

# A Very German Cultural War: Migrants and the Law

*Achilles Skordas\**

Ach, da kommt der Meister!  
Herr, die Not ist groß!  
Die ich rief, die Geister,  
Werd ich nun nicht los.

*Goethe, Der Zauberlehrling*<sup>1</sup>

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## Abstract

The article discusses the "cultural war" that engulfed the German public law scholarship as the result of the 2015 mass migration movement. Focusing on the recent book by *Stephan Detjen* and *Maximilian Steinbeis*, *Die Zauberlehrlinge – Der Streit um die Flüchtlingspolitik und der Mythos vom Rechtsbruch*, 2019, this short article seeks to explain the particular features of this discussion and establish its links with the features of the migration crisis, the uncertainties and hesitations of political decision-making and the structure of news reporting.

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\* Professor of International Law (Bristol); Senior Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg. The author would like to thank *Alexandra Kemmerer* for her very helpful comments. The usual disclaimer applies.

<sup>1</sup> *M. Reimer* (ed.), *Und noch fünfzehn Minuten bis Buffalo – Deutsche Balladen*, 2013, 12 et seq. (17).

## I. Observation Posts and Building Blocks

The book by *Stephan Detjen* and *Maximilian Steinbeis*, “Die Zauberlehrlinge – Der Streit um die Flüchtlingspolitik und der Mythos vom Rechtsbruch”, published by Klett-Cotta in 2019, offers the opportunity to reflect on the decisions, policies, and politics linked to the 2015 migration crisis. This is not a book on *migration law*, but about migration *and* the law. The authors present and assess the interplay between law, politics, and the media during the migration crisis, and reflect on the primary role the perceptions on law have played in the construction of the semantics of the crisis. *Detjen* and *Steinbeis*, prominent journalists and lawyers with first-hand knowledge and experience of the legal and political developments, masterfully explore the impact of “legal misconceptions” in the political discourse and the rise of right-wing radicalism. They are not second order observers, but participants combining the best traditions of journalism with legal expertise, and with the ambition to shape public opinion through their own interpretation of the events. “Die Zauberlehrlinge” is a polemical book, and a very good one. It offers the opportunity for a discussion on its content, but also on broader issues relating to the 2015 crisis.

The crisis led the political system into a deep depression, and enabled the radicals to expand their influence and change the rules of political communication. *Detjen* and *Steinbeis* follow the evolution of events and the public discourse, but articulate the main argument of the book on three main concepts that serve also as building blocks of their narrative: myth (infra II.), “Zauberlehrlinge” (sorcerer’s apprentices) (infra III.) and “Rechtsbruch” (breach of law) (infra IV.). The authors argue that through the actions of a variety of actors the legal myth was created that the Federal Government had committed serious violations of law by enabling the admission of migrants in the country without any border controls.

To assess the emergence and impact of legal misconceptions, the three building blocks should be discussed in turn and in relation to each other. The current article does not make an assessment of the quality of the legal arguments invoked by the various sides of the public debate and described in the book. It has the more limited ambition to understand how these actors, mainly from within the legal profession, but also from politics and the media, responded to the challenge of mass migration and how the “Rechtsbruch” was formed as a social myth. In the last part, the article presents some thoughts on the structural conditions that may explain both the Federal Government’s occasionally confusing course of action and the relative success of the “Rechtsbruch” myth (infra V.).

## II. The Power of a Myth

The decision of the Federal Government to permit the admission of migrants in the country on 4.9.2015 did not break the law, as the authors point out. The claim that a breach of fundamental legal rules and principles (“Rechtsbruch”) had happened, was construed as an interpretive possibility, but was never confirmed by German or European courts. The question is, why the claims on the existence of a “Herrschaft des Unrechts” (rule of injustice) and thus, of a “Rechtsbruch”, were easily accepted even by seasoned politicians, including the leadership of the CSU (Christlich-Soziale Union/Christian-Social Union) without serious reflection.<sup>2</sup> An explanation might be that the construction of legal arguments for political purposes is nothing new. There is a fine line separating legally meaningful legal arguments from wishful legal thinking, and this line is often overstepped in areas such as human rights law and migration, but not only. Both conservative and liberal activists strengthen their political messages through legal justifications that tend to create reciprocal cycles of arguments-bites that are ready-to-hand in the appropriate situations.<sup>3</sup> In situations of political polarization, the parties employ arguments dressed in the language of law and engage in “lawfare”,<sup>4</sup> in the broad sense of the term, denoting some form of militant “hyper-activism”. The participants in a politically fluid environment may thus feel that the use of simplistic arguments dressed in legal terms can facilitate political gamesmanship.

The allegations of a “Rechtsbruch” allegedly committed by the Federal Chancellor had a different quality. They created a storm that could not be easily contained, because the legal and policy arguments, taken together, constructed an illiberal legal and political mythology that emerged from the right-wing and ultra-conservative side of the political spectrum. The “Rechtsbruch” myth triggered a very German cultural war because it was expressed through the use of arcane, historically-laden, and emotionally disturbing concepts and semantics, sought to legitimize the political surge of the extreme right and, ultimately, upset the balances of the political system.

As the authors demonstrate, terms such as “Herrschaft des Unrechts” (rule of injustice or illegality), “Ernstfall” and “Ausnahmestand” (state of

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<sup>2</sup> S. Detjen/M. Steinbeis, *Die Zauberlehrlinge – Der Streit um die Flüchtlingspolitik und der Mythos vom Rechtsbruch*, 2019, 16 et seq., 20 et seq.

<sup>3</sup> D. Kennedy, *A Critique of Adjudication (fin de siècle)*, 1997, 137 et seq.

<sup>4</sup> On the meaning of the term, which is usually linked to the instrumental use of legal arguments in the course of armed conflict, terrorism, the national security, or the use of force, see Case W. Res. J. Int’l L. 43 (2010), special issues 1 and 2.

emergency),<sup>5</sup> “Völkerwanderung” (peoples’ migration)<sup>6</sup> and “Selbstermächtigung” (self-authorization)<sup>7</sup> transmit very powerful and negative messages, because they are either linked to the period of National-Socialism and to the former East Germany (German Democratic Republic/Deutsche Demokratische Republik – DDR), or evoke friend/foe situations of *Schmittian* kind. Furthermore, negative stereotypes with regard to the Chancellor were used to sharpen the negativity, including her alleged complicity in the smuggling of migrants, or her East German heritage.<sup>8</sup>

The book explains why the “romantic” of Public Law (“Staatsrecht”) is deeply ingrained in the historical trajectories of Germany, at least since the time of disintegration of the Holy Roman Empire in 1806; in addition, anxieties for the stability of statehood in view of the post-Second World War division of the country strengthened the role of lawyers and the respect for the idea of the “State” as a carrier of collective hopes and normative projections in the Federal Republic and, post-1990, in reunified Germany.<sup>9</sup> Fears of violations of fundamental norms destabilizing the political system and affecting the composition and identity of the population enhanced the power of the myth.

Finally, the fact that the “Rechtsbruch” myth was able to dominate the political discourse, at least for a crucial period of time, and become a “belief”, is attributed by the authors also to the power and influence of the conservative establishment of legal scholarship and profession in Germany. As a consequence, the myth developed its own dynamic, accelerating the process of polarization of society and facilitating the shift from the initial moment of the “Willkommenskultur” (“welcome culture”) to the anti-immigrant sentiment, as propagated by movements, such as PEGIDA.<sup>10</sup> Once the myth was created, structured and propagated, it was able to reinforce and legitimize, in turn, its own creators and secure them a place in the public sphere. The self-referential cycle was difficult to break, before taking hold of a significant segment of the public opinion.

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<sup>5</sup> S. Detjen/M. Steinbeis (note 2), 90 et seq.

<sup>6</sup> S. Detjen/M. Steinbeis (note 2), 28.

<sup>7</sup> S. Detjen/M. Steinbeis (note 2), 111 et seq.

<sup>8</sup> S. Detjen/M. Steinbeis (note 2), 17 et seq., 203 et seq., 227 et seq.

<sup>9</sup> S. Detjen/M. Steinbeis (note 2), 100 et seq.

<sup>10</sup> The acronym means “Patriotische Europäer gegen die Islamisierung des Abendlandes”, or, in English, “Patriotic Europeans Against the Islamisation of the Occident”.

### III. The Sorcerer's Apprentices and Their Opponents

The allusion of “Zauberlehrlinge”, prominently employed by the authors, remains hidden in shroud. In *Goethe's* ballade, the apprentice, overwhelmed by the dynamics of the events he set in motion, regrets the mess he created by his transgression, and asks the Master to interfere, re-establish the old order and put an end to the chaos. The course of events, as narrated in the book, prompts the reader to conclude that this role fits best to the political conduct of the CSU. The CDU (Christlich Demokratische Union Deutschlands/Christian Democratic Party of Germany) and the Federal Government were part Master and part apprentice as they went through a tough learning process trying to manage the flood without skill. The right-wing agitators and the AfD (Alternative für Deutschland/Alternative for Germany) had no reason to help manage the problem, and worked incessantly towards complicating the Master's job. Karlsruhe declined to interfere and decided to let the players sort out the problem themselves. The book criticizes the Court for failing to take actions on a major issue of the rule of law,<sup>11</sup> but this critique is not convincing. The myth was already widely believed and barring the further political controversy per judicial fiat would have probably strengthened the right-wing narrative. Leaving this matter to the democratic process and to the power of time was certainly wiser.

In the book, the reader can find a detailed analysis of the interacting groups and “circles” of law scholars who contributed to the birth of, and to the fight against, the myth through conferences, publications, media presence and political influence. In the description of the conflict between the apprentices and their opponents, the authors demonstrate how the politics of the legal system is conducted. The myth was first formulated in an essay titled “Herrschaft des Unrechts” and published by the public law academic *Ulrich Vosgerau* in the conservative magazine *Cicero* in December 2015, and it quickly dominated the legal-political discourse.<sup>12</sup>

At the same time, a real cultural war broke out within the field of public law focusing on a potential breach of law, and is described in an excellent manner by the authors. One of the main players was the conservative “Schönburger Kreis”, led by public law scholars *Otto Depenheuer* and *Christoph Grabenwarter* (currently Vice-President of the Austrian Constitutional Court and member – in 2015 also Vice-President – of the Venice Commission) who organized a conference in December 2015 criticizing the

<sup>11</sup> *S. Detjen/M. Steinbeis* (note 2), 159 et seq (164).

<sup>12</sup> *S. Detjen/M. Steinbeis* (note 2), 26 et seq., 167 et seq.

decision of the Federal Government to not close the borders.<sup>13</sup> Their legal philosophy was based on a formalistic idea of statehood that did not take seriously into account the changes that had occurred as a result of the European integration process.

A second center of gravity of conservative legal thinking has been formed by former members of the Federal Constitutional Court, who enjoy a broad reputation, such as *Paul Kirchhof*,<sup>14</sup> *Udo di Fabio*, and *Hans-Jürgen Papier*. *Kirchhof* was not involved in the migration debate, but *Di Fabio* drafted an expert opinion in support of the positions of the Bavarian government that considered at that time the possibility of an application before the Constitutional Court, whereas *Papier* sharply criticized the government's policies in the press.<sup>15</sup> It is perhaps difficult for non-Germans to understand the degree of influence that law scholars exercise in the public debates. In Germany, it is a long-standing tradition for legal scholars to exercise semantic authority that can substantially influence the public discourse.

*Detjen* and *Steinbeis* also offer a very good account on the shift of the public law scholarship to a more liberal direction since the end 1990s. The authors emphasize the role and activities of a group of liberal and liberal-conservative law scholars who have challenged the old conservative establishment over time and enabled new forms of argumentation in the academic and public debates, and in the judicial decision-making. *Andreas Voßkuhle* (Freiburg), President of Federal Constitutional Court, *Wolfgang Hoffmann-Riem* (Hamburg), *Eberhard Schmidt-Aßmann* (Heidelberg), *Christoph Möllers* (Berlin), *Stephan Breitenmoser* (Basel), *Kerstin Odendahl* (Kiel) and *Daniel Thym* (Konstanz) are among those who have approached the fundamental questions of public law with a fresh eye. The authors document *Thym's* role in rationalizing the migration debate and in contributing significantly to policy-making, which was the reason he was acerbically attacked by the extreme right in personal terms.<sup>16</sup>

Last, but not least, the book offers an insight into the role of civil service and government lawyers. Depending on their department, different advisors took different positions on the interpretation and application of public law, European Union (EU) law, and migration law.<sup>17</sup> The authors show the complexities of the decision-making process, when the government has to resolve the rationality conflicts generated within the administration.

<sup>13</sup> S. *Detjen/M. Steinbeis* (note 2), 92 et seq.

<sup>14</sup> S. *Detjen/M. Steinbeis* (note 2), 112 et seq.

<sup>15</sup> S. *Detjen/M. Steinbeis* (note 2), 115 et seq., 118 et seq., 123 et seq., 125 et seq.

<sup>16</sup> S. *Detjen/M. Steinbeis* (note 2), 105 et seq., 137 et seq., 139 et seq.

<sup>17</sup> S. *Detjen/M. Steinbeis* (note 2), 71 et seq., 75 et seq., 81 et seq.

#### IV. The “Rechtsbruch” as an Empty Shell

Even as the myth succeeded in establishing itself in the political discourse, the “breach of the law” has remained a protean and ultimately empty shell. The many fathers of the myth often changed their focus, because they lacked a stable normative ground, and the claims mutated constantly from one aspect to the next one. Some of the issues were indeed very complex and the combination of factual complexity with the novelty of practices and interpretation have given birth to a variety of approaches, some of which structured the idea of “Rechtsbruch”.

The initial issue, whether the government could legally permit the admission of migrants was soon transformed into the question, whether they could legally reject them at the border.<sup>18</sup> The question on the parallel applicability of § 18(1) Asylgesetz, Dublin and Schengen was another field of complex legal discussions, as the authors explain.<sup>19</sup> They argue that the theory of an alleged “secret decree” (“Geheimerlass”) would be made redundant, if Dublin was applicable.<sup>20</sup>

*Detjen* und *Steinbeis* then consider the constitutional questions, including in particular whether the Federal Parliament, instead of the government, had the authority to decide on the mass admission, under the criterion of the “fundamental character” (“Wesentlichkeit”) of such a decision, and, thus, whether the rights of the Parliament had been violated,<sup>21</sup> or whether the Federal Government had respected or breached its obligations towards the Länder.<sup>22</sup> The constitutionality of the change of the composition of the population and the protection of the constitutional and cultural identity under the Fundamental Law, as interpreted by the Lisbon judgment of the Constitutional Court, was another question.<sup>23</sup> The book shows that under the circumstances and legal framework, the Federal Government concluded that the legally less risky path would be to permit migrants to enter the country, as this would not constitute a “Rechtsbruch”. *Detjen* and *Steinbeis* succeed here not only in offering a comprehensive picture of the interac-

<sup>18</sup> *S. Detjen/M. Steinbeis* (note 2), 65 et seq.

<sup>19</sup> *S. Detjen/M. Steinbeis* (note 2), 40 et seq., 86 et seq. On the jurisprudence of the Court of Justice of the EU on Dublin and the migration crisis, see *D. Thym*, Judicial Maintenance of the Sputtering Dublin System on Asylum Jurisdiction: Jafari, A.S., Mengesteab and Shiri, CMLR 55 (2018), 549 et seq.

<sup>20</sup> *S. Detjen/M. Steinbeis* (note 2), 132 et seq.

<sup>21</sup> *S. Detjen/M. Steinbeis* (note 2), 152 et seq.

<sup>22</sup> See the discussion on *Udo di Fabio*'s expert opinion, *S. Detjen/M. Steinbeis* (note 2), 118 et seq., 123 et seq.

<sup>23</sup> *S. Detjen/M. Steinbeis* (note 2), 165 et seq.

tions within the government departments, but structured the chapters of the book in a way that also conveys the sense of pressure and urgency that characterized the course of events.

There is still a final task for this article: to disassociate the above misleading and even “wrong” discourse from the real problems generated by the mass inflow of 2015, and to place the myth in the context of “virtual realities”, fake news and narratives created with a hitherto unbeknown speed, as consequence of the 24h news-cycle and reporting, social media communications and emotionalization of public debates.

## V. Post-Modern Confusions or Fake News?

The book offers a panoramic reconstruction of the “Rechtsbruch” myth and its impact upon the legal and political systems. As they make it very clear, *Detjen* and *Steinbeis* do not intend to engage systematically with the migration law and policy of the years 2015-2016, but only to describe the generation of a myth that triggered a cultural war.

The book, however, offers a welcome opportunity to engage in critical reflections on the policy itself. The legality of the government’s course of action is not as such an evidence on whether the policy was appropriate or not, considering in particular the action or inaction of the authorities in the time leading to the crisis. The admission of about 890,000 migrants to the country<sup>24</sup> was practically a unilateral decision by the Federal Government, even though it was taken following a last-moment request by Austria,<sup>25</sup> and was instrumental in creating a rift in Germany and in Europe that has not yet been overcome.

At this point, a further clarification is in order. The question of “Rechtsbruch” and mass migration should not be confounded epistemologically with the problems associated with the parallel society (“Parallelgesellschaft”). The latter concept focuses on social and power structures, organizations, behavioral patterns, organized crime and radicalization in migrant communities defying integration<sup>26</sup> and potentially resisting the rule of law,<sup>27</sup>

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<sup>24</sup> *S. Detjen/M. Steinbeis* (note 2), 159.

<sup>25</sup> *S. Detjen/M. Steinbeis* (note 2), 61 et seq.

<sup>26</sup> See briefly *B. Herzog-Punzenberger*, Parallelgesellschaft, in: F. Kreff/E.-M. Knoll/A. Gingrich (eds.), *Lexikon der Globalisierung*, 2011, 326. See recently *S. Schröter*, *Politischer Islam – Stresstest für Deutschland*, 2019; *R. Ghadban*, *Arabische Clans – Die unterschätzte Gefahr*, 2018.



whilst the former is about the admission of immigrants and refugees and the relevant policies and legal framework. There are obvious interlinkages between the two sets of issues, because the parallel society may offer an attractive social space for some migrant groups, and the problems emerging in one area may occasionally play a role in policy planning for the other, such as organized crime and radicalization. However, in principle, migration and parallel society raise challenges of different orders, but this discussion would go beyond the scope of the present article.

The mass admission of migrants became necessary in 2015 in the absence of pre-emptive action and sufficient preparations in the months and years before the crisis reached its peak. The rapid development of migratory flows in 2014 and in the first half of 2015 had alarmed the EU Commission<sup>28</sup> and the Union adopted the Agenda on Migration in May 2015, together with the establishment of the naval operation EU Naval Force Mediterranean (EUNAVFOR Med, later added: Operation Sophia) in the Southern Central Mediterranean.<sup>29</sup> Despite these measures, the coordination of the action by the Member States and the administrative response were slow and, at that stage, no meaningful preparations for the Eastern Mediterranean and the Aegean Sea had been made.<sup>30</sup>

This was a serious omission by the Union, as the then Greek Secretary of Defense, leader of the populist party “Independent Greeks” (ANEL), had threatened at the beginning of March 2015, at the time of the negotiations with the Troika on the Greek austerity measures, to facilitate the movement of migrants and even jihadists towards Central Europe.<sup>31</sup> Whether this threat was meant seriously or not, is another matter, but it can be reasonably assumed that the message was received by the smugglers and by Turkey. As the mass movements developed rapidly from August 2015 onwards via the Western Balkans route, the range of possible responses by the German government became increasingly narrower. After all, the decision not to close the border and to let things take their course was the combination

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<sup>27</sup> Landeskriminalamt (LKA) Nordrhein-Westfalen, Clankriminalität – Lagebild NRW 2018, in: <<https://polizei.nrw>>. See also Bundeskriminalamt (BKA), Bundeslagebild Organisierte Kriminalität 2018, 24.9.2019, in: <[www.bka.de](http://www.bka.de)>.

<sup>28</sup> See Proposal for a Council Decision Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece, COM(2015) 286 final, 27.5.2015.

<sup>29</sup> COM(2015) 240 final, 13.5.2015; Council Decision (CFSP) 2015/778 of 18.5.2015 on a European Union Military Operation in the Southern Central Mediterranean (EUNAVFOR MED), OJ L 122/31.

<sup>30</sup> NATO got involved in the management of movements only on 25.2.2016, see the Statement of the Secretary-General *J. Stoltenberg*, in: <[www.nato.int](http://www.nato.int)>.

<sup>31</sup> *B. Waterfield*, Greece’s Defence Minister Threatens to Send Migrants Including Jihadists to Western Europe, The Telegraph, 9.3.2015, in: <[www.telegraph.co.uk](http://www.telegraph.co.uk)>.

of administrative inertia and political inaction that made the mass admission to be the only reasonable and possible solution at the moment of the culmination of the crisis.

The government did not act illegally on 4.9.2015, but bears a part of the responsibility for omissions and actions before this decision became unavoidable. Obviously, it would be an oversimplification to attribute the crisis to single causes without considering the larger geopolitical frame, such as the intervention in Libya, the war in Syria, the collapse of the Middle East and North Africa (MENA) region as the result of the post-2011 insurgencies and revolutions, and, obviously, the destruction caused to the region by terrorism. Notwithstanding this context, governmental inaction or decisions taken by subordinate or secondary administrative and social actors offered a strong “push” to the development of the crisis. For instance, the infamous tweet by the Federal Office for Migration and Refugees (BAMF – Bundesamt für Migration und Flüchtlinge) of 25.8.2015 on the status of Syrian citizens entering Germany<sup>32</sup> and the alleged dissemination of the BAMF’s policies to the refugee camps by German non-governmental organizations (NGOs)<sup>33</sup> were contributing factors that accelerated an already ongoing process, at least to some extent.

A decision with long-term consequences such as the one taken by the German Chancellor in September 2015 cannot be oversimplified as “good or bad”, “positive or negative”. From the standpoint of the internal European governance, the non-closure of the German borders affected the cohesion of the Union both negatively and positively. This decision generated a “great schism” on migration policy and laid bare the cultural split between East and West, but, at the same time, it prevented Greece’s administrative and economic collapse.<sup>34</sup> The mass influx was actually triggered at the most critical juncture for the Greek economy, less than two months after the agreement of 12.7.2015 that put in place a system for the rescue of the country’s financial system.<sup>35</sup>

Germany’s diplomatic efforts to involve Turkey in the management of the flows came into fruition in March 2016.<sup>36</sup> Nevertheless, in terms of international relations, the handling of the crisis was a symptom of the weak-

<sup>32</sup> <[https://twitter.com/bamf\\_dialog/status/636138495468285952?lang=de](https://twitter.com/bamf_dialog/status/636138495468285952?lang=de)>, last access 18.11.2019.

<sup>33</sup> H. W. Sinn, Merkel hätte sich bedeckter halten müssen, Interview, Der Spiegel, 10.11.2015, in: <<https://www.spiegel.de/wirtschaft/soziales/hans-werner-sinn-zur-fluechtlings-krise-kritik-an-merkel-a-1061993.html>>, last access 18.11.2019

<sup>34</sup> On the Greek dimension of the migration issue, see S. Detjen/M. Steinbeis (note 2), 51.

<sup>35</sup> See Euro-Summit Statement SN 4070/15 of 12.7.2015.

<sup>36</sup> S. Detjen/M. Steinbeis (note 2), 87, 144, 152.

ened geopolitical stature of the EU. The Union had to outsource the protection of its external borders to Turkey in order to keep the Western Balkans route closed and prevent future migratory movements. Moreover, the collapse of the Libyan State as the result of the 2011 intervention created an open space, enabling the mass influx via the Southern Central Mediterranean towards Italy and Malta.<sup>37</sup>

The final issue is whether, in view of the circumstances, the “Rechtsbruch” myth has been part of a right-wing conspiracy with the purpose to destabilize the country, and whether Germany faced in 2015-2016 an early variety of fake news strategies. *Prima facie* it would be possible to find some similarities based on the untruthfulness of the myth. However, there are three reasons why there is no conspiracy and no fake news. First, a “conspiracy” requires the existence of coordinated action, but there is no evidence in the book that the various conservative groups that were critical to the migration policies in legal circles, mass media, political centers or administrative units were acting in unison. There were personal connections and networks of like-minded individuals all over the place, but no “center” existed. Different scenarios and approaches converged to the same point, because they originated from a deeply conservative, old-fashioned, or even reactionary way of thinking.

Second, there were no fake “news”. The facts were known, and there was no significant dispute on the extent of the inflows, which ultimately proved to be slightly smaller than initially assessed.<sup>38</sup> The only fact that remained in the dark was related to the alleged returns of 1132 individuals to Austria during the G7 Summit in Elmau and the meaning of such a “precedent”. This is why *Detjen* and *Steinbeis* talk about a “gray area” with regard to the application of the Dublin rules in this occasion.<sup>39</sup>

Third, and most importantly, the main controversy was about the interpretation of the events. Some of the criticisms addressed to the government had been formulated in good faith and were the product of the complexity of the issues under consideration. This complexity could quickly shrink and mutate into an easily digested political myth for a number of reasons. The political myth unburdens people in angst from the need to engage in a labyrinthine search for the alleged “truth”. Politico-intellectual activists operating at the intersection between structural complexity and individual desires

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<sup>37</sup> A. Skordas, The European Union as Post-National Realist Power, in: S. Blockmans/P. Koutrakos (eds.), Research Handbook on the EU’s Common Foreign and Security Policy, 2018, 394 et seq. (408 et seq.).

<sup>38</sup> J. Staib, De Maizièrè rechnet ab, 30.9.2016, FAZ, in: <www.faz.net>.

<sup>39</sup> S. Detjen/M. Steinbeis (note 2), 75 et seq.

offer frames that may take control of the debates. The real issue of legally complex questions during the crisis that overwhelmed both Germany and the EU was at the end hijacked by right-wing activists, who were able to dominate the public debate and polarize the public opinion.

The “Rechtsbruch” myth was disseminated via decentralized and spontaneous communications in mass media and social media. As the media devise the “background culture” of our time through stereotypes, frames and emotions,<sup>40</sup> the “Rechtsbruch” was successfully propagated through the simplicity of its message, the emptiness of its content, and the strong emotionality of its semantics. One of the “big businesses” of our time is the fabrication of narratives on demand, and the “Rechtsbruch” myth has been one of them. Even though the discussion has already ebbed away, the society is still facing the consequences of radicalization.

*Detjen* and *Steinbeis* have served the public well and contributed to the self-reflexivity of legal scholarship. By reconstructing the story of “Rechtsbruch”, they succeed in depriving it of its attraction. They show that the content of the message was none.

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<sup>40</sup> *T. Gitlin*, *Media Unlimited – How the Torrent of Images and Sounds Overwhelms Our Lives*, 2001; *N. Luhmann*, *Die Realität der Massenmedien*, 1996.