

## BUCHBESPRECHUNGEN / BOOK REVIEWS

### Review Article: Post-Colonial Theory, Constitutionalism and the “Global East”

*Herbert Küpper/William Partlett, The Post-Soviet as Post-Colonial, A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire*, Cambridge University Press, 2022, 281 pages, \$135.00/\$40.00, ISBN 9781802209440

By *Caroline von Gall*\*

**Abstract:** Post-colonial legal theory has tended to focus on the binary of the Global North and the Global South, but it may also be helpful to understand constitutional development and “democratic backsliding” in Eastern Europe. This is shown by William Partlett and Herbert Küpper in their 2022 book “The Post-Soviet as Post-Colonial, A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire”. Consideration of colonial experiences in Eastern and Central Europe can lead to important contributions to the global perspective of postcolonial legal studies and broaden its comparative scope as well as to the global history of international law and to comparative constitutional law. However other than Partlett and Küpper suggest, coloniality in Eastern European legal thought is not only shaped by Russian and the Soviet Union’s but also by Western coloniality. It is recommended that future studies on Eastern European constitutionalism that rely on post-colonial theory may pay greater attention to the nuances and complexities of the multi-layered colonial legacy in Eastern Europe, encompassing not only the influence of Russian and Soviet colonialism but also that of Western colonialism.

**Keywords:** Constitutionalism; Post-Colonial theory; Soviet Union; Global East; Legal theory

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\* Prof. Dr. Caroline von Gall is currently a Senior Fellow of the DFG Center for Advanced Studies ‘Universalism and Particularism in Contemporary European History’ at Ludwig Maximilian University Munich, Germany, Email: [cvgall@uni-koeln.de](mailto:cvgall@uni-koeln.de). She specialises in international law, German constitutional law, comparative constitutional law and the philosophy of law, with a particular focus on Eastern Europe.

## A. Introduction

In 2022, Herbert Küpper and William Partlett comprehensively discuss in their book “The Post-Soviet as Post-Colonial: A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire” the effects of post-colonialism on constitutionalism in the former Soviet empire.<sup>1</sup> Their study was very timely in the light of the ongoing Russian aggression against Ukraine, that has been convincingly qualified as an “imperial war” underpinned by Russia’s imperial legacy and the open denial of Ukraine’s political sovereignty and the Ukrainians’ right to exist as an independent nation.<sup>2</sup>

William Partlett and Herbert Küpper, both renowned scholars of comparative constitutional law, present a well-informed study on the role of constitutions in the process of state building in the very different areas of Eastern Europe in the aftermath of the collapse of the Soviet Union. Partlett and Küpper’s book “The Post-Soviet as Post-Colonial, A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire” is an important contribution to a new field of research. Their book seeks to provide a new angle of understanding constitutional change in the former Socialist bloc in Europe and Eurasia after the end of the Cold War until today as well as to understand “resilience of authoritarianism” in the region (p. vii). The authors use the post-colonial perspective to compare the constitutions of countries they identify as former Soviet colonies. They argue that constitutional dynamics in post-socialist Europe and Eurasia are usually analyzed through the lens of post-authoritarianism, discussing the end of Soviet dictatorship and the targeted transformation to the liberal democratic rule of law-based state. These approaches had focused on the ability of constitutions to limit state power by separation of powers and human rights. By this approach the questions of sovereignty, constitutional identity and nation-building, the relationship to other states and among the different federal regions in a country remained overlooked. Instead, the authors propose to add a “postcolonial lens” that turns attention “to the role of constitutions in building and consolidating the state” (p. 2). According to Partlett and Küpper, the post-colonial perspective is “aware of the problem of the challenge of asserting sovereignty and State building and the challenge of creation of postcolonial national identity”. The new lens shifts the focus from the question of democracy to the question of sovereignty.

In recent years, post-colonial theory had been increasingly recognized as a methodological tool to analyze and discuss legal development in former colonies in the Global South.<sup>3</sup>

- 1 Herbert Küpper / William Partlett, *The Post-Soviet as Post-Colonial: a New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire*, Cheltenham 2022.
- 2 Timothy Snyder, *The War in Ukraine is a Colonial War*, *The New Yorker*, 28.02.2022, <https://www.newyorker.com/news/essay/the-war-in-ukraine-is-a-colonial-war> (last accessed on 04 February 2025); Maria Mälksoo, *The Postcolonial Moment in Russia’s War Against Ukraine*, *Journal of Genocide Research* 25 (2023), pp. 471-481.
- 3 Alpina Roy, *Postcolonial Theory and Law: A Critical Introduction*, *Adelaide Law Review* 29 (2008), p. 315; Peter Fitzpatrick / Eve Darian-Smith, *Laws of the Postcolonial: An Insistent Intro-*

Post-colonial theory has broadened the perspective and the understanding of legal development in the former colonies of the Global South showing that the effects of colonial laws and the underlying ideology continue to have contemporary relevance as they “continue to be used as an instrument of control in this post-colonial world.”<sup>4</sup>

Post-colonial theory has brought a critical perspective on eurocentrism and the claim of universality of Western law in legal debate.<sup>5</sup> As Fitzpatrick and Darian-Smith suggest, “postcolonialism would [...] oppose those who perceived law as a great civilizing mode of colonization or as an instrument of development or of modernization.”<sup>6</sup> It sides with the Global South and is aware of the difficulties arising from colonialism by tracing “the patterns of epistemological and pedagogic reterritorialization of the non-Western world.”<sup>7</sup>

For many years, post-colonial critique had focused on Western colonialism in the Global South. The post-colonial debate is therefore greatly shaped by the particularities of the North-South divide: economic and normative hegemony of the Global North, exploitation of the South and questions of race. Studies have focused on the very different regions of the Global South that were all affected by Western colonialism and discussed their similarities.

Colonialism in Central and Eastern Europe is still a blind spot of post-colonial legal studies. While there has been a growing literature on Eastern European coloniality in social science and the humanities,<sup>8</sup> post-colonial legal scholarship continues to disregard the effects of colonialism and post-colonialism on Eastern European constitutions. Scholars have only on rare occasions argued that not only the constitutions of the Global South demand a post-colonial reading but also the constitutions in Europe and Eurasia.<sup>9</sup>

Therefore, using a post-colonial perspective relying on post-colonial theory for studies on Eastern European constitutionalism is an important innovation. However, it is to criticize that Partlett and Küpper focus too much on Soviet colonialism. Further studies should pay more respect to the particularities and ambiguities of multi-layered colonialism in Eastern Europe established by Russian and Soviet but also Western colonialism in Eastern Europe.

duction, in: Peter Fitzpatrick / Eve Darian Smith (eds.), *Laws of the Postcolonial*, Ann Arbor 1991, p. 4.

4 Roy, note 3.

5 Fitzpatrick / Darian-Smith, note 3.

6 Ibid.

7 Roy, note 3.

8 David Chioni Moore, *Is the Post- in Postcolonial the Post- in Post-Soviet? Toward a Global Postcolonial Critique*, *Publications of the Modern Language Association* 116 (2001), p. 111 ; Hana Cervinkova, *Postcolonialism, postsocialism and the anthropology of east-central Europe*, *Journal of Postcolonial Writing* 48 (2012), p. 155; Dorota Kołodziejczyk / Siegfried Huigen, *East Central Europe Between the Colonial and the Postcolonial: A Critical Introduction*, in: Dorota Kołodziejczyk / Siegfried Huigen (eds.), *East Central Europe Between the Colonial and the Postcolonial*, Heidelberg 2023.

9 James Fowkes / Michaela Hailbronner, *Decolonizing Eastern Europe: A global perspective on 1989 and the world it made*, *International Journal of Constitutional Law* 17 (2019), p. 497.

## B. Küpper/ Partlett: *The Post-Soviet as the Post-colonial*

Küpper and Partlett's book is divided into six chapters. The first chapter introduces the key concepts of the study. Most interestingly, the authors do not further engage in the discourse on post-colonial legal theory or postcolonial critique. Instead, they quickly define "postcolonialism" as "the end of colonial dominance of one political entity over territory with another political entity" that involves two processes: First the withdrawal of imperial dominance of the colonial power and second in the process of constructing independence stated by the former colony public on the process of constitutional change in the process of decolonization (p. 7).

In a second step the authors discuss the question of whether the Soviet Union qualifies as a colonial power (p. 16 ff.). The authors argue that Soviet rule was based on hard power through military and political dominance as well as soft power, communist ideology. The authors recall that while Western European colonialism had a strong racist component, dividing the "masters" from the "subaltern", communist ideology advocated equality and rejected all forms of colonialism. The ethnical aspect nonetheless remained of importance in the system, the Russian people had a superior position. The authors explain that Russian superiority was justified by the allegation of the Russians as most advanced on the path leading to communism. Against that backdrop, the authors identify five pillars of Soviet colonialism: The dominance of the Russian people in the Soviet Union, communist party hierarchies, the dominance of the Russian language and culture. Outside the Soviet Union, in the "outer empire" it is the presence of the Soviet army. Compared to Western colonialism the authors see no exploitation of the colonies although they acknowledge the constraints for the national economies deriving from the Soviet COMECON planned economy, and the fact that the colonies were used as "reservoir of commodities" and a market for the center's own products (p. 22).

This methodological part is followed by several case studies on the different countries. The case studies discuss how the constitutions respond to colonial history, how they tackle the question of sovereignty, national identity and the influence of international law and finally how post-coloniality is used in constitutional discourse. The authors begin with the Russian case (p. 36). They demonstrate how the Russian state struggled to come to terms with this new position as an independent nation in between two alternative paths: Joining Europe as an equal partner or following an explicitly nationalist and pre-Soviet form of Russian exceptionalism grounded in the tsarist era (p. 37). They show how the discourse of exceptionalism grew in influence and "imperial nostalgia" became increasingly important for constitutional dynamics (p. vii).

The third chapter examines the constitutions of the state of the "inner empire", the former republics within the Soviet Union. The authors claim that many Soviet successive states in Eurasia were "not prepared for the challenges of independence after the collapse of the Soviet Union" (p. 6) and struggled with building a national identity and a new independent state after the collapse of the Soviet Union. According to the authors, the

sudden need to consolidate power may explain the hyper-centralized approach in these countries.

The fifth chapter discusses the constitutions of the outer empire, followed by an in-depth case study on Hungary. The authors recall that in the 1990s most constitutions of the outer empire explicitly engaged with their countries' "return to Europe" but remained silent on former Soviet colonialism. The authors argue that remaining silent on the past "has allowed room for populism and divergence from post authoritarian approaches in recent years" (p. 118). The Hungarian constitutional reform in 2010 constitutionalized a particular narrative showing the new basic law as a symbol of the end of the transitional period after Soviet colonial rule and presenting the achievements of the current government by restoring full state sovereignty and historical justice. The authors describe this approach as strategic: The victimization of the Hungarian nation as subaltern to Soviet foreign power is especially convincing for those Hungarians who were part of the communist system and aim to whitewash the involvement of Hungarians in communist crimes.

The authors conclude that the postcolonial lens reveals five key lessons: First it turns the attention "to the understanding of the way in which history is strategically interpreted (or avoided) by powerful individuals in the post-socialist space" (p. 238). Second, it turns the attention to external sovereignty and "the role of constitutional integration with international law." The authors understand the "current resistance" to international law "as a postcolonial development;" that helps to "understand the basis for the nationalist backlash against the transnational project both in the imperial center and the former colonies" (p. 239). Third, it shows how the need to assert control over the territory of these newly independent states has shaped the constitution (p. 239). The postcolonial lens brings attention to the details of constitutional state building beyond courts and rights and shows how the postcolonial requirement of nation building has shaped constitutional text.

The authors maintain that the postcolonial emphasis on sovereignty obviously collides with the post-authoritarian emphasis on the implementation of European norms and democratic constitutionalism (p. 234). However, the authors admit leaving it to future scholars to further develop "this understanding and counter the anti-democratic argument that sometimes emerge as part of this past-coloniality" (p. 247).

### C. Applying Post-Colonial Theory in Eastern Europe

The study is eye-opening and pursuing: Küpper and Partlett rightly observe that research on Eastern European constitutionalism is very much focused on the question of the political transformation to the democratic rule of law-based state and the dichotomy of democracy and authoritarian rule. Research on post-socialist transformation in Eastern Europe had nonetheless acknowledged at an early stage that the newly independent states in the European East face multiple challenges after the collapse of the Soviet Union, not only political transformation from authoritarianism to democracy. Already in 1989, Claus Offe had outlined the complexity and challenges of simultaneously establishing the institutions of

representative democracy and market economy as well as the question of nation building.<sup>10</sup> Only recently Lauri Mälksoo had explained the consequences of Russian imperial legacies for the Russian approaches to international law.<sup>11</sup> Nevertheless, *constitutional* scholarship had long ignored the implications of history and coloniality for constitutionalism in Eastern Europe. The proposal to direct the post-colonial lens to the role of constitutions in the process of nation building, the question of sovereignty and national identity is thus promising and innovative and as a new methodological tool constitutes a major contribution to constitutional studies.

The Partlett and Küpper use of this new tool does however leave open the categorial question regarding the many contradictions and paradoxes of the Soviet Union as a colonial power as well as the effects of Western colonialism and dominance in Eastern Europe.

Apart from the methodological contribution the book delivers interesting findings through the application of the post-colonial lens in the case studies. For Russia it is convincing to outline how “imperial nostalgia” became important for constitutional dynamics, especially with regard to the weak character of federalism and the rights of smaller ethnicities and regions in the Russian Federation or with regard to the affirmation of the primacy of national sovereignty over international law by the 2020 Russian constitutional amendments. The sudden need to consolidate power in the former republics of the Soviet Union after becoming independent from the former Soviet empire may also explain the hyper-centralized approach in these countries in recent years. The book argues convincingly that Hungary's lack of confrontation and historical reappraisal of its time as a Soviet “colony” contributes to the fact that populists today can successfully implement nationalist and anti-European constitutional measures and underline sovereignty and the importance of the independence from the European Union.

However, the study of Partlett and Küpper leaves many questions unanswered. First, the study does not further engage with the particularities and paradoxes of Russian and Soviet coloniality compared to Western empires. Consequently, the study does not further discuss how a discourse on Eastern Europe may possibly differentiate from earlier post-colonial discourse and to what extent the Eastern European example may add to the global perspective on colonialism.

Second, the current constitutional “backlash” is obviously shaped not only by Soviet colonialism but also by Western dominance in Europe and the question of “Europeanness” of the Central and Eastern European countries, the question of Eastern European countries being equal partners in Europe or characterized by otherness compared to Western European countries. The authors discuss the consequences of the Soviet colonial power, but

10 Claus Offe, *Das Dilemma der Gleichzeitigkeit. Demokratisierung und Marktwirtschaft in Osteuropa*, in: Claus Offe (ed.), *Übergänge*, Heidelberg 2020, p. 59.

11 Lauri Mälksoo, *The Russian Concept of International Law as Imperial Legacy*, in: Peter Hilpold (ed.), *European International Law Traditions*, Heidelberg 2021; see also *Anastasiya Kotova / Ntina Tzouvava*, *In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law*, *American Journal of International Law* 116 (2022), p. 710.

surprisingly fail to reflect the consequences of Western colonialism in Central and Eastern Europe, thereby neglecting not only the anti-Western stance of current constitutional backsliding in Eastern Europe but also the successful authoritarian abuse of anti-colonial critique.

Rather than discussing post-coloniality one-dimensionally as the effects of former Soviet colonialism, it seems more convincing to conceptualize coloniality in Eastern Europe on the basis of Martin Müller's concept of the "Global East".<sup>12</sup> Müller acknowledges the paradoxes of Eastern Europe being neither a part of the Global North nor of the Global South, but in itself shaped by different layers of Western as well as Russian and Soviet colonialism and the question of being an equal part of Europe or "the other", the oriental. This concept allows a better understanding of the current constitutional challenges in Eastern Europe based on an ambiguous history of colonialism but also explains the communist's ("Eastern") implications on the North-South divide. Adding the Global East leads to a more comprehensive understanding of coloniality and its implications for the history of international law as well as global constitutionalism.

### *I. The Soviet Union as a Colonial Power?*

Partlett and Küpper quickly define the Soviet Union as a colonial power, but neglect the lengthy discourse in Eastern European coloniality in social science and the humanities.<sup>13</sup> They also keep silent on the reluctance of parts of the literature to describe the former Soviet Union as a colonial power and to convey the paradigm of post-colonialism to Eastern Europe, a question that is still contested in scholarship.<sup>14</sup> Consequently, the study does not further discuss how a discourse on Eastern Europe differs from earlier post-colonial

12 *Martin Müller*, In Search of the Global East: Thinking between North and South, *Geopolitics* 24 (2020), p. 734.

13 For a recent overview on the literature with regard to Central Europe: *Kolodziejczyk / Huigen*, note 6. See also *Martin Schulze Wessel*, *Der Fluch des Imperiums: Die Ukraine, Polen und der Irrweg in der Russischen Geschichte*, München 2023.

14 *Ulrich Hofmeister*, *Kolonialmacht Sowjetunion: Ein Rückblick auf den Fall Uzbekistan*, *Osteuropa* 56 (2006), p. 69; *Sharad Chari / Katherine Verdery*, Thinking between the Posts: Postcolonialism, Postsocialism, and Ethnography after the Cold War, *Comparative Studies in Society and History* 51 (2009), p. 6; *Jill Owczarzak*, Introduction: Postcolonial Studies and Postsocialism in Eastern Europe, *Journal of Global and Historical Anthropology* 53 (2009), p. 3; *Dirk Uffelman*, Theory as Memory Practice: The Divided Discourse on Poland's Postcoloniality, in: *Uilleam Blacker / Alexander Etkind / Julie Fedor* (eds.), *Memory and Theory in Eastern Europe*, Heidelberg 2013, p. 103; *Madina Tlostanova*, Postsocialist ≠ postcolonial? On post-Soviet imaginary and global coloniality, *Journal of Postcolonial Writing* 48 (2012), p. 130; *Cristina Sandru*, *Worlds Apart? A Postcolonial Reading of Post 1945 East Central European Culture*, Newcastle upon Tyne 2012; *James Mark / Slobodian Quinn*, Eastern Europe in the Global History of Decolonization, in: *Martin Thomas / Andrew Thompson* (eds.), *The Oxford Handbook of the Ends of Empire*, Oxford 2018, p. 351; *Michał Buchowski*, The Specter of Orientalism in Europe: From Exotic Other to Stigmatized Brother, *Anthropological Quarterly* 79 (2006), p. 463; *Claudia Snochowska-Gonzalez*, Post-colonial Poland – On an Unavoidable Misuse, *East European Politics and Societies* and

discourse, although it seems obvious that that branding Central Europe as “post-colonial” will always “ring a false bell or iterate discussions on the inevitability of dependence in the world-system and evoke accusations of derivativeness.”<sup>15</sup> It is in the end convincing to see the Soviet Union as a colonial power as the state exercised military power over its satellite states, but the study leaves questions unanswered. As mainstream post-colonial studies focus on the political construction of racial hierarchies along the color lines, it would have been interesting to better understand how ethnic hierarchies and racial differentiations of master and subaltern played a role in the Russian Imperial project. Yet it is obvious that the different colonies in the East and the West were treated differently by the Russian and Soviet colonizers and that the different colonies had a very different legal history. The Western colonies of the Russian Empire had in different periods also been part of the German, Prussian or Austro-Hungarian empire and also participated in the legal development of these countries or empires. The universities of Prague, Pécs and Krakow are among the oldest universities in Europe with legal faculties.

At the same time, it is interesting to see that compared to Western empires, Russia not only imposed its laws to the colonials, Russian legal theory is also very much shaped by legal scholars from the peripheries. Some of most eminent “Russian” legal scholars with an enormous impact on Russian legal development came from the Western peripheries such as legal realist Leon Petrażycki (Poland), legal philosopher Bogdan Kistyakovski (Ukraine) or international lawyer Friedrich Fromhold Martens (Estonia).

It is also fascinating to see the extent to which ethnic hierarchies collide with ideological hierarchies in the Soviet Union. From the perspective of communism, the working class was superior to other classes like the bourgeoisie. From the ideological perspective ethnic hierarchies did not play a role. Until today Russia (like the Soviet Union before) builds its feeling of superiority on the defeat of fascism and Nazi occupation, the liberation of Europe. In the rhetoric’s the Soviet Union and Russia today does often not claim to fight ethnic groups like Germans or Ukrainian, but fascism as a political idea. And while the Soviet Union used communist ideology as a justification for colonial rule, the ideology itself praised the non-colonial form of participation in the Soviet Union and the equality of workers worldwide.

At the same time, Russian and Soviet power always used to be authoritarian and dictatorial against its own people. Alexander Etkind has shown how Imperial Russia applied the cultural and political tools to colonies beyond but also within its own borders.<sup>16</sup> Ideology and ethnical superiority were of course used tactically, but unfortunately the authors remain

Cultures 26 (2012), p. 708; *Viatcheslav Morozov*, *Russia's Postcolonial Identity: A Subaltern Empire in a Eurocentric World*, London 2015.

15 *Kołodziejczyk / Huigen*, note 6, p. 21.

16 *Alexander Etkind*, *Internal Colonization: Russia's Imperial Experience*, Cambridge 2011; *Dominic Lieven*, *Empire: The Russian Empire and its Rivals*, New Haven 2000.



too vague on the relationship between hard power, ideology and ethnic hierarchies and its consequences.

Any approach conveying the discourse on coloniality on Eastern Europe should be more cautious on the differences and closely examine the context of coloniality in each country as well as the narratives accompanying coloniality. Any analogy to the countries of the Global South demands a more careful exposure of the differences. Only then can a post-colonial perspective, as global perspective, dismantle the assumption of a bipolar world and uncover the interconnections of this order.

Finally, in the light of the Russian aggression against Ukraine there is the obvious question if Russia should rather be discussed as acting as a colonial than a post-colonial power.

## II. Soviet Anti-colonialism

Another paradox of Soviet colonialism is that the Soviet Union, while being a colonial power itself, very much contributed to anti-colonial aspirations of the Global South. While from the Western perspective as well as from the perspective of its immediate neighbors the Soviet Union and Russia are colonial powers, from the perspective of the Global South both are anti-colonial powers. The Soviet Union was not only opposed to Western aspirations on the international sphere but itself also influenced the development of international law.<sup>17</sup> Recent scholarship has highlighted the special impact of the Soviet Union on the development of the right of self-determination under the United Nations.<sup>18</sup> Victor Kattan has shown how the communist approach to the right of self-determination was appropriated and applied by the emerging leaders in the Third World to support their claims to self-determination against Western colonizers. In a recent article, Kattan cites Nelson Mandela who in 1963–64 explained that

*“for many decades communists were the only political group in South Africa who were prepared to treat Africans as human beings and their equals; who were prepared to eat with us; talk with us, live with and work with us. Because of this, there are many Africans who, today, tend to equate freedom with communism.”*<sup>19</sup>

17 Bill Bowring, The Soviets and the Right to Self-determination of the Colonized: Contradictions of Soviet Diplomacy and Foreign Policy in the Era of Decolonization, in: Jochen von Bernstorff / Philipp Dann (eds.), The Battle for International Law: South North Perspectives on the Decolonization Era, Oxford 2019, p. 404 ; Johannes Socher, Russia and the Right to Self Determination in the Post Soviet Space, Oxford 2021; Lauri Mälksoo, The Soviet Approach to the Right of Peoples to Self-determination: Russia’s Farewell to *jus publicum europaeum*, Journal of the History of International Law 19 (2017), p. 200; John B. Quigley, Soviet Legal Innovation and the Law of the Western World, Cambridge 2007, pp. 47–52, 143–147.

18 Victor Kattan, Self-Determination in the Third World: The Role of the Soviet Union (1917–1960), Jus Gentium 8 (2023), p. 87.

19 Nelson Mandela, Long Walk to Freedom, Boston 1994, p. 504; 2013 reprint; p. 110.

Kattan argues the Soviet Union with communism and self-determination could offer more appealing concepts to many leaders in Africa than the West with democracy and individual rights.<sup>20</sup>

Consequently, Neil Lazarus' perception of the post-colonial framing of post-communist studies as "paradoxical" is convincing on the account of an assumption that the Soviet Union was a decolonizing force.<sup>21</sup> Lazarus stresses that initially post-colonial theory was driven by its communist anti-capitalist critique of its uneven development at the peripheries. Therefore, this paradigm would not fit in Eastern Europe.

Partlett and Küpper's book neglects the influence Marxism had on decolonizing movements.<sup>22</sup> This is also more astonishing as today again Russia uses anti-Western resentment as soft power in Africa<sup>23</sup> to gain support for its colonial war in Ukraine.<sup>24</sup> Today, Putin successfully plays the global leader of anti-Western rebellion that clashes with the anti-colonial narrative in Central Europe. The nature of Soviet colonialism can only be understood by the constant struggle of the Soviet power to contest the Global North's liberal script as well as its anti-colonial empowerment of the Global South.

## D. Explaining Constitutional Backlash by Post-colonial Theory?

As the book aims to better understand democratic backlash and authoritarian resilience in Eastern Europe it is fascinating to see that Partlett and Küpper remain almost completely

20 Kattan, note 18, p. 115.

21 Neil Lazarus, Spectres haunting: Postcommunism and postcolonialism, *Journal of Postcolonial Writing* 48 (2012), p. 117.

22 Sanja Petvoska, Book Review: William Partlett & Herbert Küpper's *The Post-Soviet as Post-Colonial: A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire*, *Marx & Philosophy*, 19.10.2022, [https://marxandphilosophy.org.uk/reviews/20583\\_the-post-soviet-as-post-colonial-a-new-paradigm-for-understanding-constitutional-dynamics-in-the-former-soviet-empire-by-william-partlett-and-herbert-ku%C3%88pper-reviewed-by-sanja-petkovska/](https://marxandphilosophy.org.uk/reviews/20583_the-post-soviet-as-post-colonial-a-new-paradigm-for-understanding-constitutional-dynamics-in-the-former-soviet-empire-by-william-partlett-and-herbert-ku%C3%88pper-reviewed-by-sanja-petkovska/).

23 Gilles Paris, Whatever Putin may say, Russia is no less predatory in Africa than the colonial powers of yesteryear, *Le Monde*, 06.10.2022, [https://www.lemonde.fr/en/opinion/article/2022/10/06/whatever-vladimir-putin-may-say-russia-is-no-less-predatory-in-africa-than-were-the-colonial-powers-of-the-past\\_5999308\\_23.html](https://www.lemonde.fr/en/opinion/article/2022/10/06/whatever-vladimir-putin-may-say-russia-is-no-less-predatory-in-africa-than-were-the-colonial-powers-of-the-past_5999308_23.html) (last accessed on 04 February 2025); Peter Dickinson, Putin Denounces Imperialism while Annexing Large Swathes of Ukraine, *Atlantic Council*, 30.09.2022, <https://www.atlanticcouncil.org/blogs/ukrainealert/putin-denounces-imperialism-while-annexing-large-swathes-of-ukraine/> (last accessed on 04. February 2025); Howard French, Why Putin's Denunciations of Western Imperialism Ring Hollow, *Foreign Policy* 05.10.2022, <https://foreignpolicy.com/2022/10/05/putin-speech-ukraine-annexation-western-imperialism/> (last accessed on 04 February 2025); Edyta Bojanowska, Putin's Anti-Colonial Agenda?, *Yale Macmillan Center*, 16.12.2022, <https://europeanstudies.macmillan.yale.edu/news/putins-anti-colonial-agenda> (last accessed on 04 February 2025).

24 Andrey Pertsev, Putin, the Anti-Colonialist. The Kremlin's new Model of Russian "Soft Power" will fuel Anti-Western Resentment in Southern Europe, South America, Africa and Asia, *Meduza*, 11.11.2022, <https://meduza.io/en/feature/2022/11/11/putin-the-anti-colonialist> (last accessed on 04 February 2025).

silent on Western colonialism in Eastern Europe and the anti-western, anti-liberal justification of current authoritarization framed as anti-colonial discourse.

### *I. Western Colonialism in the East*

Coloniality in Eastern Europe is multilayered. Apart from the Russian and Soviet colonial past there is also a history of Western colonialism in Eastern Europe. Partlett and Küpper neglect the fact that Central Europe was not only colonized by the Soviet Union but also has a long history of being part of the Austro-Hungarian and German/Prussian Empire.<sup>25</sup> The narratives are interconnected: The Soviet Union legitimized their power in Eastern Europe not only by communist ideology but also by the liberation from German fascism and the Nazi-occupation.

In his essay “In Search of the Global East: Thinking between North and South” Martin Müller recollects the story of an old man who says he was born in Austria-Hungary, went to school in Czechoslovakia, married in Hungary, worked most of his life in the Soviet Union, and retired in Ukraine. “Travelled a lot, then?” asks his interviewer. ‘No, I never moved from Mukachevo.’<sup>26</sup> The joke is very telling not only with regard to multi-layered Eastern European colonialism but also the widespread ignorance versus this very special colonial history.

### *II. Eastern European “Otherness”*

As post-colonial studies initially aimed to critically engage with *Western* dominance and political construction of hierarchies, it is appealing that Partlett and Küpper remain silent on the discussion of Eastern European otherness and its relationship to the West. Edward Said’s influential concept of “orientalism”<sup>27</sup> can easily be applied to Eastern Europe. Based on Said, Milica Bakić-Hayden and Robert Hayden developed the concept of “nesting orientalism” as “a tendency for each region to view cultures and religions to the south and east of it as more conservative or primitive.”<sup>28</sup> It has been argued that it was the West that created the difference between East and West that provided grounds for considering the region from a postcolonial perspective. Until today, Eastern European countries are often regarded as

25 Kopp argues that the colonization of the East was inscribed in the project of German expansion, see *Kristin Leigh Kopp*, *Germany’s Wild East: Constructing Poland as Colonial Space*, Ann Arbor 2012, p. 2.

26 *Offe*, note 10.

27 *Edward Said*, *Orientalism*, New York 1978.

28 *Milica Bakić-Hayden / Robert Hayden*, *Orientalist Variations on the Theme “Balkans”: Symbolic Geography in Recent Yugoslav Cultural Politics*, *Slavic Review* 51 (1992), pp. 1, 4; *Milica Bakić-Hayden*, *Nesting Orientalisms: The Case of Former Yugoslavia*, *Slavic Review* 54 (1995), p. 917.

the other, the inferior, the latecomers in European history.<sup>29</sup> The conceptions of Eastern Europe as the other or the “new” Europe does display the characteristics of orientalism—the exaggeration of difference, the presumption of Western cultural superiority, and the application of clichéd analytical models for perceiving the other. Larry Wolff’s “Inventing Eastern Europe: The Map of Civilization on the Mind of the Enlightenment” (1994)<sup>30</sup> discusses Eastern Europe as an imaginary, an ideological construct of the Western European othering, while Maria Todorova’s “Imagining the Balkans” (1997) studies the Orientalist construction of the Balkans.<sup>31</sup>

The post-colonial perspective also demands a critical reading of Western academic engagement with East European law, e.g., of the German former discipline of “Ostrecht”. The first German journals dealing with the law in the newly independent states in Eastern Europe and in Russia under the special designation “Ostrecht”<sup>32</sup> emerged in Germany during the 1920s. Although the articles in these journals are almost all unbiased and objectively guided by an sincere interest, many written by expatriates, Ditt has argued that most people understood “Ostrecht” as something less than other law.<sup>33</sup> “Ostrecht” gained a new meaning during the 1940s: It now covered the practical legal issues of the occupation on the basis of a special understanding of the German East coined by national socialist ideology.<sup>34</sup> After the Second World War, representatives of “Ostrecht” such as Reinhold Maurach<sup>35</sup> sided with the West and liberalism, drawing on the dichotomy of Eastern (socialist) and Western law. Consequently, constitutional scholars of Ostrecht aimed to unmask authoritarian socialist constitutionalism as mere shame, as façade as “wrong” constitutionalism.<sup>36</sup>

After the collapse of the Soviet Union, the rift dividing the rich Western European and post-communist societies, triggered new images of inferiority and backwardness now again

- 29 Hans-Christian Petersen, Rassismus gegen Weiße? Für eine Osterweiterung der Rassismusdebatte, *Geschichte der Gegenwart*, 23.02.2022, <https://geschichtedergegenwart.ch/rassismus-gegen-weiss-e-fuer-eine-osterweiterung-der-deutschen-rassismusdebatte/> (last accessed on 04 February 2025); Manuela Boatcă, Multiple Europas und die interne Politik der Differenz, in: Manuela Boatcă / Willfried Spohn (eds.), *Globale, Multiple und Postkoloniale Modernen*, München 2010, p. 341; Anca Parvuelscu, Eastern Europe as Method, *The Slavic and Eastern European Journal* 63 (2019), p. 470; Madina Tlostanova, Can the Post-Soviet Think? On Coloniality of Knowledge, *External Imperial and Double Colonial Difference, Intersections. East European Journal of Society and Politics* 1 (2015), p. 38.
- 30 Larry Wolff, *Inventing Eastern Europe: The Map of Civilization on the Mind of the Enlightenment*, Stanford 1994; See Tomasz Zarycki, *Ideologies of Eastness in Central and Eastern Europe*, 2014.
- 31 Maria Todorova, *Imagining the Balkans*, Oxford 2009.
- 32 Starting with the journals “Ostrecht” and “Zeitschrift für Ostrecht”.
- 33 Thomas Ditt, „Stoßtruppfakultät Breslau“: Rechtswissenschaft im „Grenzland Schlesien“ 1933–1945, Tübingen 2011, p. 14.
- 34 Ibid.
- 35 Viktor Nerlich, *A Baltico ad Euxinum: Reinhart Maurach und die Frühzeit der Deutschen Ostrechtforschung*, Berlin 2015.
- 36 For example, Georg Brunner, *Die Grundrechte im Sowjetsystem*, Berlin 1963, pp. 59, 115.

measuring the distance from the normative West. Transformation science focused on legal systems in Eastern Europe on their way to becoming more like Western systems, focusing on non-compliance and violations of European norms, focusing again on the insufficient.

At the same time, Eastern European scholarship itself suffered from “West-centrism” of post-colonial studies.<sup>37</sup> As Müller states, there is an irony that remaining outside British and French colonialism limited the chances to be heard. Russian, as main language of knowledge production, excluded Eastern European scholars from global and European discourse after the collapse of the Soviet Union. Until today Eastern European academic debates remain a grey zone to Western discourse.<sup>38</sup>

Being regarded as the “other European” has obviously shaped the identity of Eastern European countries and Russia. The perception of Russia’s backwardness in legal development influenced Russia’s self-perception. Non-compliance with alleged universal values and the allegations of backwardness have repeatedly provoked reactions by stressing Russia’s and the Soviet Union’s uniqueness and otherness in the Russian self-discription. From the 1850s it provoked a vibrant discussion between “Westernizers” and “Slavophiles” among Russian intelligentsia if Russia should try to catch up with Western legal development. Responding to the claim of backwardness, Slavophiles argued that Russian culture is based of concepts bigger than the law, such as community and orthodoxy. The discourse on the role of the law mirrors the general ambiguity of Russian discourse about being an equal part in Europe or a different exceptional entity. Nevertheless, the universality claims of Western law continued to put pressure on Russian authoritarian leaders. After the Second World War, when human rights became a subject of international law and foreign policy, communist leaders in response developed an alternative “socialist” human rights concept focusing on social rights to contest western claims as well as dissidents’ demands.

In the same way Central Europe is characterized by the in-betweenness of the region, between Europe and Russia: “The in-betweenness of the region has been inherently contradictory: on the one hand, founded on the strong identification with Europe, and, on the other, driven by the anxiety of incomplete belonging and not ranking high enough to merit the status of Europeanness.”<sup>39</sup> Despite being dependent on the Prussian/German, Austro-Hungarian or Russian empires until the end of the First World War, the countries would not consider themselves Western colonies: In-betweenness determines its equivocal self-perception as both inherently European and different, or, perhaps, made different by historical and geopolitical circumstances.<sup>40</sup>

37 *Offe*, note 10.

38 *Ibid.*

39 *Kołodziejczyk / Huigen*, note 6, p. 1.

40 *Ibid.*, p. 22.

During the Cold War, dissidents in the Soviet Union and Central Europe used the common language of universal human rights to oppose the socialist regime.<sup>41</sup> Consequently, the year 1989 was regarded as a return to Europe, post-communist countries aspired to join the European Union, the Council of Europe and NATO to seek redress for the decades of separation from Europe and the West. A post-colonial discourse on Eastern Europe should be aware of these conceptions and ambiguities.

### III. *The EU as a Colonial Power?*

Particular awareness is even more essential as post-coloniality today is largely applied by populist and authoritarian leaders in Eastern Europe in order to stir anti-EU sentiments and create a narrative of national decolonization from the European Union covering up a nationalist and anti-democratic agenda.<sup>42</sup> It is particularly surprising that the book is silent on anti-colonial political discourse in Poland, Hungary or Russia against western domination and the hegemony of European institution as populist leaders explain constitutional backlash not only by the Soviet past as the book suggests but also explicitly by European hegemony. Here the “postcolonial condition” turns into a powerful political weapon, disguising the illiberal democracy as the politics of decolonization.<sup>43</sup> The post-colonial concepts have become tools legitimating right-wing populist politics, providing the vocabularies of decolonization, “of a national insurgency against the hostile hegemony of the West, of the deprivation of national agency resulting in a domination by hegemonic states within the EU.”<sup>44</sup>

For leaders like Putin and Orban, colonialism has evolved into a powerful metaphor for the alleged arrogance of Western liberal elites. In this approach they unite with right wing populists worldwide. Putin not only justified the 2020 constitutional amendments by the need to strengthen sovereignty to repel Western cultural dominance<sup>45</sup> but also to justify the current war. In his speech on September 30, 2022 announcing the annexation of

41 *Michal Kopeček*, Dissident Legalism, Human Rights, Socialist Legality, and the Birth of Legal Resistance in the 1970s Democratic Opposition in Czechoslovakia and Poland, in: Celia Donert / Ana Kladnik / Martin Sabrow (eds.), *Making Sense of Dictatorship. Domination and Everyday Life in East Central Europe After 1945*, Budapest 2022, p. 241.

42 *Simon Taylor*, Orban accuses EU of colonialism, Politico, 16.03.2012, <https://www.politico.eu/article/orban-accuses-eu-of-colonialism>.

43 *Kołodziejczyk / Huigen*, note 6, p. 16.

44 *Siegfried Huigen / Dorota Kołodziejczyk*, New Nationalisms: Sources, Agendas, Languages. An Introduction, *European Review* 29 (2020), p. 427; *Dorota Kołodziejczyk*, Comparative posts going political-The postcolonial backlash in Poland, in: Lars Jensen / Julia Suarez-Krabbe / Christian Groes / Zoran Lee Pecic (eds.), *Postcolonial Europe. Comparative Reflections After The Empire*, Lanham 2017, p. 177; *Dorota Kołodziejczyk / Cristina Șandru*, Introduction: On colonialism, communism, and east central Europe – some reflections, *Journal of Postcolonial Writing* 48 (2012), p. 113.

45 *Lauri Mälksoo*, International Law and the 2020 Amendments to the Russian Constitution, *American Journal of International Law* 115 (2021), p. 78; see *Marianna Muravyeva*, Russia and the

Ukraine's Donetsk, Luhansk, Zaporizhzhia, and Kherson regions, Putin spoke little about Ukraine, instead heavily attacking the West for the alleged attempt to colonize Russia: "They do not want us to be free," Putin accused Western leaders, "they want us to be a colony" he claimed. While the West had claimed to be bringing freedom and democracy to the world, according to Putin, the exact opposite was true: Western states indented "total de-sovereignization" to impose liberal values to destroy Russian culture and democracy: "This explains their aggression towards independent states, traditional values and authentic cultures, their attempts to undermine international and integration processes."<sup>46</sup>

In Hungary, similarly Prime Minister Orbán and political figures supporting the Hungarian government have been constructing a colonial discourse against the West. According to this narrative, Hungarian culture and values as well the Hungarian understanding of democracy were not respected. The framing of EU-relations as a new colonial dependence is also crucial for the understanding of the backsliding in Poland.<sup>47</sup> The Istanbul Convention of the Council of Europe has been particularly targeted in that anti-European, anti-colonial constitutional politics.<sup>48</sup> It has been argued that anti-genderism forms a "symbolic glue"<sup>49</sup> to unite right wing politicians worldwide. This conservative version of anti-colonialism simply equates gender egalitarianism with colonization and compares it with totalitarianisms or the deadly Ebola virus.<sup>50</sup> Brussels has been cast as colonial and imperialist, but especially in Central Europe also connected to "communist" history as observed in sentiments such as "Brussels is the new Moscow."<sup>51</sup> The phenomenon in populist politics in Hungary and Poland, which claimed to be post-colonial actors in order to stir anti-EU sentiments and create a narrative of national decolonization from the European Union, proves how easily academic paradigms can be co-opted to legitimate politics. This makes post-colonial theory applied in Eastern Europe particularly delicate. It bears the risk that liberal pro-European scholars tend to neglect the colonial perspective as mere populist propaganda. In turn, scholarship should not ignore the abuse of the theory by Putin and others. Regardless of the abuse, an anti-colonial critique of the EU has a core of truth. Structural inequalities of the European Union, the accession conditions and the

Istanbul Convention: Domestic Violence Legislation and Cultural Sovereignty, *Osteuropa-Recht* 68 (2022), p. 147.

- 46 *President of Russia*, Signing of Treaties on Accession of Donetsk and Lugansk People's Republics and Zaporozhye And Kherson Regions to Russia, <http://en.kremlin.ru/events/president/transcripts/69465>.
- 47 *Marta Bucholc*, The Rule of Law as a Postcolonial Relic: The Narrative of the Polish Right, *Zeitschrift für Rechtssoziologie* 42 (2022), p. 43.
- 48 *Caroline von Gall*, Introduction: The Istanbul Convention in Central and Eastern Europe, *Osteuropa-Recht* 68 (2022), p. 5.
- 49 *Eszter Kováts / Maari Põim* (eds.), Gender as Symbolic Glue, Friedrich-Ebert Stiftung, 2015, <https://library.fes.de/pdf-files/bueros/budapest/11382.pdf>.
- 50 *Elżbieta Korolczuk / Agnieszka Graff*, Gender as 'Ebola from Brussels': The Anti-colonial Frame and the Rise of Illiberal Populism, *Signs* 43 (2018), p. 797.
- 51 *Kováts et al.*, note 49.

ongoing asymmetrical relations within the EU cannot be disregarded. Given the economic and symbolical asymmetries, this claim is not far-fetched and can and should be analyzed critically.

In “The light that failed” Ivan Krastev and Stephen Holmes discuss EU-accession as a kind of voluntary cultural colonization, which they characterize as “imitation.”<sup>52</sup> The argument is put forth that the pressure on East European countries to “imitate” Western institutions during the period of transformation after the collapse of the Soviet Union has fostered the politics of resentment and authoritarianism in these states. The relationship between the imitator and the imitated may be regarded as asymmetrical relation with an implicit superiority of the model over the mimic. Remaking its own politics and economics according to a foreign model feels itself humiliated or irritated at having to toss away or devalue its own traditions in the light of “superior” foreign ideas like democracy, human rights, free markets, etc. Tanja Petrović has explored the employment of colonialist patterns emerging in the South-Eastern periphery of the EU and related to the process of accession of the neighboring countries, referred to as the Western Balkans in political discourse.<sup>53</sup>

## E. Conclusion: The Global East as a Category of its Own

Küpper and Partlett’s attempt to shifting the focus from non-compliance of EU and Council of Europe’s standards in Eastern Europe to the question of sovereignty and the role of the constitution in the process of post-colonial and anti-colonial nation-building is a meaningful endeavor. The post-colonial perspective also highlights the shortcomings of transformation science discourses by provoking a critical revision of the legacies of colonialism in Eastern Europe. However, constitutional discourse and politics in Central and Eastern Europe demand a more careful reading. Precisely because the authors aim to better understand democratic “backlash” and “authoritarian resilience” the reader might expect more concrete answers to the question of the causal relation between coloniality and new authoritarianism in Eastern Europe. Indeed, (post-) colonialism and authoritarianism appear closely related. New liberal constitutions in Eastern Europe can easily be interpreted as not only a symbol of the break with ideology and authoritarianism but also with colonial power. The current discourse on (constitutional) identity<sup>54</sup> is clearly shaped by the normative demands for compliance set by the EU and the Council of Europe. Anti-colonial discourse is abused by political leaders to justify authoritarianism and war. This link indeed needs further reflection. A major challenge is to foster critical thought on European constitutional hegemony

52 *Ivan Krastev / Stephen Holmes*, *The Light that Failed: A Reckoning*, Bristol 2019.

53 *Tanja Petrović*, *The Idea of Europe or Europe Without Ideas? – Discourses on the “Western Balkans” as a Mirror of Modern European Identity*, in: Heinz Fassmann / Wolfgang Müller-Funk / Heidmarie Uhl (eds.), *Kulturen der Differenz – Transformationsprozesse in Zentraleuropa nach 1989: Transdisziplinäre Perspektiven*, Göttingen 2009, pp. 137, 141.

54 *Julian Scholtes*, *The Abuse of Constitutional Identity in the European Union*, Oxford 2023.



while at the same time detect and reject hostile takeovers of anti-colonialism to justify anti-liberal forms of governance by political leaders in Eastern Europe.<sup>55</sup>

To convey the post-colonial paradigm into the discussion on current constitutional development on Eastern Europe is also meaningful for the global discourse on colonialism. Until today, mainstream post-colonial legal theory has focused on the binary of the Global North and the Global South. Emerging German scholarship in post-colonial legal studies focuses on (German) coloniality in the Global South, ignoring German colonial history in the East.<sup>56</sup> Eastern Europe still suspends in the shadows of these two poles, not fitting neatly in either category.<sup>57</sup> As Martin Müller described, the Eastern European countries “fell between the crack rather than joining the north or the south, they seem to be stuck in eternal transition towards modernity”.<sup>58</sup> Müller has argued that the inscription of the East is long overdue to unsettle the binary of North and South as well as of East and West. Therefore, it is to discuss the “Global East” as category of its own shaped by Russian, the Soviet Unions and Western colonial power but also by the claim of universality of Western constitutionalism, the Western orientalist reading of constitutionalism in Eastern Europe that often portrays the East by its backwardness, otherness and non-compliance of the normative demands of the West.

Küpper and Partlett do not further discuss how much Soviet colonial power was shaped by the East-West divide and ideological struggle to compete with the universality claim of Western constitutionalism. At the same time the Soviet Union successfully engaged with the Global South, offering anti-colonial support against the West.

In sum, proposing the post-colonial lens to discuss constitutional backlash in Eastern Europe is an important contribution to the debate. However, a better focus on the particularities of colonial experiences in Eastern and Central Europe in the light of Soviet colonialism going hand in hand with Western hegemony could have even more impact to the global perspective of postcolonial studies and broaden its comparative scope. This could lead to helpful contributions to the global history of international law as well as to comparative constitutional law.



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55 *Kołodziejczyk / Huigen*, note 6, p. 23.

56 Philipp Dann / Isabel Feichtner / Jochen von Bernstorff (eds.), (Post)koloniale Rechtswissenschaft. Geschichte und Gegenwart des Kolonialismus in der Deutschen Rechtswissenschaft, Tübingen 2022; See also the 38th Biennial Conference of the German Society of International Law: “Koloniale Kontinuitäten im internationalen Recht”, (15–17 March 2023), <https://owncloud.gwdg.de/index.php/s/jVHQwNKXkfIODBC> (last accessed on 04 February 2025).

57 *Kołodziejczyk / Huigen*, note 6.

58 *Ibid.*