

## Malcolm MacLaren

### Immigration and Healthy Policymaking

---

#### The patient

The metaphor of the «body politic» is an old one, dating at least back to the Middle Ages and being famously depicted on the frontispiece of the first edition of Hobbes' *Leviathan*. It has proven resilient in the conceptualization of public affairs to date, the people incorporated in the state often being treated as the body politic.<sup>1</sup>

Indeed, the metaphor has been frequently used in the ongoing debates in the West about mass migration due to a nation-state's central role – be it in terms of the official regime, logistical capacity, national character, or self-identity. Hillary Clinton, who suffered electorally from Donald Trump's promise to build a wall with Mexico, argues that «if we don't deal with the migration issue it will continue to roil the body politic».<sup>2</sup> Likewise, the migrant crisis of 2015 hit a real nerve in many European countries, wracking national political systems and populations. A British activist reckons that «the ways in which governments treat people who are moving in

<sup>1</sup> Exemplary is Jared Diamond: *Upheaval: How nations cope with crisis and change*, London 2019. Diamond draws on the metaphor not only in describing how the polity functions, but also in prescribing right «behaviour». Contrary see Niall Ferguson: *Shrink thinking: Are countries really like people?*, in: *Times Literary Supplement*, 1 November 2019, 12–13.

<sup>2</sup> Quoted in Matt Stevens et al.: *Hillary Clinton Says Europe Must «Get a Handle» on Migration to Thwart Populism*, in: *New York Times*, 22 November 2019.

search of safety and opportunity have become a stark indicator of the health of those democracies».<sup>3</sup>

Here, the metaphor of nations as personified abstractions will be used as a starting point in exploring how public policy is made in the West today.<sup>4</sup> Related notions of individual (ill-)health offer insight into the (ab-)normal functioning of a liberal democratic system. Further, the present volume's guiding principle of *Krankheit und Gesundheit* based on the conception of One Health helps clarify the condition described. It points to the holistic approach that should be taken to understand and to treat such dysfunction in a liberal democracy.

### A medical examination

In addition to the policies' substance, i.e. how governments deal with immigrants, the process of policymaking must be examined. The question arises: to what extent is «healthy policymaking» being practiced in Western democracies regarding such topical societal concerns as immigration? More fundamentally, how far can the customary ideals of careful consideration of information, constructive exchange of different opinions, and amiable consensus be reasonably expected in this highly emotive context?

In the following essay, I find that the requirements for such deliberation about mass migration and other contemporary hot-button issues are not currently vouchsafed in *Mitteleuropa* or elsewhere in the West. A primary cause and consequence of this deficit have been the rapid rise of nativist populism and its great influence on immigration policymaking.

For concerned politicians and commentators, engaging with feelings within – and for/against – liberal democracy is imperative

<sup>3</sup> Lucy Hovil: Telling Truths about Migration, in: International Journal of Transitional Justice 13/2 (July 2019) 199.

<sup>4</sup> The information and websites in this essay are up to date as of 1 March 2020.

so as to enable common reflection, dialogue and agreement. My analysis of approaches that have been pursued of late by liberal democrats suggests that identifying what is *not* to be done in treating the body politic is easier than identifying what is to be done. There are policymaking pitfalls to avoid, which otherwise stoke fears about immigration and render public debate even more extreme. How these fears can and should be assuaged, however, remains unclear. Neither the means nor the justification for the state to determine their permissibility is evident in liberal democracy.

I conclude that absent an effective and acceptable treatment, deficient discourse and mistaken policies will at times result. Dysfunction in policymaking – and profound dissatisfaction with liberal democracy – will therefore persist about mass migration. The body politic will – can – never develop a total immunity to «illnesses» in popular deliberation. At most an alleviation of the symptoms may be achieved.

### The dysfunction

That immigration receives close attention in the West today is readily understandable. It is on a larger scale and of a changed composition from earlier decades. That immigration is a matter of great societal concern and of considerable discussion is also understandable. It affects the native population's sense of identity and well-being – as well as the immigrants themselves – as people are insecure about the future of their community. As the German political scientists Gary Schaal and Felix Heidenreich put it simply, immigration policy is about how we wish to live together: «Was ist es, das wir gemeinsam wollen und wertschätzen?»<sup>5</sup> The terms and justifications in immigration policymaking are not self-evident; they

<sup>5</sup> Gary S. Schaal, Felix Heidenreich: Zur Rolle von Emotionen in der Demokratie, in: Aus Politik und Zeitgeschichte, 30 July 2013: <https://www.bpb.de/apuz/165744/zur-rolle-von-emotionen-in-der-demokratie>

must be worked out country by country, provision by provision. While they are, a degree of tension is unavoidable.

Alone the language commonly used speaks to how important and how charged the issue of immigration is today in public. For example, the influx of 2015 has been characterized in *Mitteleuropa* as an «immigrant avalanche» (qua an unstoppable force of nature) and as a «humanitarian imperative» (children's bodies washing up on Mediterranean beaches). Where for one group, the German ship's captain who rescued migrants from the sea is a «hero», for another group she is a «pirate». A moral fervour overcomes a large part of the population in debating immigration. This fervour has been manifested in the rancour and animus that characterise exchange: «accusations of xenophobia fly in one direction, dismissals of starry-eyed idealism in the other». <sup>6</sup> Despite being a complicated and tangible policy issue, immigration tends to be understood in simplified and symbolic terms by the general public.

At all times, realizing the ideals of liberal democratic discourse in immigration policymaking seems wishful thinking. The debate in Switzerland, for example, around the *Masseneinwanderungsinitiative* of 2014 was a testing – and sadly telling – time for that country's political culture, which had hitherto been widely admired for rational, reasoned argument. It is an issue, arguably more than any other, that possesses the power to divide opinions, to lead to polarization and radicalization. Germany already struggled with this issue prior to 2015. In early 2001, Interior Minister Otto Schily proposed Germany's first-ever regulated immigration program. Following the 9/11 terrorist attacks, he decided against submitting the bill to cabinet, judging it an unpropitious moment. <sup>7</sup> Extreme positions dominate debate, despite most voters maintaining moderate views. This culture of political debate is widely acknowledged to be defective. It seems, a columnist notes plaintively, «zu viel verlangt,

<sup>6</sup> Special Report: Migration, in: *Economist*, 28 May 2016, 16.

<sup>7</sup> Further see Malcolm MacLaren: Framing the Debate over the German Immigration Bill: Toward Reasoned Policymaking, in: *German Law Journal* 2/16 (2001): <https://doi.org/10.1017/S2071832200003990>

einem halbwegs zivilisierten Gegenüber erst mal zuzuhören und gegebenenfalls sachlich zu widersprechen.»<sup>8</sup> Pleas for a new *Streitkultur* in Germany are made by leading newspapers and even the *Bundespräsident*.<sup>9</sup> Can the polity still build majorities for profound reforms urgently required?

These strong, divisive feelings evoked by mass migration – and other hot-button issues like Brexit and climate change – have been manipulated and exploited by political entrepreneurs to challenge, with considerable success, present norms, institutions, and practices. In the US, «Trump's virulent rhetoric taps into the grievances of a white working or middle class and encourages it to embrace, revitalize, and act on its prejudices».<sup>10</sup> These feelings have been inflamed beyond dissatisfaction with the content of particular policies to now express general frustration and disenchantment with liberal democracy and support for alternative regimes.

Where in past, the establishment parties across Europe tended to advance moderate positions soberly, of late these have been adopting populist-inspired rhetoric and policies on issues like immigration. A normalization and outbidding may be observed. Mainstream politicians also pander to fear, hatred, anger, etc. for

<sup>8</sup> Peter Maxwill: Lädierte Streitkultur: Wir schweigen die Demokratie zugrunde, in: Spiegel Online, 21 July 2019: <https://www.spiegel.de/panorama/gesellschaft/streitkultur-und-demokratie-wie-wir-sie-zugrunde-schweigen-a-1261127.html>

<sup>9</sup> Bundespräsident Steinmeier. Haben Problem mit Streitkultur, ZDF, 18 November 2019: <https://www.zdf.de/nachrichten/heute/bundespraesident-steinmeier-haben-problem-mit-streitkultur-100.html>

Bastian Berbner: «Germany Talks»: It's Impossible to Talk to You!, in: Zeit Online, 1 October 2018:

<https://www.zeit.de/gesellschaft/2018-09/germany-talks-discussion-argue-constructively-political-adversaries-englisch>

<sup>10</sup> Martijn Konings: Neoliberalism Against Democracy? Wendy Brown's «In the Ruins of Neoliberalism» and the Specter of Fascism, in: Los Angeles Review of Books, 22 September 2019:

<https://lareviewofbooks.org/article/neoliberalism-against-democracy-wendy-browns-in-the-ruins-of-neoliberalism-and-the-specter-of-fascism>

votes, giving credibility to those feelings and undermining human rights, the rule of law, and democratic structures.<sup>11</sup>

Populism is facilitated today by the internet, as it furthers fragmentation, polarization and radicalization in the citizenry.<sup>12</sup> On one hand, bots and echo chambers amplify our views, and news websites trade in outrage; on the other, the use of social media hinders the shared understandings and conversations that are the basis of liberal democracy. The result is that «modern debate has a structural bias in favour of demagoguery and disinformation».<sup>13</sup>

Regarding 2015, fearmongering by right-wing political parties and media outlets earned votes and boosted ratings. These questionable practices before – as well as after – that momentous summer had a negative impact on policymaking and have been partly why the migration took on epic proportions in Europe.<sup>14</sup> The problem was «the way immigration was depicted, described, debated or demonised»<sup>15</sup> and not the migrants' arrival in larger numbers *per se*.

These flawed discourses must be reformed if the body politic is to function as intended. This reform begins with greater public self-reflection by political and media actors. How then can the

<sup>11</sup> Generally see Demetrios G. Papademetriou et al.: The Future of Migration Policy in a Volatile Political Landscape, in: Migration Policy Institute, November 2018:

<https://www.migrationpolicy.org/research/migration-policy-volatile-political-landscape>

<sup>12</sup> *Inter alia* see Cass Sunstein: #Republic: Divided Democracy in the Age of Social Media, Princeton NJ 2017.

<sup>13</sup> Steven Poole: Who wins from public debate? Liars, bullies and trolls, in: Guardian, 3 May 2019:

<https://www.theguardian.com/books/2019/may/03/death-of-debate-jordan-peterson-slavoj-zizek-alexandria-ocasio-cortez>

<sup>14</sup> Further see Florian Lippert: Public self-reflection in the context of the European migrant crisis: Towards a new transdisciplinary model of discourse analysis in politics, media and the arts, in: Journal of European Studies 49/3–4 (2019) 336–353.

<sup>15</sup> In the British context, see Rachel Shabi: How immigration became Britain's most toxic political issue, in: Guardian, 15 November 2019:

<https://www.theguardian.com/politics/2019/nov/15/how-immigration-became-britains-most-toxic-political-issue>

deliberative and judicious policymaking that is required on this emotive issue of national importance be facilitated?

### The parameters

The policymaking process in Western democracies has several phases, roughly divisible into agenda building, formulation and adoption, implementation as well as evaluation and termination. The focus here is on the second phase, i.e. coming up with a national approach to deal with a perceived problem.<sup>16</sup> The process of policymaking is aimed at the most effective outcomes, achieved by the most appropriate means. Recourse alone to democracy and its decision-making mechanisms does not ensure – may indeed prevent – «healthy» policymaking. A process that involves reacting to popular demands and results in broad consensus must be supported by reliable knowledge and a certain culture of debate.<sup>17</sup>

Traditionally, the parameters for the policymaking process in Western democracies have been defined by the Rawlsian ideal of public reason, as effected by responsible politicians, quality media, and reasonable citizens. This ideal is emotion-averse: it intentionally excludes related motivations that are considered an improper basis for public policy- and decision-making. Put pointedly, emotions in politics are alien to the body politic, should be minimized, and belong in the private sphere. The prescription was not new, but it found renewed support due to the experience of the Interwar. Collective passions are held responsible in Europe for the atrocities of the Nazis and their collaborators, which constitute the antithesis

<sup>16</sup> Exemplary see European Commission, *Quality of Public Administration: A Toolbox for Practitioners* (Theme 1: Policy-making, implementation and innovation), Luxembourg 2017: <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8055&type=2&furtherPubs=no>

<sup>17</sup> Generally see Marc Bühlmann, Hanspeter Kriesi: *Models for Democracy*, in: H. Kriesi et al.: *Democracy in the Age of Globalization and Mediatization*, Basingstoke UK 2013, 44–68.

of reason and humanity. In liberal democracy, the constitution, together with the whole legal system and the rule of law, may be seen as already geared to dampening and controlling passions.<sup>18</sup>

In the specific context of public debate, ideas are to «do battle» with one another to enable citizens to inform themselves and to make the best judgments possible. This view finds its perhaps most developed version in Habermas' theory of communicative action. Action must be characterized by reason, which is based alone on the «zwanglosen Zwang des besseren weil einleuchtenderen Argumentes».<sup>19</sup>

In view of its nature and significance, the issue of immigration poses a challenge to this understanding of and approach to politics in Western democracies. No politics/policymaking is ever neutral; even in reasonable liberal societies, it is to an extent emotionally charged. Of late, politics/hot-button issues have been the subject of mendacious campaigning amplified by partisan media and resonating in voters' anger. More helpful is to consider emotions in political participation/policymaking to be unavoidable, even indispensable. Moreover, feelings are neither good nor bad *per se* for democracy; outrage and anger can, for example, be a positive as well as negative force. Such an understanding distinguishes which are deployed/used and how, with which goals and tactics, and asks to what extent these are connected to deliberative processes.<sup>20</sup>

<sup>18</sup> Generally see András Sajó: Emotions in constitutional design, in: International Journal of Constitutional Law 8/3 (2010) 354–384.

<sup>19</sup> Jürgen Habermas: Sprachtheoretische Grundlegung der Soziologie. Philosophische Texte. Studienausgabe, Frankfurt am Main 2009, I 144.

<sup>20</sup> Further see Priska Daphi: Presentation, 14. Bundeskongress politische Bildung 2019. Was uns bewegt. Emotionen in Politik und Gesellschaft, Leipzig, 9 March 2019:

<https://www.bpb.de/veranstaltungen/dokumentation/277643/sektion-3-partizipation-was-treibt-uns-an-bach-saal>



### A diagnosis

Under the political systems prevailing in the West, the prospects for productive debate on a common good have been shown to be poor when the latter concerns the character and direction of the society. Especially in troubled times, democratic participation and processes may be destructive for the polity rather than constructive.

To my mind, what is determinative of the culture of debate is how the different ways of knowing, especially the emotional, that are evoked in policymaking are dealt with. In the present context, feelings motivate our (re-)actions; they are the basis for our value judgements; and they shape «situational interpretations».<sup>21</sup> When emotions in democratic life are misunderstood and mishandled, the vitality of the debate and ultimately, its facilitating processes will suffer.

In face of the latter-day *besorgte Bürger* and *Wutbürger* and of the *Siegeszug der Gefühle*, politicians and political theorists have sought to make public policy regarding mass migration in ways that avoid «testing» the body politic, i.e. that do not give rise to distrust, divergence of opinion, and disagreement. Generally, the more emotional a debate becomes, the louder is the call for its control, internal or external.

For example, some politicians attempt to depoliticize the issue and to frame mass migration as merely a logistical challenge. These efforts are naïve or deceitful, but either way, they will prove unsuccessful. The issue of mass migration cannot just be «managed» by government executives with the proper strategies, structures, and capacities; it is more than just a big admin job.

The most famous attempt was German Chancellor Merkel's promise at the height of the migrant crisis: «[w]ir schaffen das: Wo etwas im Wege steht, muss es überwunden werden, muss daran

<sup>21</sup> Paraphrasing G.S. Schaal, F. Heidenreich: Zur Rolle von Emotionen in der Demokratie.

gearbeitet werden.»<sup>22</sup> As she had other policy challenges, Merkel sought to deal with it rationally and objectively, with detachment and moderation. This approach had been very popular previously.<sup>23</sup> The *Wir-schaffen-das*-promise did not, however, correspond to the public's expectations or rather, own emotionality about the event. Where policy in other contexts might have been agreed to be *alternativos*, the sudden arrival of immigrants in great numbers provoked an intense search for alternatives.

In the event, the German state coped very quickly and flexibly with the practical challenges of processing, housing, schooling, etc. the 1.1 million migrants who arrived in 2015. A marked and steady decrease in the number of immigrants has followed. In March 2019, the European Commission officially declared the crisis in the member states to be over. To the state's and Commission's chagrin, the situation is otherwise depicted by rival politicians and otherwise perceived by large sections of the public. Many in Germany, for example, continue to question the propriety of Merkel's decision in August that year not to close the country's borders to asylum seekers. They still worry greatly about immigrants, as many polls testify.

### Preventive measures

Merkel's characterization of the migrant crisis as foremost an administrative challenge may be thought of as an actual attempt at evading, rather than accounting for, the feelings implicated in

<sup>22</sup> German Chancellor Angela Merkel on the country's refugee policy, Press Conference, 31 August 2015:

<https://www.youtube.com/watch?v=kDQki0MMFh4>

<sup>23</sup> As a German political scientist in 2014 observed, «[w]ir haben fast eine Debattenallergie in Deutschland, in Zeiten der grossen Koalition ganz besonders.» (Karl Rudolf Korte, quoted in Ingeborg Breuer: Zwischen Leidenschaft und Demagogie, Deutschlandfunk, 31 July 2014:

[https://www.deutschlandfunk.de/politik-und-emotion-zwischen-leidenschaft-und-demagogie.1148.de.html?dram:article\\_id=293252](https://www.deutschlandfunk.de/politik-und-emotion-zwischen-leidenschaft-und-demagogie.1148.de.html?dram:article_id=293252)

designing a national immigration regime. Emotions have long been treated warily, even ascribed a negative role in political processes. Of late, populists' politics of fear has led to others' fear of politics and to the recommendation of different approaches to militate against feelings' influence on policymaking.

A careful review of three such approaches advises, however, political elites not to condescend to the views of ordinary people, believing themselves entitled to impose their enlightened perspectives and truths on the benighted masses.<sup>24</sup>

1 — Attempts to disparage feelings (or pejoratively, passions) are misconceived, in principle and in practice. Hamlet-esque encomia of the «noble reason» that makes humankind «the paragon of animals» constitute a dubious prioritization of one way of knowing in politics. It valorises rationality in making sense of the world at the expense of possible contributions of other ways of knowing, e.g. intuition and imagination as well emotion.

One cannot, and arguably should not, tell people whether and what to feel. Our feelings are simply what they are and are worthy of recognition as such in political processes; they deserve validation rather than judgment. That does not mean that we can, and should, express feelings whenever and however we wish. Nonetheless, neither being fearful of immigrants nor preferring limits on immigration is «wrong» in and of itself.

Attempting, moreover, to dismiss unconventional or inconvenient attitudes by branding them as improper – or worse – will not shut down the political discussion. You won't win over anyone to your viewpoint, as a US journalist notes, by insulting them.<sup>25</sup> This preventive approach has, in any event, been effectively countered by populists, who urge the feelings' expression as not only natural

<sup>24</sup> Paraphrasing Joan C. Williams: Metro vs retro: The rise of divisiveness in modern politics, in: Times Literary Supplement, 8 February 2019, 6.

<sup>25</sup> German Lopez: Research says there are ways to reduce racial bias. Calling people racist isn't one of them, in: Vox, 30 July 2018: <https://www.vox.com/identities/2016/11/15/13595508/racism-research-study-trump>

but also justified. They propagate the legitimacy – even propriety – of voters' having them.

Listening to and showing respect for others' politics are integral to achieving broad consensus in policymaking. Emotions really become problematic when attempts are made to deny them. The expression of related sentiments in the native population, if widely shared and abiding, cannot be suppressed or long evaded. Politicians can gag themselves, but in a liberal democracy, they cannot gag the public (or press). These and the concomitant divisions in the body politic «will out», like truth itself, and may then be more the extreme. – For example, the majority vote in favour of Brexit was arguably caused by «the inability and unwillingness of liberal elites to discuss migration and contend with its consequences».<sup>26</sup>

2 — An alternative appeal to citizens for trust in and deference to scientific and political leaders is also likely to fall on deaf ears. Although the leaders' intent may genuinely be to give people what is in their best interests, a paternalistic, elitist approach will not be readily agreed to in the West.

Some theorists have argued in favour of technical expertise, i.e. giving greater say to demographers, economists, and the like in determining policy. To give responsibility over to technocrats is to revert to «a system without anger and fondness», to rationalized governance devoid of irrational content.<sup>27</sup> Experts' understanding of a complex issue is presumed to be more astute and less self-interested than that of the average member of the public. This argument can be traced back to Plato's time at least: there have long been intellectuals who view the majority of citizens as «ignorant», «shiftless and flighty» and therefore would entrust power to an elite of «carefully educated guardians».<sup>28</sup>

<sup>26</sup> Ivan Krastev: *After Europe*, Philadelphia 2017, 25.

<sup>27</sup> Following the title of a conference «A system without anger and fondness? Emotions in the age of bureaucracy» held at the Max Planck Institute for Human Development, Berlin, in 2016.

<sup>28</sup> Caleb Crain: *The Case against Democracy*, in: *New Yorker*, 7 November 2016:

The present reality in the West is, however, that the citizenry will not simply acquiesce in tighter limits on its participation in policy-making. Citizens expect substantial acknowledgement of their views as well as own broad and deep involvement in the political process.

Citizens consider themselves as «empowered» in what is oft characterized as an «age of individualism» in Western society. Many refuse to be dictated to by authorities – secular as well as religious – and seek to think and act for themselves, to «take back control», as Trump and Leavers sloganeered. This democratization of knowledge has been accelerated by high literacy rates and enhanced dissemination of news and communication.<sup>29</sup>

Citizens are also aware that in a democracy, their vote has equal worth to others' and their right to take part in government is the same. They value having a voice and participating in political processes; they will assert their right to settle public issues as they wish. Ensuring public authorities' input legitimacy, whatever the output legitimacy they can lay claim to, is a great concern, as the prevailing criticism of the EU's democracy deficit attests. In immigration policy-making, the cogent argument that existential questions must be democratically answered would need to be convincingly refuted. Georg Kohler, Swiss philosopher, puts it succinctly: «Der allerletzte Richter in der Entscheidung über die Humanität und ihre (Staats-) Grenzen ist in der Demokratie stets <das Volk> [... bzw.] die Mehrheit seiner Angehörigen.»<sup>30</sup>

An alternative approach of appealing to trust and deference also underestimates the general public's scepticism of and even anger toward present political authorities. Top-down politics and

<https://www.newyorker.com/magazine/2016/11/07/the-case-against-democracy>

<sup>29</sup> Further see William Davies: Why can't we agree on what's true anymore?, in: Guardian, 19 September 2019:

<https://www.theguardian.com/media/2019/sep/19/why-cant-we-agree-on-whats-true-anymore>

<sup>30</sup> Georg Kohler: Flüchtlingskrise: Der gute Hirte darf nicht zu gut sein zu anderen, sonst schadet er der eigenen Herde. Wo liegen die Grenzen der Humanität?, in: Neue Zürcher Zeitung, 17 August 2019.

unresponsive leaders have of late evoked disenchantment, rejection, and backlash worldwide. Such attitudes are not without grounding in experience. As the number of arrivals rose quickly in 2015, far beyond expectations, the popular perception that European governments could no longer control their countries' borders – a primary responsibility of the state – grew with it. Moreover, instances of policymaking about immigration that was sorely misconceived or promises about immigration that were flagrantly broken<sup>31</sup> resist such an approach. In further policy contexts, Western governments have been revealed to have lied to their citizens. This understandable wariness toward government appeals for trust and deference is only intensified by populists' accusations that the «powers that be» look on them with disrespect, do not take their interests into consideration, or worse, are trying to hoodwink them.

Two phenomena in contemporary political discourse reflect this lack of trust in and deference to political elites. On one hand, mass migration is the subject of many conspiracy theories. For example, the «Eurabia myth» resonates widely today in the West and has moved in political discourse from the far-right into the mainstream.<sup>32</sup> On the other, calls are frequently made to «trust the people» in public affairs and to have faith in «common sense» on matters of common good.<sup>33</sup>

<sup>31</sup> In terms of the former, the fate of many so-called *Gastarbeiter* is apposite. Young Turkish men were invited in the 1960s as temporary workers for West German factories. Afterwards, they did not return home as expected but brought over their families instead. An example of the latter is the estimate of the Blair government in 2004 that between 5,000 and 13,000 people would migrate to the UK from Central and Eastern Europe following their countries' accession to the EU. The actual number was more than 20 times the estimate's upper end.

<sup>32</sup> Further see Andrew Brown: The myth of Eurabia: how a far-right conspiracy theory went mainstream, in: Guardian, 16 August 2019: <https://www.theguardian.com/world/2019/aug/16/the-myth-of-eurabia-how-a-far-right-conspiracy-theory-went-mainstream>

<sup>33</sup> Generally see Peter C. Baker: «We the people»: the battle to define populism, in: Guardian, 10 January 2019:

3 — This resilience of emotions' influence in policymaking has led to a third preventive approach today. Worrying about demagoguery and disinformation regarding hot-button issues like mass migration, liberal democrats have characterized the underlying situation as «misunderstood» and popular attitudes as «mistaken». They examine closely such debate and reveal serial «misleading rhetorical devices, half-truths and questionable assumptions».<sup>34</sup> Recent research in social psychology indicates, however, that their efforts should not focus on fact-checking about and empirical refutation of the allegedly negative impact of immigration in society. The debate in the West over mass migration is far from an exercise in truth-finding.

According to this research, people tend to overestimate the relationship between immigration and criminality – generalizing incidents such as the *Kölner Silvesternacht*. It also shows that stagnant wages and growing inequality in Western countries are not attributable to immigration. Indeed, humankind, as the «New Optimists» attest, may never have had it so good. Such figures may be objective and admit no contradiction, but they do not convince many more citizens, who remain discontented and disaffected.<sup>35</sup>

Rather than by the proven balance of costs and benefits, perceptions in the population of immigration and of the national interest may be formed by memories and identity. As a German historian of emotions paraphrased the *vox populi* today, «ich fühle mich fremd im eigenen Land».<sup>36</sup> Alternatively, concern for the expected impact

<https://www.theguardian.com/news/2019/jan/10/we-the-people-the-battle-to-define-populism>

<sup>34</sup> Exemplary see Ali Rattansi: Migration fantasies: how not to debate immigration and asylum, in: openDemocracy, 28 September 2015:

<https://www.opendemocracy.net/en/migration-fantasies-how-not-to-debate-immigration-and-asylum/>

<sup>35</sup> Oliver Burkeman: Is the world really better than ever?, in: Guardian, 28 July 2017:

<https://www.theguardian.com/news/2017/jul/28/is-the-world-really-better-than-ever-the-new-optimists>

<sup>36</sup> Wie Gefühle Politik machen: Die Historikerin Ute Frevert im Gespräch mit Thomas Kretschmer, Deutschlandfunk, 4 November 2018:

on cohesiveness and character of the community may be determinative. Yascha Mounk finds that «[a] lot of the anger at immigration is driven by fear of an imagined future rather than by displeasure with a lived reality».<sup>37</sup> In eastern Europe, anxieties about national cohesion and demographic panic wrought by immigration – and emigration – help to explain the deep hostility toward migrants across the region in 2015.

This research in psychology undermines key assumptions of public choice theory, e.g. that political actors, especially voters, behave rationally in their own self-interest. Such assumptions seem unreal and unhuman, unrelated to a current context of great and rapid societal change. Most people do not show themselves as rational, utility-maximizing actors, i.e. *homines oeconomici*, whose behaviour can be predicted, dominated, and steered. They show themselves as *homines politici*, whose thinking and action are defined otherwise. This home truth makes the approach unsuited as a guide for life as it is in the polity and for democracy as it is in actuality.<sup>38</sup>

In short, it is not relevant whether the pervasive pessimism and anxiety can be justified. It is relevant simply that these feelings are widely spread and are meaningful for those harbouring them.<sup>39</sup> Liberal democrats seem generally unable to make sense of memory and identity politics; these tend to be disregarded as irrational. People are expected to think straight and act sensibly. In contrast, nativist populists play to «perceived» – as well as «real» – concerns in immigration policymaking and draw a larger, more receptive audience than purveyors of restrained analysis. «A populist is», observes one author, «a gifted storyteller, and the recent elections

[https://www.deutschlandfunk.de/gesellschaftsforschung-wie-gefuehle-politik-machen.1184.de.html?dram:article\\_id=427800](https://www.deutschlandfunk.de/gesellschaftsforschung-wie-gefuehle-politik-machen.1184.de.html?dram:article_id=427800)

<sup>37</sup> Yascha Mounk: *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It*, Cambridge MA 2018, 174.

<sup>38</sup> Contrast Josiah Ober: *Democracy and knowledge: innovation and learning in classical Athens*, Princeton NJ 2009, with Geoffrey Hawthorn: *A game called Greek democracy*, in: *Times Literary Supplement*, 29 May 2009, 24.

<sup>39</sup> O. Burkeman: *Is the world really better than ever?*



across the world illustrate the power of populism: a false narrative, a horror story about the other, well told.»<sup>40</sup>

### Prescriptions?

Whereas populists seize on emotions in contemporary politics, considering them to be central to the human condition, liberal democrats treat emotions, including in this policy context, with suspicion. They therefore do not understand many citizens' preferences, take emotions' effects on the body politic seriously, and ultimately, allow for their role in democratic policymaking (regarding immigration or otherwise). This failure may be traced to the fact that there is no systematic place for emotions in democratic politics agreed among political theorists. The further question as to how, if at all, emotions might contribute constructively to policymaking on issues like immigration remains accordingly unanswered.

In the last two decades, however, there has been an «emotional turn» in Western political theory and in judgement of political decisions. Rational utilitarianism has been debunked as an inadequate understanding of democracy and its exclusive pursuit recognized as a threat long-term to democracy. Various commentators have sought to «compatibilize» democracy and emotions and to establish politics in the West on a new knowledge basis.<sup>41</sup> These reject the stark dichotomy between rationality and emotionality in political theory, stressing their complex interactions in modern society. Rather than following the hierarchy in Rawlsian public reason, they also re-value the de-valued emotions, arguing that these are not necessarily harmful for democracy.

<sup>40</sup> Suketu Mehta: Immigration panic: how the west fell for manufactured rage, in: Guardian, 27 August 2019: <https://www.theguardian.com/uk-news/2019/aug/27/immigration-panic-how-the-west-fell-for-manufactured-rage>

<sup>41</sup> Exemplary see Karl Rudolf Korte (ed.): Emotionen und Politik: Begründungen, Konzeptionen und Praxisfelder einer politikwissenschaftlichen Emotionsforschung, Baden-Baden 2015.

To cite two examples: Robert Howse, a progressive legal scholar, greets emotionalism in contemporary US politics as part of a promising agenda of reform: he sees it disrupting discredited elite-dominated politics. Howse argues that emotionalism could be a cause – and consequence – not of «mob rule» but of a more participatory and representative form of democracy.<sup>42</sup> For his part, historian Ian Beacock suggests that «we might need political emotions if our democratic institutions are to survive.» He observes that supporters of the Weimar Republic embraced policymaking as an exercise in calm, sober rationality, even as regards widespread, profound concerns. They relinquished thereby «the powerful force of political feelings to the antidemocratic extremes».<sup>43</sup>

While there may be a trend to affording emotions a role in political processes in the West, there is no agreement about which emotions are most promising and should be promoted. US public intellectual Martha Nussbaum maintains that «love» provides an affective basis that can «touch citizens' hearts and [...] inspire, deliberately, strong emotions directed at the common work before them»<sup>44</sup> and that can keep fear, disgust, and envy at bay. The way to cultivate it is through education and the arts. Others call for a politics based on hope: e.g. «[g]reater attention to the cultivation of emotions, such as hope, in public life might help us to understand, (re)kindle, and sustain people's affection for, and engagement in politics.»<sup>45</sup> Finally, appeals for «empathy» are made by the likes of Barack Obama.<sup>46</sup> The aspiration

<sup>42</sup> Robert Howse: Epilogue: In defense of disruptive democracy – A critique of anti-populism, in: *International Journal of Constitutional Law* 17/2 (2019) 641–660.

<sup>43</sup> Quoted in Andrea Davies: Can political emotions destroy democracy? An interview with Ian Beacock, in: *Stanford News*, 9 April 2018: <http://shc.stanford.edu/news/qa-research/can-political-emotions-destroy-democracy>

<sup>44</sup> Martha Nussbaum: *Political Emotions*, Cambridge MA 2014, 2.

<sup>45</sup> Laura Jenkins: Why do all our feelings about politics matter?, in: *British Journal of Politics and International Relations* 20/1 (2018) 191.

<sup>46</sup> Further see Marina Fang: Obama Uses «To Kill A Mockingbird» To Remind Americans Of The Importance Of Empathy, in: *Huffpost*, 10 January 2017:

to social sensitivity is not merely to see things, but to feel them, as others do – e.g. to «walk a mile in the shoes of a Syrian refugee».

On their own terms, these ideals are very important and compelling; they approximate «motherhood and apple pie» issues. Both the means and prospects of their realization are, however, uncertain. Considered realistically, could popular support for the democratic system and liberal attitudes be deliberately won in the West in the face of the political disenchantment?

#### a) Means of realization

Further progressive commentators argue in favour of channeling emotions in the community for «positive» purposes. Amid societal conflict, they seek the reorientation of relevant political actors toward «inspiring sentiments», which are to be directed by public institutions and rules of behaviour.

The contention is that as national governments are unable to negate or override emotions, they can and should help form people's responses to public issues, events, etc., especially by reference to political philosophy. Nussbaum argues for an official, programmatic attempt to be made to promote «pro-social» emotions, while curbing «anti-social». As regards mass migration, the positive attributes of character – the «better angels of our nature» – are to be invoked and the issue framed as a «moral opportunity». Similarly, national governments can and should create conditions for the proper emotions to be expressed. Deliberative democrats, for example, speak of «sluices», «valves», and «filters» being set up to moderate political emotions in deliberation.<sup>47</sup> Demonstrations of empathy for others, e.g. in the form of volunteering, sponsoring, or donating, are to be promoted.

Two reservations about these proposed means of right emotions and positive channelling come readily to mind. First, proscribing justifications, or their epistemic sources, by governments would

[https://www.huffpost.com/entry/obama-farewell-address-to-kill-a-mockingbird\\_n\\_58759621e4b03c8a02d3fa49](https://www.huffpost.com/entry/obama-farewell-address-to-kill-a-mockingbird_n_58759621e4b03c8a02d3fa49)

<sup>47</sup> G.S. Schaal, F. Heidenreich: Zur Rolle von Emotionen in der Demokratie.

contradict tenets of Rawlsian liberalism, which is otherwise to be upheld. These tenets include that each of us should be regarded as entitled to make the final choice in his/her political preferences – and possibly to err in so doing. Moreover, such edicts require imposing «a comprehensive theory of the good» on the populace.<sup>48</sup> How else might emotions in citizens be promoted without being totalitarian and specific beliefs on citizens be proscribed without being illiberal? – A second reservation lies in the fact that appealing to empathy proves particularly problematic in policymaking. Although empathy can be useful in getting people «to do the right thing», recent studies show that it can also distort people's judgment.<sup>49</sup> Empathy is biased, as people tend naturally to feel more for those like them. It can even be perverted by populists into hatred and violence through stirring up sentiments against «the other».

#### b) Prospects of realization

The mentality and response thereby strived for are a *Willkommenskultur* of humanity, fairness, solidarity among people – as captured, for example, in Germans cheering and handing bonbons to immigrants in the streets of the nation in August 2015. How far do these, however, take actual human nature and behaviour into account? Are human beings essentially good and reasonable? Judged according to historical and recent experience, these emotions are unlikely to be realized in liberal democratic politics.

The situations in which feelings might be expressed change over time; it is not the feelings themselves. The fear and hatred of immigrants and minority groups generally are age-old; they were politically potent a century ago. As an Iranian-Swiss historian of migration observes, «der heutige neue Rassismus in der Schweiz und Europa spricht nicht mehr von Rassen, sondern von anderen

<sup>48</sup> Further see A. Sajó: Emotions in constitutional design, 373: «some constitution makers have thought that they have a right or duty to impose moral truth and proper emotion-display rules on society».

<sup>49</sup> Generally see Paul Bloom: *Against Empathy: The case for rational compassion*, New York 2016; Fritz Breithaupt: *Die dunklen Seiten der Empathie*, Berlin 2017.

Kulturen, von Fremden, von Migranten und Migrantinnen und Menschen mit Migrationshintergrund. [...] Die Bezeichnungen ändern sich, die Ausgrenzung und Diskriminierung bleibt [sic].»<sup>50</sup> Our collective civic virtues have consistently proven more «ordinary» than heroic, despite concerted efforts at developing them through morality and reason. As I argue elsewhere, «[l]iberal hope and promise should be accordingly tempered by skepticism and experience of repeated disappointment.»<sup>51</sup> The real question is whether the hardcore racists, anti-Semites, xenophobes, et al. feel comfortable vocalizing and acting on their attitudes in public.<sup>52</sup> Recent experience in the context of immigration is also disillusioning. Even prior to 2015, most citizens in Western democracies preferred that immigration rates be lowered or maintained – certainly not raised. Since the migrant crisis, the majority feels that the change wrought has been too fast and sweeping. The euphoria of the «German summer» of 2015 was transient, and feelings became ambivalent over the new year. Debate then focused on the extent to which immigrant flows and access to social assistance should be reduced.

A few reasons lie close at hand for the persistent popularity of notions like nativism and for the general preference for a restrictive immigration regime. First, the «worse» angels of our nature, e.g. egoism, self-interest, Islamophobia, also influence people's behaviour. Immigration may offer benefits for many and for society as a whole. Yet there are further consequences, burdens felt by some. Citizens do lose out, especially those who have few job skills, value cultural

<sup>50</sup> Kijan Espahangizi: Wir sind nicht als Fremde geboren, wir werden zu Fremden gemacht, foraus Blog, 16 February 2015: <https://www.foraus.ch/posts/wir-sind-nicht-als-fremde-geboren-wir-werden-zu-fremden-gemacht/>

<sup>51</sup> Malcolm MacLaren: Where are we now? Michael Ignatieff's *The Ordinary Virtues: Moral Order in a Divided World*, in: *German Law Journal* 20/5 (July 2019) 760: <https://doi.org/10.1017/glj.2019.60>

<sup>52</sup> Klaus Riexinger: Politologe im Interview: Die AfD hat das Klima, in dem solche Taten stattfinden, sehr deutlich mitbestimmt, in: *Badische Zeitung*, 1 March 2020.

homogeneity, and prefer stability over change;<sup>53</sup> in point of fact, immigrants *are* in significant respects different, and the potential for cultural alienation is latent; integration requires sustained effort, flexibility, and sacrifice on both sides to succeed.<sup>54</sup> Second, there is in human psychology a «universal tendency for negative events and emotions to affect us more strongly than positive ones».<sup>55</sup> Due to the brain's «negativity bias» the downsides perceived in liberalized immigration are likely to resonate more in public discourse than the upsides, e.g. support for human rights, family unification, access to skilled labour, cultural diversity. Finally, the prescriptions proposed do not map well onto the world of politics in the here and now. Countries, even if rich, are more concerned about their own citizens than about «others». The «good shepherd», as Kohler's subtitle notes, cannot be too good to others or he may hurt his own herd.

In sum, it remains doubtful whether the state can and should moderate the affective relation in its interactions with citizens. These prescriptions provide no panaceas for these combustible feelings in public life. A British historian observes that «[f]or humanity's mental and moral incapacities there are, alas, no permanent cures, but we can aim to do better than we are doing right now.»<sup>56</sup> The deliberative investigation of «right» policy must thereby remain the ideal in a liberal democracy: open discussion, broad consensus, and sensible outcomes. Liberal democrats must sincerely engage

<sup>53</sup> Generally see Michael J. Trebilcock: *Dealing with losers: the political economy of policy transitions*, Oxford 2013, 97–117.

<sup>54</sup> Further see Paul Scheffer: Presentation, 14. Bundeskongress politische Bildung 2019. Was uns bewegt. Emotionen in Politik und Gesellschaft, Leipzig, 9 March 2019: <https://www.bpb.de/veranstaltungen/dokumentation/277645/sektion-5-besorgt-aengstlich-und-wuetend-emotionale-rezeptionen-gesellschaftlicher-umbrueche-schumann-saal>

<sup>55</sup> John Tierney, Roy F. Baumeister: *How the Negativity Effect Rules Us and How We Can Rule It*, New York 2019, 1.

<sup>56</sup> David Wootton: What's Wrong with Liberalism?, in: *History Today* 68/12 (2018): <https://www.historytoday.com/archive/feature/what%E2%80%99s-wrong-liberalism>

with those who disagree with them and address their feelings on own terms.

### A prognosis

Strong, divisive feelings tend to determine the character of the political debate and to drive the political agenda in the West today. In the context of immigration policy, these feelings have largely arisen from long-standing flawed discourses. The questions addressed above are whether such flawed discourses are immanent in liberal democracy and whether dysfunctions in the body politic are always to be reckoned with regarding existential questions.

The preceding analysis suggests that the traditional model of liberal democracy asks for – in this policymaking context at least – unrealistic effort on our collective part, especially to inform ourselves about political issues, to prefer facts and figures to feelings, and to exercise «rationality» in choosing among policy options. Existential questions defy people's reasoning powers, and group discussions even under conducive conditions may not produce «sane» and moderate outcomes.<sup>57</sup> The evidence thereof in many Western countries has been a disconnect of mainstream – as opposed to populist – politics with the (emotional) lives of ordinary citizens.

I have also found that attempting emotional regulation in Western political systems is, in practice as in theory, questionable. The potential for deterring or reining in «ugly» feelings of citizens – e.g. away from negative, pessimistic, and cynical sentiments about immigration and politics – is limited. Instead, certain feelings may be «facts» of social life that underlie values and attitudes as well as convey information about and messages in society.

Accordingly, I call here for a certain pragmatism in dealing with emotionality. The starting point of policymaking must be life

<sup>57</sup> Further see David Miller: How about a better case?, in: Times Literary Supplement, 23 & 30 December 2005, 38.

as it is lived by citizens. The advice of former German Chancellor Adenauer, a practitioner who lived through many popular upheavals, seems particularly astute: «nehmen Sie die Menschen, wie sie sind, andere gibt es nicht». Preferred approaches should be non-prescriptive but linked to prevailing sentiments, ideas, values, and political culture. Especially the law, if it is to be respected and have force, as well as to be in force, must correspond to human reality. Approaches must correspond to the practices that can be reasonably expected in human lives on one hand and to the actual demands being made in public on the other.

The challenge facing proponents of liberal democracy in the context of immigration policy is to acknowledge the emotional appeal and popular traction of restrictive policies as well as to regard fear, anger, hatred, etc. not as external afflictions the body politic is to be inoculated against and/or cured of. Instead, they must recognize that Western democracy are vulnerable to this sort of crisis and must accept a degree of powerlessness and shortfalls in realizing ideals. For making policy, like doing politics generally, in a democracy is «the art of the possible». As Chancellor Schröder stated in the 2001 German immigration bill debate, immigration is «no issue for an election campaign» despite the possibility of providing a popular mandate for legislation thereby.<sup>58</sup>

In terms of the opening metaphor, a different understanding of what a «healthy» body politic is may now be proposed: health is the extent of illness that permits a satisfying life to be led.<sup>59</sup> The limits of popular deliberation identified above suggest that the «health» of a liberal democracy is not absolute. Indeed, complete «well-being» of the body politic is, in context of «existential» questions, unattainable. Moreover, the body politic's health should be considered as protean, varying according to the situation and specifically to the nature and significance of the policy issue facing it.

<sup>58</sup> Quoted in M. MacLaren: Framing the Debate over the German Immigration Bill.

<sup>59</sup> Paraphrasing Markus Zürcher: Ein neues Gesundheitsverständnis ist notwendig, in: Schweizerische Ärztezeitung 100/46 (2019) 3.



Postscript: As this essay was being finalized, the Turkish government announced that the country would no longer prevent migrants from crossing into Europe. Turkey would open its borders, as it could no longer handle the numbers fleeing the war in Syria. Another migrant crisis may be looming ...

conexus 3 (2020) 148–172

© 2020 Malcolm MacLaren. Dieser Beitrag darf im Rahmen der Lizenz CC BY-NC-ND 4.0 – Creative Commons: Namensnennung/nicht kommerziell/keine Bearbeitungen – weiterverbreitet werden.



<https://doi.org/10.24445/conexus.2020.03.011>

PD Dr. Malcolm MacLaren, Universität Zürich, Rechtswissenschaftliche Fakultät, Rämistrasse 74/2, 8001 Zürich

[malcolm.maclaren@uzh.ch](mailto:malcolm.maclaren@uzh.ch)