

**Food for critical thinking: Hauke Brunkhorst's discussion of Europe's politico-economic crisis.**

Tannelie Blom

The intensity and intellectual quality of the German debate on the sequence of crises – financial-, banking-, sovereign debt, etc. – which starting in 2008 has finally led to a Eurocrisis on the brink of a full European crisis, is more than impressive. With authors like Grimm (2012), Habermas (e.g. 2011a, 2011b, 2013a, 2013b) Scharpf (e.g. 2012, 2013, 2014a, 2014b) and Streeck (e.g. 2013, 2014) throwing their full weight – and anger – into the public debate, the Dutch contribution seems rather bleak. And now a new voice is making itself audible, counterpointing the already established lines of arguments: the voice of Hauke Brunkhorst. May this special issue of *Krisis*, dedicated to Brunkhorst's latest publications, at least make up some ground.

In my contribution to this special issue I will concentrate on Brunkhorst's essay *Das doppelte Gesicht Europas – Zwischen Kapitalismus und Demokratie* (Brunkhorst 2014a), and more in particular on his diagnosis of, and remedy for, the current European crisis. In addition I will take into account his Clough Lecture (March 13, 2007) – “The Beheading of the Legislative Power – European Constitutionalization between Capitalism and Democracy” – and the version thereof presented as “The Kantian Mindset under Pressure” at a symposium in Maastricht on 30 October 2014. The lecture and the paper differ sometimes from the essay qua emphasis and political suggestions. Yet, as will become clear, my point is not to deliver a critique on (in)consistency. To the contrary, I think it is

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only a question of interpretational fairness to point out that Brunkhorst has been conscious of different options and directions, and has explored and assessed them at different moments and in different outlets. And it may well be that genuine reflections on the socio-political state of the European Union (EU) inevitably produce the ambivalences, if not sometimes the paradoxes, that incite critical thought.

This contribution will address three issues: two with a more historical flavour – ‘the Kantian mindset at work’ in the late 40s and early 50s, and the ‘victory of ordoliberalism’ -, and, last but not least, the urgent political question of how to counter the hegemony of the austerity politics.

### 1. The Kantian mindset ‘at work’?

In *Das doppelte Gesicht Europas*, as well as in the two papers mentioned above, Brunkhorst depicts – rhetorically quite impressively - the second half of the 40s and the early 50s of the twentieth century as an era during which the ‘Kantian mindset’ took its chance. Opposed to the ‘managerial mindset’ with its incrementalist, technocratic inclinations, the Kantian mindset appears as a revolutionary disposition that celebrates the constitutional act by which an autonomous people gives itself its fundamental political and legal institutions as the triumph of democratic emancipation. The paradigmatic example of the Kantian mindset at work is still the French Revolution.

According to Brunkhorst, this Kantian mindset was also the inner motive of the constitutionalization processes that took place during the second half of the 40s of the twentieth century within the countries that eventually would become the founding members of what nowadays is called the EU. The most intriguing component of this narrative is to be found in Brunkhorst's emphasis on the cosmopolitan character of these new constitutions and how it pointed in the direction of European collaboration and integration. Except Luxembourg, the five

other founding member-states stipulated in and through their constitutions the principle of 'Völkerrechtsöffentlichkeit' – the principle that their governments should positively approach each and every opportunity for peaceful international cooperation and the legal regulation thereof. As Brunkhorst (2014, 23) puts it: "Verfassungsrechtlich entscheidend für die Gründung und Entwicklung der EU ist jedoch gewesen dass sich die Verfassungsgebende Gewalten aller Gründungsmitglieder sich explizit zum Staatsziel *der politische Vereinigung Europas* bekannt haben.,," (*Italics in original*). This parallels Habermas' diagnosis that the EU presents a new step in the history of the domestication of (potential) state violence, now regarding the violence between states (Cf. Habermas 2011a). Yet quite interestingly Brunkhorst provides an empirical foundation for this diagnosis.

One may doubt of course whether the German constitution of 1949 represented the foundational act by which the German people gave itself its political and legal institutions; whether this actually was not a dictate of the Allied Forces, with the US in the lead. One may also doubt whether the constitutions of the other founding members really were an expression of the self-legislation of their people, instead of the (compromise) product of negotiations between the leading political elites. Above all, and this is the point here, one may doubt whether there really was such an important link between the principle of 'Völkerrechtsöffentlichkeit' and the founding of the EEC. Historically the EEC was established amidst a lot of other trans- and international forms of cooperation (e.g. the TIR and the OECD) and attempts thereof – even to the point that one may well deem it a miraculous accident that in the end the EU became the paradigm, the most important instance of European cooperation and integration. And yet, other attempts to establish European cooperation failed. Perhaps the most genuine attempt to establish a European political union, the Paris Treaty, perished in 1954 in the French parliament, notwithstanding the Völkerrechtsoffenheit principle.

One may well adhere to the idea that the process of European integration that set in with the Coal and Steel Community was indeed a new step in the civilization or domestication of state power, and concerns the relations between states. It should indeed be emphasized that European integration encompasses more than just the reconciliation of former arch-enemies France and Germany, and has aspirations

beyond its contribution to a seemingly everlasting *Pax Europaeensis*. From a normative perspective, it is at least as important that in and by the institutionalization of European cooperation shape has been given to a multilateral form of politics that is 'incomparably more transparent and subject to public scrutiny and democratic accountability than the secretive, suspicion based bilateral *tête-à-têtes* of classical ('diplomatic') foreign politics' (Christiansen 1997).

This multilateral supranationalism entails, moreover, the recognition that international law, including the various declarations of human rights, should be respected as being of a higher order than mere national interests and considerations. Accordingly, it involves the recognition of the judicial competences of European and international Courts of Justice, accepting the possibility of citizens and societal associations litigating their own governments. Finally, it means the acknowledgement of a form of international, if not global, politics that is not founded on intimidation and the clash of arms, but on persuasion and collaboration. Yet, seen historically, European multilateralism was not the result of a new outburst of democracy, but the outcome of an 'elite project', a project of political, administrative and economic elites.

## **2. An ordo-liberal victory?**

In an article published in 2002 Fritz Scharpf put the counterfactual question of what would have happened if, during the negotiations preceding the Treaty of Rome, the then French Prime Minister Guy Mollet 'had had his way' (Scharpf 2002: 645/646). Mollet, a socialist, wanted not only an economically integrated Europe but also a harmonization of the social policies of the EEC member states. But Mollet lost to Germany (and the Netherlands), a defeat that had the lasting effect of a 'constitutional asymmetry', an asymmetry embedded in the European Treaties, between economic and social integration. This asymmetry *legally* privileges economic integration, i.e. the principles and mechanism of a common market, while eventual redistributive European social policies have been given no foothold in the Treaties.

Brunkhorst recast this early history of European integration as a victory of the ordo-liberal discourse over Keynesian and socialist approaches to economic policy, a victory

that paved the way for an even more uncompromising neo-liberalism. Of German origin, ordo-liberalism holds that the state should not interfere in economic life, but should instead guarantee the legal framework for economic competition. As Brunkhorst puts it (2014: 9 and 11) “The first basic idea of Ordoliberalism is: *to get markets rid of state control*” and “*to get rid of democratic legislative control*” (italics in original). Adenauer and his Minister of Economics, Erhard, heavily influenced by ordo-liberal thought, severely defended its economic constitutional consequences until the French gave in. As an ultimate consequence the European Treaties supported from the beginning the primacy of economics over politics.

One could add to these kinds of diagnoses Grimm's observation that with the Treaty of Rome market-related *substantive* law - the four freedoms! - acquired a constitutional status, therewith effectively isolating a large part of EU regulatory initiatives from politics and political contention. Certainly, assessments such as the ones by Scharpf, Brunkhorst and Grimm do have merits, but seem to cover only a part of the story. It is also a fact that during at least the first twenty years of the history of the EU the most important policy area, and also the policy area that provoked the first serious political crisis, the ‘open chair’ crisis, was agricultural policy. The EEC's and EC's agricultural policies were definitely redistributive policies and very much against ordo-liberal principles, exactly like the introduction of the Structural Funds (1975) and the Cohesion Fund (1993). How could this be? How could the EU's agricultural policy be the most important and politically sensitive area during the first twenty years of EU integration if the theses of an ordo-liberal victory or of a constitutional asymmetry are valid? Why would we have EU environmental policies and food and feed safety regulations with their inevitable redistributive effects? Is this Mr. Jekyll's immediate revenge? That would be nothing but a philosophical, if not metaphorical, re-description of factual history, but not an explanation.

The point is that generic assessments of the European integration process, such as those of Scharpf, Brunkhorst and Grimm, have the effect of almost a priori excluding important questions, such as: under which conditions does European politics and policy-making find itself forced to redress the subjection of politics by economics, to break through the ‘constitutional’ asymmetry between economic integration and

social integration? For example, does the current sovereign debt/Euro-crisis present such a political opportunity for countering the discourse and practice of ordo/neo-liberalism?

### **3. How to counter the neoliberal inspired austerity policies?**

Confronting the austerity policies as the EU and IMF's answer to the sovereign debts crises of Ireland, then Greece, Spain, and Portugal, Habermas committed to an interviewer in 2009 that “what worries me most is the scandalous social injustice that the most vulnerable social groups will have to bear the brunt of the socialized costs for the market failure”(Habermas 2009). This anger concerning the fate inflicted upon those who never had a part in the licentious festival of international financial speculators also infuses Brunkhorst's engagement with the political-economic approach the (so-called) Troika deems the only beatific recipe for states suffering from a sovereign debt crisis: harsh cuts in state expenditures, not least when it comes to social security and pensions, and a liberalization of the labour market – get rid of labour rights ! Yet, how to counter these neo-liberal recipes – or: how to restore, beginning with Europe, the primacy of politics over the globalised world of financial capital?

In “The Beheading of the Legislative Power – European Constitutionalization between Capitalism and Democracy” – and in “The Kantian Mindset under Pressure” Brunkhorst pays due respect to the option of an enhanced democratization of EU policy-making. However, in *Das doppelte Gesicht Europas – Zwischen Kapitalismus und Demokratie* he places his bet on the emergence of a trans-European labour movement, under the banner of a *Transnationalisierung des demokratischen Klassenkampfes*. Yet there are some compelling reasons for not being very optimistic about a timely arrival of a transnational rally of trade unions that will lead the democratic class struggle against the hegemony of financial capital. In most EU countries trade union membership is declining, sectoral fragmentation serving particularistic interests is predominant, and it is very difficult to detect at the domestic level signs of a transnational, let alone a global, solidarity with the deprived

of other countries. The Dutch trade unions were very much against Commissioner Bolkestein's 'services directive' fearing a tidal wave of Polish plumbers. The German trade unions serve the employed, but don't care much about the unemployed. If we look at the Southern Member States and resistance against austerity politics we see that the Greek trade unions did not align with the street protests, and, as a consequence or not, strikers in the public transport sector easily fell victim to the criminalization tactics of the Greek Government. In Spain the ideological fragmentation of the trade unions pre-empted a unitary front and certainly did not lead to a mass movement. Only in Portugal were the trade unions able to block some austerity measures, but interestingly enough only with the support of Portugal's highest court of justice. Surely there are transnational European labour federations like the ETUC (European Trade Unions Confederation) or ETUCE (European Trade Union Committee for Education). Did we hear much of ETUC or ETUCE during the last years – were they at the front in organizing a Europe-wide class struggle against austerity politics? These are of course rhetorical questions.

Why this trust in the labour movement, why not more trust in the parlementarization of Europe? Besides the ever-growing competences of the European Parliament (EP) – since the Lisbon Treaty the EP is almost on a par with the Council of the European Union as a co-legislator – with the last European elections an interesting precedent has been established: from the start the European Parliament had insisted that the leader of the winning European party group should also become the President of the European Commission (EC) – and so it happened. Since the EC has the almost exclusive right of legislative initiative this means that for the first time European elections gave the European citizen the opportunity to influence the policy agenda of the next five years to come.

Moreover, we know from the studies of, for example, Marks and Steenbergen (2002) and of Hix and his collaborators (Hix, Noury and Roland 2005, 2006), that the classical left-right cleavage also dominates the voting behaviour in the EP, and, further, that from the first directly elected EP onwards every new EP has shown that the internal cohesion of the party groups in terms of the voting behaviour of their members has become stronger and stronger. In fact the big party groups of the EU resemble pretty much the parties operating in the national parliaments when it comes

to voting discipline. The question is of course whether these tendencies will also prevail when it is about specific solutions for the Eurocrisis.

If we limit ourselves here to the debates in the EP between the first financial relief to Greece (Spring 2010) and the signing of the Fiscal Compact (March 2012) it can be observed that members of the European Peoples Party (EPP) – let us say: the European Christian Democrats and Conservatives – endorse the austerity discourse, also when they come from the southern member states. For example, during the EP debate on the 19th June 2010 the Portuguese EPP member Paolo Rangel stated: “while we are supporting the austerity measures, we would also criticize the Portuguese Government ... because it is not cutting spending. To reduce the deficit, it is essential not just to increase taxes but also to cut spending ...” (Rangel 2010). During the same debate Theodoros Skylakakis, a Greek representative and also a member of the EPP fulminated: “Why are we in this situation? The main reason is that we have spent beyond our means and run up credit. We spent when there was no crisis, we spent during the crisis, and we are spending now on our way out of the crisis. Anyone who wants to learn what happens when you consistently spend more than you have just needs to come to Greece” (Skylarakis 2010).

Members of the European Social Democrats and the European Greens endorse an anti-neoliberal discourse also when they come from donor countries. For example, the German Rebecca Harms, a member of the Greens, emphasizes the role of the financial sector in the emergence and continuation of the Euro crisis and the need to find a European answer to it: “we believe that there should be a ban on toxic assets and short selling throughout the EU, that hedge funds should be kept under very tight control, and that we must stop talking about introducing a tax on financial transactions and finally do something about it” (Harms 2010). For Martin Schulz, a German and leader of the Social Democrats in the EP, the cause of the crisis is also clear: run amok bankers and financial speculators: “This economic system has taken us into the deepest financial, economic and employment crisis and the deepest crisis in the morality and legitimacy of the institutions since the end of the Second World War. The system is wrong. It is to a certain extent, immoral, and it is also warped” (Schulz 2010).

What does this tell us? Although there is no European 'demos' yet, the last decades have witnessed the emergence of political-ideologically motivated transnational collectives in the form of European political families and, more in particular, of the party groups in the EP of which the dominant groups commit themselves unconditionally to the rules of the democratic, majoritarian game. This, together with the already immensely increased power of the EP, seems to indicate a more viable route towards restoring the primacy of politics over economy than waiting for the resurgence of a Europe-wide labour movement.

#### 4. By way of concluding

In all probability Brunkhorst's reflections on the crooked path of European integration will not be to the taste of those EU scholars who have yielded to the growing dominance of the positivist school in political science and its preference for ever-more-sophisticated statistical analysis. Certainly, now and then there are reasons to criticize Brunkhorst's approach and findings – as I have tried myself in this article, though admittedly in a rather ad hoc and sketchy manner. Yet, whereas positivist political scientists are starting to complain that no one is reading their (indeed indecipherable) books and articles anymore, except congenial colleagues, Brunkhorst's writings have the literary and philosophical quality that may rouse an audience much wider than that of his scholarly colleagues. Reminiscent of the German school of 'Critical Theory' it seems that the thrust of essays like *Das doppelte Gesicht Europas* is to provoke critical debate and reflection, rather than claiming to provide ultimate empirical truths which are unquestionable because of the impeccable method by which they were produced.

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## Biographies

### Tannelie Blom

Tannelie Blom studied philosophy at the University of Amsterdam. Initially specializing in political philosophy and philosophy of the social sciences he established a reputation as an expert in system theory and system theoretical sociology. During the nineties he developed an interest in the politics and theory of European integration, a subject that became his main field of academic research. He is one of the founding fathers of the European Studies program at the FASoS, currently comprising a bachelor program and three Master programs