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„EINBLICKE / INSIGHTS – FORSCHUNGS-HIGHLIGHTS DER ZENTREN FÜR DEUTSCHLAND- UND EUROPASTUDIEN“

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Kulturschock? Erfahrungen polnischer Fußballspieler in der Bundesliga

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Die moderne Entwicklung des Sports und besonders des Fußballs kann als Prozess der Globalisierung und Migrationsbewegungen analysiert werden. Seit dem Anfang wurde diese Sportdisziplin vor allem durch Kulturtransfer und Migranten verbreitet.¹ Die meisten der großen Fußballvereine – von Europa bis Südamerika – gründeten britische Auswanderer.² Auch Emigranten verliehen der Entwicklung des Fußballs neue Impulse. Im Fall von Deutschland spielten die Zuwanderer aus Polen eine wichtige Rolle. Deutsch-polnische Fußballkontakte haben eine lange und reiche Tradition. Spieler polnischer Herkunft waren in fast jeder Phase der deutschen Fußballentwicklung vertreten. In den höchsten Klassen des deutschen Fußballs tauchten in den 1920er und 1930er Jahren die ersten Spieler mit polnisch klingenden Namen auf. Das berühmteste Beispiel war Schalke 04 Gelsenkirchen, wo Spieler aus dem Osten spielten, darunter die unbestrittenen Stars der Mannschaft Ernst Kuzorra und Fritz Szepan. Allerdings war die Situation bei fast allen Teams aus dem Ruhrgebiet ähnlich. Der deutsche Historiker Diethelm Blecking errechnete, dass in der Gauliga-Saison 1937/1938 68 Spieler mit polnischen oder masurischen Wurzeln für 15 Vereine im Ruhrgebiet spielten.³ Paradoxerweise bestand die Stärke der deutschen Nationalmannschaft im Dritten Reich aus Spielern mit den polnisch klingenden Namen. Das Paradebeispiel für einen Spieler der polnisch-deutschen Herkunft, der seine Karriere in Deutschland fortsetzte, ist Ern(e)st Wil(l)imowski, der sowohl in der polnischen als auch in der deutschen Nationalmannschaft ein Star war.⁴

Der Krieg führte zu einer Unterbrechung der besonderen polnisch-deutschen Fußball symbiose. Nach dem Ende des Krieges versuchten die in Polen eingesetzten kommunistischen Behörden – unter Missachtung der Besonderheiten des

Fußballs und seines multikulturellen und multiethnischen Charakters – dem Sport neue Merkmale zu verleihen. Fast von Anfang an versuchten die kommunistischen Behörden, den Sport im Allgemeinen und den Fußball im Besonderen zu instrumentalisieren.⁵ Fußball diente u.a. dazu, den Identifikationsprozess der Bürger mit dem Staat anzuregen. Er bot die Möglichkeit, das vom Staat erwünschte Modell des Patriotismus und der nationalen Identität zu fördern. Großer Wert wurde auch auf den Einsatz von Sport zu Propagandazwecken gelegt, denn Sport war ein Faktor, mit dem man die Unterstützung der Gesellschaft gewinnen konnte.

In einem solchen System gab es keinen Raum für polnisch-(west)deutsche Kontakte im Bereich des Sports. Dennoch zog Deutschland polnische Fußballspieler an. Ziel des Beitrages ist es, die Erfahrungen polnischer Fußballer, die ihre Karrieren in deutschen Fußballligen fortsetzten, zu erforschen. Für viele von ihnen war der Kontakt mit dem westdeutschen Fußball und vor allem mit den Lebensbedingungen im Ausland eine besondere Erfahrung, die ihr weiteres Leben beeinflusste. Die Konfrontation mit einem anderen Spielstil, die Trainingsbedingungen, die Intensität des Trainings, die Kollegen auf dem Spielfeld (oft Vertreter vieler Länder), aber auch die Unterbringungsbedingungen, die Löhne, der Lebensstandard und der Lebensstil waren wichtige Faktoren, die ihre fußballerischen Leistungen und die weitere Gestaltung ihrer Laufbahn beeinflussten. Analysiert wird das Schicksal mehrerer Spieler, die ihren Traum von der Bundesligakarriere mit spektakulären illegalen Fluchten von Polen nach Westdeutschland am zielstrebigsten verfolgten.

Nach dem Ende des Krieges war Westdeutschland kein natürliches Ziel für polnische Fußballer. Dies war vor allem auf die

1 Diethelm Blecking: Planet der Nomaden: Sport und Migration in der Geschichte, 2019, https://www.researchgate.net/publication/331976002_Planet_der_Nomaden_Sport_und_Migration_in_der_Geschichte (abgerufen: 21.09.2021).

2 Stefan Szczeplak: Moja historia futbolu. Bd. 1: Świat, Warszawa: Sine Qua Non 2007.

3 Diethelm Blecking: Von Willimowski zu Lewandowski, 23.9.2014, <https://www.bpb.de/gesellschaft/medien-und-sport/bundesliga/192009/polnische-spieler-im-deutschen-elitefussball?p=all> (abgerufen: 20.09.2021).

4 Górnoślązacy w polskiej i niemieckiej reprezentacji narodowej w piłce nożnej – wczoraj i dziś. Sport i polityka na Górnym Śląsku w XX wieku, hrsg. v. Paweł Czado et al. Gliwice-Opole: Dom Współpracy Polsko-Niemieckiej 2006, S. 23–32; Thomas Urban: Schwarze Adler, weiße Adler Deutsche und polnische Fußballer im Räderwerk der Politik. Göttingen: Die Werkstatt 2011, S. 28–46.

5 Artur Pasko: Sport wyczynowy w polityce państwa 1944–1989. Kraków: Avalon 2012.

Organisationsstruktur zurückzuführen – das Fehlen von Ligawettbewerben, wie man sie in anderen europäischen Ländern kennt, und die niedrigeren Gehälter der Spieler als in anderen westlichen Ländern. Erst mit der Gründung der Bundesliga 1963/1964, die neue Entwicklungsmöglichkeiten bot, wurde die geografische Nähe zur Bundesrepublik ein zusätzlicher Anreiz für Spieler, ihre Karriere dort fortzusetzen. Mit der Zeit wurde die BRD, wo die Vereine gerne Sportler aus Mittel- und Osteuropa beschäftigten, zum beliebtesten Ziel für polnische Spieler, die von einer Karriere im Westen träumten. Dies war besonders wichtig für die Vertreter der schlesischen Vereine, die die größte Gruppe der in die Bundesrepublik geflüchteten Fußballer darstellten. Für sie war das Vorhandensein von Verwandten oder Freunden am Ankunftsort ein zusätzliches Argument und ein Faktor, der die Akklimatisierung erleichtern könnte. Oft war es auch einfacher, ihren Aufenthalt zu legalisieren, indem sie sich auf ihre schlesische bzw. deutsche Herkunft beriefen und die diesbezüglichen Regelungen in der BRD nutzten. Wichtig waren auch die Sozialisierung in einem spezifisch polnisch-deutschen Umfeld und oft eine charakteristische Doppelidentität. Diese Auffassung sowohl im Fußballverband als auch in den staatlichen Behörden führte zu einer merkwürdigen Haltung gegenüber schlesischen Vereinen und Spielern aus dieser Region. Sie versuchten, die gemeinsame deutsch-polnische Geschichte und Fußballtradition Schlesiens fast völlig zu verdrängen. Eingang in das kollektive Gedächtnis fanden zwar regionale Spieler, doch wurden sie ohne schlesischen Kontext und lediglich als Helden der Geschichte des polnischen Fußballs dargestellt.⁶ Als Paradebeispiel kann hier Gerard Cieślík – einer von den besten polnischen Fußballspielern in der Geschichte – stehen.⁷

In einer multiethnischen Region mit einer komplizierten Vergangenheit zu leben und oft deutsche Vorfahren zu haben, bot – wenn auch mit vielen Schwierigkeiten verbunden – mehr Möglichkeiten, das Land zu verlassen. Aufgrund mangelnder Quellen ist es sehr schwierig, die Zahl der Fußballflüchtlinge zu ermitteln. Der Historiker Sebastian Pilarski schätzt, dass insgesamt etwa 50 polnische Erstligafußballer ins Ausland geflohen sind.⁸ Die meisten von ihnen wählten die Bundesrepublik als Ziel. In den 1960er Jahren gab es eine Welle von Ausbrüchen schlesischer Sportler. 1961 floh Eugeniusz (Egon) Piechaczek, der damals in Odra Opole und zuvor AKS Chorzów, Wawel Kraków, Legia Warszawa und Ruch Chorzów spielte, nach West-Berlin. Er war der erste polnische Flüchtling, der sich in der Bundesliga etablierte. Allerdings nicht als Fußballer, sondern als Trainer. Nach dem Ende seiner Spielerkarriere arbeitete er als Assistent und übernahm in der Saison 1968/1969 im Alter von 37 Jahren den Cheftrainer-Posten des 1. FC Kaiserslautern, wo er den Spitznamen „Major“ erhielt. Trotz seines anfänglichen Erfolgs begannen die von ihm geführten Spieler, Disziplinlosigkeit und schlechte Ergebnisse zu zeigen, was zu seiner Entlassung führte.⁹ Die nächste Station seiner Karriere war die Stellung bei Arminia Bielefeld. Seine deutsche Trainerkarriere wurde 1971 durch den Korruptionsskandal unterbrochen, der den deutschen Fußball erschütterte und in dem er in Spielmanipulationen verwickelt war. Als erfolgreicher Trainer unterlag Piechaczek den Aktionen der Vereinsbosse oder (einigen Quellen zufolge) er selbst inspirierte illegale Aktivitäten, bei denen er Spieler und Aktivisten anderer Mannschaften bestach.¹⁰ Es ist erwiesen, dass er bei dem gesamten Verfahren eine Schlüsselrolle spielte und von den mit unlauteren Mitteln erzielten Erfolgen profitierte, wobei er auch vor Partys und Alkohol nicht zurückschreckte. Er

6 Marcin Wiatr: Spielst du für uns oder gegen uns? Sport in Oberschlesien und die Erfahrung europäischer Grenzgebiete. In: „Dialog“ nr 99, 2012, S. 18–23.

7 Ausführender s. Rafał Zaremba, Gerard Cieślík. Urodzony na boisku, Chorzów: Ziolo 2006.

8 Sebastian Pilarski: „Odmówił powrotu do kraju” – ucieczki piłkarzy z PRL na Zachód, in: „Pamięć i Sprawiedliwość”, Nr. 13/2 (24), 2014, S. 419–420.

9 Asanka Schneider: Saison 1968/69: Trainerentlassung von Egon Piechaczek beim 1. FC Kaiserslautern. 22.03.2020. <https://sport-90.de/egon-piechaczek-1969-beim-1-fc-kaiserslautern-als-trainer-entlassen> (abgerufen 23.09.2021).

10 „Boss, wir müssen Spiele kaufen” in: „Der Spiegel” Nr. 18, 1972.

war im Milieu als eine Person bekannt, die bei gesellschaftlichen Anlässen gerne die Aufmerksamkeit anderer auf sich zog, während er unter Alkoholeinfluss übermäßig aktiv und äußerst redselig wurde, so dass die Gefahr bestand, dass er die Geheimnisse des illegalen Match-Handels preisgab.¹¹ Als die Affäre ans Licht kam, wurde er mit einem lebenslangen Berufsverbot belegt, aber nach drei Jahren begnadigt. Erst 1978 kehrte er auf die Trainerbank zurück und trainierte griechische und zyprische Vereine.

Der erste polnische Spieler, der als Fußballer in der Bundesliga Karriere machte, war Piotr (Waldemar) Sł(ł)omiany. Der Verteidiger von Górnik Zabrze, mit dem er viermal die polnische Meisterschaft und einmal den nationalen Pokal gewann, war eine äußerst schillernde Persönlichkeit. Neben den sportlichen Erfolgen – er debütierte sogar in der Nationalmannschaft – hatte Słomiany auch Probleme, zum Beispiel stand er unter der Aufsicht eines Bewährungshelfers.¹² Im Juni 1966 entschied er sich spontan, in der BRD zu bleiben.¹³ Wie er sich Jahre später erinnerte, war der Aufenthalt in der Bundesrepublik eine Suche nach einem besseren Leben – sowohl persönlich als auch beruflich. Słomiany stammte aus einer Familie, in der die Mutter weggezogen war, während der Vater sich aufgrund von zu viel Arbeit nicht viel Zeit für seine Kinder nahm. Gleichzeitig war er sich dank regelmäßiger Reisen mit der Mannschaft zu Spielen im Ausland über die wirtschaftliche Lage des Landes und den Lebensstandard in den westlichen Ländern bewusst.¹⁴ Als führender polnischer Verteidiger fand er bei den Schalke-Aktivisten Anerkennung und gab 1967 sein Debüt für den Verein, obwohl er vom polnischen Fußballverband mit einer lebenslangen Sperre belegt worden war. Jahre später erinnerte sich der

Fußballer noch sehr gut an die Anfänge seines Aufenthalts. Selbst die Trennung von seinem Vater stellte für ihn kein Problem dar, da er zuvor keinen regelmäßigen Kontakt hatte: „Schalke ist meine Familie geworden, die ich in Polen nicht hatte“.¹⁵ Die Bedingungen, unter denen er nach seiner Flucht lebte, unterschieden sich stark von der polnischen Realität. Wie er betonte: „Man hat sich sehr gut um mich gekümmert, ich hatte Unterkunft und Essen umsonst“.¹⁶ Der Fußballer versuchte, die gezeigte Unterstützung zu erwidern und passte sich schnell an seine Umgebung und die Erwartungen an und versuchte, die deutsche Sprache effizient zu beherrschen, z. B. durch häufige Kinobesuche. Gleichzeitig betonte er, dass das fußballerische Umfeld zwar viel besser sei, aber das sportliche Niveau sich nicht von dem in Polen unterscheide. Als Spieler der besten polnischen Mannschaft – Górnik Zabrze – war er sofort bereit, sich auf Bundesliga-Niveau zu messen.¹⁷ Nach drei Jahren auf Schalke wechselte er zu Arminia Bielefeld, wo er das Schicksal von Trainer Piechaczek teilte und in einen Korruptionsskandal verwickelt wurde. Seine Rolle in dem Verfahren war nach Angaben von Journalisten des „Spiegel“ bedeutend. Piechaczek machte ihn zu seinem Assistenten in diesem Verfahren – beide kommunizierten gewöhnlich auf Polnisch miteinander,¹⁸ was ihnen als eine besondere Art von Chiffre dienen konnte. Der Trainer beauftragte ihn mit der wichtigen Aufgabe, Spieler seines ehemaligen Vereins Schalke 04 zu bestechen.¹⁹ Die Aufdeckung der Affäre führte zu einer zweijährigen Sperre und beendete praktisch Słomiany's Karriere auf Erstligaebene. Der Fußballer rechtfertigte seine Verwicklung in den Skandal damit, dass er der Mannschaft helfen wollte (aufgrund der allgegenwärtigen Korruption musste er sich angeblich einmischen). Er merkte auch an, dass

11 „Boss, wir müssen Spiele kaufen“. Fortsetzung. in: „Der Spiegel“ Nr. 19, 1972.

12 Pilarski, S. 392.

13 Ebd., S. 391–392.

14 Dariusz Faron: Czasem myślę, że to się wcale nie zdarzyło. „Onet Sport”, 9.03.2021. <https://sport.onet.pl/pilka-nozna/ucieczka-z-polski-i-wielki-skandal-historia-waldemara-slomianego/df13fcj> (abgerufen: 24.09.2021).

15 Ebd.

16 Ebd.

17 Ebd.

18 Ebd.

19 „Boss, wir müssen Spiele kaufen“. Fortsetzung. in: „Der Spiegel“ Nr. 19, 1972.

er „jung und dumm“ war und heute nicht denselben Fehler machen würde.²⁰ Nach dem Ende seiner Karriere hat er nicht einmal daran gedacht, nach Polen zurückzukehren. Er begann als Schweißer in einem Unternehmen zu arbeiten, das Transportwagen herstellte. Er versuchte sich auch als Trainer von Amateurmanschaften zu etablieren, wurde aber durch seine Verwicklung in den Korruptionsskandal, der in Deutschland noch in Erinnerung war, daran gehindert. Heute führt er ein sehr bescheidenes Leben, arbeitet auf einem Golfplatz (wo er manchmal ehemalige Schalke-Kollegen trifft) und hat keine Familie.²¹

Sehr interessant ist das Schicksal eines anderen Flüchtlings, Jan (Heinz-Dieter) Banaś. Seine Eltern, eine polnische Mutter und ein deutscher Vater, lernten sich während des Krieges in Lemberg kennen. Als die Mutter schwanger wurde und nach Berlin kam, stellte sich jedoch heraus, dass der Vater an der Front vermisst wurde und außerdem bereits Familie in Deutschland hatte. Banaś wurde in Berlin geboren, aber seine Mutter zog bald nach der Geburt nach Oberschlesien. Als der junge Banaś eine Fußballkarriere bei Polonia Bytom und in der polnischen Nationalmannschaft verfolgte, fand ihn sein Vater, der den Krieg überlebt hatte, und schickte ihm Briefe mit dem Versprechen, ihm zu einem Vertrag bei einem führenden Bundesligisten zu verhelfen.²² Während des Aufenthalts von Polonia Bytom in Schweden anlässlich des Intertoto-Cup-Spiels im Jahr 1965 verschwand Banaś zusammen mit zwei weiteren Spielern, Konrad Bajger und Norbert Pogrzeba, aus ihrem Hotel und machte sich mit Hilfe von Banaś' Vater auf den Weg in die BRD. In Polen erhielt die Flucht eine propagandistische Dimension. Die Presse veröffentlichte ein Kommuniqué des Vereins, in dem sie als „eine unwürdige Tat“ bezeichnet

wurde, die „von allen Spielern und Mitgliedern des Polonia-Clubs sowie seinen Fans scharf verurteilt“ werden sollte, sowie eine Erklärung der Spieler des Vereins, die dies als eine Tat bewerteten, die „der Bürger der Volksrepublik Polen unwürdig“ sei und somit das Vertrauen der Mannschaft verletze.²³

Der Vater von Banaś arbeitete als Buchhalter beim Zweitligisten SpVgg Hof. Sein Sohn begann dort die Trainings, während er auf einen Vertrag mit einem Bundesligisten wartete. Es kam zu einem Konflikt zwischen ihnen, als der Spieler ein Schreiben zur Unterschrift erhielt, in dem der Vater 10 % der Summe jedes von ihm unterzeichneten Vertrags forderte. Banaś nahm die Bedeutung des Briefes sehr negativ auf: „Das hat mir sehr wehgetan, denn mir wurde klar, dass mein Vater mich nicht als Sohn mitbrachte, sondern als jemanden, mit dem er ein Geschäft machen wollte“.²⁴ Er weigerte sich, das Dokument zu unterschreiben und brach den Kontakt zu seinem Vater ab. Dann brachte der Präsident des Hofer Vereins, an den sich Banaś um Hilfe wandte, die drei Polen zu Testspielen zum 1. FC Köln.²⁵ Laut Thomas Urban war die Hilfe des Präsidenten der SpVgg Hof nicht uneigennützig, denn er soll Banaś' großes Talent erkannt haben und wollte deshalb das Vereinsbudget aufbessern, indem er ihn an den Kölner Verein vermittelte.²⁶ Als Ergebnis der Bemühungen des Polnischen Fußballverbandes sperrte die FIFA Banaś für zwei Jahre, so dass er nicht an offiziellen Spielen teilnehmen konnte.²⁷

Schließlich beschloss der Fußballer, nach Polen zurückzukehren. Sein Verhältnis zu seiner Zeit in Deutschland ist heute ambivalent. Einerseits erfuhr er von Teilen des Fußballmilieus uneigennützig Hilfe: Der Hofer Vereinsvorsitzende stellte ihn als Fahrer ein, damit er

20 Faron (s. Anm. 14).

21 Ebd.

22 Dariusz Dobek: Jan Banaś. Człowiek, który mógł zostać legendą. „Onet Sport”, 31.08.2015. <https://sport.onet.pl/pilka-nozna/kadra/jan-banas-zyciorys-kariera-osiagniecia/5644mb> (abgerufen: 27.09.2021).

23 Pilarski, S. 389–390.

24 Dobek (s. Anm. 22).

25 Ebd.

26 Urban, S. 122.

27 Pilarski, S. 390.

seinen Lebensunterhalt verdienen konnte, Vertreter des 1. FC Köln garantierten ihm kostenlose Unterkunft und Verpflegung, was Kosten von rund 1500 DM verursachte. Dank seines großen Talents konnte er sich im Training mit den damaligen Stars des deutschen Fußballs messen. Der Aufenthalt sollte seiner Meinung nach zu seiner fußballerischen Entwicklung beitragen, indem er sich an die dortigen Bedingungen anpasste: „Es war eine andere Welt im Westen, was die Trainings anging. Ich habe mich auf die deutsche Mentalität und Disziplin eingestellt. Meine Kollegen aus Polonia sahen mich an, als sei ich verrückt. Ich könnte sogar zwei Spiele hintereinander spielen. Dann war ich dank des deutschen Trainings drei oder vier Jahre lang in Superform“.²⁸ Andererseits war er aber auch sehr enttäuscht von seinem Vater, von dem er sich ausgenutzt und betrogen fühlte. Seine Verbitterung spiegelte sich in der Haltung nach seiner Rückkehr wider. Tatsächlich beschlossen die Behörden, die Rückkehr der beiden Spieler Anfang 1967 als Propaganda zu nutzen und ihr den Charakter einer Warnung an potenzielle Nachahmer zu geben. Die Fußballer trugen dann dazu bei, ein negatives, antideutsches Bild von der BRD und derer Bürger zu schaffen. Die Darstellung ihrer eigenen Erfahrungen in der Sportpresse sollte als Beweis für die Rücksichtslosigkeit des kapitalistischen Systems dienen. Die Ausländer sollten als minderwertige Menschen und als Vertreter der sozialen Randgruppen behandelt werden, was an die Stereotype anknüpfte, die von der Propaganda der Volksrepublik Polen unter Bezugnahme auf die antipolnische Nazipolitik während des Zweiten Weltkriegs gepflegt wurden.²⁹ Nach seiner Rückkehr setzte Banaś seine Karriere erfolgreich fort. Es sei jedoch darauf hingewiesen, dass er trotz seiner hervorragenden Leistungen bei den Qualifikationsspielen nicht zu den Olympischen Spielen

(München 1972) und den Weltmeisterschaften (1974) in Westdeutschland zugelassen wurde. Jahre später diente seine Lebensgeschichte als Inspiration für das Drehbuch des Spielfilms „Gwiazdy“ („Stars“).³⁰

Die sich verschärfende Wirtschaftskrise der 1980er Jahre, die Stagnation, in der sich die Gesellschaft nach dem Zusammenbruch der „Solidarność“ befand, und die beispielhafte Karriere von Zbigniew Boniek, der zu einem Weltstar wurde, veranlassten viele Sportler, nach Fluchtmöglichkeiten in den Westen zu suchen.³¹ Der berühmteste Fall war Andrzej Rudy, damals Mittelfeldspieler bei GKS Katowice und Nationalspieler. Es ist erwähnenswert, dass Rudy, als er noch für Śląsk Wrocław spielte, eines der größten Fußballtalente in Polen war. Nicht nur die Sportpresse interessierte sich für sein Privatleben, seine Einkünfte, Transfersummen und vor allem für seine Beziehung mit dem Model Anna Dąbrowska, die das Paar zu einer Berühmtheit der damaligen Zeit machte.³² Die Ausreise von Dąbrowska in die BRD veranlasste den Fußballer zu einem ähnlichen Schritt. Als er im November 1988 mit der Nationalmannschaft in Italien war, verließ er das Trainingslager. Seine Flucht löste eine Pressekampagne gegen den Spieler aus. Die Zeitungen veröffentlichten diffamierende Artikel, in denen der Spieler als Verräter bezeichnet wurde.³³ Die sportlichen und politischen Instanzen beschlossen, den Spieler für fünf Jahre zu disqualifizieren, was ihn aber nicht daran hinderte, seine Karriere nach einer Zwischenzeit beim 1. FC Köln und später beim VfL Bochum, in Dänemark, Belgien und den Niederlanden fortzusetzen. Der Anfang beim 1. FC Köln war für den Fußballer sehr schwierig – er hatte Probleme, sich in der neuen Realität zurechtzufinden, was zusammen mit persönlichen Problemen mit seiner Partnerin, wegen

28 Dobek (s. Anm. 22).

29 Pilarski, S. 390.

30 „Gwiazdy“, reż. Jan Kidawa-Błoński, Polska 2017.

31 Dariusz Wojtaszyn: Dzieci uciekinierów, zdrajcy ojczyzny i profesjonalści na kontraktach. Polscy piłkarze w Niemczech. „Mówią Wieki“ Nr. 9, 2020, S. 38.

32 Ebd., S. 38–39.

33 Pilarski, S. 412–413.

der er nach Deutschland gegangen war, einen sportlichen Niedergang verursachte.³⁴ Später kehrte er jedoch zur richtigen sportlichen Einstellung zurück und wurde zu einem der Lieblinge der Kölner Fans. Obwohl er in vielen europäischen Städten spielte, kehrte er nach dem Ende seiner Karriere nach Deutschland zurück und ließ sich in Pulheim nieder. Nach mehreren Versuchen, seine Karriere als Trainer, Technik-Coach und im Jugendbereich auszubauen, nahm er einen Job als Abschleppwagen-Fahrer an. Obwohl der ehemalige Fußballer darauf besteht, dass sein Lebensplan ein anderer war („Früher habe ich gedacht, ich mache nie im Leben etwas anderes als Fußball [...] Es gab auch schwierige Phasen, als ich dann realisiert habe, dass ich jetzt etwas anderes machen muss, als Fußball. Das hat mir schon weh getan.“³⁵), akzeptierte er dennoch seine Situation („Bodenständigkeit war schon immer mein Ding und in den VIP-Räumen habe ich mich schon als Spieler immer unwohl gefühlt [...] Natürlich habe ich Vorteile des Fußballs genossen, auch, dass ich für so viele Menschen einer der Größten war, aber ich konnte immer gut damit umgehen, weil ich selbst aus einem armen Haus kam. Ich weiß, wie es ist, wenig zu haben und mit wenig auszukommen. Ich muss Luxus nicht haben“³⁶).

Die Bundesliga war aufgrund ihrer Wirtschaftskraft und ihrer Bedeutung ein Magnet für Fußballmigranten aus Polen. Neben den analysierten Schicksalen der Sportler gab es eine große Gruppe von Fußballern, die in die BRD flohen, um dort ihre Fußballerfahrung fortzusetzen. Trotz ihres Talents und ihrer Fähigkeiten führten der Kontakt mit einem anderen Lebensstil und einer anderen Mentalität sowie manchmal auch ihre Einstellung zum Training und die vom kapitalistischen System gebotenen Möglichkeiten dazu, dass sie keine Karriere machen konnten. Ihre Lebensgeschichten bestätigen, dass Migration im Fußball sowohl eine Chance zum sozialen Aufstieg sein kann, aber auch das Risiko der sozialen Deklassierung birgt. In diesem Zusammenhang ist anzumerken, dass die meisten der betreffenden Fußballer nach dem Ende ihrer Karriere nicht nach Polen zurückkehrten. Da sie in das deutsche Milieu hineingewachsen waren, haben sie sich trotz der manchmal bescheidenen Lebensbedingungen für Deutschland als Wohnort entschieden.

34 Mariusz Wiśniewski: Andrzej Rudy – historia piłkarza, który uciekł za głosem serca. „Gazeta Wroclawska”, 26.11.2020. <https://gazetawroclawska.pl/pilka-nozna-andrzej-rudy-historia-pilkarza-ktory-uciekl-za-glosem-serca/ar/c2-235225> (abgerufen 28.09.2021).

35 Ulrich Bauer: Ex-Köln-Profi fährt jetzt Abschleppwagen. „Bild”, 26.03.2018. <https://www.bild.de/sport/fussball/1-fc-koeln/ex-profi-faehrt-jetzt-abschleppwagen-55214498.bild.html> (abgerufen 28.09.2021).

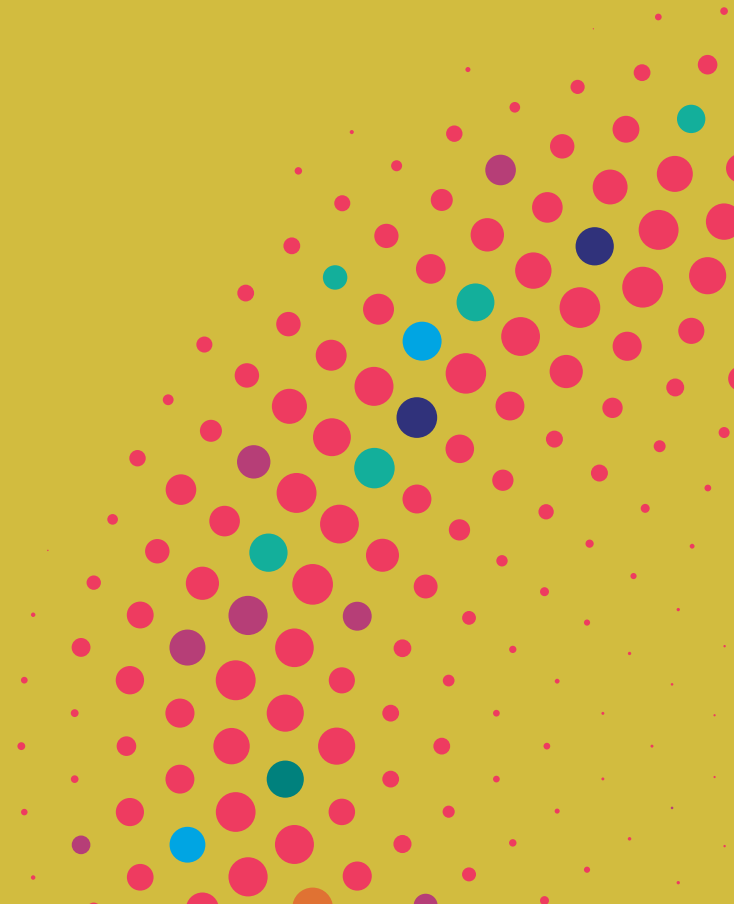
36 Ebd.



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Finding Odysseus's Scars Again: Hyperlinked Literary Histories in the Age of Refugees



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We are living, once again, in times of forced migrations and refuge. For the year 2020, the United Nations High Commission for Refugees estimated that there were 82.4 million forcibly displaced people around the world – the highest number on record since the two World Wars.¹ The proliferation of refugees and stateless people in the world has coincided with the resurgence of ethno-religious nationalism and divisive rhetoric centered on securing and insulating borders. The year 2019 also marked thirty years since the iconic fall of the Berlin Wall, and from India to Hungary to the United States, we witnessed a worldwide fixation on construction of new walls and barbed-wire fences along national borders.²

In addition, new migration plans and migration bans are using refugees as instruments to shape and transform national self-representation, as well as the very definition of citizenship. In the US, this includes the so-called Muslim Ban, also known as the Travel Ban, which had been introduced in various forms since 2016, until finally receiving approval from the Supreme Court, in 2018, and then being rescinded by the US House Committee.³ In Germany, the CSU politician Horst Seehofer's Masterplan Migration (2018)⁴ has led to a large-scale deportation of Afghan asylum seekers by placing limitations on migration in the name of national cultural cohesion.⁵ India's discriminatory Citizenship Amendment Act (2019) has likewise weaponized the very idea of citizenship, creating an internal wall between the majority Hindu and the minority Muslim communities in a two-tier citizenry, through a two-tier refugee profile.⁶

In other words, we live in a time when the figure of the forced migrant, the refugee, rendered homeless due to political upheaval or natural disaster, on a treacherous journey to find safety, becomes the figure from whom we need to guard our relatively safer homes by shutting doors or closing borders. In addition, minority citizens, be they recent immigrants, as millions are in the United States, or members of populations with longer histories of residency, as in the case of India's Muslim communities, are being rendered stateless and homeless. Migration has become the anathema of nationalism, as the Indian historian Romila Thapar has recently reminded us, because it works against purist notions of national composition.⁷ Citizenship is being weaponized so that populist political discourse can operate without any challenges to the state's attempts to manipulate history in order to willfully erase heterogeneity of national formations from public memory.⁸ Processes of willful and forced migration, and slow sedimentation, through which national communities and nation-states were created, are being proactively suppressed by denouncing histories of migration, and consequentially migratory futures. In the US, the closing of international borders and the massive restrictions on visa processes in the midst of the global coronavirus pandemic, all under the guise of protecting national public health and safety, is just the latest indication of the uncertain journey ahead for migrants and refugees aspiring to make the United States their home.

1 "Figures at a Glance," UNHCR, updated June 18, 2021, <https://www.unhcr.org/figures-at-a-glance.html>.

2 Elisabeth Zerofsky, "Viktor Orbán's Far-Right Vision for Europe," *The New Yorker*, January 14, 2019, <https://www.newyorker.com/magazine/2019/01/14/viktor-orbans-far-right-vision-for-europe>; Lucy Rodgers Zurcher and Anthony Dominic Bailey, "Trump's Border Wall – in Seven Charts," *BBC News*, September 27, 2019, <https://www.bbc.com/news/world-us-canada-46824649>.

3 Rebecca Rainey, "House Committee Votes to Rescind Trump Travel Ban," *POLITICO*, February 2, 2020, <https://www.politico.com/news/2020/02/12/house-committee-votes-to-rescind-trump-travel-ban-114649>.

4 Florian Gathmann, "Innenminister Seehofer stellt Migrationskatalog vor: Der Desaster-Plan." *Spiegel Online*, July 10, 2018, sec. Politik. <http://www.spiegel.de/politik/deutschland/innenminister-und-csu-chef-seehofer-stellt-migrationskatalog-vor-masterplan-des-desasters-a-1217421.html>.

5 Waslat Hasrat-Nazimi, "Afghanische Flüchtlinge verzweifeln an Europas Außengrenze," *DW.COM*, March 3, 2020, <https://www.dw.com/de/afghanische-fl%C3%BChtlinge-verzweifeln-an-europas-au%C3%9Fengrenze/a-52623524>.

6 Nayanima Basu, "CAA, NRC Could Render Huge Numbers of Indian Muslims Stateless, Says Ashutosh Varshney." *ThePrint* (blog), March 5, 2020. <https://theprint.in/india/caa-nrc-could-render-huge-numbers-of-indian-muslims-stateless-says-ashutosh-varshney/376008>

7 Romila Thapar, "They Peddle Myths and Call It History," *The New York Times*, May 17, 2019, <https://www.nytimes.com/2019/05/17/opinion/india-elections-modi-history.html>.

8 Sahana Ghosh and Sara Shneiderman, "New Laws Weaponize Citizenship in India," *The Conversation*, December 22, 2019, <http://theconversation.com/new-laws-weaponize-citizenship-in-india-129027>.

At this conflict-ridden and volatile moment at the beginning of the third decade of the twenty-first century, it is urgent for scholars of literature to reclaim and re-insert histories of human migration, and to grant these their rightful place in studies of “national literatures.” Reading literature in the institutional context of a university today necessitates the charting out of new pathways to resist nativist, racist, and ethnonationalist imaginations of literary studies. Today more than ever before, there is an urgent need to hypothesize linkages among various national and regional histories to challenge further a monolingual, homogeneous cooptation of literatures and their histories into the nationalist discourse.

These ideas form the core of this essay, in which I underscore the need for a global history of German literature by proposing a transnational arrangement of literary history around borderlines, walls, and the figure of the refugee. There are three central ideas that guide my proposal: First, any attempt at tracing a “globally connected” literary history of a national or linguistic-cultural sphere must aspire to engage a global, discerning readership rather than a specialized set of professional readers (i.e., students and scholars of a single national literature). Second, such a broadly oriented literary history should offer its readers an account of global historical forces – which may include a set of globally influential ideas, significant political events, and/or state- and non-state actors – locating authors, readers, and critics within these forces. Finally, a global history of German or any other “national” literature should try to emancipate itself from a territorially bound imagination of transnationalism that still privileges the native over the migrant in the national imaginary. To this end, merely treating authors of “migrant backgrounds” or authors in exile as additions or supplements – that is, optional, or exceptional enrichments – to a national literature otherwise written by authors of majority (ethnic German)

communities will not suffice. New modes of global history must proactively seek, and uncover, “hyperlinks” – a term that I will explain later – between national and global political histories, and in doing so work to bring literature written by authors with histories of comparatively recent migrations onto equal footing with literature written by so-called native or majoritarian authors. What I am essentially arguing for in this essay is a way of thinking about literary history that presents literatures of and by the native, the migrant, the refugee, and the foreign author as an essential condition for – and not an exception to – the formation of national or world literatures.

By locating the need for a paradigm shift in the study of literature and literary history in our current political realities, my thoughts extend a project whose foundations were laid by Edward Said. In his celebrated essay “Secular Criticism,” Said pointed out that “academic literary history is a descendant of such nineteenth-century specialties such as scholarship, philology, and cultural history.”⁹ Said’s new formulations for criticism in the last two decades of the twentieth century – the essay was first published in 1983 – were framed by his poignant observation that the “cultural realm and its expertise are divorced from their real connections with power.”¹⁰ Said traces the roots of power inequities in tandem with the realm of culture by locating them in the nineteenth-century Eurocentric project of creating national cultures, based very much on the notion of inside and outside: “The readiest account of place might define it as a nation, and certainly in the exaggerated boundary drawn between Europe and the Orient ... [through which] the idea of a national-cultural community as a sovereign entity and place set against other places, has its full realization.”¹¹ Said identifies modes in which literary criticism and literary history are embedded in multiple formations of borders and hierarchies: “The entire history of nineteenth-century European thought... is made

9 Edward W. Said, “Secular Criticism,” in *The Selected Works of Edward Said, 1966–2006*, ed. Moustafa Bayoumi and Andrew Rubin (New York: Vintage Books, 2019), 221.

10 Said, “Secular Criticism,” 222.

11 Said, “Secular Criticism,” 228.

between what is fitting for us and what is fitting for them, the former designated as inside, in place, common, belonging, in a word, *above*, the latter, who are designated as outside, excluded, aberrant, inferior, in a word *below*.¹²

There are multiple ways in which we can imagine upsetting the vertical hierarchies of above and below and the horizontal discriminations of inside and outside, thus breaking up nineteenth-century national-cultural formations. Focusing on different ways in which political borders are punctured and cultural expertise engages with real connections of power can lead us to think about ways in which national spaces are connected through wars, trade, state-sponsored or state-independent cultural exchanges, and more. For the purpose of this essay, I will focus on the figure of the refugee. For reasons stated at the beginning of the essay, the figure of the refugee has become the litmus test for our global humanity, for our politics of recognition, inclusion, and exclusion. Contained in, and disseminated through, the figure of the refugee are *longue durée* histories of empire and nation-state formations, wars, insurgencies, terrorism, religious and sectarian violence, poverty, pandemics, and, more recently, climate, environmental, and health-related crises through which nations, as political and social units, are inextricably connected with one another. An engagement with the figure of the refugee, especially in a literary historical context would mean, extending my previous thought, recognizing the refugee, conditions that lead to the formation of refugees, management of refugee populations, and narratives about and by refugees as central to – rather than an episodic or momentary enrichment of – national literature and its literary

history. Consistent with Said, I want to consider the refugee as a figure that is constantly out of place, and that therefore paves the way for us to upset vertical hierarchies and horizontal discriminations between Europe and the Orient, the nation and its others. This is the second set of assertions that I want to present in this essay, albeit through a few questions.

What ensues when the figure of the refugee is imagined not at the periphery but at the center of our historical and literary historical investigations? What does it mean to cross borders, establish relations, and enable exchanges through “borderless” readings of historical events and literary texts? How would a literary history based on borderless reading help us to rethink our understanding of literary history in a globally comparative context?

I want to approach my proposals, assertions, and these questions in three steps. First, I want to briefly discuss two models of literary history published in the first decade of the twenty-first century – one in the national and the other in the world literary context. Second, I turn to a brief discussion of the term *global history* from the discipline of history, which opens up space for a discussion of archives as a concept and practice in the context of a global literary history. This will lay the ground for me to present a “hyper-linked” history of German literature, with a focus on connections to the history of Afghanistan and Afghan refugees. My essay ends with a discussion of Erich Auerbach’s *Mimesis* and Edward Said’s “Reflections on Exile,” examining how refuge, exile, and displacement can be “hyper-linked” to frame historical and literary events.

World Literary Histories

In his introduction to the volume *A New Literary History of German Literature* (2004), David Wellbery cites Paul Celan’s famous dictum

“Jedes Gedicht ist datierbar” (Every poem is datable).¹³ For Wellbery, “traditional literary histories treat individual texts and performances

12 Said, “Secular Criticism,” 230 (emphasis in original).

13 David E. Wellbery, *A New History of German Literature* (Cambridge, MA: Harvard University Press, 2004), xvii.

not as singular occurrences, but as illustrative instances of some force, tendency, or norm such as the spirit of an age or a nation, a class bias, or an aesthetic ideal. To grasp the historical character of a literary text is, according to this way of thinking, to see the individual case as something typical of something else, and therefore replaceable. This operation effaces literature's 'datable' singularity and contingency. A major aim of *A New Literary History of German Literature* is to find a mode of presentation that restores access to this dimension of literature.¹⁴ Moving away from a literary history that presents a work as an example for or typical of something, Wellbery proposes a reorganization based on specific dates – of an important court case, a publication date, a performance date, or a political or cultural event – which coincide with and therefore help to reflect on the historical, temporal situation of a literary work. Multiple modes of production and circulation of literary works in the electronic age, both physical and digital, and the creation of a new, more inclusive readership drive Wellbery's model of datability. The task of such a literary history is formidable, spotlighting the singularity of the date while providing "multiple points of entry and allowing for various reading agendas."¹⁵ The datable event, the encounter of a reading experience, and the constellation of media in storage and transmission become central to this literary historical enterprise, which aspires to construct German literary history in relation with various other literary histories. Wellbery calls this form of literary historical writing "random access history."

Wellbery's model of the narrative writing of "national" literary histories, framed through significant time periods or specific years, shifts the focus from spatiality to temporality, thus opening the possibility of a transnational evaluation of literatures that is not territorially bound. However, the decided focus on German language and the German-speaking world in general curbs that ambition significantly. Consequently, "random access history" remains

sparse and selective in its aspiration to access political or literary histories beyond Europe that might be connected in some way to the German-speaking world.

While Wellbery's literary history focuses on literature in the German-speaking world, a different model of arranging literary history is offered in a special issue of *New Literary History* (2008), which focused on "world literary history." This model also draws attention to the particularity of literary texts, but the project gains its richness through its much larger temporal and spatial scale, and contextualizes the production, circulation, and translation of literature in the larger context of world literary space. Key to this collection are two opposing positions.

Hans Ulrich Gumbrecht, in an essay tellingly entitled "Shall We Continue to Write Histories of Literature," traces a history of literary history from early nineteenth-century Germany to late twentieth-century Anglo-American theory, only to reveal an Auerbachian anxiety over the very loss of historicity and the purpose of literary history today. "How [...] such new ways of experiencing the historicity of literature may relate to each other – I don't know," writes Gumbrecht, but he points out that we will have to "think, experiment, and [...] wait" if we want to write histories of literature.¹⁶ Admittedly, Gumbrecht does not reject outright the possibility of writing literary histories in the future. However, in questioning the relevance of traditional modes of writing literary history, Gumbrecht opens up ways of thinking and experimenting. Juxtaposed with Said's ideas such experimentation should involve undoing the national-cultural paradigm.

A counter-position to Gumbrecht's comes from David Damrosch, whose "Definition," "Design," and "Purpose" of a world literary history somewhat intersect with ideas proposed by Wellbery. A "full history of world literature," Damrosch proposes, "should unfold the varied processes and strategies through which writers have

14 Wellbery, *A New History*, xxi.

15 Wellbery, *A New History*, xxii.

16 Hans Ulrich Gumbrecht, "Shall we continue to write Histories of Literature?" *New Literary History* 39, no. 3 (2008): 531.

individually and collectively furthered the long negotiation between local cultures and the world beyond them.”¹⁷ This very formulation brings Damrosch into conversation with Said about the significance of moving beyond a simple national-cultural, isolationist model. Multiple points of entry, multiple modes of writing – in other words, the plurality of languages, critical approaches, and literary traditions, as well as modes of production and circulation, encompassing scripts, media, and forms – remain foundational to Damrosch’s model. Instead of conceptualizing a “random access history,” Damrosch mentions Wikipedia as providing “hyperlinks” that connect literary works on a larger scale.

At the risk of generalizing, let me point out three commonalities among the approaches to literary history proposed above. The first is the centrality of the literary terrain. Wellbery’s “random access history” still privileges German – as a marker of linguistic-cultural specificity – for its conceptualization of national literature, which, in turn, cannot be dissociated from geographical borders, even if they change over time. The *New Literary History* model emphasizes multilingualism, but here as well, language, at least in the scope of the essay, is largely linked to territory. The second commonality is the positioning of a literary work: born in the local but read in relation to the extra-local – whether it is regional, international, or really on a global scale. One can sense an evolutionary perspective, which goes from natal-residential to migrant. There is more room in this model to think about migration along with, and despite, worldwide projects of nation building. The third, and most important, commonality is history itself: a) the changing nature of our relationship, especially the younger generation’s relationship, to history, and b) the changing nature of the very discipline of history – its design, definition, and purpose. What I find noteworthy here is that a newer generation’s relation to history seems to be in

flux, as, perhaps, do the design, definition, and purpose. But historical specificity seems to be traceable largely to place – that is, to a singular territory. A national space, defined by territorial boundaries, becomes open to pluralistic imagination and examination through its connection to other national spaces, also defined by territorial boundaries. A sense of permanency in natality and residency, and of insecurity in itinerancy, migrancy, and especially exile informs such modalities of thinking about literary history. Underlying these observations is more than a hunch. A tradition of intellectual investment in settlement, residency, and citizenship can be noted in European, especially German, literary history and historiography. This sense of privileging space can be seen in the periodization model of multiple edited volumes, such as *Deutsche Literaturgeschichte von den Anfängen bis zur Gegenwart* (2019, first published in 1979), edited by Wolfgang Beutin et al.

It should be noted that in his review of the first edition, the prominent U.S.-based Germanist Jost Hermand hailed the volume as the first “useable project” (“brauchbares Projekt”) with a “readable representation” (“lesbare Darstellung”) and a clear pedagogical purpose of cultural education.¹⁸ For Hermand, the volume was geared toward students in the (former) Federal Republic of Germany, who did not read books, go to the theater, or even know what “lyric” might mean, a generation Hermand claimed had grown up in an era of cultural regression (“Kulturzurückstufung”).¹⁹ Hermand had less of an issue with the singularly German-oriented nature of this cultural product; understandably so, as at the very outset of his review, he thought of this literary history as the perfect source for German literature and culture for his students in the United States. Nonetheless, Hermand found it problematic that a 500-page volume had reduced the discussion of post-1945 literatures to a mere 100 pages.

17 David Damrosch, “Toward a History of World Literature,” *New Literary History* 39, nos. 3–4 (2009): 485.

18 Jost Hermand, “Book Review: Deutsche Literaturgeschichte. Von den Anfängen bis zur Gegenwart,” *Monatshefte für deutschsprachige Literatur und Kultur* 73, no. 3 (1981): 338.

19 Hermand, *Deutsche Literaturgeschichte*, 338–39.

Hermand's description, as well as his critique, of the volume, could be useable for the 2019 edition, albeit for different reasons. The jacket carries the following formidable description:

Von den mittelalterlichen Sängern und Epikern über Martin Opitz, Gotthold Ephraim Lessing, Friedrich Schiller und Johann Wolfgang von Goethe, über Heinrich Heine, Georg Büchner und Bertolt Brecht bis Günter Grass, Martin Walser, Uwe Tellkamp, Herta Müller und Ursula Krechel. Alle namhaften Schriftsteller sind erfasst: Die Literaturgeschichte fängt Lyrik, Roman, Prosa und andere literarische Gattungen und Strömungen im Spiegel der Epochen ein, zeigt die Autoren, ihr Schaffen und den Literaturbetrieb in enger Verflechtung mit dem gesellschaftlichen, kulturellen und politischen Zeitgeist. Ein lebendiges Nachschlagewerk, das durch die gelungene Verknüpfung von Text und Illustrationen bei Neugierigen und Kennern gleichermaßen für großes Lesevergnügen sorgt.

From medieval singers and epic writers to Martin Opitz, Gotthold Ephraim Lessing, Friedrich Schiller and Johann Wolfgang von Goethe, to Heinrich Heine, Georg Büchner and Bertolt Brecht to Günter Grass, Martin Walser, Uwe Tellkamp, Herta Müller and Ursula Krechel. All well-known writers are recorded. This literary history captures poetry, novels, prose and other literary genres and currents in the mirror of the epochs, shows the authors, their work and the literary business in close interweaving with the social, cultural and political zeitgeist. A lively reference work, which thanks to the successful combination of text and illustrations, ensures great reading pleasure for the curious and the connoisseurs alike.

The volume promises a national-cultural pedagogy steeped in the traditions of the nineteenth century. Trends of each decade in this volume are defined by continuous waves of "original" national artistic tendencies that

provide a national literature its character – from *Aufklärung* and *Sturm und Drang* to *Expressionismus*, or even the *Bitterfelder Weg*, all the way up to *Wendeliteratur*. *Migrationsliteratur* finds an extremely brief mention and is not connected to *Exilliteratur*. This literary historical form of "trending now," to use a contemporary phrase, is highly place-based and obligated to the nation. *Exilliteratur* is extolled because it was written in exile, in a place where somebody settled, but still remained connected to the place that was left behind, to which one hoped or longed to return. "Literatur der Migration" (usually referring to literature that comes out of voluntary or forced migrations) is appreciated because it enriches ("bereichert") the language and literature of a place. There is little room for the figure of the refugee within these spaces. There is no attention paid to the possibility that instead of enriching an already existing national tradition, the figure of the refugee within a narrative, or the refugee author may actually be modifying the existing tradition, or contributing to the creation of a new tradition, one that in turn may be connected to many other literary traditions previously ignored or willfully neglected.

Following Gumbrecht's cue of thinking and experimenting, what if we disarrange the particular imagination of a "rooted" connectivity that I have mentioned in the previous modalities and give equal significance to "uprootedness" and "unsettlement" – by force, not just by volition – as essential to our conceptualization of networks of histories? What if we accord primacy to a series of "hyperlinked" bases that are formed and informed by the itinerancy of the human subject, instead of disentangling historical connections by tracing and restoring genealogies to singularly space-bound, sociocultural headquarters? To approach these questions, it might be productive to consider the development of the framework of global history within the discipline of history.

Global Histories, Refugees, and the Question of Archives

The notion of territoriality and global history is taken up most compellingly by historian Sebastian Conrad in his monograph *What is Global History?* (2016), in which he underlines the complexity of history in our time, when “the relevance of territorial boundaries has been called into question.”²⁰ As an alternative to the “compartmentalization of historical reality – into national and world history, into history and area studies,”²¹ Conrad presents global history as one of the ways to “come to terms with the connectivities of the past.”²² Instead of presenting global history as “what happens worldwide,” or casting it in terms of an “omnivorous perspective [through which] everything that ever happened on the earth is a legitimate ingredient of global history,”²³ Conrad proposes global history as a perspective and as a process.²⁴ Cross-border exchanges, connections, conditions, concepts, or phenomena that shape human societies in different parts of the world become central for thinking through the perspectival and processual approach and scope of global history. However, instead of just reducing the project of global history to a perspective or a process, Conrad privileges contextualization as a mode of global historical inquiry: “Any attempt to contextualize globally needs to consider the degree and quality of the entanglements in its purview.”²⁵ A preliminary test of the degree and quality of such entanglements can be found in Conrad’s underlining of the significance of links:

As the world has evolved more and more into a single political, economic, and cultural entity, casual links on the global level have become stronger. And as a result of the proliferation and perpetuation of such links, local events are increasingly shaped by a global context that can be understood structurally or even systematically.²⁶

The complexity of the model of global history model and its promise, scope, limitations, and impact within the field of history are too vast to summarize here. Nonetheless, the perspectival and processual opening that Conrad assures could serve well to develop a conceptual framework for a global literary history for our times.

A global history of literature need not rely on a worldwide coverage model, but it would be helpful to identify the degree and quality of entanglements in the purview of a literary historian in order to escape a compartmentalized, partially focused examination of ideas, concepts, and phenomena in the larger literary field. While the field of comparative world literature has succeeded in constructing frameworks within which the development of genres such as the novel, poetry, and drama is traced in specific locations around the world, the focus on the territorially bound local specificities has curtailed the globality of the project. A prime example of such an exercise would be Franco Moretti’s much discussed two-volume project *The Novel* (2007), which relies on the synthesis of scholarship on the novel from various local interlocutors from the Chinese (linguistic and national), Indian (national, subsuming all Indian languages into one), and African (continental, subsuming all literatures of Africa into one), contexts (as well as others), establishing the primacy of the distinctions between various European novels, such as French, German, and English. A global literary history would afford the possibility of moving beyond such territorially based, territorially bound models of arranging literature, which, on the one hand, operate according to cross-border, worldwide exchanges and influences and, on the other hand, erase the migratory, hybrid origins of aesthetic forms and flatten the nuances that occur when aesthetic forms acquire different shapes and forms, after

20 Sebastian Conrad, introduction to *What Is Global History?* (Princeton: Princeton University Press, 2016), 15.

21 Conrad, *Global History*, 5.

22 Conrad, *Global History*, 6.

23 Conrad, *Global History*, 7.

24 Conrad, *Global History*, 11.

25 Conrad, *Global History*, 13.

26 Conrad, *Global History*, 11.

the border-crossings have taken place. Moretti's model also reduces the agency of the scholar; by limiting the scholar to local expertise, this form of tracing the globality of a genre allows little space for the identification and articulation of connectivities of the past.

While I do not discount the significance of a narrative of global history with a genre at its center, I am more interested in seeing how the inherent mobility of a figure that by nature is not bound to a place or a space – a figure that exists through deterritorialization, whose very identity is defined by forced displacement and the lack of acceptance into the text of a nation, or national literature – could become productive for a model of global literary history that privileges contextualization and linkages in a much more flexible, borderless way. That is why the figure of the refugee, the unwanted, an always already erased outsider, whose primary teleological trace is often limited to the co-optation into the national text becomes so fascinating for thinking through global literary history. However, instead of reducing the refugee to an “ingredient” of a global literary history, I want to speculate the position of the refugee and refugee narratives through the notion of the archive. For a history requires its archives, and in the context of a global historical project, or the globalization of German literary archives, the question remains: whose history, whose archive? Which past is remembered, and which conveniently subjected to amnesia?

A focus on refugees and refugee narratives immediately draws attention to the dual meaning of a literary archive: first, as a house of “authentic” documents, a repository of records, a collection of artifacts pertaining to an author, place, movement, political organization, or collective such as the nation-state, in a physical or digital space; second, as a collection of forms of aesthetic expression – verbal, visual, and aural,

physical and digital – that may serve as a surrogate to narratives absent from regular archives.

In their comprehensive *Handbuch Archiv. Geschichte, Aufgaben, Perspektive* (2016), Marcel Lepper and Ulrich Raulff list several definitions of *archive*. An archive, they state, is “ein Gebäude, ein Aufbewahrungsort” (a building, a repository); “eine Institution oder Organisationsform” (an institution or a form of organization); “das Material, das im Archivgebäude gelagert, oder verarbeitet wird” (the material that is stored or processed in an archive building).²⁷ Lepper and Raulff's definitions correspond to those of the Society of American Archivists, but with one major difference. The SAA's disciplinary definition emphatically states that archival materials are those “maintained using the principles of provenance, original order, and collective control” and must have “enduring value.”²⁸

The design and purpose of an archive – as a safe or right place for documents – its contents, as well as the notion of its enduring value underwent contestation in the late twentieth century. In *Archive Fever* (1996), Jacques Derrida invokes the Greek word *arkheion*, which is a place, an address, a domicile that houses “authentic documents.”²⁹ Derrida uses this definition as a point of departure to challenge the notion of archive, as well as the authenticity of documents. Roughly two decades before Derrida's publication of *Archive Fever*, Hayden White, in his *Metahistory* (1973), called an archive a place that contains bits of “unprocessed historical record,” making the radical declaration that an archive cannot be considered the “arbiter of truth.”³⁰ Extending some of White's concerns, in *History and Criticism* (1985), Dominick LaCapra warned of the fetishization of the archive as “a literal substitute for the ‘reality’ of the past which is always already lost on the historian,” and “a stand in for the past.”³¹ While White's phrasing serves as an important reminder to

27 Marcel Lepper and Ulrich Raulff, eds., *Handbuch Archiv* (Stuttgart: J.B. Metzler, 2016), 1.

28 “What Are Archives?” Society of American Archivists, <https://www2.archivists.org/about-archives>.

29 Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: The University of Chicago Press, 2005), 2.

30 Hayden V. White, *Metahistory* (Baltimore: Johns Hopkins University Press, 1973), 5.

31 Dominick LaCapra, *History & Criticism* (Ithaca, NY: Cornell University Press, 1985), 92, n. 17.

question the very authority of the house of documents, as historical truths emerge from rigorous examination and careful interpretation and narrativization of documents present in the archive, LaCapra subjects the archive to an even more stringent scrutiny, admonishing against the givenness of the archive and the conflation of the archive with the past, rather than seeing it as a space meant for a critical analysis of documents that represent parts of that past.

But which truth? And whose past? The sufficiency of the archive was subject to sharp scrutiny by postcolonial theorists. Here, the main question was, how does one create postcolonial narratives from colonial archives? Valentin Y. Mudimbe's groundbreaking study *The Invention of Africa* (1988) begins by tracing the etymological roots of colonialism and colonization to the Latin word *colĕre*, meaning to cultivate and design, to argue that the cultivation and design came from the tendency to "organize and transform non-European areas into fundamentally European constructs."³² Focusing on three figures – the explorer, the soldier, and the missionary – Mudimbe disarranges the European epistemic archive, literal and figurative, in medicine, geography, and anthropology, which produce otherness relentlessly. In the *Critique of Postcolonial Reason* (1999), Gayatri Chakravarty Spivak insists on a continuous vigilance toward the historicity of the archive and its ordering of knowledge, in literature and in history. There are two moments in Spivak's discussion of archives that are worth noting here. First, in taking issue with LaCapra, Spivak proposes that "in establishing the relationship between the 'literary' and the 'colonial,' the reading of literature can supplement the writing of history with suspicious ease."³³ Second, she states, "To me, literature and the archives seem complicit in that they are both a crosshatching of condensations [...]. The authority of the author is

there matched by the control of the archon, the official custodian of truth."³⁴

If Mudimbe and Spivak focus on the archive as a collection of documents, broadly defined, Ann Laura Stoler shifts the focus from objects to a process. In the opening chapter of *Along the Archival Grain* (2007), which tellingly begins with a discussion of Pramoedya Ananta Toer's novel *House of Glass* (1988), Stoler makes a case for "archiving-as-process rather than archives-as-things."³⁵ To distinguish the two forms of engagement with archives, Stoler offers the term "archival form": "prose style, repetitive refrain, the arts of persuasion, affective strains that shape 'rational' response, categories of confidentiality and classification, and not least, genres of documentation."³⁶ She proposes that archives are "condensed sites of epistemological and political anxiety rather than skewed and biased sources," and that "colonial archives were both transparencies on which power-relations were inscribed and intricate technologies of rule themselves."³⁷

By outlining differences between processes of archiving and the archive itself, by questioning the very authority of the archon, and by revealing the power relations contained in and disseminated throughout the archives, Mudimbe, Spivak, and Stoler provide valuable insights into the governance of the archives, the legitimization of documents, and the truth narratives that are created through careful critical analysis. In the context of our discussion, these scholars point out the limitations of a representative, national-cultural consideration of literature and literary histories, and, consequently, the possibilities of using the very archives that are inscribed with power to unravel power relations, by shedding light on boundaries, hierarchies, and discriminations.

32 Valentin Yves Mudimbe, *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (Bloomington: Indiana University Press, 2010), 1.

33 Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Cambridge, MA: Harvard University Press, 1999), 205.

34 Spivak, *Postcolonial Reason*, 205.

35 Ann Laura Stoler, *Along the Archival Grain: Thinking through Colonial Ontologies* (Princeton: Princeton University Press, 2009), 20.

36 Stoler, *Archival Grain*, 20.

37 Stoler, *Archival Grain*, 20.

The postcolonial critique of archives, however, is not limited to colonial archives that are present. The authority of the colonial archon that determines the admittance or presence of documents within an archive is concomitant with the willfully created absence thereof, which makes the creative assemblage of new archives for writing hitherto unwritten histories and representing hitherto underrepresented historical connections essential. In his essay on recollection and narration of histories that are neither officially blessed nor ordained, Dipesh Chakrabarty draws our attention to instances of absence of archives. In “Minority Histories, Subaltern Pasts,” an essay in *Provincializing Europe* (2001), Chakrabarty confronts the “problems of telling the stories of groups hitherto overlooked – particularly under circumstances where usual archives do not exist,” to ask, quiet directly, “How do you construct the narrative of a group or class that has not left its own sources?”³⁸

Chakrabarty’s essay, as I have discussed elsewhere, presents a rich discussion of the responsibility and ambition of democratizing the

discipline of history.³⁹ In the context of refugees and forced migrants, his question can be reformulated as, “How do you construct the narrative of a group or a class that has left all of its sources behind?” And herein lies the tension between forced migration, its archive, and the narrative histories, literary and political, that we create from it. An archive, by definition, is a space or an act of collection – a *Sammlung*. Migration, by definition, involves dispersal: *Zerstreuung*. Narratives of refuge that we choose to read in relation to otherness should work out the tension between *sammeln* and *zerstreuen*: first, in their creation, as we account for legacies of war, partitions, and the creation of borderlines; second, in their reception, as we read narratives that recount lives of individuals and groups who are forced to leave their collections behind and are dispersed across the world; and third, through their bibliomigrancy, as literary works are catapulted into the world literary space, in their original languages or in translation.⁴⁰ But what would the narrative construction of such a random-access, hyperlinked, multilingual, bibliomigrant literary history look like?

Afghanistan and Germany: An Attempt at a Globally Connected Literary History

In 1857, the same year the first revolt against the British East India Company took place in India, German author Theodor Fontane published a poem with the title “Afghanistan. Ein Trauerspiel.” The poem depicts the catastrophic defeat of the British army at the end of the first Anglo-Afghan War (1839–1842). Led by the so-called Fighting Bob, Sir Robert Sale, whom Fontane mentions in celebratory tones, the poem recounts from the perspective of the aggressors, in a somber, almost sympathetic tone, their disastrous defeat at the hands of the resistance army of Pashtuns, led by Sirdar Akbar

Khan. The reason for the First Anglo-Afghan war was territorial control over Pashtun and Baloch territories, a way of controlling the local territory to impact the extra-local project of expanding imperial power. Fontane, who was working as a journalist in England at the time, took the title of the poem from a history book, Karl Friedrich Neumann’s *Das Trauerspiel in Afghanistan*, published in Leipzig in 1848. Neumann and Fontane’s term “Trauerspiel” anticipates by almost sixty years Rudyard Kipling’s novel *Kim* (1900–1901), in which Kipling uses the term “the Great Game” to describe the power struggle in

38 Dipesh Chakrabarty, “Minority Histories, Subaltern Pasts,” in *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000), 98.

39 B. Venkat Mani, *Cosmopolitical Claims: Turkish-German Literatures from Nâzımî to Pamuk* (Iowa City: University of Iowa Press, 2007), 89.

40 B. Venkat Mani, *Recoding World Literature: Libraries, Print Culture, and Germany’s Pact with Books* (New York: Fordham University Press, 2017), 33–37.

western South Asia, as the British Empire tried to curb the influence of two other empires: Russia, to the north, and Persia, to the west of what is Pakistan and Afghanistan today. The first war led to the second one. The second Anglo-Afghan War was fought between 1878 and 1880, at the end of which the Peace Treaty of Gandamak was signed, and eventually the Durand Line was drawn, in 1896, cutting through the hearts of the Pashtun communities in northern and north-western Pakistan, and Southern Afghanistan. The “Frontier Policy” of the Russians and the British was captured in one fleeting line by the Nobel laureate Rabindranath Tagore in his short story “Kabuliwala” (1894), which recounts events in the life of Rahmat Khan, an Afghan migrant trader of dry fruit and spices in Calcutta.

While the Great Game might have found its closure in 1896, it reappears in the form of the Cold War in the late twentieth century, when Afghanistan became a much less discussed but very crucial pawn. The US-Soviet struggle and the repercussions of the fights between the Russian soldiers and the Mujahideen, funded by the US, regularly appear as frame stories in the French-Afghan author Atiq Rahimi’s works. The novella *Earth and Ashes* (2000), originally composed and published in Dari as *Khâkestaro-Khâk* (1999), is set in the years following the Soviet invasion of Afghanistan, in 1978. The protagonist Dastaguir is an old man whose son works for a coal mine run by the Afghan state. The Soviet army bombards the village and everyone in the family dies, except for the old man and the five-year-old grandson Yassin, who goes deaf. Incapable of understanding why he cannot hear anyone anymore, Yassin asks, “Grandfather, have the Russians come and taken away everyone’s voice? What do they do with all the voices? Why did you let them take away your voice? If you hadn’t would they’ve killed you?”⁴¹

The history of Afghanistan, entangled and inseparable from the history of many Western nations – Great Britain, Soviet Union, as well as imperial, divided, and reunited

Germany – acquires an epic treatment in the German-Afghan author Masssum Faryar’s novel *Buskaschi, oder der Teppich meiner Mutter*. Published in 2015, the year that saw record numbers of refugees arriving in Germany from Syria, but also from Afghanistan – a fact that is hardly recognized in literary and refugee studies – the novel begins in 1919, with the end of World War One, when the Western-oriented Afghan King Amanullah resumes power. It ends in the late twentieth century, when the aftermath of the rivalries between superpowers empowers the Mujaheeddin, and, later, the Taliban. The narrator, who finds refuge in Germany in the 1980s, recounts the lives of his mother, Khurschid, and father, Scharif, the protagonists of the novel, over the course of the twentieth century and into the twenty-first. A pattern on the carpet of the narrator’s mother, which depicts the game of Buzkashi, an equestrian precursor to polo in which riders fight for the body of a headless sheep, emerges early in the novel as a motif that drives the narrative forward. Afghanistan, and the refugees created over the course of a century, become the metaphorical headless sheep, thrown around by superpowers from the outside, and by powerful factions from the inside. Faryar’s novel is the first in the German language that is bookended by the history of British colonialism in South Asia and the East German support for the Soviet invasion of Afghanistan, which culminated in the German Army’s presence alongside NATO forces after the US invasion of Afghanistan, in 2001.

Refugees from Afghanistan created by the Great Games appear in Navid Kermani’s journalistic photo essay *Einbruch der Wirklichkeit* (2016). They traverse the trail from Greece to Germany, and their stories document the en masse arrival of Syrian refugees in Germany in the summer of 2015. Kermani himself in this book is neither aware of nor interested in historical connections between Germany and Afghanistan. Suffice it to say – as he comments on a “seltsam weichgewordenes Deutschland,” (“a strangely softer Germany”) with its “Willkommenskultur” (“welcome

41 Atiq Rahimi, *Earth and Ashes*. Translated by Erdag M. Gökner. (New York: Other Press, Kindle Edition, 2010), 32.

culture”⁴² – he quickly realizes that the arrival of the “Schreckgespenst” (“bogeymen”), figure of the young Muslim, whom he knows, will push Europe into the onset of a new reality.⁴³

At a distance from Kermani’s specter of the figure of the young Muslim is a collective of refugee poets in contemporary Germany, writing under the auspices of The Poetry Project, who are drawing attention to the contemporary histories of the *Trauerspiel* of Afghanistan in the twenty-first century. The project was founded by the journalist Susana Koelbl, who served as the foreign correspondent for the German political magazine *Der Spiegel* in Afghanistan, in collaboration with Afghanistan-born German lawyer Aarash Spanta. It serves as a creative

writing platform as well as a forum for cultural and social integration into German society for minor refugees from Afghanistan, Syria, and Iran. Much like Tagore’s Rahmat Khan, Rahimi’s Yassin, and Faryar’s narrator, these poets shed light on the unfinished business of borders and borderlines.

This sketch of a global literary historical process through multiple points of historical and literary entry, and some hyperlinks, stresses the need for a new kind of *Vergangenheitsbewältigung* of Germany/Europe in tandem with the non-European world. In resonance with Conrad’s thoughts, this is a way to come to terms with the connectivities with the past formed through forced migration and displacement.

Finding Odysseus’s Scars, Again: Hyperlinking Literary Histories

The tension between settlement as a norm, on the one hand, and exile and forced migration as aberration, on the other, is expressed most beautifully in Erich Auerbach’s *Mimesis* (1946). While a detailed discussion of Auerbach’s work is not possible here, it is important to note that the opening chapter of the book is “Odysseus’s Scar” – Auerbach’s poignant reading of Odysseus’s return home and his recognition by his nurse Euryclea. The entire project is a literary history of Europe that is inaugurated in the shadow of imminent war and violence, as faced by Odysseus and his interpreter, Auerbach, who is writing in exile. In tracing this scar on the body of a war-torn Europe, Auerbach reveals toward the end of his book a temporally moving genealogy:

Basically, the way in which we view human life and society is the same whether we are concerned with things of the past or things of the present. A change in our manner of viewing history will of necessity soon be transferred to

our manner of viewing current conditions. When people [...] come to develop a sense of historical dynamics, of the incomparability of historical phenomenon and their constant inner mobility [...] when finally, they accept the conviction that meanings of events cannot be grasped in abstract and general forms of cognition [...] but also in the depths of the workday world and its men and women [...] then it is to be seen that those insights will be transferred to the present, and that, in consequence, the present too will be seen as incomparable and unique.⁴⁴

Representation and representability, as connected to time and space, put history and the present on equal footing. But tracing Odysseus’s scar from Homer to Thomas Mann or Virginia Woolf cannot not happen in a linear, orderly path. Rather, such a journey is best described as a constant, moving, back and forth, a series of proactive “hyperlinkings.”

42 *Einbruch der Wirklichkeit. Auf dem Flüchtlingstreck durch Europa* (Munich: C.H. Beck, 2015), 5. Navid Kermani, *Upheaval: The Refugee Track through Europe*. Translated by Tony Crawford. (Cambridge, UK and Malden, MA: Polity Press, 2017), 1.

43 Kermani, *Einbruch*, 11; *Upheaval*, 7.

44 Erich Auerbach, *Mimesis: The Representation of Reality in Western Literature* (Princeton: Princeton University Press, 2003), 443–44.

I am using this term intentionally, for its genealogy can be traced to the same year in which Auerbach finished *Mimesis*. “The term hyperlink, or simply a link, is a reference to data that the reader can follow by clicking or tapping. A hyperlink points to a whole document or to a specific element within a document. The text that is linked from is called anchor text.”⁴⁵ A hyperlink, in other words, opens up the possibility of thinking about history and literature through multiple entry points, created communally by readers and experts – but also by individuals – and it gives rise to a collective of authors and works, a trail of related

information. The hyperlink is multi-sourced rather than single-sourced, much like the coding of a nation or national history is built over time. To borrow from Auerbach, it is a trail of specific events, constituting an epoch, that brings history and the present on equal footing through the recognition of violence. After all, by the end of *Mimesis* it is clear that the project is as much about the dramatic transformation of European realism starting in early nineteenth century as it is about the destruction of humanity and human values and the creation of exilic subjectivities en masse when Auerbach wrote his text, in the first half of the 1940s.

Coda

In his essay “Reflections on Exile,” Edward Said draws attention to the “unhealable rift between a human being and a native place, between the self and its true home.”⁴⁶ In tracing this rift, Said does not want us to focus merely on exile literature:

You must think of refugee-peasants with no prospect of ever returning home, armed only with a ration-card and an agency number [...], the hopelessly large numbers, the compounded misery of the ‘undocumented,’ [...] without a tellable history.⁴⁷

This “tellable history,” I want to argue, cannot be constructed just by reading the refugee – that is, by their representation – but by reading with the refugee figure as the primary frame story. What this involves is a willful disarranging of refugee narratives and world historical events and a subsequent rearranging in an imperfect constellation aimed at rethinking the idea of a literary home, puncturing chronologies of national, political, and literary histories. Reading with refugees to surmise a postcolonial archive of globally connected histories reveals that nation-states and empires are ephemeral, and refugees

are perennial. Concepts of temporary or permanent stay, of integration or isolation, of hopes and angst, of old homes and new ones, of old friends and strangers, of old objects and newly founded objects, start acquiring relief as we see the whole world as a fractured entity, with fissures and wounds weeping from the follies of imperfect historical triages. Locating refugees at the center of world literature, history, and literary history calls upon us to see the world not as a place of permanent dwellers, homeowners, or renters but as a place where human beings are one political, military, or environmental disaster away from becoming refugees. In the third decade of the twenty-first century, when the cacophony of populist voices reverberates against borders and walls – already existing, or new ones – thus demarcating new insides and outsides, refugees, who are always already out of place, ask us to dismantle the longstanding validation and legitimization of national-cultural hierarchies of the nineteenth century. A focus on the figure of the refugee reveals the limitations of place-based literary and cultural studies, opening up possibilities for a new Humanities that considers willful and forced migration as

45 Wikipedia, s.v. “Hyperlink,” last modified July 11, 2021, <https://en.wikipedia.org/w/index.php?title=Hyperlink&oldid=948004191>.

46 Edward W. Said, “Reflections on Exile,” in *Reflections on Exile and Other Essays* (Cambridge, MA: Harvard University Press, 2000), 137.

47 Said, “Reflections,” 139.

critical frameworks for crossing boundaries and bringing down disciplinary insides and outsides.

Refugees are at the front and center of every society, revealing the internal fissures of the place of settlement and carrying wounds and scars from their places of departure. In being undocumented, in having left everything else but their stories, refugees become the *arkheion*

– the place that holds authentic documents. They are the documents themselves. Refugees remind us what our last home looks like: an alias, a place of eternal sorrow, or a home whose address we ask every stranger. Instead of asking what we can say about refugees from the safety of our homes, it is time to ask what refugees tell us about our literatures, our literary histories, our homes, our worlds.

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Notes on the Limits of Data Sharing and Informational Separation of Powers in Brazil – The Contribution of the Federal Supreme Court

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The increasing concentration of informational power, especially concerning the personal data and the limits of its sharing, represents one of the greatest challenges for the Democratic Rule of Law. For this reason, the necessity of the recognition of a constitutional principle and duty of informational separation of powers has been sustained. In this regard, the present paper aims to analyze how the informational separation of powers has been recognized and understood in the Brazilian legal order and applied – directly or indirectly – by the Supreme Federal Court (STF).

Keywords: Personal Data Sharing. Informational Separation of Powers. Brazilian Federal Supreme Court

1. Introductory Notes

In the context of the evolution of information and communication technologies, digital transformation, and related phenomena, the principle-right-guarantee of and to due informational process has taken on an increasingly central role within the Democratic Rule of Law, with an emphasis here, given the scope of this text, on the protection of personal data. In this context, the state must also operate as a guarantor of secrecy, trust, and transparency, which are of the utmost importance for an informational due process¹.

Furthermore, it should be emphasized that the informational due process is, beyond a mere legacy of liberal constitutionalism, a logical consequence and requirement of Democratic Rule of Law. This is due to the radical asymmetries, subtlety, and pervasiveness of new technologies and, consequently, the possibilities of abusive practices that affect or could potentially affect the decision-making process of people (and also of state actors in charge of protecting and promoting fundamental rights and guarantees). For this reason, the due process of information implies the existence of adequate instruments to set limits to the factors mentioned, such as the guarantee of full defence and adversarial proceedings, ensuring real conditions of effectiveness for the

free development of the personality, among other fundamental rights and guarantees².

In this sense, it is imperative, in a Democratic Rule of Law that deserves to bear this designation, to prohibit common databases, where the sharing of information is unlimited between and among all state entities. In other words, it is crucial to also ensure an informational separation/division of powers, which is even more imperative and urgent when it comes to setting limits on so-called vigilantism, which is increasingly present – and even omnipresent – in Brazil as well, all enhanced by the use of artificial intelligence resources.

By way of illustration, Byung-Chul's thought is that the information regime constitutes a form of domination in which data takes centre stage, decisively determining social, economic, and political processes through the management of algorithms and artificial intelligence. From this perspective, it is emphasized that there is a direct relationship between this regime and the surveillance capitalism system in terms of an exercise of power aimed at a disproportionate profiling based on an action that degrades the human person insofar as it uses data to abuse an

1 DI FABIO, Udo. *Grundrechtsgeltung in digitalen Systemen: Selbstbestimmung und Wettbewerb im Netz*. München: C.H. Beck, 2016, p. 44–45; See also BIONI, Bruno; MARTINS, Pedro. *Devido processo informacional: um salto teórico-dogmático necessário?*, Manuscrito. Available at: <https://brunobioni.com.br/wp-content/uploads/2020/08/Ensaio-Devido-Processo-Informacional1.pdf> Accessed on: 02.03.2022.

2 CRAWFORD, Kate; SCHULTZ, Jason. *Big data and due process: Toward a framework to redress predictive privacy harms*. *BCL Rev.*, v. 55, p. 93, 2014. Available at: <https://lawdigitalcommons.bc.edu/bclr/vol55/iss1/4>. Accessed on: 04 Mar. 2022.

increasingly precise prognosis of behavioural expectations, including psychopolitical ones³.

Strictly speaking, given the current technopolitical situation and the idea that there is no such thing as irrelevant data, personal data protection and, consequently, the effectiveness of informational self-determination, implies the containment/sealing of private and public informational units/blocks which, acting in a monolithic manner, through the consequent vitrification of the human being, manifest a potential for intense damage⁴ to human dignity and fundamental rights and guarantees. This also puts into question the realization of the demands of the Democratic Rule of Law and its structuring principles, which, in turn, implies a reinterpretation of constitutional principles⁵.

Certainly, due to this situation, there is a need to re-read the constitutionally guaranteed canons in the national legal order⁶, especially with concerning the position of the human person in the information society, the resulting vulnerabilities⁷, and the new forms of protection as an unavoidable starting point⁸.

It is also based on a flexible interpretation of the constitutional provisions, including an interpretation through the prism of so-called digital constitutionalism⁹, which implies reconfigurations of the state and of Brazilian federalism itself. Furthermore, given the role of state agents, especially since the enactment of EC 115, which included the right to personal data protection in the constitutional catalogue, the constitutionally binding duty to develop republican, ethical, reliable, and secure data management throughout its life cycle is even more important. Therefore, by forging guidelines for certain conditions for exercising digital citizenship, the aim is to seek a feasible discourse for strengthening democratic institutions and the rule of law¹⁰.

In this context, there is an urgency of an analyses of the issue in the light of the theory of fundamental rights and, more specifically, on the basis of the principle of human dignity, (also) in view of Brazil's efforts to rise to the status of a legitimate Digital and Democratic Constitutional State, including measures to build effective barriers against the formation of an informational unit (and centralization without limits and control), especially with regard to the unrestricted sharing of personal data, contrary to the requirements of the fundamental right to data protection and the content of the LGPD, as well

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- 3 HAN, Byung-Chul. Infocracia: digitalização e a crise da democracia. Tradução: Gabriel S. Philipson. Petrópolis, RJ: Vozes, 2022, p. 07. The author makes a kind of comparison between the disciplinary regime and the information regime to affirm that information capitalism, based on communication and connection, has made the disciplinary techniques of spatial isolation obsolete, as well as the rigidity of labour regulation and/or bodily training. He goes on to say that the nature of submission in this case is different, since it presupposes that the subject perceives themselves as free, authentic, creative and performative.
- 4 ZUBOFF, Shoshana. *A era do capitalismo de vigilância: a luta por um futuro humano na nova fronteira do poder*. Tradução: George Schlesinger. Rio de Janeiro: Intrínseca, 2020, p. 153–154.
- 5 <https://www.conjur.com.br/2022-mar-07/polido-ingresso-brasil-ocde-padroes-conformidade> Access on: 26.08.2022 According to the author, “OECD members, as in the Brazilian state’s intended accession to the organization, must ensure that adequate data privacy standards are technically proven, with laws and regulations that establish rules regarding guarantees of security and trust for internet users and digital consumers, especially young people, as well as combating disinformation and promoting democratic principles and human rights associated with digital operations.”
- 6 MENDES, Gilmar Ferreira; BRANCO, Paulo Gonet. *Curso de Direito Constitucional*. 15. ed. São Paulo: Saraiva Educação, 2020, p. 126–127.
- 7 MENDES, Laura Schertel; MATTIUZZO, Marcela. Discriminação algorítmica: conceito, fundamento legal e tipologia. *Direito Público*, Porto Alegre; Brasília, n. 90, nov./dez. 2019, p. 42–43.
- 8 RODOTÁ, Stefano. A vida na sociedade da vigilância. Rio de Janeiro: Renovar, 2008, p. 113; SOLOVE, Daniel J. La persona digital y el futuro de la intimidad. In: POULLET, Yves; ASINARI, Maria Verónica Pérez; PALAZZI, Pablo (Coord.). *Derecho a la intimidad y a la protección de datos personales*. Buenos Aires: Heliasta, 2009.
- 9 ROBL FILHO, Ilton Norberto. Alguns apontamentos sobre o constitucionalismo digital. *Revista Consultor Jurídico*, 22 de janeiro de 2022. Available at: <https://www.conjur.com.br/2022-jan-22/observatorio-constitucional-alguns-apontamentos-constitucionalismo-digital>. Accessed on: 26.02.2022. For the author, “Digital constitutionalism is not limited to descriptions of the impact of digital technology on social, legal and constitutional relations, nor is it restricted to prescriptions about the regulation of technologies. Digital constitutionalism produces a critical review of the structure of constitutionalism”. On the subject, see also the excellent text by MENDES, Gilmar Ferreira; OLIVEIRA FERNANDES, Victor. Constitucionalismo digital e jurisdição constitucional: uma agenda de pesquisa para o caso brasileiro. *Revista Brasileira de Direito*, Passo Fundo, v. 16, n. 1, p. 1–33, out. 2020. ISSN 2238-0604. Disponível em: <https://doi.org/10.18256/2238-0604.2020.v16i1.4103>. Access on: 28 fev. 2022.
- 10 OCDE. Good practice principles for Data Ethics in the Public Sector, 2020, p. 04. Disponível em: www.oecd.org/digital/digital-government/good-practice-principles-for-data-ethics-in-the-public-sector.htm Acesso em: 26 fev. 2022.

as in disregard of the recommendations of the ANPD, more specifically, its guidelines¹¹ for the processing of personal data by public authorities.

As already mentioned, the problem of the concentration of informational power and the lack of limits on the personal data sharing not only jeopardizes the effectiveness of the fundamental right to data protection, but also the democratic order itself and the Rule of Law.

In the Brazilian case, since the Supreme Federal Court (STF) recognised an implicitly positive fundamental right based on a set of principles and fundamental rights, through a merit decision on ADI 6387, in May 2020, by Justice Rosa Weber (a case that also involved a dispute over the legitimacy of data sharing), both the legal academic community and the STF have become increasingly concerned with the issue, already

ensuring some significant advancements, even though a proper resolution of the matter is still relatively distant – which is not surprising, given the short time that has elapsed since the aforementioned decision, the publication of the General Data Protection Law (LGPD) and the insertion of a fundamental right to the protection of personal data into the Federal Constitution text by the also aforementioned EC 115/22.

In view of these brief considerations, the aim of this text is to sketch a few lines on the necessary recognition of a principle and corresponding duty of informational separation of powers in the Brazilian legal-constitutional order, especially concerning the problem of sharing personal data between public authorities, with emphasis on the role played by the Supreme Court in this matter.

2. The Informational Separation of Powers and the Limits to Data Sharing

Bearing in mind the broad recognition of fundamental rights as one of the core aspects of a Constitutional State and, dating back to the liberal paradigm, the role of constitutions in establishing limits to the exercise of political power, the basic condition for this exercise is, as has already been consolidated in democratic constitutionalism, the division of powers and functions between state bodies, guaranteeing them a reasonable degree of autonomy, while at the same time limiting their respective powers through decentralization and the establishment of reciprocal controls¹².

As precisely described by Konrad Hesse, the division of powers creates state functions and bodies that, in turn, must carry out these functions within the limits of their respective constitutionally established competences and through

binding and sufficiently clear rules of procedure. In essence, it involves a distribution and/or division between the typical functions of state power, given that state power itself is one and indivisible, just as sovereignty is one and indivisible¹³.

On the other hand, just as happened with the Rule of Law and its other manifestations (principles and/or elements), the principle of the division of powers, despite important aspects in common, has not been the object of identical reception and concretization in each legal-constitutional order and must, therefore, be presented and analysed in the proper context of each Democratic State of Law, which, from the origin of the Constitutional State, can be observed by the distinctions between the French tradition (more loyal to a model of strong and

11 ANPD. Tratamento de dados pessoais pelo poder público. Guia orientativo. Versão 1.0. janeiro 2022. Available at: <https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/guia-poder-publico-anpd-versao-final.pdf>. Accessed on: 28.02.2022

12 SILVA, Virgílio Afonso da. *Direito Constitucional Brasileiro*. São Paulo: Editora da Universidade de São Paulo, 2021, p. 33.

13 HESSE, Konrad. *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*. 20 ed. Heidelberg: C.F. Müller, 1995, p. 28.

strict separation) and the North American tradition, which preferred to build and refine a system known as “checks and balances”.

Nevertheless, apart from isolated divergent experiences (such as the imperial Brazil, with the provision of a fourth power, the so-called Moderator Power), the classic system pioneered by Montesquieu of a horizontal division of powers (decentralization and reciprocal functional limitation among state bodies) between the legislative, executive, and judicial powers (functions) remains in force today. This horizontality stems from the fact that there is no hierarchy between the respective bodies and functions of state power, all of which operate within the sphere of their constitutionally established competences.

In the Brazilian case, especially since the first Constitution of the Republic (1891), but structured in a particularly way in the current Federal Constitution, the division system (denominated separation, by the constituent!) of powers, strongly inspired by the North American tradition and equally close to the model adopted by Germany’s Basic Law (1949), is identified by the fact that the three state powers (bodies and functions) operate jointly to achieve constitutional objectives, action that takes place in a deconcentrated, rational and legally limited way through their own spheres of competence and reciprocal control mechanisms.

In effect, the principle of the separation of powers aims to control power by power, in other words, through a scheme of reciprocal supervision, realized through a set of different techniques and instruments, such as the right of veto by the head of the Executive branch, the Executive’s possibility of the issuing normative acts, the Legislative’s approval of the budget of the other state bodies, judicial control of the acts of the other branches, among others. However, given the importance of the separation of powers, the corresponding principle will be further

developed in the light of the current digitalization of the State and its government structures¹⁴.

In this regard, the informational separation of powers discussed here represents both a logical and necessary redefinition of the semantic content of the principle of the division of powers (Article 2 of the Federal Constitution) in the light of digital constitutionalism, especially in view of the problem of the growing levels of informational power of the Brazilian state, as well as the absence of rules and criteria to limit this concentration and the sharing of data that feeds it. Such a state of affairs implies, in turn, the establishment of a clear separation between the various areas of state activity, on pain of violating a fundamental precept and, consequently, essential requirements of the Democratic Rule of Law.

As a fundamental structuring principle, implicitly enshrined in the Federal Constitution, the separation/division of powers binds all the actions of the Brazilian state, as a direct effectiveness rule. Among other requirements, it must be implemented by the legislator and requires the motivation of decisions involving all forms of data processing, especially personal data, in order to effectively configure a multi-level protection¹⁵ of the human person in the information society, which is in line with recent decisions on constitutionality control by the Supreme Court (STF), precisely when it comes to the limits of sharing personal data between public authorities.

In a first important judgement, ADI 6529, which took place on 08.10.2021, the rapporteur, Justice Cármen Lúcia, stated that “the Constitution of the Republic repudiates uncontrolled power, demands the motivation of administrative acts, and demands that all of them be guided by the principles of legality, impersonality, morality, publicity and efficiency. Intelligence activities, even if covered by secrecy, are subject to external scrutiny by the other branches of

14 For the Brazilian case, see Law 14.129/2021, which establishes the Digital Government.

15 TRIBUNAL decide que Sistema de Indicação de Risco viola direitos humanos. InternetLab, 2020. Available at: <https://internetlab.org.br/pt/itens-semanario/holanda-tribunal-decide-que-sistema-de-indicacao-de-risco-viola-direitos-humanos/>. Accessed on: 11 Mar. 2022. The District Court of The Hague concluded that the use of SyRI did not strike a balance between the right to privacy and the public interest in detecting fraud, going against the provisions of Article 8 of the European Convention on Human Rights (ECHR), which provides for the right to privacy.

government (Legislative and Judicial), and any interpretation that allows arbitrariness must be ruled out.”

In the same judgement, taking as a reference the case of data sharing by SISBIN (Brazilian Intelligence System) with ABIN (Brazilian Intelligence Agency), the STF unanimously decided that:

- (i.) The component bodies of the Brazilian Intelligence System can only provide ABIN with specific data and knowledge when the public interest of the measure is proven, ruling out any possibility that the provision of such data may serve personal or private interests.
- (ii.) Any decision to share this data must be duly and formally motivated for potential legality control by the Judiciary.
- (iii.) Even when the public interest is present, data related to telephone communications or data subject to reservation of jurisdiction cannot be shared in the form of the provision, due to the limitation arising from respect for fundamental rights.
- (iv.) In applicable cases of information and data sharing to Abin, it is essential to have a formally established procedure and the existence of electronic security systems and access records, including for accountability purposes in the event of any omission, deviation, or abuse.

Equally noteworthy is the monocratic decision handed down by Justice Gilmar Mendes on a precautionary basis in ADPF 695-DF, which deals with the sharing of personal data by the Federal Data Processing Service (SERPRO) with the Brazilian Intelligence Agency (ABIN), with supposed normative backing in Decree no. 10.046 – which revoked Decree 8.789/19 – and regulated data sharing within the Federal Public Administration, as well as establishing the Citizen Base Register (CBC) and creating the Central Data

Governance Committee (CCGD). In his decision, Justice Gilmar Mendes stated that: “the legal regime for sharing data between bodies and institutions of the Public Power is a matter of extreme relevance for the constitutional protection of the constitutional right to privacy (article 5, caput and items X, of the Federal Constitution), constituting an elementary guarantee of any contemporary democratic society”¹⁶.

Recently (September 15, 2022), in a definitive decision, the rapporteur of the cases – supported by the majority of the Justices – decided to recognise the ADI and ADPF in order to partially uphold the requests, opting to interpret the content of Decree 10.046/2019 in accordance with the Constitution.

According to Justice Gilmar Mendes, data sharing is becoming increasingly central to the actions of the state, especially regarding public policies, so that it presupposes compliance with the LGPD, especially from the point of view of indicating legitimate, specific, and explicit purposes for all stages of processing. Thus, the primary and secondary purposes, if necessary, must be duly reconciled, since the sharing itself must be restricted to a minimum and guided by compliance with legal requirements, guarantees and procedures.

It is also clear from the vote that the sharing of personal data between public bodies presupposes compliance with Article 23, I, of the LGPD, especially regarding publicising the cases in which each government entity shares or has access. In short, the ministerial judgement was that access by government bodies and entities to the Citizen’s Database is subject to the above.

Another point worth highlighting concerns the competences of the Central Data Governance Committee, insofar as, according to the rapporteur, they should be restricted/assigned to those expressed in article 21, VI, VII and VIII of Decree 10.046/2019, provided that it acts in the establishment and prevention of strict mechanisms in the control of access to the Citizen

Base Register. In other words, public bodies and organizations are obliged to demonstrate the real need for access and sharing. To this end, as can be seen from the vote, permission should only be granted to achieve legitimate, specific and explicit purposes, being limited to information that is indispensable to the fulfilment of the public interest, under the terms of article 7, III, as well as article 23, caput, I of Law 13.709/2018.

In addition, for the purposes of data sharing, the obligation of prior and detailed justification was established, based on proportionality, reasonableness, and the principles of the LGPD, both for the need to include new personal data in the integrating base and with regard to the choice of thematic bases for the Citizen Base Register¹⁷.

The reporting Justice recommends that security measures be put in place in the form of an electronic access registration system to ensure accountability in abusive cases. He also advises that the sharing of intelligence activities should follow the criteria established in specific legislation, as well as those set out in the STF's decision in the case involving ABIN, which has already been analysed. It is important to emphasise the state's civil liability for damages suffered by private individuals, in line with the wording of article 42 et seq. of the LGPD, with the right of recourse against public servants and agents responsible for the unlawful act, in the event of guilt or intent.

The decision, in summary, by a majority held that the sharing of personal data between public administration bodies and entities presupposes: 1) the selection of legitimate, specific and explicit purposes for processing; 2) compatibility of processing with the stated purposes; 3) limitation of data sharing to the minimum necessary to fulfil the stated purpose, as well as full compliance with the requirements, guarantees and procedures established in the LGPD, particularly with regard to the public sector. It is clear that this type of personal data sharing must be publicized and linked to the provision of clear and up-to-date information on the legal provision, purpose, procedures and practices used

to carry out these activities, preferably in a way that is widely monitored by the public.

The decision also emphasises that access to the Citizen's Database by government bodies and entities is conditional, in addition to what has already been decided, on the actions of the Central Data Governance Committee. This, in turn, must: 1- establish strict access control mechanisms to the extent that there is proof of the real need for access; 2- comply with the parameters of reasonableness, proportionality, as well as the principles already enshrined in the LGPD for allowing access which, of course, must be in accordance with the public interest; 3- indicate the thematic bases that should make up the Citizen Database; 4- institute security measures compatible with the protective system in force in the country, particularly by creating an electronic access registration system with the aim of gauging responsibility in cases of abuse.

It is worth noting that, following the position previously explained by Justice Gilmar Mendes, the STF decided that, in the case of intelligence activities, the standard/model arising from specific legislation and the parameters set out in the ADI 6529 judgement must be followed. In accordance with the rapporteur's vote, it was clear that the processing of personal data by public bodies in breach of the legal and constitutional guidelines of the Brazilian legal system will result in civil liability on the part of the state for the damage suffered by private individuals.

It is important to reaffirm that it has been decided that intentional transgression of the duty of publicity established in article 23, I, of the LGPD, outside the constitutional hypotheses of secrecy, will lead to the liability of the state agent for acts of administrative improbity. Finally, with prospective effects, the STF declared Article 22 of Decree 10.046/19 unconstitutional, while preserving the current structure of the Central Data Governance Committee for a period of sixty days from the date of judgement's minutes publication. Additionally, during this time, the Executive branch should work to ensure the committee's independence,

17 STF, ADI 6649/DF e ADPF 695. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6079238>. Accessed on: 09.10.2022

autonomy, and diversity, which are essential bases for its constitutionality.

In view of the above (albeit briefly), both the efficacy and effectiveness of the fundamental rights enshrined in the Federal Constitution, particularly the right to personal data protection and informational self-determination, are directly linked to the consolidation of the principle of the separation of powers (including informational separation) which, as has already become clear, has undergone considerable changes in recent times, especially in relation to the digital configuration that the Brazilian state has taken on in order to keep up with the intensity of social, technological and technopolitical transformations¹⁸, in a complex context marked, on the one hand, by hyperconnectivity, while, at the same time, the digital divide¹⁹ still prevails in Brazil and in much of the world.

On this point, it is worth remembering that article 5, X of the LGPD clarifies the concept of processing personal data, including, among other things, the modalities of collecting, receiving, classifying, using, accessing, storing, deleting, modifying, communicating, and transferring data. The LGPD, which here gives concrete

expression to the requirements of the Democratic Rule of Law, binds state agents (as well as private actors) as recipients of its normative provisions, including imposing the establishment of ethical data governance programmes and the provision of accountability measures, as well as the production of appropriate regulations for the area of security in general and, in particular, what has been called cyber security²⁰.

Among the most challenging areas that have arisen and demanded effective responses to address numerous problems²¹, mention should be made of those arising from the use of artificial intelligence and the formation and use of Big Data²². These areas put human and fundamental rights at risk, insofar as they can produce and accentuate discrimination through generalizations or stereotyping and abusive profiling, predictive analysis and vigilantism, thus accentuating information asymmetries and, as a result, violating the sphere of privacy and human dignity²³. Arendt's lesson comes in handy in this context, given its topicality, when she states that "the public sphere, as a common world, brings us together in the company of one another and yet prevents us from colliding with one another, so to speak"²⁴.

3. Final Thoughts

It has long been known that the collection and processing of data by the state is, in any case, inevitable and even necessary in current development scenario contexts, including and

especially so that the state can fulfil its tasks, which are increasingly diverse, complex, and difficult to define and execute.

18 HUI, Yuk. *Tecnodiversidade*. Tradução: Humberto do Amaral. São Paulo: Ubu, 2020, p. 39–46.

19 "In 2020, the proportion of households with internet access reached 83 per cent, which represents approximately 61.8 million households with some type of connection to the network." Available at: https://cetic.br/media/docs/publicacoes/2/20211124201505/resumo_executivo_tic_domicilios_2020.pdf. Accessed on: 02 March 2022. "There was an increase in the proportion of users who searched for information offered by government websites (from 28 per cent to 42 per cent) and who performed some public service via the Internet (from 28 per cent to 37 per cent) (Graph 3). However, these activities were more frequent, especially among those who already carried out a wider variety of activities on the Internet. Performing public services online, for example, was mentioned more by users from urban areas (39 per cent), class A (63 per cent) and individuals with higher education (68 per cent)."; Cf. NEMER, David. *Tecnologia do oprímido: desigualdade e o mundano digital nas favelas do Brasil*. Vitória: Milfontes, 2021, p. 73–79.

20 See, for example, the problem that is occurring in the state of Ceará, in order to understand what disproportionate vigilantism consists of (Available at: <https://direitosnarede.org.br/2020/09/04/nota-sobre-projeto-de-videomonitoramento-no-ceara-e-em-defesa-de-maior-debate-publico/>. Accessed on: 12.03. 2022).

21 WEIDENFELD, Nathalie; NIDA-RÜMELIN, Julian. *Digitaler Humanismus: Eine Ethik für das Zeitalter der künstlichen Intelligenz*. München: Piper, 2018.

22 HOFFMANN-RIEM, Wolfgang. Big Data e Inteligência Artificial: desafios para o Direito. *REI-Revista Estudos Institucionais*, v. 6, n. 2, p. 431–506, 2020.

23 BÄCHLE, Thomas Christian. *Digitales Wissen, Daten und Überwachung: zur Einführung*. Hamburg: Junius, 2016, p. 158.

24 ARENDT, Hannah. *A condição humana*. Roberto Raposo (trad). Rio de Janeiro: Forense, 2001, p. 62.

On the other hand, as already mentioned, it is essential to establish and affirm ethical, technical, and legal guidelines regarding the collection, processing, storage, use and sharing of personal data, otherwise there would be a serious risk of establishing arbitrariness and eroding the structuring principles of the democratic Rule of Law.

From this perspective, it is more than appropriate to quote Greco, who states:

“If knowledge is power, the state cannot know everything, because a state that has unlimited knowledge also has unlimited power. The right to data protection, which began as a subjective right, is now, at least in large part, an institutional guarantee, relating to the very structure of society and the state. At this macro level, **the right becomes a requirement for the informational separation of powers**”²⁵ (our emphasis).

Data protection thus implies the definitive incorporation of a culture based on fundamental principles and rights (not only, but especially the right to the protection of personal data, the human dignity and the informational separation of powers) and in synergy with the LGPD, which must be taken on as a task by the Brazilian State, which must establish, through the use of action parameters forged on the basis of the principle of the separation of powers, an organizational regime based on the division of competences, making every effort to avoid the abusive, disproportionate, unrestricted and, therefore, unconstitutional sharing of personal data. It is worth remembering that the effectiveness of the fundamental right to the protection of personal data is incompatible with measures that aim to enable the indiscriminate processing of personal data by state bodies.

It is also for these reasons that control based on the purpose parameter is so important and is one of the cornerstones of data protection. In

this sense, it should be remembered that controlling the actions of the state through the use of the purpose criterion introduces the logic that its actions should not be absolute, but subject to a constitutionally guaranteed division of competences (in terms of an informational division/separation of powers), especially concerning data sharing and its limits.

This, in turn, implies State’s strengthening of trust levels in its protective actions²⁶, which includes the adoption of measures that establish and guarantee adequate (constitutionally compliant) data governance, in order, among other things, to ensure transparency, accountability and the expansion of popular participation and the exercise of citizenship.

It should be noted that the implementation of a Digital Democratic Rule of Law must be geared towards the citizen, through the implementation of an innovative and sufficiently secure, transparent and reliable ecosystem that minimizes the damage and risks caused and generated by Information and Communication Technologies and Artificial Intelligence (just to mention the most important in this context) through the use of technical and legal guarantees oriented towards protecting and promoting the human dignity, informational self-determination, the protection of their personal data, and other fundamental rights and guarantees, prohibiting any kind of abusive practice, including the field of cyber security, which presupposes the full guarantee of informational due process and an informational separation of powers.

Taking into account recent developments in Brazil, especially on the basis of the STF judgments mentioned and discussed above, there are reasons for optimism, as the Brazilian Supreme Court has played a leading role in the process, not only for recognising a fundamental right to the protection of personal data even before it was included in the text of the Constitution, but

25 WOLTER, Jürgen. O inviolável e o intocável no direito processual penal: reflexões sobre dignidade humana, proibições de prova, proteção de dados (e separação informacional de poderes) diante da persecução penal. Luís Greco (tradução, organização e introdução). Eduardo Viana e Alair Leite (tradução). São Paulo: Marcial Pons, 2018, p. 45.

26 As an illustration, see the provisions of article 2, I of Law 13,874/2019, which lays down, among its principles, the good faith of private individuals vis-à-vis public authorities.

also for establishing limits to the concentration of information power, all of which also contributes to strengthening - or at least (which is no

small feat, considering current times) preserving – the Democratic State of Law established and shaped by the 1988 Constituent Assembly.

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