"Neocolonialism" and Amnesias: Comparative Constitutional Law in Post-War Germany

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In 1970, two East German legal scholars sounded the alarm. Under the heading "On the Role of West German Political Science and Law in the System of Neocolonialism", Gerhard Brehme and Klaus Hutschenreuter, professors at the University of Leipzig, wrote:

> "Global imperialism is trying to stop the development of the national liberation movement, which is in accordance with the laws of our epoch, through an intensified policy of neo-colonialist intervention [...]. In pursuance of its strategy [...] ideological infiltration and diversion are gaining increasing importance. [...] In [West German political science and jurisprudence] the specific objectives of neo-colonialist expansion are expressed."[1]

In the article, the two then examine in detail how West German legal scholars increasingly analyse and attempt to instrumentalise recent constitutional developments in the Third World. They conclude that "West German lawyers are actively engaged in training leading cadres of developing countries, educating them in special seminars at home and abroad and steering them in the sense of their models"[2]. Comparative constitutional work aimed at neo-colonialist interference, they conclude, has become an increasingly important part of West German jurisprudence.

A good forty years later, Michael Stolleis arrives at a completely different assessment in his "History of Public Law in Germany". There he notes comparative constitutional law not having played a significant role in research on public law in the post-war period.[3] Rather, scholarship was dominated by an internal orientation towards the still new Basic Law and its development in dialogue with the Federal Constitutional Court. Jochen Frowein speaks of a tunnel vision that allowed little comparison.[4] No one says a word about comparative research, let alone with a focus on the Global South.

What explains the discrepancy between alarm in the GDR and observations of indifference in the West? Was it merely ideological bombast on Brehme-Hutschenreuter's part, or did (neo)colonial impulses actually play an essential, but until today suppressed, role in the constitutional comparison of the post-war period? How does comparative constitutional law present itself in the context of this volume? Has German colonialism left its mark on this research? Does comparative research possibly perpetuate colonial thinking?

This article examines comparative constitutional research in post-war Germany (1950s-80s) and asks what role engagement with non-Western constitutional states and colonial pasts played in it.[5] It tells

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[1] *Gerhard Brehme* / *Klaus Hutschenreuter*, Zur Rolle der westdeutschen Staats- und Rechtswissenschaft im System des Neokolonialismus, Staat und Recht 19 (1970), p. 1254–1269.
[2] Ibid., p. 1269, note 58.
[3] *Michael Stolleis*, Geschichte des Öffentlichen Rechts in Deutschland, Volume 4, München 2012, p. 239.
[4] *Jochen Abr. Frowein*, Kritische Bemerkungen zur Lage des deutschen Staatsrechts aus rechtsvergleichender Perspektive, DÖV 19 (1998), p. 806.
[5] When I write about "comparative research", I do not only mean comparison in the narrow sense of direct comparison between two or more orders, but also include work with a focus on the constitutional law of a state

the diverse and surprisingly current story of a subject in the context of the Cold War and decolonisation that was exposed to the functionalist risk of comparison, meaning the risk of its particularly error-prone problem definition as well as ideological instrumentalisation, but nevertheless largely escaped it - and at the same time largely ignored the colonial past. In a certain sense, this contribution is also an attempt at reading the history of German jurisprudence more in the context of a global history.

Ultimately, the article argues, two types of comparison emerge: on the one hand, a rather instrumental comparison produced for development policy, which was oriented along Eurocentric concepts (especially modernization and the state) and was often a soliloquy of Northern "experts" about the South; on the other hand, however, a comparison beyond Western models, which considered developments in the South for itself and emerged in exchange with authors from the South. In the context of general comparative constitutional research, this was (possibly) marginal, but methodologically, theoretically and concerning its subjects decidedly innovative. In the context of this volume, a curious, double amnesia stands out: Alongside our forgetting of the comparative literature of the post-war period comes a second forgetting, namely that of colonial history. Neither in instrumental nor in original, neither in West German nor East German research is a connection to German colonial history established or recognisable. This history seems forgotten, perhaps repressed, but in any case absent.

In the subject of this contribution, two questions and contemporary historical dynamics intersect: that of the role of legal scholarship in the context of decolonisation and the aftermath of colonialism, and that of the role of legal scholarship in the Cold War. The treatment of these questions in the various fields of jurisprudence and between English-language and German-language literature is marked by great disparity. The question of the role of legal scholarship in the Cold War is in any case discussed sporadically in English-language discourse.[6] The second question, that of legal scholarship in the context of decolonisation and colonial continuities, has long been underway in international law discourse and is as controversial as it is productive,[7] while it is only just beginning with regard to comparative constitutional law.[8]

The examination of the history of German-language public law research in turn has its own cycles and contexts, it seems. While the historisation of public law in the Federal Republic of Germany has been underway for a long time[9], this reconstruction is largely done without locating it in the global

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other than the one in which the author was trained. This "foreign public law" is a typical part of comparative research, as it is also doe from an external perspective.

[6] Most recently, Ugo Mattei has highlighted the push for professionalisation, but also the instrumentalisation of comparative private law during the Cold War: *Ugo Mattei*, The Cold War and Comparative Law: A Reflection on the Politics of Intellectual Discipline, American Journal of Comparative Law 65 (2017), p. 567. With regard to international law, a recently published, large volume counters the widespread assumption that international legal thinking was static and ideologically frozen in the Cold War: *Matthew Craven / Sundhya Pahuja / Gerry Simpson*, International Law and the Cold War, Cambridge 2019. Instead, its authors outline the dynamics and immense importance of international law in legitimising international politics.

[7] *Antony Anghie*, Imperialism, Souvereignty and the Making of International Law, Cambridge 2004; *Jochen von Bernstorff / Philipp Dann* (eds.), The Battle for International Law, Oxford 2019; *B. S. Chimni*, Customary International Law: A Third World Perspective, American Journal of International Law 112 (2018), p. 1.

[8] Predecessor *Upendra Baxi*, Constitutionalism as a Site of State Formative Practices, Cardozo Law Review 21 (2000), p. 1183; *Daniel Bonilla Maldonado*, Constitutional Law and the Global South, Cambridge 2014; now at a glance: *Philipp Dann / Michael Riegner / Maxim Bönnemann*, Southern Turn, in: Dann/Riegner/Bönnemann (Hrsg.), Global South and Comparative Constitutional Law, Oxford 2020, p. 1 et seq.

[9] Besides *Stolleis*, note 3, p. 239; see *Dieter Simon* (ed.), Rechtswissenschaft in der Bonner Republik, Berlin 1994; *Kremer* (ed.), Die Verwaltungsrechtswissenschaft in der frühen Bundesrepublik, Tübingen 2017; *Christoph Möllers*, Der vermisste Leviathan, Berlin 2008.

ideological struggles of the time - neither with regard to the Cold War nor to the North-South dimension, and is largely related to West German research. Completely forgotten in all the historicising research is the German comparative constitutional law of the post-war period. Its history has yet to be written.[10]

Against this backdrop, the following article fills a large gap, which it attempts to fill only in part. It deals with comparative constitutional research, especially in West Germany,[11] with a view to the question of how far the confrontation with non-Western constitutional states and the colonial past played a role in it. The study proceeds in three steps: First, it delves into the period around 1970 and follows up on the article by the Leipzig authors mentioned in the beginning. This is interesting in itself, but also because the then 28-year-old editor of the VRÜ, a certain Brun Otto Bryde, responded to the accusations of the East Germans shortly afterwards.[12] The study reconstructs this German-German controversy, in which it becomes clear that comparative research also with regards to the Global South very much existed in Germany at the time, and that it could even become a German-German and ideological bone of contention in the Cold War.

The second section reflects and contextualises this debate from today's perspective (II.). It becomes clear that the East German authors certainly put their finger in a wound with their Marxist political-economic analysis. They made clear how central the concepts of modernization and development were, at least in a large part of the relevant literature, and that "colonial thinking" in the form of Eurocentric concepts and their instrumentalisation continued to have an effect, especially in the context of development research. The marking of this ultimately instrumental comparison is a merit of the East German analysis. At the same time, however, their sweeping conclusion from instrumentalisable theorems to actual instrumentalisation is sometimes a short-circuit. In any case, from today's perspective, the authors overestimate the scope, ideological coherence and lacking reflectivity of this research.

The review of the controversy provokes and at the same time opens up views on another and particularly fascinating strand of comparative constitutional work from the period, which I will describe in a third step (III.). This strand contains comparative constitutional work by West German researchers who developed an original interest in the young constitutions in the Global South that lay beyond development politics, Eurocentric arrogance and instrumentalisation, and whose work has so far been largely ignored.

Ultimately, the result of the study is ironic in that both sides probably fell short, the East Germans Brehme and Hutschenreuter as well as the West Germans Frowein and Stolleis. Although the Leipzig-based authors provide a clear-sighted analysis, they (like Stolleis and Frowein) fail to recognise the more extensive and clearly more innovative intrinsic comparative research of the time. Instrumental research existed, but it was ultimately insignificant and soon gone. The real, hardly noticed

[10] The contribution by Michael Martinek, Wissenschaftsgeschichte der Rechtsvergleichung, 529–619, in the collection of *Simon*, note 9, only refers to comparative and international private law.

[11] The focus on West German and the neglect of East German literature is mainly explained by my greater familiarity with the former, but also by the very thin research base on the latter. Although there is some initial research on international law: *Günter Frankenberg*, Little Red Riding Hood and Other Tales from the East, in: Emmanuelle Jouannet / Iulia Motoc (eds.), Les Doctrines internationalistes durant les années du communisme réel en Europe, Paris 2012, p. 391–409; and on East German legal scholarship: *Inga Markovits*, Diener zweier Herren, Berlin 2020, but not comparative research. Regarding the instrumentalisation of human rights: *Ned Richardson-Little*, Human Rights Dictatorship: Socialism Global Solidarity and Revolution in East Germany, Cambridge 2020.

[12] *Brun-Otto Bryde*, Überseerecht und Neokolonialismus, VRÜ 4 (1971), p. 51–57.

contribution of these times lies in the original comparative research on the Global South, which has lasting value.

The article ends with reflections on the peculiar amnesias that characterise the relationship to colonialism and research in the Cold War, and identifies desiderata for research (IV.).

I. A Cold War skirmish

The 1970 essay by the Leipzig-based authors cited at the beginning of this article was written in the context of broader considerations in the Eastern bloc of decolonisation, the liberation movements in Africa, Asia and Latin America, and ideological system competition with and demarcation from bourgeois-capitalist development research and policy in the West. Published in the leading constitutional law journal of the GDR, it offers a fascinating window into Marxist political economy-influenced legal research in the GDR and its perception of research in the Federal Republic. Leipzig was a centre of engagement with the "constitutional law of developing countries", as the research unit there was called, which appears quite significant in the context of GDR legal scholarship, with the authors being proven experts especially on African legal developments.[13] The Leipzig-based authors examine their subject in three steps. First, they describe the academic context of West German research, then elaborate its guiding theorems and finally outline its instrumentalisation and "neocolonial orientation", meaning its intention and ability to influence constitutional practice on the ground.

Looking at the general situation of Western research on the Third World and the role of West German research in this broader context, the authors first point out that the imprint of positivism made it difficult for West German legal scholarship to take up the more political science-dominated research in this field. However, the increasing attention paid to legal studies in the colonial metropolises (France, Great Britain, USA) since the 1950s now motivates West German research in this field. A certain centre of this research, which is thus characterised as rather unoriginal and foreign-induced, is located in Hamburg around the Research Centre for International Law and Foreign Public Law headed by Professor Herbert Krüger and the journal "Verfassung und Recht in Übersee" (VRÜ), which has been published there since 1968. It is noted with foreboding that although the results are not yet very impressive in terms of number and scope, "a rapid quantitative and thematic expansion can be expected in the near future" (1259).

Then the leading theorems of this research and their function are analysed. In a discussion of the writings of Herbert Krüger[14] and Frank Ronneberger[15], it is shown to what extent the research is tied to a bourgeois concept of modernization and a standard of development oriented towards the

[13] Gerhard Brehme, born in 1928, had come to prominence in the early 1960s with studies on the constitutional development in Ghana. In 1965, he had completed his habilitation with a thesis on "Permanent sovereignty over natural wealth and sources of aid: Problems of International Law in the Struggle for Economic Independence" and had been a lecturer in "Constitutional Law of Young Nation-States" at the University of Leipzig since 1966. Klaus Hutschenreuther, his younger colleague (born 1933) and co-author, had completed his doctorate in 1967 with a study on the federal structure of Nigeria.

[14] Particularly examined was *Herbert Krüger*, Das Programm – Verfassung und Recht in Übersee, VRÜ 1 (1968), p. 1.

[15] Particularly discussed was *Franz Ronneberger*, Das Verfassungsproblem in den Entwicklungsländern, Der Staat 1 (1962), p. 39; as well as: *Franz Ronneberger*, Theorien zur politischen Entwicklung, in: Bernhard Hanssler / Ernst Eduard Boesch (eds.), Entwicklungspolitik, Stuttgart 1966, p. 305–334.

European model.[16] What is bourgeois about this approach to modernization theory is that it excludes "social content and social objectives". In contrast, the socialist (and conclusively materialist) analysis includes this social content and the question of the economic system. Thus, a contrast is made between historical thinking in categories of modernization theory and historical thinking in materialism. The concept of moderniuation supposedly serves to establish scientific comparability. Above all, however, the function of the concept of modernization is to serve as a "method of concealing the true political content of the processes at work and the neo-colonialist objective aimed at wielding influence" (1263). Supposedly, the use of modernization theory is always intended to establish states that not only have rational administrative bureaucracies and a coherent legal system, but also guarantee property rights and the market economy.

This introduces the third step of the analysis. The aim of the research is not the accurate description of new constitutions, but it is always instrumentally oriented towards preparing the adoption of the bourgeois model. It is supposed to work towards forming a new establishment that is trained in its own beliefs through "methods of colonial pressure and political blackmail" (1264). Here, the Leipzigers point to the practical difficulties that arose everywhere along the development path and in adopting the modernization model in developing countries and note the thoroughly self-critical reflection and adaptation of the model by Krüger and others (1266-7). For Krüger and others, however, it was clear how to react to obstacles to modernization, namely through the concept of a strong state power that could pursue and implement modernization (1268). The Leipzigers' conclusion is thus clear and threatening: West German research is bourgeois, Eurocentric and instrumental. Its role and importance will only increase in the years to come.

As mentioned, the analysis and criticism of the Leipzig authors did not remain unchallenged for long. Shortly after their publication, the editor of VRÜ, Brun-Otto Bryde, countered them.[17] His analysis is partly ironic in tone, but above all, it struggles to find an honest answer to the accusations. The thought of a rapid increase in the importance of research on developing countries, he first states laconically, only elicits a "wistful smile" from those who know the situation; interest in these developments is in fact marginal and research burdensome. He does not dispute the centrality of the concept of modernization, but asks for alternatives. In particular, Bryde defends it as possibly more productive than the distinction between capitalist and socialist.

Furthermore, Bryde deals particularly with the accusation of "neocolonial" influence, which he takes extremely seriously. For him, the focus is on "examining the reasons" and motives for doing research on constitutional developments in the Global South. In his view, there were many good reasons for a genuinely objective interest in the constitutional developments of "developing countries", which he attributes to most researchers: the topicality and novelty of the developments, the simple intellectual challenge in the struggle for an appropriate understanding of new constitutions and also their significance as a possible model - for the West. He does not deny that "legal development aid" and thus the transfer of knowledge could be an essential reason as well. However, he only sees "neo-

[16] Other relevant research cited includes *Henrich Herrfahrdt*, Staatsgestaltungsfragen in Entwicklungsländern Asiens und Afrikas, Heidelberg 1965; *Ernst Wilhelm Meyer*, Das Problem der Verfassungssysteme in Entwicklungsländern, Zeitschrift für Politik 8 (1961), p. 297–302; *Karl Newman*, Die Entwicklungsdiktatur und der Verfassungsstaat, Frankfurt/Bonn 1963; *Rüdiger Schott*, Beharrung und Wandel der traditionellen Staatsformen in Afrika, Zeitschrift für vergleichende Rechtswissenschaft 67 (1965), p. 23 et seq.; *Hnas-Ulrich Scupin* (ed.), Unvollendete Demokratien. Organisationsformen und Herrschaftssturkturen in nichtkommunistischen Entwicklungsländern in Afrika, Asien und im Nahen Osten, Köln 1965; *Franz Ronneberger*, Militärdiktaturen in Entwicklungsländern, Jahrbuch für Sozialwissenschaft 1965, p. 13 et seq.

[17] *Bryde,* note 12, p. 51–57.

colonialism" where it is accompanied by an impairment of self-determination (55). He does not see it where solutions are being offered, especially since research in the West tends to be carried out by left-wing, progressive authors who are hardly advocates of the capitalist ideal of development.

II. Comparison as Development Research: Between Eurocentrism, Instrumentalisation and Self-Doubt

The exchange of blows between Brehme-Hutschenreuter and Bryde is remarkable, but in a way not entirely surprising. For the GDR, criticism of the Federal Republic played a central role in demarcation and self-affirmation; this also applied to academia. The accusation of neocolonialism did fit perfectly into the self-image of working class anti-colonial solidarity in the communist camp or the neocolonial continuation of imperial capitalism by the West. Therefore, the exchange of blows also fits the pattern of the ideological struggles of the Cold War. What is particularly interesting from our perspective is that it were the ideological dynamics of the Cold War that brought the issue of (neo)colonialism to the table, which incidentally did not play a central role in German political consciousness.[18]

However, it is worth taking a closer look at the controversy's content from today's perspective. With the distance of 50 years and at least one ideological era later, three points in particular are striking about the controversy: First, the clear-sightedness of the East German analysis - with regard to the fixation on Eurocentric concepts and their instrumentalization in the (albeit very short-lived) boom of comparative development studies; at the same time, the precipitousness of the analysis, which today presents itself as an outdated (and in parts ideologically obscured) snapshot; and finally, the fading out of the colonial past in the controversy over (supposed) neocolonialism.[19]

1. Of the usefulness of the external, political economy gaze

Without question, in the writings of the time provide (especially if one refers to the texts by Krüger and Ronneberger, albeit few in number) a strong orientation towards the model of European modernity and, in particular, the Western concept of statehood as the standard of thinking. The radiance of modernization theory was strong and dominated not only German analyses but also, and especially, U.S. discussions of the time.[20] Krüger was also strongly influenced by technocratic thinking that favored the "strong state" as an essential actor over other formations.[21] Epistemologically, the orientation towards essentially Eurocentric categories in these authors is accompanied by a

[18] On the significance of this ideological confrontation for the act of remembrance, *Sebastian Conrad*, Rückkehr des Verdrängten? Die Erinnerung an den Kolonialismus 1919–2019, APuZ 69 (2019), p. 28.

[19] Their sketch of the academic context and character of West German legal research of the time is convincing today only on first glance. Most West German legal scholars were trained in positivist thinking and had little experience or guidance in interdisciplinary legal research. While some may have understood this as an assurance of scientific purity, younger West German authors of the time were quick to address this situation and its problem. They were sensitive to the political-economic contexts of law and understood an opening to the knowledge of other disciplines as the imperative of their time (see *Ernst Petersmann*, Die Dritte Welt und das Wirtschaftsvölkerrecht, ZaöRV 36 (1976), p. 502. This applied not only to those with international interests, but was a progressive demand for German law itself (see only *Grimm* (ed.), Rechtswissenschaft und Nachbarwissenschaften, Frankfurt am Main 1973).

[20] *Walt Rostow*, The Stages of Economic Growth, The Economic History Review 12 (1959), p. 1–16.

[21] Concerning the contextualisation of his main work, the „Allgemeine Staatslehre“ of 1964, see *Stolleis*, note 3, p. 370 ff.

widespread ignorance of local voices and no separate effort to understand the intrinsic value of pre-colonial structures and those shaped by colonialism on the ground.

Part of the truth, however, is that the authors left out their own, East German and communist approaches to development ideology. The appeal of modernization theory was by no means limited to the West. On the contrary: at any rate, the notion of state omnipotence fed the planning ideas in West as well as East, North as well as South - and the influence of the Eastern bloc and their socialist model of development were likewise subject to these ideas.[22]

Particularly alert and topically informed is also the observation of the dynamism and popularity with which jurisprudential research was taken into service for the goals of "development" in the 1960s.[23] Law and Development research emerged in the U.S. at that time, with the quite explicit goal of exporting Western liberal legal thought to the so-called Third World, thereby stimulating "development processes."[24] It had powerful sponsors, especially the Ford Foundation, which indeed highly valued the importance of ideas and law both for the struggle against the ideological model of communism and for the potentials of liberal thought in the field of development and promoted them accordingly.[25] Among its protagonists, there was a great fascination for Max Weber's theory of modernization. In many cases, this gave rise to functionalist comparative legal research that understood the absence of liberal law as a problem and characteristic of "underdevelopment."

Such research also existed in Germany. In addition to Herbert Krüger, the Hamburg Research Center, and the VRÜ, reference is rightly made here to the University of Bochum, where studies on development research also acquired an important significance in law. This research[26] turns out to be instrumental, conducted and designed for the purpose of a concept of development that is rarely reflected critically. If one looks for "colonial thinking" in comparative research of the postwar period, then one must probably look primarily for unreflective usage of development ideology and indentification of research to it.

At this point, one can also ask about the significance of Nazi thinking. In any case, if one takes the two "crown witnesses" of East German authors, Herbert Krüger and Franz Ronneberger, it is striking that both not only belonged to the generation that began their academic careers in the 1930s, but both also had a Nazi past and were even members of the NSDAP. Did their interest stem from the Nazi period and are their texts from the 1960s influenced by fascist or colonial figures?[27] The GDR authors do not make any corresponding considerations; from today's perspective, however, this context can hardly be ignored. But ultimately, the contexts seem to have been different. Ronneberger had been primarily interested in Southeast Europe ever since the 1930s and propagated his ethnonationalist

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[22] *James Scott*, Seeing like a state, New Haven 1998; *Joseph Kaiser*, Planungen, Baden-Baden 1965, 1972; *Ulrich Menzel*, Das Ende der Dritten Welt und das Scheitern der großen Theorie, Berlin 1992.

[23] A contextualisation from today's and Germany's perspective in *Brun-Otto Bryde*, Was erforschen wir zu welchem Zweck?, in: Philipp Dann / Stefan Kadelbach / Markus Kaltenborn (eds.), Entwicklung und Recht, Baden-Baden 2014, p. 101 et seq.; also *Philipp Dann*, Ideengeschichte von Recht und Entwicklung, in: Philipp Dann / Stefan Kadelbach / Markus Kaltenborn (eds.), Entwicklung und Recht, Baden-Baden 2014, p. 19.

[24] *David Trubek*, Law and Development Forty Years After „Scholars In Self-Estrangement“, Toronto Law Review 66 (2016), p. 301; *John Henry Merryman*, Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement, American Journal of Comparative Law 25 (1997), p. 457; *Francis Sutton*, The Ford Foundation: The Early Years, Daedalus 116 (1987), p. 41.

[25] Dazu *Mattei,* note 6, p. 578.

[26] *Herrfahrdt,* note 16; *Schott*, note 16; *Scupin*, note 16; *Ronneberger*, note 16.

[27] Regarding questions of the colonial in the law of the Nazi regime, see *Lange* (•••).

ideas there.[28] In the Federal Republic, after the essays of the 1960s, he pursued no further interest in the Global South, but worked as a political scientist and scholar of communications. Krüger is the more fascinating, because ambivalent, figure.[29] On the one hand, according to his writings of the 1930s, he was fascinated by Nazi ideology.[30] On the other hand, he is described by contemporaries and students in later years as non-ideological and open-minded, he was a student of Rudolf Smend (and deeply disgusted by Carl Schmitt), and last but not least, he was the founder and promoter of the VRÜ. Kruger's interest in the constitutional systems of the South is not easily explained. He did not engage in in-depth comparisons with individual constitutional orders in the South. To be sure, he repeatedly wrote and reflected generally on developments there[31]; in comparative research, however, his interest was more directed towards English legal thought. Even in his opus magnum, the "Staatslehre" of 1964, constitutional systems of the South do not appear in any significant way. Intellectually, he was fascinated above all by the shape and function of the state, the necessity of its "non-identification" or neutrality vis-à-vis ideologies and religions, its ameliorative as well as demanding side vis-à-vis citizens, the special role of society in caring for the community. The ethno-nationalist, movement-like and antisemitic aspects of Nazism are quite alien to this approach.

More important than fascist impressions was thus, quite as Brehme and Hutschenreuther characterise it, modernization theory, thinking of the model of a certain dynamic of societal development, in which the interaction of a (bourgeois) society and the state played a central role.

2. Ambivalences and gradations

Nevertheless, the East German view is at the same time blind to the finer gradations and ambivalences that certainly also characterised Western research. Looking at West German research, the assumption that it was a significant, perhaps even formative, research direction proves to be a misconception. Quantitatively dominant in (the not very extensive) comparative public law of the time was certainly the examination of the traditional constitutional systems of the West, as it was institutionally anchored above all at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg and its journal.[32] In addition, there was certainly interest in developments in the Global South. But in the broader context of West German legal research, this was ultimately rather marginal and hardly

[28] Concerning Ronneberger, who worked in the Federal Republic of Germany primarily as a political scientist and scholar of communications, see *Peer Heinelt*, Portrait eines Schreibtischtäters. Franz Ronneberger (1913–1999), in: Wolfgang Duchkowitsch / Fritz Hausjell / Bernd Semrad (eds.), Die Spirale des Schweigens. Zum Umgang mit der nationalsozialistischen Zeitungswissenschaft, Münster 2004, p. 193–218.

[29] Regarding Krüger, see *Thomas Oppermann*, Ein Staatsrechtslehrer im 20. Jahrhundert, AöR 130 (2005), p. 494; *Dieter Suhr*, Herbert Krüger. Nachruf, NJW 40 (1989), p. 2521; for context see *Horst Dreier*, Die deutsche Staatsrechtslehre in der Zeit des Nationalsozialismus, VVDStRL 60 (2001), p. 10.

[30] *Krüger*, note 14, p. 210 ff.

[31] See texts from 1962: Grundzüge der Verfassungsbildung in den neu entstehenden Staaten, in: Deutsche Landesreferate zum VI. Internationalen Kongreß für Rechtsvergleichung in Hamburg 1962; also VRÜ 1968, 1972, 1977.

[32] Between 1950 and 1990, ZaöRV primarily examines the constitutional systems of France, the USA, Austria, Italy, Switzerland and Sweden (more than 10 contributions each). A focus on comparative topics can be found in issues from 1964 and 1972. Regarding the Global South, mainly India and China are being addressed in separate contributions. (I thank Thilo Herbert for his research on these issues).

supported by financially powerful donors.[33] A linkage of development agencies and legal research, as it became important for U.S. American research, did not exist in Germany.

The GDR authors also overlook the fact that Western research on constitutional developments in the Global South was by no means monolithic, but rather diverse and in part already reflected in a decidedly critical manner even among leading representatives at the time. There, questions regarding developing countries were intensively discussed and a separate approach emerged, which, unlike U.S. research, ultimately argued materialistically (Reims School). West German research was hardly uniformly bourgeois-capitalist.[34] As noted, Bryde points out as early as 1971 that many of those writing on such topics are largely progressive sympathisers leaning to the left. Capitalism itself is viewed suspiciously and many are actively discussing their viewpoints. They also reflected on their work at the time and were quick to point out the ambivalences and problems of that work.[35] Even Krüger, who was the primary target of Brehme-Hutschenreuter's criticism and certainly very bourgeois, warns against instrumentalisation and, in particular, Germany's self-perception as a role model. From today's perspective, in which we have almost become accustomed to viewing the Basic Law with feelings of patriotism or even nationalism, it is surprising and downright refreshing how critically Krüger assesses the reference to Germany as a role model.[36] Krüger sees an essential task of comparative research in developing a critical lense for understanding European constitutions, not in making them absolute

Historical contextualisation also includes the fact that even U.S. research, which at first was rather naïve-idealistic in its approach, increasingly reflected itself critically. The enthusiasm even shifted massively in the early 1970s, and there is hardly a subject whose leading representatives pick it apart with such fervor. In a famous 1974 essay by the two figureheads of the movement, Marc Galanter and Dave Trubek, the two question the overly simplistic image of easily transportable, liberal public law, of courts and legal education.[37] In this, however, it is not so much a doubt about the accuracy of the goal (export of the liberal rule of law) being expressed, but above all, concerning the means.[38]

Ultimately, it is a rather brief moment in which the fate of the Third World and the development discourse bounced (with some force) into the general Western and West German public sphere (Vietnam War, Oil crisis, general economic crisis).[39] Thereafter, this interest in developments in the Global South slackens, probably also because the constitutional developments in the South themselves give less and less reason to hope for innovative and emancipatory impulses. More and more states in

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[33] In a detailed essay on the literature of overseas comparative research from 1972, Krüger discusses exclusively non-German-speaking authors! See *Herbert Krüger*, Stand und Selbstverständnis der Verfassungsvergleichung heute, VRÜ 5 (1972), p. 5.

[34] In addition to various voices in German research, it is also worth mentioning the numerous French research projects on the „droit outre mère" (*François Luchair*, Droit d'outre-mer, Paris 1959; *Pierre Francois Gonidec*, Droit d'outre-mer, Paris 1959/1960) and especially the critical research on the „droit du developpement" (*Emmanuelle Tourme Jouannet,* Charles Chaumont's Third-World International Legal Theory, in: Bernstorff / Dann (eds.), note 7, p. 358).

[35] I.a. *Manfred Mols*, Zum Problem des westlichen Vorbilds in der neueren Diskussion zur politischen Entwicklung, VRÜ 8 (1975), p. 5–22.

[36] *Krüger*, note 14, p. 9 and 20.

[37] *Marc Galanter/ David Trubek*, Scholars in Self-Estrangement, Wisconsin Law Review (1974), 1062.

[38] On the state of the discussion today, see *Jedidiah Kroncke*, The Futility of Law and Development, Oxford 2016; *Florian Hoffmann*, Facing South, in: Dann / Riegner / Bönnemann (eds.), note 8, p. 41.

[39] *Niall Ferguson* (Hrsg.), Shock of the Global, Cambridge 2010.

Africa, Asia, and Latin America are becoming authoritarian military regimes, for very different reasons, in which constitutional law increasingly counts for less.[40]

The ideological lens, as well as the political-economy and theoretical lens, with which the East German authors work helps expose the instrumentality and methodological approach of the research. It holds up a mirror to West German research and, from a comparative theory perspective, points out the functionalist risk that is always present in comparative and, in particular, development research.

It is important to note, however, that not every interest in the Global South is instrumental and not every instrumental thinking is already neocolonial. Instead, thinking about the instrumentality of comparative research under the sign of modernization theory and development discourse raises the question of the extent to which there has also been comparative research on the Global South beyond development discourse and functionalism.

3. The colonial blank space

Before pursuing this question, we should point out a third conspicuous feature when examining the controversy. It is the lack of mention, let alone discussion, of Germany's concrete colonial past - neither in Krüger or Ronneberger, nor in Brehme and Hutschenreuter. Their accusation of neocolonialism serves to demarcate Germany from the West, and the late 1960s may have been one of the few moments in the general (non-jurisprudential) debate in which the colonial past was addressed at all.[41] But in the jurisprudential debate observed here, it was not about the past, not about coming to terms with it or remembering it, but about criticising current structures and ideological demarcation. The analysis was not supported by or linked to a demand for an examination of the role of law and legal scholarship in German colonialism. The GDR authors were concerned with demarcation and criticism of the West, less with an original examination of racism and the conditions of colonial exploitation. Today's criticism by postcolonial authors regarding the Frankfurt School, which did not pay sufficient attention to the racist and neocolonial dimension of capitalism, takes up this point.[42] For these West German intellectuals, who were indeed critical, the colonial was not an essential topic either. Postcolonial theory, one could say in short, was developed neither in Leipzig nor in Frankfurt.

III. Comparison beyond Western models

Alongside Cold War battles and instrumental development research, research on constitutional law in the Global South emerged in the 1960s and 1970s that showed an original interest in decolonisation and the autonomy of constitutional structures and dynamics outside the West. Even though this research did not come into the field of vision of either the GDR researchers or Michael Stolleis, and was indeed not extensive in quantitative terms, it represents a special phenomenon of comparative research during this period and is important for an overall picture and understanding of the history of comparativism in the FRG. For the research question of this volume, namely the question of the role

[40] *H.W.O. Okoth-Ogendo*, Constitutions without Constitutionalism: Reflections on an African Political Paradox, in: Douglas Greenberg / Stanley Katz / Melanie Berth Oliviero / Steven Wheatley (eds.), Constitutionalism and Democracy: Transitions in the Contemporary World, Oxford 1993; *Berihun Adugna Gebeye*, Theory of African Constitutionalism, Oxford 2021.
[41] *Conrad*, note 18, p. 28; *Britta Schilling*, Postcolonial Germany. Memories, Oxford 2014.
[42] See *Amy Allen*, End of Progress, New York 2015.

of colonial thought patterns and "neocolonial mechanisms’’ in (postwar) jurisprudence, it is extremely interesting because it shows a type of research that possesses a decolonial sensibility.

I would like to name three areas of this intrinsic research very briefly: Work on the constitutional dimensions of formal decolonization, research on the constitutional law of Sub-Saharan Africa and South Asia, and finally the journal VRÜ as an arguably unique platform for international exchange on constitutional developments in the Global South.

1. Interest in the constitutional dimensions of formal decolonization

First, it should be noted that there is an independent interest in the constitutional dimensions of formal decolonization, especially with regard to the disintegration of the French and British colonial empires. This category includes, first, Albert Bleckmann and his 1969 dissertation „Das französische Kolonialreich und die Gründung neuer Staaten. Die Rechtsentwicklung in Syrien/Libanon, Indochina und Schwarzafrika“.[43] It examines the legal foundations of the establishment and termination of colonial rule and develops a typology of the instruments that shape the transition from one phase to the next. In the words of Brun Otto Bryde, who reviewed the work, its "greatest merit [was] to make decolonisation understandable as a legal process" - that is, to understand it not only as a political process, but also not as a merely legal process, which would have done equally little justice to reality. Instead, he develops an understanding of the overlap of categories of constitutional and international law, their partial and gradual overlapping as well as mutual influence.

Chronologically, so to speak, in the next phase (after formal independence), starts the work of Enno Kliesch, who examined the influence of French constitutional thinking on African constitutions in a work published in 1967.[44] A parallel interest in the developments in the British colonial empire can be seen in the work of Werner Morva[45] and especially the work of Rudolf von Albertini, a Swiss historian, who was also trained in law and partly teaching in Germany (Heidelberg).[46] His investigations of the relevant administrative and constitutional issues always establish (implicit) reference to the role of law.

2. Experts of non-Western constitutional systems

With Dieter Conrad and Brun-Otto Bryde, there were also two great experts of non-Western legal and constitutional systems in this period, whose interest ranged broader and deeper than immediate decolonisation and which is detached from the narrower development discourse. Unlike other German legal scholars of this generation, who had an interest in non-European foreign countries but ultimately tended to limit themselves to presenting German legal thought to the outside world[47], the writings of Conrad and Bryde in particular also show a great research interest in Southern constitutional systems.

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[43] *Albert Bleckmann*, Das französische Kolonialreich und die Gründung neuer Staaten. Die Rechtsentwicklung in Syrien/Libanon, Indochina und Schwarzafrika, 1969; siehe auch *Scherk*, Dekolonisation und Souveränität: Die Unabhängigkeit und Abhängigkeit der Nachfolgestaaten Frankreichs in Schwarzafrika, Köln/Berlin/Bonn/München 1969.

[44] *Gottfried Kliesch*, Der Einfluß des französischen Verfassungsdenkens auf die afrikanischen Verfassungen, Würzburg 1967.

[45] *Werner Morvay*, Souveränitätsübergang und Rechtskontinuität im Britischen Commonwealth: ein Beitrag zur Lehre von der Staatensukzession, Berlin/Heidelberg/New York 1974.

[46] *Rudolf Albertini*, Dekolonisation: Die Diskussion über Verwaltung und Zukunft der Kolonien 1919–1960, Köln 1966.

[47] Peter Häberle and Paul Wolf come to mind.

Dieter Conrad[48] has come to prominence primarily through his essays on the constitutional law of India and Pakistan[49] as well as his book on Gandhi's political philosophy, published posthumously but compiled since the 1970s.[50] In particular, his work on the role and configuration of constitutional amendments was influential, providing key ideas to the Indian Supreme Court's jurisprudence on the "basic structure doctrine."[51] The work on Gandhi's political philosophy revolved primarily around the role of nonviolence. Conrad's works are interdisciplinary in a self-evident way, as they are always informed by the history of politics as well as the history of ideas and empirically oriented. They are deeply rooted in the intellectual histories and also scholarly landscapes of both continents, Europe and India. Epistemologically, in his sources and interlocutors, he is as much (perhaps more) anchored in the South Asian as in the German scientific landscape. He has been to India several times, is familiar with actors and places. A somehow (neo)colonial or in the narrow sense instrumental thinking is completely absent. His work is not oriented towards the concept of modernization, but is simply based on an interest in the inherent nature of developments there.

Brun-Otto Bryde had been a staff member of the Hamburg-based "Research Center for International Law and Foreign Public Law" (from 1973 "Institute for International Affairs") since 1969 and developed a profound interest in African legal development. From 1971-73 he was a lecturer in Ethiopia, then a "Law and Modernization Fellow" at Yale 1974-75, and in 1976 published the research findings of these years in his book "The politics and sociology of African legal development" (Alfred Metzner Verlag 1976). The book is an interdisciplinary study of the relationship between law and social change. Informed by the sociology and theory of law, it explores the question of "law-making" in decolonized Africa, i.e., how the creation of legal rules is organised politically and socially, in which legal framework it takes place or what sources it draws from, and how it influences social change. In this context, the ubiquitous term "development" does not subscribe to a specific (bourgeois, capitalist, socialist) model of development, but is open-ended and ultimately more akin to the concept of change that will later underlie Bryde's habilitation thesis. His interest is rather in the determinants, coordinates, and effects of legal change. In doing so, he looks at all African states that had become independent by 1975 (43!) and draws from the entire breadth of local and international literature.

Bryde later became a professor at the Bundeswehr University in Munich, then in Giessen, and finally a judge at the Federal Constitutional Court. He turned (always sociologically informed) to general constitutional law, and partly to environmental law. Less work on African law followed, but a continuous interest in the importance of law in the Global South as he is still "patron" of the VRÜ-WCL today.

3. Journal „Verfassung und Recht in Übersee“ (VRÜ)

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[48] Conrad (1932-2001) received his doctorate in the early 1960s with a thesis supervised by Ernst Forsthoff ("Freiheitsrechte und Arbeitsverfassung") and was head of the legal studies department at the South Asia Institute in Heidelberg from 1963 to 1997. Concerning him and the context of his research, see *Werner Menski*, From Dharma to Law and Back?, Heidelberg Papers in South Asian and Comparative Politics, Working Paper Nr. 20, 2004.

[49] Collected in: *Dieter Conrad*, Zwischen den Traditionen: Probleme des Verfassungsrechts und der Rechtskulturen in Indien und Pakistan, Cambridge 1999.

[50] *Dieter Conrad*, Gandhi und der Begriff des Politischen, Paderborn/München 2006.

[51] See *Monika Polzin*, The basic-structure doctrine and its German and French origins, Indian Law Review 5 (2021), p. 45.

The broadest and most enduring format in which an original interest in the constitutional developments of the new states manifested itself was the journal "Verfassung und Recht in Übersee" (VRÜ).[52] Supervising its founding in 1968 was Herbert Krüger, who strongly supported the journal both financially and intellectually until his death in 1989, but never himself exercised editorial leadership or determined the editorial line. The project was developed as an idea and driven in its concrete work by Dieter Schröder[53] and then, from 1969 on, primarily by Brun-Otto Bryde.[54]

Five aspects seem noteworthy: its intrinsic nature, its interdisciplinarity, its epistemological openness, its colonial self-forgetfulness, and its early critique of the concept of development. The first aspect is that the impulse to found and the basic idea were intrinsic, not instrumental. At the centre was an intrinsic interest in the new constitutions, not the instrumental goal of development aid. In other words, the guiding theoretical concept in the early years was modernization, not development aid. It was not about the role of the North in the South, but about the original understanding of the processes on the ground. The goal was rather understanding per se, as well as critically mirroring Western constitutional states.

The thematic framework and methodological approach was interdisciplinary. The term "Verfassung" in the title of the journal was meant in the broad sense of the legal constitution of a society, including constitutional reality. In addition to the attention to legal structures, the reflection of the political dimension and, above all, the economic dimension was to take place.[55] Die Prägung Krügers durch seinen akademischen Lehrer, Rudolf Smend, wird hier erkennbar und durch den Rechtssoziologen Brun-Otto Bryde. Ausweis dieser Bandbreite sind vor allem auch die Buchbesprechungen dieser Jahre, die ein wahre Fundgrube sind.

Krüger's influence through his academic teacher, Rudolf Smend, is recognizable here, as well as through the legal sociologist Brun-Otto Bryde. Evidence of this range can be found specifically in the book reviews of these years, which are a veritable treasure trove. Epistemologically, it was (at the time) a daring project in academic politics and organisation, indeed, an experiment. It was not only an attempt to identify new horizons (and not only developments in the larger, more noticed countries [such as Brazil or India], but also smaller states). It was also, above all, an attempt to hear, indeed to activate, as many authors and voices as possible from the countries of the South.[56] The authorship's diversity in the first decades is impressive, especially in light of the conditions on international communication at the time. Without the Internet, hardly any international sources, and even fewer contacts in the Third World. The range of authors and languages was conceivably wide; German, English, French and Spanish. Considering today's mono-lingual dominance of English - almost unthinkable.

In the VRÜ, too, the treatment of the colonial is revealing. Historical colonialism was not an issue. No specific interest in historical law in the (German) colonies or any particular interest in the constitutions of the formerly German colonies can be discerned. This is possibly different from the French and English literature, which is present, but mostly interested in the fate of their "own" colonies. Krüger explicitly addresses the importance of the historical dimension in his programmatic opening

[52] VRÜ got a new English title in 2019. It is now (also) called 'World Comparative Law' (WCL).

[53] https://de.wikipedia.org/wiki/Dieter_Schr%C3%B6der_(Politiker), (last accessed on 11 November 2021).

[54] Regarding the history of VRÜ, *Brun-Otto Bryde*, 50 years of „VRÜ/Law and Politics in Asia, Africa and Latin America": History and Challenges, VRÜ 51 (2018), p. 3 ff.

[55] *Krüger*, note 36, p. 7.

[56] See the programmatic statements by *Krüger*, note 36, p. 5, concerning the need for exchange with local authors.

contribution, but considers the colonial past interesting only where it reaches into the present.[57] For the rest, there is no interest in the "genesis" of the new states. Indeed, if one goes through the contributions of the first twenty years, historical perspectives are largely absent.

At the same time, another observation about the content of the VRÜ through the years is of importance. If in the postwar period "colonial thinking" is supposed to be found primarily in the unreflected use of development ideology, then in any case this is not found in the VRÜ. There, a critical examination of the concept of development, the idea of a Western role model, and skepticism about development policy (and also about the dangers of cooperation as a new form of colonialism) can be found at an early stage. [58] In this respect, it is exactly the opposite of what Brehme and Hutschenreuter saw and predicted.

IV. Conclusion: Two kinds of comparison, double amnesia

In retrospect, two types of comparison emerge. On the one hand, there was a rather instrumentally designed comparison produced for development policy during the period, which was oriented towards Eurocentric concepts (especially of modernization and the state) and was often a soliloquy of Northern "experts" about the South. The perspective of the GDR authors is helpful for their critique - but their critical analysis on a larger horizon is not singular either. Criticism of the development discourse also existed in the West and above all in the South.[59] On the other hand, there was already original research at that time, which emerged in exchange with authors from the South. In the context of general comparative constitutional studies, this was (possibly) marginal, but it was extremely innovative methodologically and theoretically and in its subjects. Where comparative research served Western development models and the geopolitical and economic interests behind them, the question of its neocolonial dimensions and colonial thinking is certainly justified. In the case of intrinsically motivated research, however, the question is revealed to be pretextual and falsely posed.

In the context of this volume, however, both types of comparison also trigger the question of how to deal with German (and general) colonialism and its continuing effects. This addresses the broader question of remembering and researching coloniality, which was also the trigger for this volume.[60] What is interesting here, first of all, is the interplay between the colonial theme and the Cold War. The Cold War was the trigger and context of one of the few moments in which the colonial dimension of Germany's past was addressed in a somewhat broader form. Dealing with the Global South served as

[57] "However, since this journal is not so much concerned with genesis as with actuality, and this applies above all to the existence of the obvserved states, colonisation and even decolonisation come into consideration for us only insofar as their consequences are still noticeable today", *Herbert Kürger*, VRÜ 1 (1968), p. 7.

[58] *Henning Wedel*, Entwicklungspolitik wozu?, VRÜ 6 (1973), p. 327; *Mols*, note 35, p. 5.

[59] This is not quite as self-evident as it sounds today, because the dominance of the development paradigm was still very strong at the time - in the North as well as in the South (see regarding the central concept of the era, *Meredith Woo-Cumings* (ed.), The Developmental State, Ithaca 1999). Nevertheless, there were critical voices, see *Kwame Nkrumah*, *Neo-Colonialism*: The Last Stage of Imperialism*,* London 1971, p. 242; *Frantz Fanon*, The Wretched of the Earth, New York 1963, p. 66; *Balakrishnan Rajagopal*, International Law from Below, Cambridge 2004. For context, *Dann*, note 23, p. 20 ff.

[60] Regarding German colonial history see particularly *Schilling*, note 41; *Conrad*, note 18, p. 28; *Riegner* (•••). On the broader connection between law and memory, see as an introduction *Uladzislau Belavusau / Aleksandra Gliszczyńska-Grabias* (eds.), Law and memory, Cambridge 2017; *Justin Collings*, Scales of Memory: Constitutional Justice and Historical Evil, Oxford 2021; *Nikolaus Marsch / Laura Münkler / Thomas Wischmeyer* (eds.), Apokryphe Schriften, Tübingen 2019.

an ideological demarcation from the West and for self-assurance, not least among the GDR legal scholars cited above. However, criticism of Western interference and dominance in the Global South was not the exclusive prerogative of GDR authors. Left-wing authors in the West addressed the same structures and neocolonial dynamics. Much was mixed here with criticism of the US, which in Germany took up a much older tradition of anti-Americanism and was able to renew itself here.[61] The role of the US in the Vietnam War, Latin America as well as elsewhere in the South thus also played with familiar reflexes and stereotypes.

However, one must ask whether this was really about a form of memory. This seems doubtful in view of the controversy in legal schoalrship. In any case, the research examined here shows no engagement with the legal history of German and general colonialism or the role of lawyers and legal scholarship therein. German colonial history does not appear, neither in the authors from the GDR nor in the research from the Federal Republic. They do address the South, but not continuities, ruptures or other connections between South and North (for example, in the emerging law of development), but never actually colonial law and certainly not questions of restitution.

In this respect, the impression of amnesia sets in. The colonial past has remained strangely absent in both the East and the West. The works discussed ignore the colonial legacy; one finds precisely no search for and no examination of the German share in colonial exploitation and foreign rule or their concrete continuing effect in the constitutional life of Namibia, Tanzania or other states; one finds no in-depth research on the constitutions of former German colonies, no general interest in continuities of colonial instruments.

This blank space is surprising, because there was no lack of critical voices and original interest in the period (1960-70s). It was the time of a truly progressive development policy under Willy Brandt and his development minister Erhard Eppler.[62] The thoroughly broad support for it certainly had something to do with a diffuse sense of injustice and solidarity. However, the connection to Germany's role as a colonial power was not made. Questions about the legacy of colonialism did not reach jurisprudence and the critique of, for example, the left in the Federal Republic. The domestic orientation, especially of legal scholarship, was strong and the few interested in the Global South apparently did not act out of an impulse of colonial guilt.

There is increasing reflection on the reasons for this amnesia. Several times, reference has been made to the positivist blinkers, i.e. the focus of legal scholarship of the time on norms and doctrines instead of realities. But this is hardly convincing considering the thoroughly politicised generation we are dealing with here. The reference to the overwhelming efforts of the generation of that time to re-establish itself as a liberal-democratic society and legal scholarship following the Holocaust is more illuminating. It is possible that the generation around Brehme, Bryde and Stolleis was simply overburdened with the task of coming to terms with Nazi history and guilt. One should not forget that the generation under consideration here was anything but oblivious to history. But they were working on the history of the Nazi era, not the colonial era.[63]

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[62] For context *Philipp Dann*, Entwicklungsverwaltungsrecht, Tübingen 2011, p. 61 ff.; *Bastian Hein*, Die Westdeutschen und die Dritte Welt: Entwicklungspolitik und Entwicklungsdienste zwischen Reform und Revolte 1959–1974, München 2006.

[63] Regarding the challenges of „multidirectional memory“: *Michael Rothberg*, Multidirektionale Erinnerung, Berlin 2021 (in English 2009).

However, a second amnesia also makes us suspicious - namely in our memory of the research and constellations of the 1960s and the state of knowledge that had already been achieved at that time, not least in critical-reflective findings on the problem of instrumentalisation and foreign determination that are still valid today. This amnesia probably also has something to do with the long unquestioned dominance of the Cold War and East-West conflict as the only relevant explanatory framework of these decades. The history of North-South tensions hardly fit in (at least so far). At the same time, it is certainly necessary to take into account non-simultaneity in the attention economies of societies and scientific trends (in contrast to Kuhnian paradigms). A look at the literatures on transitional justice, in which the element of normative inclinations, bias or "chosen amnesia" is also discussed[64], would also be fruitful here, as would a reflection on the effects of disciplinary demarcations that prevent remembrance and inquiry.

Against this background, I would like to conclude by naming some research desiderata. Three seem central to me: First, there is still a lack of critical studies on the role of legal scholarship in the structuring and legitimisation of German colonial rule.[65] Original works on comparative legal history could also be devoted to the (historical) constitutional law of colonised societies, not least in relation to colonial interventions. In addition to historical research of the colonial period, research into the continuing effects in German law or European Union law from the post-war period and up to the present day should be undertaken. Legal, economic and epistemic domination play together here and, to my knowledge, the colonial tradition of the EU in particular has hardly been researched.[66] Finally, comparative legal research in GDR academica in general has hardly been researched. There are beginnings here and there, but they are far from providing a coherent picture.[67]

Ultimately, each generation develops its own favourite topics and blind spots. If we (i.e. those born from the 1970s onwards) are the generation of globalisation, then we should also tell the global history of German jurisprudence. Especially for the second half of the 20th century, when globalisation picked up speed, there are still many blank areas.

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[64] *Susanne Buckley-Zistel*, Remembering to Forget: Chosen Amnesia as a Strategy for Local Coexistence in Post-Genocide Rwanda, Africa: The Journal of the International African Institute (76) 2006, p. 131–150; more general Hakeem *Yusuf / Hugo van der Merwe* (Hrsg.), Transitional Justice: Theories, Mechanisms and Debates, Milton Park 2022.

[65] Contributions to this in Part I and the review of literature in *Jakob Zollmann*, Bausteine einer kolonialen Geschichte des Privatrechts. Das Reichsgericht und die deutschen Kolonien, 1888-1920, Rechtskultur 5 (2016), p. 14.

[66] First attempts in *Peo Hansen / Stefan Jonsson*, Another Colonialism: Africa in the History of European Integration, Journal of Historical Sociology 27 (2014), p. 442; *Peo Hansen* / *Stefan Jonsson*, Eurafrica Incognita: The Colonial Origins of the European Union, History of the Present 7 (2017), p. 1.

[67] See note 11.