Introduction

The German philosopher and sociologist Hauke Brunkhorst is considered as one of the most interesting representatives of the third generation of the so-called Frankfurt School. That means that as have the members of the first generation (Theodor w. Adorno, Max Horkheimer, Herbert Marcuse, etc.) and the second generation (Jürgen Habermas, Claus Offe, Albrecht Wellmer, etc.) he has developed a critical theory that not only describes and explains the transformations of modern societies, but also criticizes them from a normative perspective. A critical theory assumes that a theory of modern societies cannot get rid of the normative perspective of actors. Actors often criticize the society of which they are part. As far as their criticism is implicit, it needs to be made explicit and the subject of criticism. In contrast to the positivism of mainstream theories critical theory doesn’t want to neutralize normative criticism through the use of specific methods.

Even though Brunkhorst is particularly inspired by the work of Adorno and Marcuse, he expressly distances himself from the first generation of the Frankfurt School (cf. Brunkhorst and Koch 1987; Brunkhorst 1990). The reason for this is that he endorses the linguistic turn of critical theory accomplished by Habermas.

This turn is not only helpful for throwing all shortcomings of the subject-object model overboard which are inherent to the epistemology developed by Descartes, but also for building bridges between critical theory and American pragmatism (John Dewey, George Herbert Mead, Richard Rorty and Robert Brandom). While Horkheimer and Marcuse criticized pragmatism because its alleged positivism would give expression to instrumental reason, Brunkhorst stresses that pragmatism just as critical theory rejects the correspondence theory of truth and embraces the emancipation-focused project of Enlightenment (Brunkhorst 2014c). There are many similarities between the radical democracy that Brunkhorst has in mind and the democratic experimentalism of Dewey (Brunkhorst 1998).

Brunkhorst distances himself to a certain extent also from the second generation of the Frankfurt School. For a long time the critical theory of this generation was guilty of methodological nationalism because of an identification of the society with the nation-state (Wimmer and Glick Schiller 2002). In a sense this is also true for Habermas’s Faktizität und Geltung (Habermas 1992). However, after its publication he broadened his horizons by examining the post-national constellation (Habermas 1998). At an early stage Brunkhorst leaves the methodological nationalism far behind by focusing primarily on the world society (Weltgesellschaft). In order to grasp this he relies on the system theory of Niklas Luhmann for which many of the second generation have cold feet. Nevertheless, he has an eye for the shortcomings of Luhmann’s system theory (Brunkhorst 2014d). Against the background of the rise of neoliberal authoritarianism, a world-wide environmental pollution and an ever-increasing gap between haves and have-nots, Brunkhorst represents a historical materialism that explores the opportunities to do justice to human rights and democracy. He defends a cosmopolitanism that assumes that the nation-state is no longer able to solve the problems that many politicians (especially populists) promise to solve at that level. According to him, politicians must realize that solidarity...
nowadays implies a shift from civic friendship to a global legal community (Brunkhorst 2005).

In October 2014 the Faculty of Arts and Social Sciences of Maastricht University organized a symposium on the critical theory of Brunkhorst. The symposium focused on two books that were released that year: *Critical Theory of Legal Revolutions* and *Das Doppelte Gesicht Europas* (Brunkhorst 2014 a en b). In the former book Brunkhorst reconstructs from an evolutionary perspective the development of law. He is obviously more interested in the social evolution than the natural evolution. In his opinion, communication plays a crucial role in the social evolution, because the variation is triggered by the rejection of communicative propositions. Through social selection a social system can improve adaptation to its environment. Social evolution can be gradual as well as revolutionary. Brunkhorst argues that legal revolutions are crucial breaking-points in history, because they imply that the basic structure of society radically changed. The driving forces behind the social evolution are the development of productive forces and class struggles. Brunkhorst uses a broad concept of class struggles; it encompasses more than just the antagonism between two classes. Class struggles cannot only unleash productive forces, but also trigger normative learning processes. Under specific historical circumstances, normative learning processes can lead to the institutionalization of a new constitutional order. A constitutional order consists of normative constraints that channel social evolution. They can channel social evolution because of what Brunkhorst calls the ratchet effect: a barrier against regression to earlier stages of the moral and legal insight of people. After a legal revolution the constitution can establish normative constraints on certain forms of purpose-oriented adaptation of a social system. These normative constraints create the opportunity to transcend the status quo of a society from within. If the normative constraints are implemented in the legal system they give people the opportunity to articulate their sense of injustice and fight for their liberation. Emancipation implies the destruction of the illusion of an unchangeable world. The more the egalitarian ideas of personal and political autonomy, or of human rights and popular sovereignty, have been globalized, the more they can be mobilized to challenge or even change the power structures of the world society.

In *Das doppelte Gesicht Europas* Brunkhorst makes use of the evolutionary perspective that he has developed in his book on legal revolutions. He sees the European Union as the product of both normative learning processes and systems adapting themselves to their environment. According to him the adjustment processes and normative learning processes correspond to a Kantian and managerial mindset. The Kantian mindset consists of the universal ideas of justice and popular sovereignty that are part of daily praxis. Although these universal ideas are immanent, i.e. part of this world, they transcend it. Therefore they are a resource of resistance and emancipation. The managerial mindset operates in praxis incrementally, contributes to the consolidation of power structures and preserves evolutionary advances by adaptation. With this distinction Brunkhorst doesn’t want to sketch a Manichean image of Europe, but rather point to the dialectic relationship between both. The point is that the Kantian mindset and the managerial mindset are the two faces of Europe. According to Brunkhorst the history of Europe shows both the repression and the recurrence of the emancipatory potential of the Kantian mindset. Now that the European Union is struggling with both an economic and political crisis the tension between the two mindsets is clearly visible. Like nearly every crisis the one in which the European Union now finds itself also entails dangers and opportunities. Brunkhorst points out that there is a danger that politicians who embody the managerial mindset and stick to a neoliberal political agenda and austerity policies support nolens volens right-wing populism in Europe. But he also points to the emancipatory potential that is part and parcel of many European treaties and can be used in the fight against the increasing social inequality and democratic deficits. This fight can only be won when the socially deprived in the various
European countries understand that they have the same interests, and realize that class struggles should take place on a transnational level.

This dossier on the Critical Theory of Hauke Brunkhorst is based on the papers that were presented during the symposium on both books. The contributions of René Gabriëls, Darryl Cressman, Matthew Hoye, Willem Schinkel and Ludek Stavinoha concentrate on *Critical Theory of Legal Revolutions*. And the contributions of Sjaak Koenis, Pieter Pekelharing and Tannelie Blom focus on *Das Doppelte Gesicht Europas*. Brunkhorst responds to the challenging objections of all these scholars. Krisis hopes that this dossier contributes to the further discussion of his Critical Theory.

**References**


**Biographies**

**René Gabriëls**

René Gabriëls is editor of Krisis and works at Maastricht University.

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