

Chapter 2

Introduction Part I

Abstract Part I, comprising two chapters, is concerned with historical analyses of the concepts of colonialism and neo-colonialism (Chap. 3), including an assessment of the role of law during European colonialism on the African continent (Chap. 4).

Keywords European legal colonialism · Neo-colonialism · Colonialism · Structural Power · Expansion · Latin American Dependency Theory

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Having outlined in the introductory chapter how the term neo-colonialism is used in present-day political discourse, we now turn to the historical analyses of the traditional concepts of colonialism and neo-colonialism. More specifically, this section aims at identifying characteristic elements of these historical concepts to reflect on how these notions can later be used in a contemporary ICL context.

What both colonialism and neo-colonialism have in common is that they are used to describe formal or informal influence exercised by a number of powerful states in some other parts of the world.¹ The literature on these concepts of domination is extensive and authors, depending on the specific historical context, often rely on different labels to describe the dichotomy between the different actors involved in these processes of expansion and subordination. In the context of colonialism, the colonial powers themselves often relied on the difference between civilised and barbaric societies or between industrialised and backward states.² A more modern description, which was used to describe Latin American dependency-relationships, relied on the difference between developed and

¹ See *infra* Chap. 3, Sects. 3.1 and 3.2.

² See *infra* Chap. 3, Sect. 3.1 and *infra* Chap. 4.

underdeveloped countries.³ More recently, the division of powerful and weak states is described as a division between the First and the Third World or the Global North and the Global South, although this description should not be understood in strictly geographical terms.⁴ In addition, in the context of contemporary expansionist policies, mostly in relation to U.S. foreign policy, the difference between democratic and rogue states is used as a rhetorical instrument to justify interference in other states' policies.⁵ Although neither appropriate in strictly geographical terms, the most notorious description of the dissimilarity of the actors involved in processes of expansion and subordination is the famous division between 'the West and the rest'.⁶ While there is some debate on whether one expression is more appropriate than the other, the present author is not interested in the terminological subtleties of these labels. Rather, it is the book's ambition to provide the reader, on the basis of the historical concepts of colonialism and neo-colonialism, with an understanding of how these notions can be conveyed in abstract terms detached from preconceived stereotypes.

In line with the focus of this work on African states, Chap. 3 starts with an introduction of European colonialism on the African continent.⁷ Subsequently, focus is put on the doctrine of neo-colonialism and the Latin American *Teoría de la Dependencia*.⁸ The chapter concludes with an assessment of how the notion of structural power relates to these concepts of domination.⁹ On the basis of these analyses, it will be shown that the terminological boundaries of the notion of neo-colonialism allow a re-interpretation of the concept as a matter of international law. The convertibility of the concept of neo-colonialism to an ICL context is particularly owed to the fact that this doctrine is not strictly limited to a specific historical context. Robert Young, a theorist on post-colonial history, describes the transformative character of neo-colonialism in the following terms: 'We are talking, with neo-colonialism, about the legacies of history, not as a textual archive, but as the continued productivity of history in the present'.¹⁰

In view of the fact that the notion of neo-colonialism, historically speaking, 'is endowed with sociological and political rather than legal implications'¹¹ Chap. 4 focuses on the role of law in the establishment and preservation of colonial domination. The adopted approach enables the author to examine how law served the

³ See *infra* Chap. 3, Sect. 3.2.2.

⁴ See Koskenniemi 2005, p. 606.

⁵ On the label rogue states as used by the U.S., O'Reilly 2007, pp. 295–315.

⁶ This phrasing is used by Niall Ferguson in his recent book which is concerned with the question how a few Western states were able to dominate other parts of the world in the past (Ferguson 2011).

⁷ See *infra* Chap. 3, Sect. 3.1.

⁸ See *infra* Chap. 3, Sect. 3.2.

⁹ See *infra* Chap. 3, Sect. 3.4.

¹⁰ Young 1991, p. 2.

¹¹ Kämmerer 2012, p. 333, para 3.

consolidation of colonial rule, which eventually leads to the establishment of common characteristics of legal colonialism by European states.¹² This analysis in particular reveals that law provided the structural framework for the exercise of European colonialism and the enforcement of European colonial objectives. As Martin Chanock has observed: ‘The law was the cutting edge of colonialism, an instrument of the power of an alien state and part of the process of coercion’.¹³ Mindful of the importance of law in the creation and maintenance of institutional systems of rule, the historical analysis of the role of law during European colonial rule at the same time provides the reader with an understanding of how law was used to establish and preserve traditional inequalities. Besides a general analysis of the role of law during colonialism, Chap. 4 comprises assessments of the British indirect rule and the French system of assimilation, both of which were the dominant colonial strategies on the African continent during the nineteenth and twentieth centuries.

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¹² See *infra* Chap. 4, Sect. 4.3.

¹³ Chanock 1985, p. 4. In a similar vein, W. J. Mommsen notes: ‘There can be no doubt that the imposition of European law and European legal procedures upon various peoples in the non-Western world was in the first place a means of establishing and extending imperial control, formal or informal’ (Mommsen 1992, p. 2).



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