

Diskussion

PIETRO COSTA, Firenze

Reading Postcolonial Studies: Some Tentative Suggestions for Legal Historians

Searching in Postcolonial Studies for some profitable suggestions for legal historians seems to be a desperate attempt. Postcolonial Studies have been influent in the domain of literary history, mainly in the Anglo-American world, but they have had a limited impact on law¹⁾ and legal history. Is it also possible and convenient to build a bridge, albeit narrow and fragile, between so different disciplinary areas?

The aim of my intervention is only to pose the question, not to give a definite answer to it. Towards this purpose, I shall try, firstly, to lay out briefly the heuristic strategy of Postcolonial Studies and, secondly, to draw attention to some issues which can be taken into account as points of contact between Postcolonial Studies and the ongoing legal historical debate.

The term 'postcolonial' has not been invented by Postcolonial Studies. This word was already employed in 1960s and 70s in order to stress a historical gap. After the Second World War the long colonial age was ending, decolonization was taking off and a new geopolitical era was beginning: precisely a 'postcolonial' one. The prefix 'post' suggested, at the same time, a temporal distinction and an underlying connection between two different historical stages: new States had come into existence, but their formal sovereignty disguised their effective dependency on Western powers. According to sociologists like Gunder Frank and Immanuel Wallerstein, the postcolonial world was in fact a neo-colonial one.

Not only sociologists however employed the term 'postcolonial'. This term was used in the field of literary criticism. In the Anglo-Saxon world, a growing recognition was accorded to the literary production coming from the former colonial countries and these literatures were more and more frequently labelled as Postcolonial literatures²⁾. Postcolonial Studies assumed Postcolonial literatures as their field of analysis and developed a peculiar, even if debatable, vision of history and historical narratives, which obtained a quick and resounding reputation³⁾.

A determining source of the research line of Postcolonial Studies can be tracked down to a seminal work: "Orientalism", by Edward Saïd⁴⁾. Saïd was a Palestinian scholar, edu-

¹⁾ Cf V. Kumar, *A Proleptic Approach to Postcolonial Legal Studies? A Brief Look at the Relationship Between Legal Theory and Intellectual History*, in: *Law, Social Justice & Global Development Journal (An Electronic Law Journal)* 2003 (<http://elj.warwick.ac.uk/global/issue/2003-2/kumar.html>).

²⁾ M. Mellino, *La critica postcoloniale. Decolonizzazione, capitalismo e cosmopolitismo nei postcolonial studies*, 2005, 29 ff.

³⁾ B. Ashcroft, *The Empire Writes Back*, 2002; P. Williams – L. Chrisman (eds), *Colonial Discourse and Post-colonial Theory. A Reader*, 2004; B. Ashcroft – G. Griffiths – H. Tiffin, *Post-colonial Studies. The Key Concepts*, 2004; R. J. C. Young, *Postcolonialism. An Historical Introduction*, 102008; N. Lazarus (ed), *The Cambridge Companion to Postcolonial Literary Studies*, 2010.

⁴⁾ E. Saïd, *Orientalism* 2003 (Reprint). Cf A. Iskandar – H. Rustom (eds), *Edward Saïd: a legacy of emancipation and representation*, 2010. According to Partha Chatterjee "Orientalism was a book

cated in the United States and devoted to literary and musicological research. His inquiry deals with the cultural dimension of the colonization process, more than with its political and social components. His book "Orientalism", published in 1978, drew attention to some issues, that will have a basic importance for Postcolonial Studies: firstly, the relationship between East and West and, in general, between Europe and its 'others'; and, secondly, the theoretical presuppositions on which the historical narrative (and the very idea of history) depend.

The point of reference of Saïd's analysis of western colonial culture is not an academic discipline. Rather, it is the discourse as such: i.e. an amount of statements coming from different epistemic traditions, but capable of conveying an unitary and coherent message.

Saïd is openly indebted to Foucault. He is concerned with going beyond individual authors and established disciplines and discovering the structural components of a discourse: that discourse which modern Europe developed in order to render the East understandable and 'familiar'. According to Saïd, such a discourse does not describe an existing and autonomous reality, does not do justice to the eastern societies and cultures. Europe is not capable of representing its 'otherness': Europe imagines its others moving from and coming back to itself. Europe's East is just an 'orientalist' East: it is the prisoner of the discourse which invented it.

The 'orientalist' discourse is the mirror in which Europe reflects itself, but the mirror is at the same time a weapon. The discourse is not an amount of innocent images and words: according to Saïd (and to Foucault), knowledge is power. The orientalist discourse is a linguistic and cultural device which enhances the colonial project and promotes the subjugation of non western countries inasmuch as it overshadows their specificity and 'otherness'.

Adopting Foucaultian suggestions, Saïd focuses on an issue which Foucault had neglected: the impact of colonization on the conscience européenne (as Paul Hazard said). According to Saïd, we must rethink European culture in light of the intimate connection between Europe and its 'others': Europe's presence beyond its borders is not an accident or an event among others, but it is the sine qua non condition of Europe's cultural identity⁵⁾.

Saïd is an imperative starting-point for Postcolonial Studies, but this does not mean that Postcolonial Studies are an orthodox academy of Saïd's disciples. On the contrary, as Robert Young observed, "postcolonial studies has actually defined itself as an academic discipline" just challenging numerous of Saïd's statements⁶⁾. An important turning-point in the development of Postcolonial Studies has been Homi Bhaba's *The Location of Culture*⁷⁾, whose theoretical point of reference is Lacan, more than Foucault. In gene-

which talked of things I felt I had known all along but had never found the language to formulate with clarity. Like many great books, it seemed to say for the first time what one had always wanted to say" (P. Chatterjee, *Their Own Words? An essay for Edward Saïd*, in: M. Sprinker (ed), *Edward Saïd: A Critical Reader*, 1992, 194).

⁵⁾ E. Saïd, *Culture and Imperialism*, 2003. Cf S. Mezzadra, *La condizione postcoloniale. Storia e politica nel presente globale*, 2008.

⁶⁾ R. Young, *Postcolonialism* (Fn 3), 384.

⁷⁾ H. K. Bhabha, *The Location of Culture*, 2008 (Reprint).

ral, Postcolonial Studies stem their roots from French post-structuralism⁸⁾ and draw from it some relevant convictions: such as the rejection of an humanistic attitude, which leads them to neglect the conscience and the intentions of social actors and focuses on the discourse as an objective device. Another important topic, blatantly influenced by Lacan, is the relationship between identity and otherness. This is the premise on which one of the most intriguing postcolonial concepts depends: the concept of hybridity, mainly developed by Bhabha and widely shared by Postcolonial Studies, which refer hybridity to the creation of "new transcultural forms within the contact zone produced by colonization"⁹⁾. Hybridity, briefly, means metissage, interconnection among different worlds, refusal of an essentialist definition of culture.

An interesting field of application of the concept of hybridity is the relationship between colonizers and colonized. Beyond the extraordinary variety of historical contexts, this relationship has been predominantly described as a relationship of domination and subjection, which excluded any cultural exchange and connection between the governing elite and the subjugated people. On the contrary, if we use the hybridity concept, our vision of colonization changes, at least in part: power and subjection are still undeniable features of the relationship between colonizers and colonized, but the exercise of power makes use of local cultures and institutions and results in a complicated interaction among different groups.

In fact, many historical narratives have long since stressed the importance of intercultural exchange. Only to quote a few examples, Christopher Alan Bayly¹⁰⁾ and Eugene Irschick¹¹⁾ have pointed at the hybrid nature of British domination in India and Lauren Benton has affirmed in recent times that colonial government (at least in the earlier stages of its development) was not the output of an autonomous state machine, but resorted to numerous and interlaced normative systems and jurisdictional apparatus. "Colonial rule magnified jurisdictional tensions and gave greater urgency and symbolic importance to the task of defining the interactions of various legal forums, sources and personnel"¹²⁾. And, last but not least, an enlightening essay by Antonio Hespanha, in a recent volume of "Quaderni Fiorentini", stresses and describes the entanglement of different legal orders in the Portuguese empire¹³⁾. According to Benton, we must also replace the "elite colonial history" with an "interactional history"¹⁴⁾.

⁸⁾ An important point of reference is Jacques Derrida. A prominent member of Postcolonial Studies, Gayatri Spivak, has edited the English translation of Derrida's *Grammatologie*. Cf *D. Landry - G. MacLean* (eds), *The Spivak Reader: Selected Works of Gayatri Chakravorty Spivak*, 1996; *G. C. Spivak*, *The Post-colonial Critic: Interviews, Strategies, Dialogues*, 1990.

⁹⁾ *Ashcroft - Griffiths - Tiffin*, *Post-colonial Studies* (Fn 3), 108.

¹⁰⁾ *C. A. Bayly*, *Rulers, Townsmen and Bazaars: North Indian Society in the Age of British Expansion 1770 - 1870*, 1983. Cf *T. Ballantyne*, *Archive, Discipline, State: Power and knowledge in South Asian Historiography*, in: *New Zealand Journal of Asian Studies* 2001, 87 ff.

¹¹⁾ *E. F. Irschick*, *Dialogue and History: Constructing South India, 1795 - 1895*, 1994.

¹²⁾ *L. Benton*, *Law and Colonial Cultures. Legal Regimes in World History, 1400 - 1900*, 2002, 253. Cf *L. Benton*, *Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State*, in: *Comparative Studies in Society and History* 1999, 563 ff.

¹³⁾ *A. M. Hespanha*, *Modalidades e limites do imperialismo jurídico na colonização portuguesa*, in: *Quaderni Fiorentini* 2012, 101 ff.

¹⁴⁾ *Benton*, *Law and Colonial Cultures* (Fn 12), 256. If the hybridity concept and an interactional view of colonial history could seem to be on the same wavelength, a quite opposite stance has been developed by Ranajit Guha and other Indian historians belonging to the group of Subaltern

The interactional history recommended by Benton, in turn, depends on (or at least is coherent with) a theoretical assumption: a pluralistic vision of the law. Legal pluralism is a prominent theory in the present scenario of legal philosophy¹⁵⁾. It refuses the monism and imperativism of an austinian theory of law and endorses a multilevel vision of the juridical realm. Legal pluralism originated in nineteenth century legal sociology (I am thinking to Eugen Ehrlich) and was expressed at its best in the twentieth century institutionalism of Santi Romano. And we must also recall that some prominent anthropologists (like Malinowsky) mentioned colonial experiences as telling examples of the interlacement among numerous and heterogeneous legal orders.

We are also faced with a peculiar convergence of interpretative schemes, coming from different disciplinary traditions: on one side, the postcolonial concept of hybridity and, on the other side, the pluralistic theory of law. These conceptual schemes have no common origins, but can be (distinctly or jointly) employed in order to underline the interaction and hybridization of cultures and the plurality of legal orders in the colonization process, notwithstanding the enduring subjection of colonized peoples.

Looking at colonial government through the glass of the hybridization concept leads also to an interactional vision of colonial history. There is however a second and still more intriguing aspect of an approach to Western history centred on the relationship between colonized and colonists. If cultures develop and change in a permanent connection and confront with their 'otherness', European identity must be reinterpreted from outside, as it were. According to Postcolonial Studies, the historians must try to locate themselves in an in-between, in an intermediate position between Europe and its others, becoming aware of the continuous and bidirectional transfers from the colonies to the metropolis, from the peripheries to the centre (and vice versa).

If we look at Europe from outside, we can realize that transfers and mixtures between colonizers and colonized take place, despite the dramatic gap which secludes the former from the latter. Some interesting examples can be found if we examine the policies of government adopted, respectively, in Europe and in the colonies over the past two centuries.

In the metropolis individual rights were more and more implemented and remedies were found for strengthening the individual's liberties and giving them protection against power's intrusion. On the contrary, colonial government was generally based on the arbitrary and the discretionary. As Pierre Guillaume put it, while the rule of

Studies, who stress the dichotomy between the colonized mass, on one side, and, on the opposite side, the colonial power and the nationalistic élites. Cf *R. Guha*, *Dominance without Hegemony: History and Power in Colonial India*, 1997. On Guha and Benton and their different approach cf *K. M. Parker*, *The Historiography of Difference*, in: *Law and History Review* 2005, 685 ff.

¹⁵⁾ *J. Griffiths*, *What is Legal Pluralism*, in: *Journal of Legal Pluralism* 1986, 1 ff; *S. E. Merry*, *Legal Pluralism*, in: *Law & Society Review* 1988, 869 ff; *J. Vanderlinden*, *Return to Legal Pluralism: Twenty Years Later*, in: *Journal of Legal Pluralism and Unofficial Law* 1989, 149 ff; *B. Z. Tamana*, *A Non-Essentialist Version of Legal Pluralism*, in: *Journal of Law and Society* 2000, 296 ff; *F. von Benda-Beckmann*, *Who's Afraid Of Legal Pluralism?*, in: *Journal Of Legal Pluralism* 2002, 37 ff; *B. Dupret*, *Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-specification*, in: *European Journal of Legal Studies* 2007, 1 ff; *D. Pimentel*, *Legal Pluralism in Post-Colonial Africa: Linking Statutory and Customary Adjudication in Mozambique*, in: *Yale Human Rights and Development Law Journal* 2011, 3 ff.

law was becoming the flagship of Western modernity, the 'ancien regime' went on unchanged in the colonial areas. To put it another way, while modern European countries can be depicted as the triumph of the law, colonial regimes can be labelled as the permanent exceptions¹⁶).

Overall, the idea of an essential difference between the metropolis and the colonies can be endorsed. But we can also point at some peculiar convergences and exchanges between the centre and the periphery. It is true that the rule of law was the prevailing feature of metropolitan regime, but nevertheless European States, even if formally bounded by the supremacy of law, were permanently, nay increasingly, concerned with a quick, direct and efficacious control of the subjects: they wanted to contain les classes dangereuses, the subaltern classes, and at the same time render them obedient and hardworking.

If we look also at the *gouvernementalité* (in the Foucaultian sense of the term), if we look at the governmental dimension of metropolitan power, the abysmal gap between the centre and the periphery dims and we can detect that metropolitan government has been repeatedly willing to import instruments previously employed in the peripheries in order to control subjects or keep down hostile groups. For instance, it was in India that a new and efficacious device – as Carlo Ginsburg tells us – has been applied for the first time: the fingerprints¹⁷). And we can also keep in mind that a technique of subjugation which was massively employed in Europe during the twentieth century – the concentration camp – was created and tested in the colonies: in Cuba in 1894, by the Spaniards, and six years later in South Africa, by the British¹⁸).

Looking at Europe from outside can also enable us to perceive unpredicted links between the centre and the peripheries and then to conceive their relationship according to less elementary and more nuanced schemes. The approach recommended by Postcolonial Studies is however more ambitious: they suggest that historians locate themselves in an intermediate space between Europe and its others, in the 'in-between' appreciated by Bhaba, and watch Europe from a distance, avoiding an immediate and uncritical collision with their cultural paradigms.

Such a demanding program is tellingly summed in the famous title of a book written by the Indian historian Dipesh Chakrabarty: "Provincializing Europe"¹⁹). What is at stake is the attempt of transforming Europe from a whole to a part: if western culture has conceived of itself as a totalizing discourse capable of representing the whole world and giving sense to it, now is the time to deconstruct western concepts. According to Chakrabarty, we must, on one side, keep detailed records of the desperate resistance of non western cultures against the assimilationist trends of European culture; and we must, on the other side, establish that the genesis and the working of western doctrines do not simply depend on the 'Arbeit des Begriffs', but are determined and forged by colonial projects and western power strategies.

¹⁶ P. Guillaume, *Le monde colonial*, 1974, 128.

¹⁷ C. Ginsburg, *Miti, emblemi, spie. Morfologia e storia*, 1986.

¹⁸ F. Rahola, *La forma campo. Appunti per una genealogia dei luoghi di internamento contemporanei*, in: *Deportate, Esuli e Profughe (DEP) 2006*, 26; *Mezzadra, La condizione postcoloniale* (Fn 5), 27.

¹⁹ D. Chakrabarty, *Provincializing Europe*, 2008.

Provincializing Europe means denouncing that European theories are not the outcome of an unhistorical and universal reason, but they are the result of a history bound and 'local' perspective. Historiography itself – the scientific discipline to which Chakrabarty belongs – is no exception and must undergo the same reductionist process, which every component of western culture must go through.

We cannot neglect that a relevant difficulty must be confronted by the 'provincializing project': western culture is the predestined victim of this reductionist endeavour, but it is, at the same time, the furnisher of the conceptual tools indispensable for the accomplishment of such a task. Chakrabarty is aware that he is moving in a circle; he is mindful of the difficulty to undermine a cultural paradigm moving inside it and resorting to its very conceptual tools. In fact, the Indian historian does not hesitate to declare that he is not planning to sketch an alternative epistemological model. His aim is less radical, but not less interesting: he does not refuse the methods promoted and applied by the academic (and undoubtedly western) historiography, but simply questions a peculiar version of it: the historicist ideology. He tries to relativize historicism, while preserving the main features of the historical narrative.

Chakrabarty is concerned with the attempt to demonstrate that the vision of time involved by historicism is only one vision of temporality among others. Nineteenth century historicism was grounded on a vision of history as a linear process, which moved from barbarism to civilization. Western modernity was presented as the climax of universal history, while non-European civilizations were at best relegated to the category of preparatory stages of a development which found its fulfilment in the West.

To be sure, we could say that Chakrabarty, when he denounces the Eurocentric feature of the nineteenth century philosophy of history tries to kick open an already open door: for decades the attacks against the self-referential bias of western culture are increasing in number and come from several disciplinary approaches. Nevertheless, we must acknowledge that Postcolonial Studies are capable of proposing some further suggestions and outlining somewhat new research lines.

The first suggestion is pointing at the impact of nineteenth century historicism outside Europe. As Chakrabarty put it, "Historicism – and even the modern, European idea of history – one might say, came to non-European peoples in the nineteenth century as somebody's way of saying 'not yet' to somebody else"²⁰). In other terms, the hidden side of historicism, and its pragmatic effects, were the relegation of non-European peoples in the limbo of a permanent or at least temporally indeterminate status of subjection. This is precisely why nineteenth century philosophy of progress, and its narrative of the glorious transition from barbarism to civilization, cannot be interpreted as a gratuitous and politically neutral vision of history, but must be assumed as the horizon within which liberal political and legal theories take shape (I am thinking for instance to Tocqueville²¹) and Mill²²)).

²⁰ Chakrabarty (Fn 19), 8; Cf A. Ghosh – D. Chakrabarty, *A Correspondence on Provincializing Europe*, in: *Radical History Review* 2002, 146 ff.

²¹ Cf L. Re, *Il liberalismo coloniale di Alexis de Tocqueville*, 2012.

²² Cf P. A. Passavant, *A Moral Geography of Liberty: John Stuart Mill and American Free Speech Discourse*, in: E. Darian-Smith – P. Fitzpatrick (eds), *Laws of the Postcolonial*, 1999, 61 ff.

A second suggestion coming from the postcolonial critique of historicism concerns the vision of time. Going beyond historicism implies that we do not assume time as an uniform and homogeneous dimension, as an universal unit of measurement, which can be divided into minor unities with mathematical exactitude. Rather, the perception of temporality changes according to the different standpoints of social actors. In this perspective, the suggestion coming from Postcolonial Studies points at rethinking the current relationship between the present and the past. Past and present cease to be the neatly separated segments of a same line: the past can be conceived as a geological layer, underlying the surface crust of the present, rather than referred to as a completely spent and exhausted experience.

In this perspective, some historians of the Middle Ages have entitled a miscellaneous work as "The Postcolonial Middle Ages", proposing to look at medieval culture replacing the idea of a linear time with "more complicated narratives of heterogeneity, overlap, sedimentation and multiplicity"²³). The Middle Ages would not then be a mere precedent of modernity, overwhelmed by the relentless advance of the latter. Avoiding to resort to an "exclusionary model of temporalization", we should be able to perceive the simultaneous coexistence of different historical times within apparently homogeneous contexts²⁴).

Historicizing historicism is also a task – and perhaps one of the most difficult and elusive ones – suggested by Postcolonial Studies. Historicism is however only *one* of the numerous targets of their attack. According to them, it is the whole vision of the individual, rights and state drawn up by western modern culture which must be rethought starting from its connection with the colonization process. According to Chakrabarty, "concepts such as citizenship, the state, civil society, public sphere, human rights, equality before the law, the individual, distinctions between public and private, the idea of the subject, democracy, popular sovereignty, social justice, scientific rationality, and so on all bear the burden of European thought and history. One simply cannot think of political modernity without these and other related concepts that found a climactic form in the course of the European Enlightenment and the nineteenth century"²⁵).

Enlightenment is the prime defendant. According to Postcolonial Studies, the Enlightenment coincides with the tyranny of reason, which enables the flourishing of natural sciences, embodies in the great political concepts of modernity and accredits them with the feature of universality. The deconstruction of western concepts must also go on along two major guidelines: on one side, showing them as deeply embedded in western society and culture and challenging their alleged universalism; on the other side, emphasizing the connection between knowledge and power, between western philosophy and the colonization process²⁶).

It is easy to realize that these research guidelines do not come out of the blue in the field of legal and political philosophy, where a lively debate on 'universalism vs. particula-

²³) J. J. Cohen (ed), *The Postcolonial Middle Ages*, 2000, 2.

²⁴) Cohen (Fn 23), 4.

²⁵) Chakrabarty (Fn 19), 4.

²⁶) Cf E. Darian-Smith – P. Fitzpatrick (eds), *Laws of the Postcolonial*, 1999.

ism' is under way over years. A clear evidence is offered by the topic of human rights, which is probably the most debated legal-philosophical issue of our present.

Provincializing human rights means emphasizing their roots in western history and culture. In fact, this goal was proposed many decades before the birth of Postcolonial Studies. After the second world war the universalism of rights was solemnly proclaimed by the Universal Declaration of 1948, but precisely in the years when the Human rights commission was working, the anthropologists, members of the American Anthropological Society, openly showed all their scepticism about the possibility of finding really universal juridical pretensions and confirmed their commitment to the incommensurable diversity and originality of human cultures and societies. And the relativistic stance of the American anthropologists in the forties was only the outpost of a forthcoming army, the anticipation of an ongoing philosophical approach, which in our days challenges the universalism of rights endorsing the thesis of their particularistic validity²⁷).

If provincializing human rights means underpinning their culture bound features, long since Europe has been trying to provincialize itself. But provincializing human rights, in the Postcolonial approach, takes into account a second goal: showing and denouncing the dark side (as they say) of human rights²⁸).

The dark side of human rights is mainly the interests (of social classes, groups or states) underlying the (apparently) disinterested statements of human rights discourse. In this perspective, the universalism of rights is unmasked as a façade, the outward appearance which conceals the reality, the camouflaged particularism of the interests. In this case too, however, Postcolonial approach seems to confirm that nihil sub sole novi: a rhetorical device is here presented, which has been employed by western culture long since. Without bringing up Platon's *Trasymachus*, we can at least recall the reductionist approach adopted by Karl Marx, who in his "Judenfrage" undermined the alleged universalism of the rights of man downgrading them to the egoistic rights of the proprietor. Still today Slavoj Žižek moves in this trail and presents human rights as the rights of the white, male and wealthy persons. On this basis, it is possible to affirm that human rights, as idiomatic utterances of western culture, are employed as ideological weapons in order to promote western supremacy in the international arena.

Denouncing the dark side of human rights is one of the guidelines of the present legal-philosophical debate. About this we can only note an objective and autonomous convergence of this perspective with the approach recommended by Postcolonial Studies. The peculiar suggestion coming from them is to assume colonialism as the matrix of the flagrant opposition between the formal declaration of human rights and the lack of their enforcement, inasmuch as human rights have been implemented in the metropolis and not in the colonies.

Still again, the main message coming from Postcolonial Studies is the appeal to look at Europe from outside, being aware of the decisive impact of colonization not only on its

²⁷) Executive Board of the American Anthropological Association, *Statement on Human Rights*, in: *American Anthropologist* 1947, 539 ff.

²⁸) Cf R. Kapur, *Human Rights in the 21st Century: Take a Walk on the Dark Side*, in: *Sydney Law Review* 2006, 665 ff.

political and economical history, but also on its very cultural shape: that is on western great political and legal concepts (as for instance human rights) as well on specific scientific disciplines.

A good example of this latter kind is offered by international law. Recent trends in this field try to reassess the history of international law in an openly postcolonial perspective. Indeed they assume the relationship between the inside and the outside, the metropolis and the colonies, as the axis according to which the several phases and the intimate principles of international law must be understood and reinterpreted. An eloquent expression of this trend can be found in Antony Anghie's writings²⁹).

Anghie tries to sketch (so to speak) a 'counter-history' of international law: I mean a historical narrative which, in accordance with Saïd's "Orientalism", outlines the main phases of international law (from Vitoria to our present) in the light of the relationship between the colonizing powers and the colonized world. It is the very idea of sovereignty which must be reshaped: as Anghie put it, "we might see sovereignty doctrine as consisting in part of mechanisms of exclusion which expel the non-European society from the realm of sovereignty and power. [...] In other words, sovereignty doctrine expels the non-European world from its realm, and then proceeds to legitimise the imperialism that resulted in the incorporation of the non-European world into the system of international law"³⁰). Anghie's history, as one of his reviewers writes, is "an example of what might be called 'history written from the margin'" and just because of it Postcolonial Studies are correctly recalled³¹).

According to such a historical narrative, colonialism is not superseded by decolonisation in the 1960s and 70s, but extends its effects on the present globalized world. As Anghie writes, on one side "Third World states have often engaged in what might be regarded as colonial practices, in relation both to other, smaller states and to minorities and indigenous peoples within their own boundaries"³²); and, on the other side, "Third world states continued to play a subordinate role in the international system because they were economically dependent on the West, and the rules of international economic law continued to ensure that this would be the case"³³).

We are facing a relevant historical diagnosis, which has been argued and exposed in the past decades. Jörg Fisch in his book of 1984 about "Die europäische Expansion und das Völkerrecht" has convincingly pointed out the impact of colonialism on former colonized peoples even beyond the attainment of the formal independence³⁴).

Not only modern Europe, from the sixteenth to the nineteenth century, but even our present globalized world seem to claim an analysis which does not put colonialism within brackets: colonial experience, postcolonial societies and globalized world seem to be

²⁹) Cf. A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, 2005.

³⁰) A. Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, in: *Third World Quarterly* 2006, 741 ff.

³¹) M. Kleyna, review of A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, in: *Global Law Books* (www.globallawbooks.org).

³²) Anghie (Fn 30), 751.

³³) Anghie (Fn 30), 749.

³⁴) J. Fisch, *Die europäische Expansion und das Völkerrecht: die Auseinandersetzungen um den Status der überseeischen Gebiete vom 15. Jahrhundert bis zur Gegenwart*, 1984.

interlaced stages of a coherent historical development. Its guiding principle seems to be the asymmetrical relationship between the West and non-western countries; and this relationship decisively contributes to the shape of western legal and political doctrines and to their intimate connection with power.

In a brilliant and recent essay published in 'Rechtsgeschichte' Martti Koskenniemi does not hesitate to denounce the Eurocentric features of the globalized world. According to him, the idea of civilization – in nineteenth century the determining criterion of differentiation between Europe and its 'others' – has been supplanted by the idea of modernization and today in our globalized world modernity and progress coincide with the idea of an international community unified by the human rights discourse and in general by a "thoroughly Eurocentric language". His conclusion is quite clear: "When Western speech becomes universal, its native speakers – the West – will be running the show"³⁵).

Still again, we can note an objective convergence between the approach suggested by Postcolonial Studies and some views and stances which in different research areas have gained an increasing attention in recent times. The main shared guideline seems to be the intention to look at the West from outside, in order to put historical narratives at a safe distance from the pervasive hegemony of western culture.

If this is the core of the most valuable suggestions which can be drawn from Postcolonial Studies, some risks conveyed by their approach cannot be underestimated. The major risk is somewhat paradoxical: it is the risk that looking at the West from outside brings to a totalizing and stereotyped image of the West; in other terms, the risk is that, while denouncing Europe's Orientalism, we fall, so to speak, in the fallacy of Occidentalism, in a simplified, conventional and sketchy representation of European culture. The West reflected in the mirror of Postcolonial Studies risks appearing as an unitary and coherent system of concepts and key-words, assumed as unambiguous and interconnected terms: enlightenment, reason, science, universalism. In fact, it would be difficult, nay misleading, to assess western culture on the basis of Postcolonial short-circuits, relying on their oversimplified view of the intricacy of western cultural paths. The enlightenment itself, assumed by Postcolonial Studies as the very origin and synthesis of a western rationalist and universalist attitude was not a monolith, but it was a complicated galaxy where different or even contradictory visions, values and expectations took place.

From this point of view, a second Postcolonial concept could appear affected by an unsatisfying oversimplification: the concept of colonial discourse. As Nicholas Thomas put it, the concept of "colonial discourse" seems to imply a semiotic "unitary totality" which is at odds with the extraordinary variety of colonial experiences and regimes (from Asia to Africa and Latin America)³⁶). This risk too is serious. But it is also true that underlining the variety of concrete historical phenomena is an useful caveat, but must be taken into account not to banish the usage of general schemes and conceptual tools, but only to avoid to hypostatize them.

³⁵) M. Koskenniemi, *Histories of International law: Dealing with Eurocentrism*, in: *Rechtsgeschichte* 2011, 160.

³⁶) N. Thomas, *Colonialism's Culture. Anthropology, Travel and Government*, 1994, IX.

To conclude, the main risk is falling in a game of crossed generalizations, opposing to the colonial Orientalism a kind of anticolonial Occidentalism. Owing to their militant and critical attitude, Postcolonial Studies seem to be exposed to the danger of ideological shortcuts. Reading Postcolonial studies is not a relaxing exercise, because of their poststructuralist jargon and hasty generalizations. At the same time, reading Postcolonial studies can be a refreshing experience, inasmuch as they stimulate us to rethink Europe taking the link between identity and otherness seriously: the alleged self-sufficiency of European concepts is now challenged by the increasing awareness that their historical meaning can be fully understood taking into account the clashes, overlappings and entanglements of different cultures and societies in the scenario of a global (and still widely 'postcolonial') history.

Literatur

Roger K. Newman (Hrsg.), *The Yale Biographical Dictionary of American Law*. Yale University Press, New Haven 2009. 622 S.

In den USA ist ein bemerkenswertes biographisches Handbuch erschienen, das ein willkommenes und hilfreiches Nachschlagewerk wie auch eine inspirierende Fundgruppe für alle ist, die sich mit dem US-amerikanischen Recht, seiner Entwicklungsgeschichte, seinen interdisziplinären Bezügen, politischen Hintergründen wie auch kulturellen Aspekten beschäftigen. Rund 700 Personen werden in ein- bis vierspaltigen Biographien porträtiert; die Porträts stammen von 600 angesehenen Autoren, darunter nicht nur Rechtswissenschaftler und Rechtshistoriker, sondern auch Richter, selbst des U.S. Court of Appeals und sogar des U.S. Supreme Court. Dieses Buch, so viel ist klar, darf in keiner rechtshistorischen wie internationalrechtlichen Bibliothek fehlen, auch wenn es sich nicht nur an den Fachmann, sondern gleichermaßen an ein breiteres Publikum richtet. Es ist ein großartiges „Who is who“ zum amerikanischen Recht, voller Informationen und Entdeckungen, geistreicher Würdigungen und Bewertungen, voller persönlicher Eindrücke und überraschender Querverbindungen. Der Mehrwert gegenüber den einschlägigen Internet-Recherchemöglichkeiten ist enorm: Dieses Buch enthält nicht in erster Linie eine exakte Auflistung der Lebensstationen, auch keine erschöpfende Bibliographie, denn nur sparsam wird auf Sekundärliteratur verwiesen. Kein Porträt genügt der „Neuen Deutschen Biographie“. Stattdessen setzt das Konzept auf kontextualisierende Werturteile: Worin liegt die Bedeutung des oder der Porträtierten? Was war ihre Lebensleistung, ihre Idee, ihr Beitrag für das Recht? In welchem zeitlichen, kulturellen, politischen, institutionellen oder akademischen Zusammenhang ist dieses Wirken zu beurteilen? Man traut sich auch, persönliche und charakterliche Werturteile abzugeben und verschanzt sich nicht hinter Objektivierbarem. Leider fehlt ein Personen-, Sach- und Fallregister, was den Gebrauchswert einschränkt, weil sich der Leser die Querverbindungen zum Teil selbst erarbeiten muss.

Die zu Erwartenden sind natürlich alle vertreten: Gründungsväter (Jefferson, Hamilton, Madison und insgesamt ca. 50% aller Präsidenten), große Richter (John Marshall, Joseph Story, Oliver W. Holmes, Louis Brandeis, Learned Hand, Felix Frankfurter, Hugo Black, Earl Warren) und einflussreiche Briten von Bentham über Blackstone bis Bryce. Man lernt aber auch Juristen aus der zweiten Reihe kennen, etwa den Anwalt William Cranch, in dessen Law Reports *Marbury v. Madison* seit 1803 überliefert ist, oder Charles Lynch, den Namensgeber der Lynchjustiz. Schon beim Blättern fällt auf, wie amerikanische Juristen ihr Rechtssystem hier präsentieren: durch eine den deutschen Leser überraschende Zusammenstellung von Akteuren, die in den unterschiedlichsten Professionen und Institutionen das amerikanische Recht geformt haben. Besonders deutlich tritt der Beitrag hervor, den Anwälte und Rechtspolitiker für die Entwicklung des Rechts geleistet haben: von konkreten Reformvorhaben, heiklen Interessenkonflikten und immer wieder von politischem Urteilsvermögen zeugen diese Kurzbiographien. Natürlich sind Richter auf Bundes- und Staatenebene üppig vertreten; sie sind schließlich die primären Akteure (ca. 50% aller Supreme Court-Richter sind berücksichtigt). Daneben finden sich Anwälte, Staatsanwälte, Abgeordnete und Senatoren, Regierungsbeamte und Präsidenten, soweit sie eine Bedeutung für die