaninglessness, absolute freedom or total autonomy (Marchart 2007). I tried to find some anchoring points from which to say and saying something about this research object, which has been in constant flux. The concept of democracy is one of the most problematic concepts because there is no correct meta-concept of democracy, rather the meanings of democracy have been politically constructed so that different and controversial notions of democracy have emerged in the course of historical and political evolvments.

In addition, the valid EU law does not contain a legal definition of democracy and although EU law refers to the UN General Assembly's understanding of democracy as a connecting point, the UN General Assembly has defined only certain sectors of democracy.

A suitable reference in such circumstances comes from Marchart: "While the sea is boundless and bottomless, it is still structured" (2007:3).

The author of this article, firstly, approached the EU principle of democracy with a constructed system of seven categories and then viewed the results. This approach allowed different classifications diachronically and synchronically, while the difficulties arose mainly due to the political nature and indeterminacy of the concept. The questions "Which?", "Where?", "When?", "Who?", "What?" and "How?" were suitable for an empirical (factual) research, at the same time, the approach based on pure progress, induction, deduction and direct conclusions did not in itself allow explanation in the sense of understanding. Only with the question "Why?" the empirical legal research acquires the dimension of evaluative explaining because the question "Why?" can break beyond the logical circling when it escapes the constraints of causality. At the

same time, even though when an inner meaning (pure meaning) of things could be “out there” and one could grasp it regardless of human constraints, politicization is nevertheless disrupting and reconceptualizing the meanings of things. The rules of demos and kratos are politically constructed for the EU.

jaanika.erne@ut.ee

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