

›Safe Country of Origin‹ and ›Bleibeperspektive‹

A short genealogy of two classification techniques

SIMON SPERLING

Abstract: In the last years, we can observe a new rise in classification tools, which differentiate asylum seekers by their country of origin. In Germany, the concepts of Safe Countries of Origin (SCO) and ›Bleibeperspektive‹ (BP) are of special importance in this regard. Both are nowadays deeply interlinked and seem to follow the same governmental rationality. However, looking at them historically reveals that they emerged from very different contexts. The SCO concept differentiates migrants as a part of the asylum dispositif following the logic of deservingness. The BP, on the other hand, can be understood as a form of biopolitical prognosis, which is supposed to predict the future residence of migrants. It was originally used as a concept within the integration and labor dispositifs to assess who is worthy of social benefits. In 2015 the German governmental strategy shifted towards the plan of including and excluding migrants from the first moment of their arrival. Thereby, the matters of deservingness, integration, and labor were addressed at the same time and got more and more interlinked. Thus, also the two concepts became more closely connected and increasingly similar.

Keywords: Safe Countries of Origin, Bleibeperspektive, classification, genealogy, dispositif analysis

The country of origin always played an important role in the question of who could access what type of resources under what conditions. It largely defines a person's opportunities regarding labor markets, social security, and legal rights. Though the country of origin was always important to access asylum, it became increasingly relevant during the last years. The concepts of SCO and BP are central classification tools in the context of that recent transformation. This contribution tries to sketch their genealogy and highlights their role within a new order of differential inclusion. Therefore, I use the framework of a dispositif analysis. It helps to distinguish the origins of the concepts and to sketch out the power/knowledge structures in which they operate by focusing on moments of crisis, countermeasures, and subject positions. After a short introduction to the framework, I draft the genealogy of the SCO and afterward of the BP concept using policy papers, legal documents, and scien-

tific literature. Finally, I show how the separate fields the concepts used to address progressively merged into one.

DISPOSITIF AND CLASSIFICATION TECHNIQUES

In the following, I want to understand classifications within the conceptual context of what Foucault calls a *dispositif*. He defines it as a heterogeneous ensemble consisting of all kinds of elements like discourses, practices, techniques, institutions, or *»in short, the said as much as the unsaid«* (Foucault 1980: 194). These elements are linked, and changing one element of the web also affects the others. The main function of a *dispositif* is to react to the urgency of an existing or anticipated problem. In our reading, this problem cannot be understood as something naturally given but as something defined within hegemonic power relations (Mecheril 2018). *Dispositifs* are, in that sense, not strategies of singular subjects but result from the linkage of different assessments and interests to hegemonic formations.

Classification techniques can now be understood as one of the elements within that heterogeneous ensemble. They are tools that structure the world in relation to the purpose of the *dispositif* and produce new types of subjectivity. At the same time, they create new types of knowledge, which can affect the other elements of the *dispositif* and its strategy. In the same way, as we can find struggles over the definition of the problem, which is supposed to be resolved, and over governmental approaches aiming to regulate these newly found urgencies, we can observe conflicts over classificatory practices and their institutionalization. This triad of hegemonic problematizations, regulatory interventions, and social categorizations (cf. Mecheril 2018: 328) will, therefore, also guide the following analysis. This way, I can sketch disjunctures and linkages in the genesis of BP and SCO politics.

›SAFE COUNTRIES OF ORIGIN‹ AND THE ASYLUM DISPOSITIF

The contemporary European asylum system largely results from the experiences of World War II and the approval of the Geneva Convention in 1951. The suffering of people trying to flee from terror and their frequent rejections on national doorsteps before the war made the crisis of European migration politics obvious for many. This set the context for the (re-) constitution of the contemporary asylum *dispositif*. Its main function consisted in reacting to the humanitarian urgency of granting protection

to the ones who need and deserve it. Therefore, it was always *only* for the ones who fit the criteria of deservingness, and the fear that people could ›abuse‹ this right was present from the very beginning. This issue was mainly tackled by using an individual interrogation procedure as a classification technique. It was supposed to assess the credibility and the grounds of the claim as a way to sift the ›deserving‹ from the ›undeserving‹. Thereby, it (re-)produced new subjectivities like ›the refugee‹, ›the illegal migrant‹, etc., which affected not only the people being labeled, but also the other elements within the dispositif and its strategies.

While asylum was restricted to Europeans until the ratification of the Geneva protocol in 1967, and while it was for a long time not very relevant for migratory strategies in general, the situation changed in the 1980s and 1990s. With more people seeking asylum, the image of a new crisis of abuse became hegemonic, which was supposed to necessitate new classification techniques. One of these tools was the SCO concept (cf. Sperling 2022: 5), which was already used as a term in the negotiations of a 1983 UNHCR declaration and formalized in the 1992 London Resolution on a European level (Joly 1994; Engelmann 2015: 35f.). The titles of these documents already point towards the urgency to react to that crisis of ›false‹ applications: »The problem of manifestly unfounded or abusive applications« (UNHCR 1983), »Countries in which there is generally no serious risk of persecution« (Council of the EU 1992a) and »Manifestly Unfounded Applications for Asylum« (Council of the EU 1992b) – problem definitions which can be found later in the German legislation as well (BT 1992, 1993, 1995, 2014, 2015, 2016, 2018).

While the security assessments of countries of origin have always played a role in asylum procedures in the form of ›country of origin reports‹ and political debates about the (un)deservingness of particular migrant groups, it became the core principle of SCO politics. Several European governments defined lists of countries regarded as »generally safe« and »normally not producing refugees«. This was legitimized by reference to some minimum standards like political and human rights criteria as well as a low asylum protection quota (BT 1993, BT-Drs.12/4450: 21). The classification by SCO politics reproduced the subject positions of the undeserving and the possibly deserving asylum seeker while linking both clearly to the applicant's country of origin. Although this way of ordering migration was not new to political migration discourses, it gained relevance when it found its place in a legal and – in the German case – even constitutional form. A direct effect was that people falling under the so-defined nation-state clusters were fast-tracked in their asylum procedure, were required to deliver more evidence with lower chances of founding their claims, had less time and more difficulties in appealing the rejection, and had to face harsh reception conditions. Therefore, (pro-)migrant organizations denounced the concept

heavily. However, they did not manage to reverse this new classification. Eventually, they fell back more and more on criticizing the declaration of one state or another as SCO but hardly managed to tackle the concept as a whole anymore (cf. Engelmann 2015: 201).

›BLEIBEPERSPEKTIVE‹ AND THE BIOPOLITICAL DISPOSITIFS

Even if, nowadays, the German concept of BP is often seen as just an extension of the SCO idea, it has a different origin. According to most authors, its genealogy starts in 2015, and some even claim that the term had never been mentioned before (e.g., Voigt 2016a; Dahmen et al. 2017). However, upon closer examination (cf. Sperling 2022), those assumptions prove false or only partially correct. Since the early 2000s, the term can be found in the explanations of federal draft laws, in federal directives and programs, as well as in the decisions of the constitutional court.¹ It was used in the context of parental allowance, federal subsidies for civil integration programs (BMI u. BMFSFJ RL2010), public integration courses (BuRe 2004(BT-Drs.15/3984), 2007(BT-Drs.16/5065)), financial promotion of students (BafÖG), vocational training (SGB III) (BuRe 2007 (BT-Drs.16/5172), 2008 (BT-Drs.16/10996) u. 2014 (BT-Drs.18/2663)) and different types of family benefits (BuRe 2006 (BT-Drs. 16/1368) u. BVerfGE 2012 (132, 72 ff.; 132 360 ff.)) like child benefits (›Kindergeld‹), education allowance (›Erziehungsgeld‹) and maintenance subsidy (›Unterhaltszuschuss‹).

These legal documents do not have their primary focus on a crisis of abusive asylum claims. Instead, they belong to dispositifs addressing matters of integration and human capital. At their core lies the biopolitical question of how to ›enhance‹ the development of the future population within the German nation state or, as the constitutional court put it in its 2012 verdict on educational and parental allowance:

However, granting child benefits and education allowance only to parents who are likely to stay permanently in Germany serves a legitimate purpose insofar as the legislator wants to foster sustainable development

1 | Needless to say that the term has existed in other contexts already for much longer. Choe and Daheim (1987) used it, for example, even in the title of their book about Korean labor migrants.

of the population in Germany because this target would be missed by granting it to persons who will leave the federal territory again soon.²

The recipient of public assistance is here seen as a potentially useful contributor to national welfare and as a subject that has to be integrated first before being able to participate actively. The issue of abuse is sometimes mentioned in these contexts as well (e.g., BVerfGE 2004 (1 BvL 4/97 Rn.34)). However, here, it is not related to an ›abusive‹ asylum claim but rather addressing the ›fraudulent‹ attempts of a mobile population to get social benefits.

In all these contexts, the term BP refers to a social prognosis, which is supposed to predict the future residence of people who have migrated to Germany. It differentiates between the groups that get access to certain social benefits and those that do not. However, the specific ways of prediction and the applied classifications differ in these legal documents. The resident status, the possession of German citizenship, the work permit, the actual employment, and the number of years a person had already lived in Germany were all used as criteria to estimate the likelihood of future residence. As it becomes apparent in the case of family allowances, these criteria of prognosis have also been the object of legal struggles (cf. Buckel 2013) and were questioned by migrants claiming their right to access social benefits. As a result of lawsuits at the constitutional court, residence permit (2004 BVerfGE 111, 160ff.; 111, 176ff.), employment (2012 BVerfGE 132, 72ff.; 132, 360ff.), and the circumstances of not having German citizenship (2012 BVerfGE 130, 240ff.) couldn't be used anymore as criteria for excluding migrants from family allowance, since they were seen as ineligible to predict a future residence. Thereby, the conditions for legislation shifted. Whereas in the 1990s, unequal treatment of non-EC-citizens regarding family benefits hardly had to be vindicated, legislators had now to justify the exclusion as fitting some minimum standards for a prognosis about the future residence (cf. Britz 2014).

While the ways of estimating the probability of continued residence varied during this time, it is striking that asylum seekers were generally excluded whenever the BP label was applied before 2015. Therefore, also the Country of Origin was never used as a marker of differentiation between them. As I will point out in the following

2 | Original: »Erziehungs- und Elterngeld ausschließlich den Eltern zu gewähren, die voraussichtlich dauerhaft in Deutschland bleiben, verfolgt indes einen legitimen Zweck, soweit der Gesetzgeber mit diesen Leistungen eine nachhaltige Bevölkerungsentwicklung in Deutschland fördern will, weil dieses Ziel bei Gewährung an Personen, die das Bundesgebiet bald wieder verlassen, verfehlt würde.« (BVerfGE 132, 72 ff., Rn.26).

section, both changed in the summer of migration, as key actors proclaimed new urgency, demanded new regulations, and produced new subject positions.

THE LONG SUMMER OF MIGRATION AND THE MERGING OF TWO CLASSIFICATION TOOLS

In the summer of 2015, the image of a new migration crisis became hegemonic, which combines many different issues. Particularly relevant in our context are, on the one hand, the idea that asylum seekers coming from the Balkans or the Maghreb states could abuse or overload the asylum system and the fear that a big part of the future population could form an unintegrated and therefore in many ways problematic mass. On the other hand, the ›crisis‹ was simultaneously described as an answer to the urgency of dealing with the labor shortage, whereby asylum seekers were seen as a potential solution.

These diverse proclamations of crisis led to various shifts within the three outlined dispositifs (cf. Sperling 2022: 5 ff.) and to a new type of rationality, which followed the governmental dream of organizing the in- and exclusion of asylum seekers regarding integration, economy, and deservingness from the very first moment of registration (cf. Altenried et al. 2017). The techniques of classification followed a similar trend. Asylum seekers were more frequently differentiated from the moment of their arrival by using their country of origin as a criterion of distinction. This process started with changes in the asylum dispositif in September 2014, when Macedonia, Serbia, and Bosnia-Herzegovina were declared to be SCO. It continued in October 2014, when the executive accelerated the asylum procedure for migrants from Syria, Iraq, and later Eritrea, qualifying them as »extremely unsafe countries of origin«³ (Ministers and senators of interior 2014). It went on when in October 2015, a legislative majority declared Albania, Montenegro, and Kosovo as SCO, while it later failed to do the same with Morocco, Algeria, and Tunisia due to the resistance of the opposition in the Federal Council (Bundesrat).

The way of predicting the BP for issues of integration and labor also shifted during that period as at least some groups of asylum seekers were labeled now as having good chances to stay on a long time basis. In a very similar way, as it was done before in the context of the SCOs, lists of countries were now drawn up to define who had high and who had low prospects of staying, using the protection quotas to justify

3 | Original: »extrem unsichere Herkunftsländer«.

that differentiation. This new definition of BP was applied for regulating the access to integration courses (§44 AufenthG), language courses (§45a II AufenthG), volunteer programs (formerly §18 I BFDG), employment promotion (formerly §131 SGB III), educational support (formerly §132 SGB III), restrictive types of accommodation (e.g., BT-Drs. 19/4103), work permits (cf. Herrmann 2016), accelerated procedures (e.g., BT-Drs. 19/4103) and many other regulations (cf. Voigt 2016b). Which exact group would finally be included or excluded varied from case to case since there was no uniform way of assessing the BP. That led to a situation in which, for example, Nigerians couldn't get a work permit in Rosenheim while they could get one in nearby Munich (cf. Rahmsdorf 2017).

In fact, not only the modes of assessing SCOs and BP have become more similar since 2015, but also the underlying issues. Whereas the BP was first a concept used in matters of integration and human capital, while SCO was used to distinguish asylum claims, the two questions merged into one when both matters were addressed from the first moment of arrival. Accordingly, in August 2015, the ›Asylverfahrensbeschleunigungsgesetz‹ (Law for the acceleration of asylum procedures) declared new states to be SCO while simultaneously opening integration courses for asylum seekers who were (in its draft) considered to have a ›good BP‹. While the term BP remains rather vague within the law,⁴ it clearly defines – just like many other regulations – that asylum seekers from SCO are not expected to stay and therefore are excluded from benefits. In that sense, the SCO concept also has become a classificatory tool used for evaluating prospects to stay. Conversely, people with a ›bad BP‹ are increasingly understood as subjects who do not need protection and supposedly ›abuse‹ their asylum claim (e.g., c.f. Dahmen et al. 2015: 137). In this new context, the subject of the asylum seeker with ›low prospects to stay‹ appears at the same time as a bad investment in human capital, not worthy of integration efforts, probably not in need of protection, and potentially bogus, all of which can allegedly be assessed just by knowing his or her nationality. Conversely, all the opposite qualities seem to meet in the subject of the asylum seeker with a good BP.

4 | The BAMF translated that into asylum seekers from Syria, Eritrea, Iran, Iraq, and later Somalia, arguing that their protection quota was higher than 50% (BAMF 2015).

FACING REALITY

This contribution has tried to draw a short legal genealogy of two concepts that were very influential in restructuring the way asylum seekers are classified. While they originated from two different contexts, they are nowadays deeply interwoven and have produced a social order in which the nationality of people seeking asylum became increasingly relevant for claiming rights. Since they have created harsh conditions for many, they are highly contested, especially by the classified themselves, who do not accept the public prognosis about the likelihood of their stay. Even the official numbers prove the governmental dreams of a ›just in time separation‹ wrong. According to Voigt (2016b: 248), for example, 91.8%⁵ of all Afghans, who are generally supposed to have a bad BP, actually stayed in Germany in 2015. In that sense, the new legal situation created a new formation of differential inclusion (cf. Pichl 2017) rather than filtering migration. But this order also remains shaky due to people constantly claiming their rights.

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5 | He calculates the number of decisions minus the number of deportations and the ›voluntary returns‹ in relation to the total number of decisions.

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