CHAPTER

Constitutional Alternatives to the Crisis: A Political Sociological Approach to European 'Anti-Politics'

Paul Blokker, CoPolis/University of Trento

The democratic deficit of the European Union (EU) has widened with the current European crisis, not least due to a highly problematic form of EU crisis management, based on 'new intergovernmentalism', recourse to international rather than treaty law, ambiguous legal arrangements, interference into domestic politics, and a tendency towards technocratic governance (cf. Blokker forthcoming; Cartabia 2013; Tuori and Tuori 2014; Wilkinson 2013). This general move away from democratic policy-making and public debate has had harsh consequences for the democratic quality of the EU, both in terms of the democratic procedures and their violation (the top-down imposition of a singular vision) and in terms of substantive politics and its limitation (an absence of political choice and debate). Hence it is not surprising that the democratic nature of the European integration project is contested, and contestation seems to be on the increase, or at least becoming more visible, with the current economic crisis. What seems evermore clear is that a European project confined to transnational market-making, referring to a rather thin 'output-oriented legitimacy', is found wanting in terms of social competence as well as civic-democratic enablement (cf. Delanty 2009).

An important dimension of transnational contestation regards the foundations of European integration or its constitutional dimensions. The EU crisis response has increasingly been moving onto a terrain with political-constitutional connotations and the crisis and its tensions push towards the politicization and constitutionalization of the European order. In this regard, as argued by Tuori and Tuori, 'at issue is also a constitutional crisis' (Tuori and Tuori 2014: 3; see also the introduction to this volume). As they argue, '[r]eactions to the crisis which follow the logic of economic constitutionalism may have implications which contradict basic political or social constitutional values, and jeopardise democracy and transparency or social rights' (Tuori and Tuori 2014: 9). The crisis has brought to the fore a persistent tension between a firmly constitutionalized economic market project and a much less constitutionally embedded Social Europe (cf. Schiek, Liebert and Schneider 2011).

It is not least this constitutional tension that is picked up by transnationally operating social movements and networks. Social movements contest the disconnect between social solidarity and the market, as well as the gap between democracy and capitalism, in the European space, and frequently articulate

alternative views of a European order (e.g. 'Alternative Europe'). The constitutional nature of the existing European project is contested as it is seen as reproducing inequalities and democratic deficits. In this, social movements engage with the particularly contested nature of constitutionalism on the European level, which reflects that there is no unequivocal standard on the basis of which the EU's constitutional quality can be assessed (see Maduro 2009). This is not least so due to the increasingly blurred boundaries of the concept of constitutionalism itself and the loosening of the axiomatic link of constitutionalism with the state (Wiener 2008: 24-5). The contested nature of European constitutionalism became particularly clear with the project for a political European constitution, which resulted in failure due to the no votes of French and Dutch voters in two ratification referenda 2005. This failure showed the significance of a plurality of 'voices of constitutional dissent' (Everson and Eisner 2007: 1), not only the voices of political and legal actors, but also those of societal forces. The failure of a European political constitution and the continuation of contestation however also indicates that constitutionalism continues to play a significant role in the European integration project beyond a formal written constitution. For instance, European social movements denounce the constitutional nature of the Lisbon Treaty:

> In order to circumvent troublesome democratic resistance, the "old wine" of the Constitutional Treaty was simply poured into the new flasks of a treaty that is now called "The Reform Treaty" or "Treaty of Lisbon". A more detailed examination shows the text is largely identical with the EU Constitution, which is supposed to be introduced through the back door without dangerous referenda (ATTAC 2011a).

But what is particularly significant is that the thrust of a critique of the status quo is not necessarily Eurosceptic in terms of a rejection of the European project altogether, but rather frequently includes constructive suggestions for alternative arrangements.

For a political sociology of Europe, an increasing gap between a European societal sphere and the formal-political and economic world of the EU raises a host of significant and interesting questions (cf. Blokker 2014). A focus on European society, and contestation and (supranational) social movements in particular, ties in with a number of recent and emerging trends in the study of European integration. In general terms, such a focus ties in with a (political) sociology of European integration, democracy, and civil society, and more specifically with the study of critique, contestation, and dissent. A focus on the latter can be particularly useful in a number of ways. Firstly, the significance of more radical, non-institutionalized forms of 'anti-politics', including civil disobedience, lies not least in its bringing into clear relief of the increasing gap between European citizens and European elites (cf. Murray-Leach 2012). It also points to the (problematic) lack of 'civic voice' in the European political and constitutional system. The European project suffers from an inner tension between an elitist integration project and the increased expectations and demands of European citizens. As argued by Hauke

Brunkhorst, '[o]ne cannot grant extensive rights to citizens and then leave them to play *pouvoir constituant* in the sand pit' (Brunkhorst 2006: 437). Secondly, some of the articulated critique could provide a valuable basis for the emergence of more robust, multi-actor European politics, which facilitates public 'trial by discussion' (Manin 1997) of European rules and policy (cf. Della Porta and Caiani 2009). Pierre Rosanvallon speaks about the democratic functions of social movements in terms of vigilance, denunciation, and evaluation (Rosanvallon 2008: 63). In this, social movement critique might be a valuable resource for the elaboration of alternative views on existing or instituted reality, in that it 'tests' democracy and points to structural imperfections, and helps to re-imagine European democracy[1] (cf. Kaldor et al. 2012). In this regard, foundational or constitutional claims seem particularly relevant. Thirdly, alternative forms of politics ('anti-politics' or 'anti-political politics') might provide a not insignificant and promising counter-trend in times of general 'depoliticization' and the turning away from politics. In this, 'anti-politics' sheds light on the emergence of a transnational public sphere, which includes civic projects that put existing institutions 'to the test', not least by means of articulation of positive, alternative political and constitutional claims. Such claims might be particularly relevant in times of multi-faceted crisis in which the instituted political language has grown tiresome and an instituting[2] language is more likely to be drawn upon. I suggest that it is particularly in times of crisis, when existing, instituted imaginaries tend to lose their grip on reality, that critical perspectives can provide fruitful hints as to alternative trajectories.

The chapter will contribute to the delineation of a specifically political-sociological approach to European (constitutional) politics and transnational social movements. I will, first, briefly discuss the emergence of (political) sociological approaches to European integration. Second, I will argue for the need for a political-sociological approach in the context of wider European studies. I will elaborate a distinct form of political sociology, which focuses on constitutional claims by social actors. Such an approach seems particularly useful in terms of the exploration of the critique of the existing, instituted European polity and its limitations. And, thirdly, the chapter closes with a concise analysis of some of the available critique on European democracy and related constitutional claims as articulated by various transnational social movements in the midst of the crisis.

A Sociology of Europe

---

1 This is not to say that all suggestions by pro-democratic movements are useful, viable, or valid, nor that the movements necessarily express similar view points. As indicated by Geoffrey Pleyers, movements, such as Occupy and the Indignados, 'provide alternative meanings to the crisis and reclaim a more democratic society. Their strategies, actions, concepts of social change, movements and democracy however vary considerably, to the point that some of their discourses and tactics may appear contradictory' (Pleyers 2012).
2 In the sense of Cornelius Castoriadis.

In recent years, there has been a significant upsurge in the sociological study of European integration (Rumford 2002; Delanty and Rumford 2005; Favell and Guiraudon 2009; Roche 2010; Kauppi 2013). A key message of sociological approaches is that the analysis of European integration has to go beyond European institutions, state-EU interaction, and formal politics, and needs to include attention for social and public interaction within and beyond nation-states, including in an emerging European society (or societies).

Originally, sociological approaches paid significant attention to a possibly emerging European identity (Delanty 2005, 2011; Kohli 2000) as well as to forms of Europeanization, in the social-constructivist sense of the meaning that is attached to emerging European social structures (cf. Delanty and Rumford 2005: chapter 1). Recently, the need for a return to 'classical' sociological points of interest has been emphasized in an attempt to stake a specifically sociological substantive sphere of research (social class, social stratification, social cleavages, social mobility, and social movements, see Favell and Guiraudon 2009). Others have explored the fruitfulness of the sociological study of political and legal elites (Cohen and Vauchez 2008), also emphasizing a Bourdieuian emphasis on fields and habitus (Kauppi 2003; Georgakakis and Weisbein 2010). And yet others have focused on the analysis of an emerging European public sphere or set of public spheres (Van de Steeg 2002; Giorgi, von Homeyer and Parsons 2006), public attitudes in different European states (Medrano 2003), as well as the role of civil society (Kohler Koch 2009; Kohler Koch and Rittberger 2007; Smismans 2009) and social movements (Della Porta 2009 a,b; Liebert 2009; Blokker 2014) in the European political constellation.

The objective of this chapter is to contribute to what could be called a political sociology of European democracy, in which the main themes include democratic deficits, the relation between European institutions and European society, and the role of citizens and social movements in contestation, public debate, and formal politics. My focus will be on what can be seen as a rather recent, and still relatively marginal, addition to this literature, that is, a political-sociological approach that uses a sociological lens to study the role of civil society, democratic contestation, and (trans-national) movements in the context of European integration (significant examples include Liebert and Trenz 2009; Della Porta 2009a, b; Della Porta and Caiani 2009; Kaldor et al. 2012). I will particularly explore the way in which a political-sociological approach can be fruitfully combined with insights from the sociology of critical capacity and constitutional theory in order to explore contestation of the European project, and the articulation of a plurality of democratic-constitutional claims and discourses. The latter are particularly significant in the context of what is sometimes labelled 'anti-political politics', which has emerged in the context of the economic crisis, but which in itself can be related to earlier transnational formations of protest such as for instance that regarding 'alter-globalization' (Pleyers 2010).

A political-sociological approach that focuses on non-institutionalized transnational movements can help to correct an institutional bias of existing European studies, in which much attention goes to instituted forms of society (for instance, in the form of 'organized civil society'), and forms of interaction and 'partnership' between the EU's formal political society and different kinds of civil society representatives and stakeholders, but in which little attention is paid to forms of societal mobilization and contestation beyond the instituted world. As recently argued by Donatella della Porta and Louisa Parks (2013), little research has been done on the Europeanization of social movements to date, and I would add, even less attention has been paid to the type of critical claims and frames related to the European project that are produced by such movements. There are few analyses that explore how citizens, as well as a variety of social actors and social groups throughout the EU, perceive a democratic deficit, endeavour to make sense of the European project, and, in some instances, make foundational or constitutional claims and propose alternative views of European integration. Few scholars focus on the question to what extent public debate, contestation and critique with regard to the existing European architecture might indicate a political mobilization or politicization of European society or societies (according to some desirable), and what the substantive orientations in existing forms of politicization are (cf. White 2010: 55-6). Such a focus might, however, provide interesting elements for a more complete understanding of the EU's current democratic predicament, as well as a starting point for the re-imagination of democratic practice and institutions and the emergence of a critical public sphere. As Jonathan White has argued, while some attention is given to 'views and practices beyond the Brussels institutions', such attention often remains confined to general and rather superficial accounts of public opinion based on aggregated data (White 2010: 57, 60-1; for a recent contribution, see Sanders et al. 2012).

What is too often left out of the picture is a potentially significant part of the politicization process of the European project and one that might take on more importance in times of crisis, i.e., forms of (meta-)political critique and democratic dissent (cf. Blokker and Brighenti 2011). If one agrees with the observation that democracy in Europe is, if not in crisis, then at least going through a process of important transformation (cf. Ferrara 2011), then it becomes important to pay particular attention to the contours and premises of the existing, instituted democratic system(-s) and the latter's increasing distance from held beliefs on and ways of making sense of democratic politics. In other words, it is probably true that processes of structural transformation of democracy tend to coincide with a weakening general belief in or adherence to the instituted political 'reality', and an increasing visibility of an underlying, potentially to be instituted 'world'. In current times of uncertainty about the predicament of democratic politics, an understanding of forms of critique on the political status quo as well as of potentially innovative proposals for alternative political forms becomes one way of

analyzing shifting beliefs and possible directions of transformation.

A Political Sociology of European Constitutional Anti-Politics
What I propose here as a political sociology of 'bottom-up' constitutionalism builds *inter alia* on Jo Shaw's idea of a 'responsible and inclusive constitutionalism' for the EU context (Shaw 2003: 45), Ulrike Liebert and Hans-Joerg Trenz's work on a 'logics of contentious transnational constitution-making' (Liebert and Trenz 2008: 1), Hauke Brunkhorst's work on 'democratic solidarity' (Brunkhorst 2005), Dagmar Schiek's 'socially embedded constitutionalism' (Schiek 2011), Gavin Anderson's 'constitutionalism as critique' (Anderson 2014), and Michael Wilkinson's 'political constitutionalism' (Wilkinson 2013). An important starting point for a political sociology of 'bottom-up' constitutionalism is the idea that the development of a robust European constitution would necessarily need to involve various relevant actors, including civil society representatives, and consist in on-going, critical debate. As Jo Shaw has argued,

> we can contend that a responsible and inclusive constitutionalism for the EU can only be constructed through a permanent activity of critical review and reflection upon the initiation, negotiation, conclusion, review and implementation of a myriad of constitutional settlements (Shaw 2003: 67).

In a related way, constitutionalism is then also seen as a source of critique, that is, as a way of contesting existing arrangements and as a basis for proposing alternative ones. In this, Anderson's notion of 'constitutionalism as critique' is relevant in that it emphasizes how constitutional discourse is not merely about rules, but also performs a 'framing function', 'setting the parameters not just for how politics is contested, but what is deemed politically contestable' (Anderson 2014: 283). In a normative sense, viable European constitutionalism is proposed to be in need of inclusion as well as of critical reflection. In a sociological sense, a pluralistic perception is equally important, in that an analysis of constitutionalism necessarily needs to go beyond formal, political institutions. In this, the contestation of European constitutionalism by a plurality of actors needs to be upfront, in that 'European integration is … not simply seen as achieved by instrumental action and reasoning within formal organisations and institutions, but is the product of intermediating processes of public debate and resonance' (Liebert and Trenz 2008: 1). The normative as well as sociological thrust is towards a constitutionalism that is inclusive, top-down *and* bottom-up, and of an ongoing, processual nature. The assumptions are that law and politics interact, that wider public engagement with constitutional politics is of great importance for the making of a viable European order, and that different types of actors play different roles in constitutional politics (cf. Lindstrom 2011). The related empirical-sociological thrust in this chapter focuses on a largely ignored set of actors, that is, transnational social movements and networks that engage in legal mobilization, constitutional claims-making and constitutional critique. The emphasis will be

particularly on constitutional discourses.

The political-sociological approach towards constitutional politics taken here further builds on Luc Boltanski's work on critique, related here to a distinctive focus on constitutional critique and societal constitutional claims. One of the assumptions is that in particular in the current times of EU crisis (a foundational crisis) non-institutional forms of critique could become salient contributions to a debate on the future of Europe. A related normative claim is that if we want to imagine a democratic European order, it needs to involve what Rainer Forst has called a 'basic structure of justification' in which everyone has the right to be part of justificatory practices (Forst 2011: 39). What makes foundational politics and non-institutionalized claims in the European order of constitutional and legal norms so salient is that – as Forst puts it:

> the basic question of justice is about how these norms came about and who is being ruled by them – and thus the question is about the power of setting up these norms in the first place and of changing them, not primarily the power of using and interpreting them (important as it is). Justice is a constructive and creative human force, not just an interpretive one. And where there are norms that bind all citizens equally, justificatory procedures have to be in place in which these citizens can be authors of these norms (Forst 2011: 40).

A political sociology of constitutions and constitutional politics moves beyond the theoretical and normative debate by putting emphasis on the dynamic nature of European constitutional politics and the interrelatedness of law and politics. The constitutionalization of Europe is neither reducible to a creeping juridification of the European polity (integration through law) nor to a political mandate of formal political actors (European constitution-making). The picture is more complex, in that constituent politics and judicialization interact and react to each other (as with the drafting process and the subsequent Lisbon Treaty, but also the existing EU order and grassroots constitutional claims). What is more, it is impossible to conceive of European constitution-making as based on the expression of the will of a monolithic European 'people', in that there is no such thing as a 'people', neither on the national nor on the supranational levels (cf. Rosanvallon 2006). Constituent power needs to be related not to the modern constitutional idea of the sovereign people but to a fragmented and variegated set of relevant actors and interests engaging in a continuous struggle over the European polity (cf. Wilkinson 2013: 207-8).

What is important in European constitution-making is not the identification of and convergence towards a set of universal principles, nor the attempt to recreate to conditions for a European demos to emerge, but rather the exploration of possibly emerging contributions to an emerging transnational public sphere in which constitutional claims are made and justifications for different constitutional scenarios expressed. As Wilkinson puts it, the 'public sphere is not framed by any culturally unified demos or elite accord of moral principle; it is constituted by the

practice and discourse of political right, which, put simply, consists in competing claims, more or less plausible, of collective self-government' (Wilkinson 2013: 208-9). As Hauke Brunkhorst has pointed out, the communicative power that emerges from a public sphere, which is not related to formal political or administrative power nor to economic power, is crucial for a 'strong public in the making' (Brunkhorst 2005: 151). Such a strong public is important for those who endorse a democratic understanding of European constitutionalism, but more importantly allows a *reconnection* between formal European institutions and the wider European public or multitude. What is equally crucial to a functioning public sphere is the potential to generate communicative power that speaks to and criticizes existing arrangements, without ultimately being reducible to political or economic interests. It relates to public creativity as well as enables a reflexive and critical view on the status quo, a view that from the inside of institutions is very hard to produce (cf. Brunkhorst 2005). As Wilkinson states, the

> more apposite and amorphous concept of 'public sphere' [is] to function as a political form for the modern secularised and disenchanted constitutional order [and] provides a context for this reflexivity [that is the 'iteration and interplay between the constitutional surface and structure, or between constitutional text and context'] (Wilkinson 2013: 208).

A public sphere beyond the state points to the importance of sociological legitimacy for the European polity. Statist views of constitutionalism – which understand constitutionalism as necessarily wedded to the state context - equate such a legitimacy with a thick, culturally levelled community and therefore deny its potential beyond the nation-state. Universal constitutionalism - which understands Europe as a singular constitutional order grounded in universal principles endorsed by courts - ignores sociological legitimacy altogether, as it sustains the unlikely idea that normative legitimacy can do all the work. Sociological legitimacy, however, conceptualizes the idea that if a constitutional framework is to integrate a larger polity and is to make such a polity meaningful to its participants, important linkages between formal institutions and wider society need to exist. The public sphere is then an intermediary that facilitates sociological legitimacy. As Fossum and Trenz have stated (they refer to 'political legitimacy' rather than 'sociological legitimacy'):

> *Legitimacy* is a core component in the linking of the polity and social constituency. Political legitimacy refers to popular approval and to the way in which public authority is *justified*. Such justifications open a basic communicative relationship between political authorities and their constituent publics. This replicates a basic sociological insight that the exercise of political power in modern societies can no longer be derived from a given and stable ('divine') order. Political legitimacy stems instead from a *contingent* societal order that places substantial constraints on the exercise of political power (Fossum & Trenz 2006: 59).

Transnational Civil Society

Constitutional claims by transnational civic actors involve a dialogue between institutions and wider European society, and potentially point to important deficits in the current status quo, thereby 'testing' existing arrangements. Such testing seems particularly salient in contemporary times of multiple crises. In Luc Boltanski's *On Critique*, he distinguishes between three types of tests of the existing institutional order, that is a 'test of truth', a 'test of reality', and a 'test of existentiality' (Boltanski 2009). The first two tests tend to either confirm the 'rituality' and imaginary of the existing order or point to ways of reforming institutions so as to reconfirm reality. It is only in the last type of test – the test of existentiality - that innovative, novel ways of seeing the world are coming to the fore. Radical forms of critique are related to such a 'test of existentiality' – in the dual sense of a test (*épreuve*) as a form of testing and as a challenge (Boltanski and Honneth, 2009: 103) – which is situated on the 'margins of reality', and in this way offers a means to open up a 'pathway to the world', that is, to a non-institutionalized social reality (Boltanski, 2009: 163). In this, radical critique 'endangers the comprehensiveness of established definitions and puts into doubt the universal character of confirmed relations' (Boltanski, 2009: 164).

An example of a 'test of truth' of the European project is reflected in a speech by Jose Manuel Barroso on the occasion of the European State of the Union conference in Florence in May 2013. Barroso argued that in the face of societal resistance to the European project, 'The point is to demonstrate that our policies go in the right direction for the long term, that the *European alternative is the best one*, the one to be trusted most. Of course, this is not easy because the populist discourse manipulates anxieties and pretends to bring simple solutions to complex problems. But we should not shy away from exposing the complexity of the issues we are dealing with.'[3] Barroso's attempt is here to reconfirm European reality and to disarm critique by renarrating the existing European project's apparent superior status.

An example of a 'test of reality' is a statement by the legal scholars Bruce Ackerman and Miguel Maduro in *The Guardian* of October 2012 in which they propose a new attempt at European constitution-making. They argue that 'longer-term solutions demand democratic legitimation' and that in the past, 'nothing was done to encourage citizens to deliberate seriously on the fateful choice before them [the draft Constitution, pb]'. Ackerman and Maduro suggest that a new constitutional moment might build on the South-African 'three-stage experiment in constitutional creation'. In the European context, this would mean 'organising a convention - representing national and European parliaments,   heads   of   state and governments, and the European commission' - which formulates general principles, a 'second-stage convention that hammers out the final text' (the national representatives of which will be voted for by the citizenry), while a 'final judicial

---

3   See http://europa.eu/rapid/press-release_SPEECH-13-397_en.htm. Emphasis added.

check is provided by a special court, headed by the president of the ECJ.[4] Ackerman and Maduro clearly indicate the need for doing things differently than in the past, but their approach is not to suggest a wholesale alternative, rather a 'calibration' of the earlier European constitution-making attempt, 'wihtin the rule of law', by making principles clear and offering more opportunities for civic engagement. The prior attempt at constitution-making is questioned, but not the European edifice.

Below I will engage with what I see as societal claims that engage in a 'test of existentiality'. The first example is the European project Commons Sense, which has Italian origin, and some years ago launched a 'European Charter of the Commons', of which the original intention was to make it the basis of a European Citizens' Initiative. The Charter criticizes the reduction of the EU to an economic constitution, and the fact that '[l]iberal constitutionalism fails to provide a shield against private interests [and that citizens remain unprotected, pb] without the active constituent role of the people to enforce public purpose guarantees' (Mattei 2013: 375). The lawyer and activist Ugo Mattei speaks of a 'constitutional imbalance' in favour of the private sphere and marginalizing the public good.[5] A second, democratic critique is that in particular on the European level citizens have less means to influence the law with regard to forms of (economic, political) domination, as the European constitutional order is largely a legalistic one, in which democratic channels and possibilities for a European political will formation are reduced (cf. Brunkhorst 2005, chapter 7). This seems to be a particularly valid argument in the context of the current multiple crisis, in which the EU directly intervenes into national economies on the basis of view of economic adjustment, largely inspired by neo- and ordo-liberal ideas. EU interference in national economic affairs is, as Jan-Werner Mueller argues, a both quantitatively and qualitatively novel fact. But such interference is not backed by 'any overarching supranational architecture to generate legitimacy' (Mueller 2012: 44).

The upshot of the Commons Sense movement is to redress the 'constitutional imbalance' in economic and political terms, and to provide a 'strategy for reclaiming fundamental common goods (like water, culture, and education) and the democratic processes and spaces, which govern their access and distribution' (Bailey and Mattei 2013: 1). Commons Sense argues that a true commonwealth of Europe is possible only by means of constitutional safeguards of the commons through a direct participatory process (see table 1). The existential dimension of the critique of the commons consists in a call for a redefinition of the public and the private by reference to the idea of 'common goods', which can be understood as 'more similar to a change of paradigm rather than a rediscovery of something that has never ceased to be present in juridical systems' (Rodotà 2012: 120). In the European Charter for the Commons, concrete steps towards a constitutionalization

---

4   See http://www.guardian.co.uk/commentisfree/2012/oct/03/european-constitution-21st-century.
5   Interview with the author, 28-11-2013, Turin.

of the commons is proposed:

> 13. [The commons] must be integral part of *a Constitutional process*, based on the irreversibility of ecological legal protection, eventually to be granted *constitutional status* as heritage of Europe in trust for future generations.
>   …
> 20. We hereby require the Commission to *transform* this popular citizen's initiative *into a new form of legitimate and democratic European Constitutional Law*. The Commission must take all the necessary steps in order for the European Parliament, to be elected in 2014, to be granted *Constitutional Assembly Status* in order to adopt a *Constitution of the Commons* (Commons Sense 2012; emphasis added).

Another initiative, launched at the 10th anniversary of the European Social Forum in Florence in November 2012, has a strong bottom-up, extra-institutional thrust in its call for a Democratic Assembly. Here, a foundationalist/constitutionalist language appears in a reaction to what is seen as an ongoing 'quasi constitutional process happening on the European level in which the citizens are barely having any say'. It is interesting to see that the top-down, elite-driven initiative of constituent politics, as also attempted in the European Convention on the Future of Europe, is explicitly criticized: 'We need to move beyond the insatisfactory experience of the European Convention' (European Alternatives 2012: 1). The promoters of the initiative:

> believe there is an alternative – the demand for a Europe where *citizens, social forces, movements and associations have a say over their collective future*. The construction of a Europe based on real democratic and political processes, able to interrupt the hegemony of austerity and reformulate a response to the crisis and open another road to Europe. We don't need a Fiscal Pact, *we need a Citizen Pact*. A real pact of European citizens and residents leading to substantial reforms of the decision-making processes and institutions of the European Union (European Alternatives 2012: 1; emphasis added).

There is a clear allusion here to a *bottom-up constitutional order* (see table 1) with an emphasis on self-government as the higher common principle. The promoters go on by stating:

> Such a Pact can only be drafted by the *activation of a real participatory and democratic process*. We need to imagine – and begin constructing – the tools of transnational democracy in Europe. That is why we imagine a process that builds a real public debate, that engages citizens in local assemblies and that mobilises local authorities and institutions of proximity. There is no Citizen Pact without European Citizens (European Alternatives 2012: 1; emphasis added).

The Citizens Pact has led to the adoption of a European-wide deliberated 'Citizens Manifesto for European Democracy, Solidarity and Equality', which was presented to the European Parliament in the first week of December 2013. The authors invite

'[m]embers of the European Parliament and candidates to the 2014 elections' to 'endorse the Citizens Manifesto and pledge to making these proposals become reality'. The proposals include the following:

> We demand the overhaul of European democratic structures and the clarification of division of competences between Member States and the EU through the activation of a participatory process leading to a European Convention either for the whole EU-28 or for the Eurozone alone…To ensure a *real popular mandate* to the work of the Convention, it should be composed of convention members directly elected across the EU, and not representatives nominated by national governments and parliaments, as well engaging institutional and social stakeholders and citizenship at large. To this end, a process of coordinated debate and discussion of a new institutional structure for Europe *with all social movements* should be fostered, enlarging such debate to *the maximum of citizens through a cycle of meetings and debates* organised throughout Europe. A multilingual space of online discussion should further allow for the participation of the maximum of citizens employing the latest online participatory techniques (Citizens Manifesto 2013: 70-1).

A related example is the initiative of ATTAC, in particular its French and Italian components, to elaborate a 'Plan P, a Constitution for the Peoples of Europe', which is presented as a document to stimulate debate in Europe and interestingly combines a federalist thrust with a participatory one. According to a working draft of 2011,

> The most decisive innovation for democracy would certainly be that of a *federal Europe*, as opposed to the structure Europe has taken on today, a distorted confederation, or union of states. This change of structure is essential if we are to *restore both the separation of powers and popular sovereignty*.
> The Union of European Nations is not to be based on a treaty, in other words a contract drawn up between states, but on a *constitution*, simultaneously adopted and modified by a referendum put to the *European peoples*. The Union is not to contain "member states" but "member nations".
> [...] The *sovereignty of the people* in constituent matters must be upheld, thereby separating the constituent powers from the constituted powers: this constitution must be submitted to a vote by all Europeans within the Union on the same day (III-47). Any modification of the constitution (III-51; I-20-2) or of a treaty defining rules concerning international politics (I-20.1) must be ratified by referendum (ATTAC 2011; emphasis added).

Table 1   Different understandings of a European Constitutional order

EU as a:	Statist constitutional order	Universal constitutional order	Commons constitutional order	Grassroots constitutional order
Principles of legitimation	Stability, rule of law	Public reason	Commonality	Self-government
Main democratic rationales	Individual liberty, popular sovereignty	Essential, universal principles of equality, individual liberty	Access to fundamental common goods	Public autonomy
Institutional imagination	European constitutional order grounded in state constitutions	Key Charters, Conventions, national constitutions	Charter of the Commons, European Constitution, commons as legal category	Plurality of channels of civic input; various forms of basic guarantees
Scope of politics	Political participation based on rights	Formal politics within scope allowed by juridical frame	Constituent actions (occupation, self-governance)	Politics beyond formal institutions, civic deliberation

This cursory exploration here is only meant to suggest the potential richness of some of the forms of reformist and radical critique on the European project, which, while not in all cases being amenable to direct translation into institutional forms, do indicate some significant dimensions of imperfection of the current order, not least with regard to the incapacity for action of existing political institutions and actors, the problematic and shifting distinctions between the public and the private, and the deeply problematic nature of the relations between formal political society and wider civil society. In this, they point to a 'constitutional deficit' that seems largely off the radar of the European integration debate.

Concluding remarks
A political sociology of European constitutional politics provides important instruments to develop a more comprehensive analysis of the constitutional dimensions of the current European crisis. The approach combines a normative dimension which emphasizes inclusion and critique with a sociological dimension which emphasizes dimensions of contestation, legitimacy, and the interaction between law, politics, and society. A political-sociological approach recognizes various constitution-interpreting subjects, in both institutionalized and non-institutionalized domains, who make different – including critical - claims with regard to an emergent European constitutional order. The contested nature of the European political-constitutional project has become clear with the rejection of the

Draft European Constitution in popular referenda, but the constitutionalization process has not stopped in 2005. One unintended consequence of the formal constitutionalization attempts appears to have been a more explicit attention to constitutional claims and dimensions in European social movements' language and actions. If one agrees that a further politicization and constitutionalization of the European project is unavoidable in the current crisis, the multiplicity of voices and proposals regarding a future political Europe would seem to be in need of further scrutiny and analysis. Such a pluralistic focus on the interaction and conflict between institutionalized and non-institutionalized constitutional subjects appears particularly relevant in current times of multiple crises, in which the instituted language of the European project is increasingly growing thin and contested, and a multiplicity of alternative, instituting languages might form a crucial source for a reflective, reinvigorating, and inclusive exercise of constitution-making.

References
ATTAC (2011a) 'Attac exposes the Lisbon Treaty! Old letter in a new envelope - EU Constitution now called the Lisbon Treaty', available at: http://www.wiseupjournal.com/?p=320.

ATTAC (2011b) 'Presentation of the project "Plan P, a Constitution for the Peoples of Europe", available at: local.attac.org/rhone/IMG/doc/Presentation_Plan_P_EN.doc.

Anderson, G.W. (2014) 'Constitutionalism as a critical project: the epistemological challenge to politics', S. Gill and A.C. Cutler (eds), *New Constitutionalism and World Order*, Cambridge University Press, 281-94.

Bailey, S. and U. Mattei (2013) 'Social movements as constituent power: the Italian struggle for the commons', *Indiana Journal of Global Legal Studies*, Volume 20, Issue 2, 2013, 965-1013.

Blokker, Paul and Andrea Brighenti (2011) 'Politics Between Justification and Defiance', special issue on 'Pragmatic Sociology: Theory, Critique, and Application', *European Journal of Social Theory,* vol. 14(3).

Blokker, P. (2014) (Online First), 'The European Crisis and a Political Critique of Capitalism', special issue "Europe in Crisis", *European Journal of Social Theory*, 17(3).

Blokker, P. (forthcoming) 'The European Crisis as a Crisis of Democratic Capitalism', B. Dallago and J. McGowan (eds), *Economic and Political Crises in Europe and the United States: Prospects for Policy Cooperation*, Routledge.

Bohman, J. (2007) *Democracy across borders: from Dêmos to Dêmoi*, Cambridge, Mass.: MIT Press.

Boltanski, L. (2009) *De La Critique. Précis de sociologie de l'émancipation*, Paris: Gallimard.

Boltanski, Luc and Axel Honneth (2009) 'Soziologie der Kritik oder Kritische Theorie? Ein Gespraech mit Robin Celikates', R. Jaeggi and T. Wesche (eds), *Was ist Kritik?* Frankfurt am Main, Suhrkamp, 81-116.

Brunkhorst, H. (2005) *Solidarity. From Civic Friendship to a Global Legal Community*. MIT Press.

Brunkhorst, H. (2006) 'Taking democracy seriously–Europe after the failure of its constitution, E.O. Eriksen, C. Joerges, F. Rödl (eds) *Law and Democracy in the Post-National Union*. ARENA Report 1, 433-54.

Cartabia, M. (2013) 'Introduction', M. Cartabia, N. Lupo, A. Simoncini (eds), *Democracy and subsidiarity in the EU. National parliaments, regions and civil society in the decision-making process*. Bologna: Il Mulino.

Cohen, A. and A. Vauchez (2008) 'Back to the 'future of Europe'. A political sociology of the constitutional saga, working paper RSCAS/33.

Commons Sense (2012) 'European Charter of the Commons', available at: http://www.commonssense.it/emend/european-charter-of-the-commons-eng/.

Delanty, G. (2005) 'What does it mean to be a 'European'?', *Innovation: The European Journal of Social Science Research*, 18:1, p. 11 – 22.

Delanty, G. (2009) *The cosmopolitan imagination: the renewal of critical social theory*, Cambridge, UK; New York: Cambridge University Press.

Delanty, G. (2011) 'Cultural diversity, democracy and the prospects of cosmopolitanism: a theory of cultural encounters', in: *The British Journal of Sociology*, Volume 62, Issue 4, 643-656.

Delanty, G. and C. Rumford (2005), *Rethinking Europe: social theory and the implications of Europeanization*, New York: Routledge.

Della Porta, D. (2009a) (ed.), *Democracy in Social Movements*. Palgrave/MacMillan.

Della Porta, D. (2009b) (ed.) *Another Europe. Conceptions and Practices of democracy in the European social forums*. London/New York: Routledge.

Della Porta, Donatella and Manuela Caiani (2009) *Social movements and Europeanization*. Oxford: Oxford University Press.

Della Porta, Donatella and Louisa Parks (2013) 'Contentious EU politics: A comparative analysis of protest campaigns', N. Kauppi (ed.) (2013) *A Political Sociology of Transnational Europe*. ECPR Press, 17-52.

European Alternatives (2012) 'Refounding Europe: A Democratic Assembly towards a Citizen Pact', statement distributed at European Social Forum, 10+10, November 2012, Florence. On file with the author.

Everson, Michelle, and Julia Eisner (2007) *The making of a European constitution: judges and law beyond constitutive power*. Routledge.

Favell, A. (2007) 'The Sociology of EU Politics', K.E. Jørgensen, M.A. Pollack, B. Rosamond (eds.) *The Handbook of EU Politics*. London: Sage.

15

Favell, A. and V. Guiraurdon (2009) 'The Sociology of the European Union: An Agenda', *European Union Politics*, 10, 550-77.

Ferrara, A. (2011) *Democrazia e apertura*. Bruno Mondadori.

Forst, R. (2011) 'Justice and Democracy. Comment on Juergen Neyer', R. Schmalz-Bruns and R. Forst (eds) *Political legitimacy and democracy in transnational perspective*. Oslo: ARENA, 37-42.

Fossum, J.E. and H.J. Trenz (2006) 'The EU's fledging society: From deafening silence to critical voice in European constitution-making' *Journal of Civil Society*, 2(1), 57-77.

Georgakakisa, Didier and Julien Weisbein (2010) 'From above and from below: A political sociology of European actors', *Comparative European Politics*, 8, 93–109.

Giorgi, Liana, Ingmar von Homeyer and Wayne Parsons (2006) *Democracy in the European Union: towards the emergence of a public sphere*. London/New York: Routledge.

Kaldor, M. et al. (2012) 'The 'bubbling up' of subterranean politics in Europe', London School of Economics and Political Science, London, UK. available at: http://eprints.lse.ac.uk/44873/1/The%20%E2%80%98bubbling%20up %E2%80%99%20of%20subterranean%20politics%20in%20Europe%28lsero %29.pdf.

Kauppi, N. (2003) 'Bourdieu's Political Sociology and the Politics of European Integration', *Theory and Society*, Vol. 32, No. 5/6, 775-789.

Kauppi, N. (ed.) (2013) *A Political Sociology of Transnational Europe*. ECPR Press.

Kohler Koch, B. (2009) 'The three worlds of European civil society—What role for civil society for what kind of Europe?', *Policy and Society*, 28, 47–57.

Kohler Koch, B. and B. Rittberger (2007) *Debating the democratic legitimacy of the European Union*. Lanham, Md.: Rowman & Littlefield

Kohli, M. (2000) 'The battlegrounds of European identity', *European Societies* 2.2, 113-137.

Liebert, U. and H.J. Trenz (2008), 'Mass Media and Contested Meanings: EU Constitutional Politics after Popular Rejection', EUI working paper, RSCAS 2008/28.

Liebert, U. and H.J. Trenz (2009), 'Civil society and the reconstitution of democracy in Europe: Introducing a new research field', in: *Policy and Society*, 28, 1–9.

Lindstrom, N. (2011) 'Constitutionalism between normative frameworks and the socio-legal frameworks of society', Schiek, Dagmar, Ulrike Liebert, and Hildegard Schneider (eds) (2011) *European economic and social constitutionalism after the Treaty of Lisbon*. Cambridge University Press, 74-94.

Maduro, M. (2009) 'Courts and Pluralism: Essay on a Theory of Judicial Adjudication in the Context of Legal and Constitutional Pluralism, Jeffrey L.

Dunoff and Joel P. Trachtman (eds) *Ruling the world?: constitutionalism, international law, and global governance*. Cambridge University Press, 356-80.

Manin, Bernard (1997) *The principles of representative governmen*t. Cambridge University Press.

Mattei, U. (2013) 'Protecting the Commons: Water, Culture, and Nature: The Commons Movement in the Italian Struggle against Neoliberal Governance', *The South Atlantic Quarterly*, 112(1), 366-76.

Medrano, J.D. (2003) *Framing Europe: Attitudes to European Integration in Germany, Spain, and the United Kingdom.* Princeton University Press.

Mueller J.W. (2012) 'Beyond Militant Democracy?', *New Left Review*, 73, 39-47.

Murray-Leach, T. (2012) 'Reimagining Europe: Reimagining democracy', *Open Democracy*, available at: http://www.opendemocracy.net/tamsin-murray-leach/re-imagining-europe-re-imagining-democracy.

Pleyers G. (2012) 'Beyond Occupy: progressive activists in Europe', in: *Open Democracy*, available at: http://www.opendemocracy.net/geoffrey-pleyers/beyond-occupy-progressive-activists-in-europe.

Pleyers, G. (2010) *Alter-globalization: becoming actors in the global age*, Cambridge: Polity.

Roche, M. (2010) Exploring the Sociology of Europe. London: Sage.

Rodotà, S. (2012) *Il diritto di avere diritti*. Bari: Laterza.

Rosanvallon, Pierre (2006) *Democracy. Past and Future*, Columbia University Press.

Rosanvallon, Pierre (2008) *Counter-democracy: Politics in an Age of Distrust*. Cambridge University Press.

Rumford, C. (2003) 'European Civil Society or Transnational Social Space? Conceptions of Society in Discourses of EU Citizenship, Governance and the Democratic Deficit: An Emerging Agenda', in: *European Journal of Social Theory* 6(1), 25–43.

Rumford, Chris (2002) 'Introduction: A New Approach to Studying European Integration', in: *The European Union. A Political Sociology*, Blackwell, 1-14.

Sanders, D. *et al.* (2012), *Citizens and the European Polity. Mass Attitudes towards the European and National Polities*, Oxford University Press.

Schiek, D. (2011) 'Re-embedding economic and social constitutionalism: Normative perspectives for the EU', Dagmar Schiek, Ulrike Liebert, and Hildegard Schneider (eds) (2011) *European economic and social constitutionalism after the Treaty of Lisbon*. Cambridge University Press, 17-46.

Schiek, Dagmar, Ulrike Liebert, and Hildegard Schneider (eds) (2011) *European economic and social constitutionalism after the Treaty of Lisbon*. Cambridge University Press.

Shaw, J. (2003) 'Process, Responsibility and Inclusion in EU Constitutionalism, *European Law Journal*, 9(1), 45-68.

Smismans, S. (2009) 'European civil society and citizenship: Complementary or exclusionary concepts?, *Policy and Society*, 28, 59–70.

Tuori, K. & K. Tuori (2014) *The Eurozone Crisis*. Cambridge University Press.

Van de Steeg, M. (2002) 'Rethinking the Conditions for a Public Sphere in the European Union', *European Journal of Social Theory*, 5(4), 499–519.

White, J. (2010) 'European integration by daylight', *Comparative European Politics*, Vol. 8, 1, 55–73.

Wiener, Antje (2008) *The Invisible Constitution of Politics*. Cambridge University Press.

Wilkinson, M. (2013) 'Political Constitutionalism and the European Union', *Modern Law Review*, 76(2), 191-222.