

Unearthing colonial legacies and their contemporary implications: Introduction to a North-South conversation on law

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1 Colonialism, law and scholarship

From the mid-1880s onwards, Germany maintained overseas territories (*Schutzgebiete*) in Africa, the Pacific region and East Asia, all of which were subjected to colonial rule. The German colonial empire, the third-largest of its time in terms of territorial expansion,¹ endured for around 35 years. It formally came to an end following the Treaty of Versailles of 1919, when Germany renounced all claims to its overseas territories.² While, compared to other European powers, Germany entered the colonial project comparatively late and was among the first to relinquish its overseas possessions,³ in ideological terms the German venture largely mirrored those of other European colonial powers: Rhetorically justified through notions of a ‘civilising mission’ and promises of modernisation,

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- 1 The German colonial empire included territories located in present-day Burundi, Cameroon, Namibia, Nauru, Palau, Papua New Guinea, Rwanda, Samoa, Tanzania and Togo, as well as in parts of what now are the Central African Republic, Chad, China, the Democratic Republic of the Congo (DRC), Ghana, Mozambique and Nigeria.
 - 2 See art 119 of the Peace Treaty of Versailles of 28 June 1919. Germany’s former overseas territories were placed under the administration of, in particular, the United Kingdom, France, Belgium, Portugal, Australia, Japan, New Zealand and South Africa, under the League of Nations mandate system.
 - 3 At times, this has led to the false impression that German colonialism was somehow less violent or oppressive than that of other European powers.

it was fundamentally structured along racial hierarchies and driven by economic exploitation and the violent subjugation of indigenous peoples.⁴

Legally, the colonies were not regarded as integral parts of the domestic territory of the German empire (*Reich*), but rather as *sui generis* territories with a distinct legal status.⁵ As a consequence, the *Reich's* Constitution and its statutory laws did not apply *eo ipso* within the colonial territories.⁶ Instead, selected provisions of *Reich* law were extended to the White settler population through specific colonial legislation, whereas the colonised populations were subjected to a separate and largely discretionary legal regime that relied predominantly on executive decrees.⁷ This resulted in a fragmented legal landscape among the various territories under German rule, as no uniform and consistent body of law applied across all German colonies.

For a long time, this colonial period and its legacies remained strikingly absent from public debate and academic inquiry in Germany.⁸ Only in recent years a sustained discussion has begun to emerge across politics, society and academia. This renewed engagement has, in particular, been driven by questions of restitution and reparations, the return of human remains, the removal of colonial monuments, the renaming of public spaces, and broader efforts to decolonise university curricula. Indeed, these debates have brought to light the enduring material and symbolic traces of colonialism and have prompted important reflections on historical responsibility and accountability.

Yet, despite this growing attention, *legal* scholarship has remained comparatively peripheral to these developments. Research on the role of law in colonisation and the impact *on* law of colonisation has so far largely been neglected. Still, the systematic legal analysis of German colonialism

4 See S Conrad *Deutsche Kolonialgeschichte* (2019) 18, 54ff, 69ff.

5 See F Hanschmann 'Die Suspendierung des Konstitutionalismus im Herz der Finsternis' (2012) *Kritische Justiz* 144-162, 148; N Wagner *Die deutschen Schutzgebiete* (2002) 177ff.

6 See M Iffert 'Das deutsche Kolonialstrafrecht' (2025) *Kritische Justiz* 175.

7 For details regarding the applicable criminal law regime, see F Jeßberger 'Colonialism and the criminal law' (2025) 137 *Zeitschrift für die gesamte Strafrechtswissenschaft* 641 with further references.

8 In fact, for decades, Germany's colonial past was overshadowed by subsequent historical events that all had their own legal implications: World Wars I and II, the Nazi reign of terror and the Holocaust, and the systemic oppression in the GDR.

– its normative structures, its administrative and judicial practices, and its influence on the development of law – remains limited.⁹

2 Ambition and scope

Against this backdrop, the present volume seeks to contribute to closing this gap by placing law at the centre of the analysis of German colonialism. It proceeds from the assumption that, first, colonialism was not merely a historical or political phenomenon with legal implications, but a deeply juridified project in which law played a constitutive role in shaping colonial governance, ordering relations of domination and legitimising inequality, and that, second, this constitutive relationship of law and colonialism did not end with formal decolonisation, but its legacies continue to inform contemporary legal frameworks. In other words, colonialism may have ended, but coloniality in legal systems continues.¹⁰

The present volume does not claim to offer an exhaustive account of the legal dimensions and implications of German colonialism. Being intended as an impulse for further scholarly engagement rather than a definitive statement, it offers a snapshot of ongoing debates and research trends and aims to foster a more sustained engagement with the intersections of colonialism and law by bringing together contributions from different disciplinary and geographical perspectives, including, in particular, voices from the so-called Global South(s).¹¹ Particular attention is given to African contexts.

Two comments on the topics and themes addressed in this volume are in order: First, it is perhaps revealing that, despite considerable efforts, it was not possible to secure contributions from scholars based in China and the Pacific region. This may reflect the fact that the topic of German colonialism remains, at least within legal scholarship, even less present

9 However, see, eg, P Dann, I Feichtner & J von Bernstorff (eds) (*Post*) *Koloniale Rechtswissenschaft* (2022); Decolonize Berlin/ECCHR *Dekoloniale Rechtswissenschaft und -praxis* (2024); and, most recently, S Spitra *Kolonialismus und Recht* (2026). See also J Zollmann 'German colonial law and comparative law: 1884-1919' in T Duve (ed) *Entanglements in legal history, Vol 1: Conceptual approaches* (2014) 253.

10 See K Mehta 'Permanent suspicion: Reframing colonial law through postcolonial thought' (2025) 137 *Zeitschrift für die gesamte Strafrechtswissenschaft* 741.

11 It must be acknowledged that Global South is understood here as a political term and not a geographical one.

in these contexts than it is in many African settings. And second, all contributions have been independently proposed and developed by the respective authors. This, in itself, is an important indicator of the research questions and thematic fields currently considered as most pressing by scholars working in and on these contexts in the former colonies and in Germany.

Substantively, the contributions display a notable emphasis on criminal law. This focus, on the one hand, is rooted in existing scholarly traditions, and, admittedly, also reflects the editor's main area of research. On the other hand, the volume also highlights the still limited breadth of legal engagement with colonial legal orders in criminal law more generally.¹² Indeed, criminal law occupies a peculiar position in this regard. It was among the sharpest instruments of colonial domination – deployed to regulate colonial subjects into submission, criminalise resistance, enforce racial hierarchies and legitimate violence. At the same time, criminal law scholarship has been comparatively slow to subject itself to post-colonial scrutiny, lagging behind, for instance, international law, criminology and the social sciences in this respect. The engagement of the present volume with post-colonial thought, therefore, is also an attempt to intervene in these tensions.

3 Parts and chapters

The volume is organised into six parts. Parts I and VI cover overarching and cross-cutting issues. Parts II to V are organised along country-specific lines.

Part I outlines key aspects of the legal framework, mainly from a historical perspective. Iffert presents the structures of the German colonial

12 Notable exceptions include the 'classic article' by W Naucke 'Deutsches Kolonialstrafrecht 1886-1918' (1988) *Rechtshistorisches Journal* 297, and F Jeßberger 'Colonialism and the criminal law' (2025) 137 *Zeitschrift für die gesamte Strafrechtswissenschaft* 641; M Heger 'Koloniales Strafrecht' in P Dann, I Feichtner & J von Bernstorff J (eds) *(Post)Koloniale Rechtswissenschaft* (2023) 161; M Iffert 'Das deutsche Kolonialstrafrecht' (2025) *Kritische Justiz* 173. There are also a few doctoral theses dealing with the issue, including R Schlottau 'Deutsche Kolonialrechtspflege' (2007); J Steinkröger *Strafrecht und Strafrechtspflege in den deutschen Kolonien von 1884 bis 1914* (2019). See further A Aliverti and others 'Decolonising the criminal question' (2021) 23 *Punishment & Society* 297 and M Dubber 'Colonial criminal law and other modernities: European criminal law in the nineteenth and twentieth century' in H Pihlajamki and others (eds) *Oxford handbook of European legal history* (2018) ch 45.

criminal legal system, including its procedural law, substantive law and law of sanctions, with particular emphasis on their practical application and enforcement. Drawing on archival material, including case files from the National Archives of Namibia, she demonstrates that German colonial criminal law was not only designed but also implemented to privilege White colonisers and oppress colonised people. Her chapter is complemented by Ugwuoke who examines the dynamics between anti-Black racism and law. Drawing on social science research, she introduces the term 'anti-Black racism'. Referring to historical scholarship and sources from German colonial criminal law, she demonstrates that anti-Black racism played a central role in colonial law and practice, and concludes by identifying avenues for future research.

Part II engages with Namibia, or formerly referred to as German South West Africa. Petry examines taxation and penal sanctions as instruments of colonial domination. She shows that taxation was not a neutral administrative technique but, rather, a legal-administrative mechanism of domination, deeply intertwined with land expropriation and coerced labour. In the subsequent chapter, Socher discusses the potential and challenges of a possible truth commission addressing German colonial rule in Namibia. Drawing on the broader debate about the usefulness of transitional justice mechanisms in addressing past atrocities, he identifies a number of key aspects that would need to be considered in establishing such a commission for Namibia.

In Part III, the relationship between law and colonialism in Cameroon is addressed in four chapters. Gasisou zooms in on German colonial governance in Northern Cameroon. In his chapter, he examines the administrative structures imposed by German rule and reconstructs the legal transformations at work, demonstrating how colonial law actively reconfigured customary authority rather than merely coexisting with it. Subsequently, Panga analyses the pre-treaty signed between Cameroonian chiefs and representatives of the German government in 1884. He discusses the legal nature of this pre-treaty and analyses the legality of German colonisation on the basis of its administrative practices, with reference to the requirements set out in the pre-treaty. Machona, in his chapter, situates the killing of King Rudolf Manga Bell in the German colony of Cameroon within a broader context. Identifying a pattern in which violent and oppressive practices were opposed by representatives of the colonised peoples through complaints and protests articulated in

legal language, he shows how, ultimately, a self-reproducing dynamic of expropriation, complaint and punishment emerged. Part III concludes with a chapter by Nortje on sentencing practices. He demonstrates that retributive sentencing practices were enforced by the German colonial rulers, while traditional restorative forms of justice were disregarded. Arguing that the retributive system is colonial rather than African, he calls for a reform of sentencing practices in Cameroon.

Part IV – focusing on the case of Tanzania – opens with a chapter by Gabagambi. Arguing that prioritising indigenous traditions does not constitute a rejection of modern law, but rather a reaffirmation of cultural identity, dignity and continuity, she revisits the unfinished German project of documenting Tanzanian customary law. She concludes that revitalising Tanzanian customary law within a pluralistic framework would be essential to restoring cultural legitimacy and social trust in the legal system. In the following chapter, Njogu revisits the response to the Maji Maji rebellion in former Tanganyika as a case study of German colonial atrocities. She argues that Germany committed grave breaches of international humanitarian law, and concludes with recommendations for reparative measures aimed at acknowledging and remedying violations of the international legal standards applicable at the time. Subsequently, Adionyi presents a comparative study of colonial legacies in criminal law, reflecting on jurisprudence in Kenya and Tanzania. She begins from the observation that criminal justice systems in many African countries continue to reflect colonial era practices by punishing acts now widely regarded as matters of morality rather than criminal offences. Using a *Third World Approaches to International Criminal Law* (TWAIL) perspective, she concludes with recommendations inspired by other former colonies that have successfully overcome colonial remnants as part of broader decolonisation and legal reform processes.

Part V comprises two chapters, on Rwanda and Togo respectively. Zikamabahari examines the effects of German rule on the Rwandan legal system. He concludes that, while German colonialism in Rwanda was characterised by indirect rule and reliance on existing traditional systems, its influence nevertheless catalysed a transition from customary to codified legal frameworks. Abotsi examines contemporary perceptions of German colonial law in Togo through the specific lens of petitions and newspaper publications. He demonstrates that Togolese actors did in fact contest the arbitrariness and discrimination of the colonial system,

thereby revealing the agency and legal consciousness of the colonised. Rather than being reduced to passive subjects, they emerged as active participants in responding to and challenging dominant colonial discourses.

Part VI concludes the volume with cross-cutting and comparative perspectives. It opens with a co-authored chapter by Kalibani, Shiningayamwe and Masake. Starting from the observation that the 'epistemic fragility' of colonial archives necessitates alternative modes of historical reconstruction, they examine memoirs and diaries produced by colonial actors which, in their view, and perhaps paradoxically, constitute indispensable sources for interrogating colonial violence. Drawing on three case studies and contemporary debates on historical redress in Namibia, Tanzania and Cameroon, the chapter concludes that a critical re-reading of colonial archives can contribute meaningfully to ongoing discourses on accountability, restitution and epistemic justice. In the next chapter, Astfalk and Kaime examine property sales contracts concluded between German colonisers and indigenous peoples in Namibia. Arguing that these transactions were void under German contract law, contrary to the *lex loci* principle, and ineffective under Nama law, they conclude that public international law contains doctrinal tools that would classify German colonial land acquisitions as unlawful expropriations, thereby triggering state responsibility. Zundel then examines how colonial legacies have shaped the post-colonial landscape of African countries, taking perceptions of sexual orientation, gender identity, gender expression and sex characteristics as an illustrative example. Focusing on the cases of Namibia and Tanzania, she demonstrates how the colonial imposition of rigid heteronormative structures and binary gender norms, employed as instruments of power, shaped social perceptions of sexuality in ways that continue to disadvantage LGBTIQ+ individuals. In the concluding chapter, Iyi addresses, through the lens of the concept of modernity, the question of African customary law that confronted all post-independence African states at the end of colonial rule. He argues that post-colonial African leaders conflated modernity with Westernisation when they chose to privilege inherited Western legal systems over indigenous legal traditions, and consequently calls for a reimagining of a specifically African legal modernity.

4 Challenges and way forward

Many of the chapters reflect, either explicitly or at least implicitly, broader questions and challenges raised by the subject, transcending both national and disciplinary boundaries. They include, for example, questions of how to engage with colonial archival sources produced by imperial powers, or how to conceptualise legal implications and continuities in contexts where German colonial rule was followed by other colonial administrations – British, French, Belgian or South African among them. These layered histories complicate any linear narrative of legal development and call for approaches that are both historically sensitive and methodologically plural. Related questions arise with regard to the study of pre-colonial legal orders and the ways in which processes of legal reform in post-colonial states can and should be integrated into broader analytical frameworks. Finally, the volume raises – and at least implicitly attempts to address – questions about the organisation of research itself, including reflections on appropriate formats of collaboration, particularly those that bring together scholars from the Global South(s) and the Global North, or foster south-south academic exchange through (transnational) networks. It also invites discussion about suitable publication formats, including the role of international and regional journals as well as the increasing importance of open-access dissemination in ensuring broader accessibility and scholarly exchange.

These debates will continue – and they must continue. Taken together, and despite their sometimes rather specific focus, the contributions assembled in this volume seek to foster such conversations and to generate new impulses for further reflection. They cannot, of course, address every challenge or resolve all tensions; instead, they aim to make these tensions productive for future research at the intersection of colonialism and law.

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