Article

Neo-colonial penality? Travelling penal power and contingent sovereignty

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Abstract

The article explores the relevance of neo-colonial theory for criminology, and its contribution to understanding why and how penal policy and models travel from the global North to the global South. An empirical example is employed to review arguments for and against 'penal neo-colonialism' and to tease out the theory's strengths and limitations; namely the European Union's 'penal aid' to shape West African countries' penal policies and practices to stop illicit flows and irregular mobility to Europe. The article further discusses neo-colonial theory's concepts of agency, power and sovereignty by comparing them to similar poststructuralist perspectives on the 'contingent sovereignty' of 'governance states'. Moreover, by drawing on a theoretical discussion on statehood in African studies, it looks at how the sovereignty of African states has been conceptualized as hollowed out 'from above' as well as 'from below'. In doing so, the article contributes to a recent criminological debate that has problematized the relationship between (travelling) penal power and state sovereignty.

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Introduction

Recent criminological contributions have argued that penal power can travel beyond the nation-state, especially along postcolonial ties, thus problematizing its relationship to state sovereignty (Bosworth, 2017; Lohne, 2020). Others have asserted that the Western export of crime control models and the externalization of borders to countries in the global South are embedded in neo-colonial relations of power (e.g. Aas, 2011; Weber and McCulloch, 2019). However, 'neo-colonial' is used by these authors more as a polemic device to front a political critique without referring to any author or even definition. Aiming to explore the relevance of neo-colonial theory for criminology and the sociology of punishment, this article asks: how can neo-colonial theory shed light on the ways in which penal power travels and its relationship to state sovereignty?

Neo-colonial theory (Fanon, 1965; Nkrumah, 1963, 1965; Sartre, 1964/2001), stemming from the decades of African independences in the 1950s and 60s, focused on the role of asymmetrical power structures and economic dependency in explaining why Western policies could still be imposed on African countries despite their juridical sovereignty. While it largely fell out of academic fashion at the end of the Cold War, neo-colonial theory has recently re-emerged through some pertinent contributions within the discipline of International Relations (IR) (Gegout, 2017; Langan, 2015, 2018). Yet the theory is also, as this article seeks to illustrate, relevant for criminology and the sociology of punishment. Neo-colonial theory has *the state* as its unit of analysis – and explores to what extent a state's sovereignty is compromised by external actors' co-option and influence: a neo-colonial country is one which is *economically dependent* on aid, trade and loans from hegemonic states in the global North or international financial institutions, which is permeated by external actors, and where the political elites become more accountable to the donors than to the population. Yet this article suggests that the extent of neo-colonial co-optation may also be analysed sector-wise. As such, it discusses the ramifications of neo-colonialism as a theoretical framework for studying external influence in the criminal justice and penal sector, which moreover lays at the heart of the Weberian concept of national sovereignty as monopoly of force. By also taking into account similar poststructuralist theories on the 'contingent sovereignty' (Duffield, 2007) of 'governance states' (Harrison, 2004), the article compares and discusses different perspectives on agency, power and sovereignty with regard to the global North's export of 'penal aid' (Brisson-Boivin and O'Connor, 2013) and penal models to the global South. Furthermore, as Western intervention into Southern countries' penal sectors tends to take place as part of state-building efforts in countries labelled as 'fragile' or 'failed', the article draws on a theoretical debate on statehood in African studies to further explore the concept of sovereignty and its relationship to penal power: seeing how scholars have understood African states' sovereignty as being hollowed out not only from 'above' but also from 'below'.

In doing so, the article aims to problematize and develop the concept of penal power in contexts where 1) international donors of penal aid are a key source of the state's penal power by shaping penal legislation and providing funds, equipment and training to build and change penal institutions, meaning that donors have considerable power to define how and towards what 'criminals' a state's penal power and coercive capacities should be deployed (i.e., building *a particular kind of penal state*, Lohne, 2020), and 2) the state apparatus diverges substantially from the Western state (Aas, 2012): often defined by donors as 'weak' or 'fragile' (Brisson-Boivin and O'Connor, 2013) or by Africanists as 'empty shells' mediating personalized political power (Chabal and Daloz, 1999). In other words, I will discuss international donors' bolstering and/or hollowing out of the 'penal state' (cf Garland, 2013) in post(?)colonial contexts.

The article begins by reviewing criminological theory on travelling penal power, its relation to state sovereignty, and the broader structural and historical power relations within which such travel is embedded. It then goes on, in section 3, to present Kwame Nkrumah's original theory on neo-colonialism and its more recent proponents, as well as similar poststructuralist perspectives. The following two sections draw on an empirical case that is especially criminologically relevant – the EU's penal aid to shape West African countries' penal policies and practices in order to stop illicit and irregular mobility to Europe[1] – to argue, first, for the utility of neo-colonial theory (section 4), and second, against neo-colonial theory (section 5). Section 6 discusses the strengths and limitations of the theory with regard to three core concepts: agency, power and sovereignty. In doing so, it grapples with the puzzle: (how) is it possible that European aid to bolster African countries' penal power – a crucial sovereignty prerogative – simultaneously strengthens *and* hollows out their sovereignty? The conclusion discusses the added value of neo-colonial theory in general and for criminology and punishment and society studies in particular. As such, the article makes a contribution both to the criminological literature seeking to answer the question of why and how penal policy and penal models travel across national borders and geographic regions (Jones and Newburn, 2007; Melossi et al., 2011; Newburn et al., 2018) as well as to the theoretical debate on the relationship between (travelling) penal power and state sovereignty (Bosworth, 2017; Lohne, 2020).

Travelling penal power, penal aid and colonialism

There has been a discussion in the sociology of punishment on what constitutes the boundaries of punishment and penality (Lohne, 2020; Bosworth et al., 2018) – and, thus, that of the sub-discipline itself (Hannah-Moffat and Lynch, 2012, and special issue on theorizing punishment's boundaries in *Theoretical Criminology* 16(2), 2012). Scholars have argued for expanding the penality concept beyond the making of penal policies and penal codes (Garland, 2013: 476) or punishment through prisons in the strict sense, to encompassing also criminal courts, law enforcement and border control, which arguably form part of the penal apparatus

and coercive powers of the state (Barker, 2017; Bosworth et al., 2018; Hannah-Moffat and Lynch, 2012). It has been emphasized that studies of punishment and society need to take into account the shifting nature of penal power – including its changing institutional design, execution, logic and purpose – where 'bordered forms of penality' often function through administrative and not formal criminal sanctions, yet are nevertheless experienced as equally if not more punitive (Bosworth et al., 2018). Border control should be considered as punishment because it can 'deprive liberty, inflict harm, and impute wrongdoing' (Barker, 2017: 445). This article subscribes to this broad understanding of penal power as the power to criminalize, police (including of borders), prosecute, and punish.

Penal power has been seen as neatly intertwined with, and a crucial expression of, state sovereignty – understood as monopoly of force in the Weberian sense. Also, the Westphalian conception of sovereignty as territorial integrity and national self-determination is interlinked with penal power: for instance, the recent reinforcement of penal power at European internal borders has been interpreted as a manifestation of state-craft (Barker, 2017). Penal power is thus understood as constitutive of state-making, as there is 'a deep and unbroken connection between the exercise of penal power and the establishment, affirmation, and reproduction of political orders' (Barker, 2017: 446). However, recent criminological contributions have problematized the relationship between penal power and the state, arguing that penal power can travel beyond the nation-state (Bosworth, 2017) and even be detached from the nation-state altogether (Lohne, 2020). The example of Britain's 'aid' to building prisons in its former colonies Nigeria and Jamaica, to which it can also expel and transfer prisoners from these countries, demonstrates an 'increasing policy trend located at the intersection of criminal justice, migration control, and foreign policy, in which the penal state radiates well beyond the confines of the nation' (Bosworth, 2017: 2). In this case, 'penal humanitarianism (...) allows the expansion of sovereign power over familiar, racialized, subjects and places, reasserting control, or at the very least, reimagining it, in places where Britain once ruled' (Bosworth, 2017: 15). Yet, while these scholars have provided important contributions to theorizing penal power at a supranational level and the Western penal state's expansion of sovereign powers beyond its territorial boundaries, this article wishes to explore how and why penal power travels to postcolonial contexts and states with penalities labelled as 'flawed'.

Colonialism and the historical power asymmetry between the global North and South have deeply impacted on the ways in which penal policies and models travel. As most of the world has at some point in time been a European colony, many countries in the global South have inherited their penal codes and criminal justice systems from their European colonizers (Agozino, 2005; Saleh-Hanna, 2008). Utilized as tools to repress political resistance, these systems often proved convenient inheritances for new African state leaders looking to consolidate their personal rule (Agozino, 2005). Also in India, the continuity of repressive colonial penal codes and institutions 'have been retained and even innovated upon within new post-independence discourses of security' leading to a rather punitive

'postcolonial penality' (Brown, 2017: 189). Yet criminology and studies of punishment and society have been criticized for paying scant attention to colonial history and for dealing almost exclusively with the crime problems and penal policies of rich countries in the global North (Aas, 2011; Bowling, 2011; Fonesca, 2018). As a response, a new strand of 'Southern Criminology' has recently emerged, calling for a de-centring of criminological ontology and epistemology (Carrington et al., 2016). The decolonization of the discipline has also become the objective of a brand new journal (see *Decolonization of Criminology and Justice* 1(1), 2019).

Many scholars have questioned the universality of travelling penal policies and models. The aid of Western countries and international agencies to fix the 'flawed penality' of 'fragile states' so as to enhance global security and development has been conceptualized as 'penal aid' (Brisson-Boivin and O'Connor, 2013). This type of aid 'uses rule of law theories and practices to develop credible criminal justice institutions and reform penal practices throughout the world,' through penal and procedural norms and indicators and standards for accountability, seen as essential for transnational security (Brisson-Boivin and O'Connor, 2013: 516 and 521). Growing criminological attention has been devoted to international and Western efforts of security sector reform (SSR) and police reform in 'developing' countries (e.g. Blaustein, 2015; Ellison and Pino, 2012; Goldsmith and Sheptycki, 2007; Pino and Wiatrowski, 2006). Yet, these contributions have noticed that Western export of policing and criminal justice models often *counteract* democratic institutions rather than fostering them, because they are geared at indirect control through the preservation of the elites in power; driven more by donor countries' security interests than by local needs (Blaustein, 2015; Ellison and Pino, 2012). As such, criminologists have rejected the view of Western crime control export as unequivocally 'benign transfer', claiming that this view is based on the same ideology as modernization theory in development studies (a remnant of the civilising mission), which understands Western penal aid to countries with 'underdeveloped' criminal justice systems as unilinear progress towards Western standards (Cohen, 1988; Ellison and Pino, 2012). Rather, they have drawn on dependency theory in a repackaged form to argue that attention needs to be paid to how the overall political economy of aid and security assistance is embedded within neoliberal structures that reproduce global inequalities and perpetuate the dependency of the global South on the global North (Cohen, 1988; Ellison and Pino, 2012).[2] This is a similar perspective to that of neo-colonial theory.

Neo-colonial theory, 'security states' and 'contingent sovereignty'

One of the more elaborate theories on neo-colonialism, especially with regard to the African context, was developed by the first president of Ghana, Kwame Nkrumah (1965), mainly in his book '*Neo-colonialism. The Last Stage of Imperialism*'.[3] The paradox he grappled with was how it was possible that, after

the formal independences of the 1950s and 60s, African countries would continue to be economically dependent on their former imperial power, which would continue extracting their raw materials and other riches to their spiralling impoverishment; still holding a firm grip on their economies as well as their policies. The explanation, he argued, was that formal colonialism had been replaced by a new and more hidden form of colonialism:

> The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside. (Nkrumah, 1965: ix)

In agreements between the former imperial powers and the newly independent African states, the latter were promised aid to economic development in exchange for concessions to the monopoly over resource extraction – yet the European profits from this extraction would by far outnumber the aid returned. The European aid was also too modest for African countries to truly develop economically, which in turn prevented them from industrializing and refining their own raw materials, rendering them dependent on agriculture and the export of raw materials to prices fixed by the former colonizer.

> 'Aid', therefore, to a neo-colonial State is merely revolving credit, paid by the neo-colonial master, passing through the neo-colonial State and returning to the neo-colonial master in the form of increased profits. (Nkrumah, 1965: xv)

While Nkrumah wrote that neo-colonialism could take many forms and directions, the most extreme case being the garrisoning of troops of an imperial power on the territory of the neo-colonial state (i.e,. 'military aid'), the focus of the definition and analysis remained on *economic dependency* coupled with *political conditionality* and/or *external political infiltration and pressure*.

> Control over government policy in the neo-colonial State may be secured by payments towards the costs of running the State, by the provision of civil servants in positions where they dictate policy, and by monetary control over foreign exchange through the imposition of a banking system controlled by the imperialist power (Nkrumah, 1965: ix–x).

According to Nkrumah, neo-colonialism does not necessarily have to involve the former imperial power or even a state; the colonizer can also be a consortium of financial interests. The two main sources of neo-colonial co-optation he identified were multinational companies and foreign donors. Writing in the context of the Cold War and the rise of the USA as a global hegemonic power, American banks and international financial institutions (i.e., the Bretton Woods institutions) play a key role in Nkrumah's (1965) account of the neo-colonization of Africa.

Moreover, the then newly emerged European Economic Community (EEC) was seen by Nkrumah as an effort of 'collective neo-colonialism' (p. 43). However, it is important to note that Nkrumah was not against all foreign financial direct investment (FDI) and aid as long as it supported African-led policies and plans. Rather, he propagated a solution of pan-Africanism and the creation of a large enough common African market to counteract the dependency on European and American financial capital (see also Nkrumah, 1963). What is particularly impressive with Nkrumah's writing is how he with a high level of precision predicted the economic exploitation, dependency and structural adjustment in Africa that would come to characterize the following decades, consolidated by the Washington Consensus in the 1980s and 90s and compounded by the International Monetary Fund (IMF), the World Bank, the US and the EU.

Kwame Nkrumah's work has recently been revived by Mark Langan (2015, 2018) as an analytical framework for understanding contemporary African political economy and especially current Africa-EU relations. He argues that Nkrumah's (1965) original theory and analysis – as 'the continuation of external control over African territories by newer and more subtle methods (...)' (2018: 4) – is still as valid today as it was sixty years ago. Moreover, the theory adds value by giving analytical attention to the interplay between skewed economic/power structures and political agency, thereby adding an important analytical layer to the neopatrimonialism literature which has come to dominate African studies – focusing on the patronage politics of African 'Big Men' as (the only) reason for the failure of development aid. Among other, he shows that far from having stopped the conditionality-based neoliberal structural adjustment policies from the 1980s and 90s (which the EU publicly stated were flawed and distanced itself from), the EU is in fact *continuing* them – however in a much more hidden and less transparent way: through project aid, budget support and 'aid blending' initiatives. Dealing predominantly with economic aid and trade policy, Langan shows how the EU uses aid conditionality to push for a neoliberalization of African economies (through tariff cuts, privatization, market opening) to the benefit of its own trade and very often to the detriment of development in African countries – resulting in massive job losses, the closing of entire sectors, 'land grabbing', growing inequality and public protest. Particularly relevant to criminology, one chapter in Langan's (2018) book is dedicated to the increasing importance of security in Africa-EU relations. Here he selects two prime examples to showcase the role of neo-colonialism in the 'securitization of development,' namely French military intervention in the Sahel to fight terrorism, and the EU's new 'migration partnership agreements' with African states to prevent migrants from travelling to Europe:

> These donor migration initiatives have created what might accurately be termed 'security states' in Africa which monitor their own populations and curtail civil liberties to prevent movement of people. Moreover, they raise issues about how donor security concerns influence the use of aid monies, especially in terms of creeping conditionalities. (Langan, 2018: 150)

This quote points to the growing importance of neo-colonialism in the penal and 'internal security sector'.[4] However, while contributing some excellent reflections on neo-colonial theory, I also argue that there are certain points in Langan's work which can be critiqued: 1) his all-encompassing conception of neo-colonialism (what are its limits?), 2) the fact that he does not try to argue against neo-colonialism, Nkrumah's theory simply fits perfectly to every case he selects (i.e., confirmation bias), and 3) his overly easy dismissal of poststructuralist theories similar to neo-colonial theory.

Apart from the neo-Marxist/critical theory writings of Nkrumah and Langan, similar theoretical arguments have been put forth by a range of poststructuralist scholars, such as the concepts 'governance state' (Harrison, 2004) and 'contingent sovereignty' (Duffield, 2007). These note that the prognosis for states in Africa labelled as 'fragile' or 'failed' – because they are problematized as cradles of security challenges connected to transnational crime, terrorism and migration – is to have the international community becoming an integral (and not external) part of the state:

> While respect for territorial integrity remains, sovereignty over life within ineffective states has become internationalized, negotiable and contingent (...). Contingent sovereignty constitutes a zone or frontier that is shaped by the interaction between national and international actors and institutions (...). (Duffield, 2007: 28)

What all these theoretical perspectives have in common is that they see African states' sovereignty as compromised or hollowed out by the West/the international community, yet they differ as to how sovereignty (and dependency) is conceptualized (to be discussed in section 6). The following section draws on an empirical example to show the utility and relevance of neo-colonial theory for criminology and the sociology of punishment, namely for explaining why and how European penal power easily travels to West Africa.

Arguing for 'penal neo-colonialism': The case of EU penal power projection to West Africa

The EU is increasingly attempting to shape the penal legislation, policies and practices of West African countries in order to stop illicit flows and irregular mobility to Europe. This is done through employing a variety of EU external policy instruments: encompassing both European Commission-run aid instruments like the EU Emergency Trust Fund for Africa (EUTF) – which was put together in the wake of the so-called 'migration crisis' in 2015 to mainstream migration management in all EU external action – and Common Security and Defence Policy (CSDP) missions on SSR and police reform (i.e., EUCAP Sahel Mali and Niger). These projects and missions engage in building beneficiary countries' police, surveillance capabilities and border security, and co-locate EU

representatives into Ministries of Interior and Justice to mentor and advise civil servants – including on the drafting of penal codes and penal policies (see Stambøl, 2019 for a more detailed empirical account). The West African countries Mali, Niger and Senegal became EU priority partner countries in the fight against 'migrant smuggling', transnational crime and irregular mobility, placing them among the highest EU aid recipients in West Africa both in general as well as specifically with regard to border security, police and criminal justice. Can these transfers of penal policy and models be regarded as neo-colonial? Since uses of neo-colonial theory seem to vary, I propose a set of basic tenets based on my reading of Nkrumah (1965); suggesting that the new European efforts to build these countries' penality could be seen as neo-colonial when 1) they have a primary purpose of protecting Europe (not Africa), 2) these countries are economically dependent on Europe, and 3) the economic dependency and political infiltration are used as leverage to push for reform of the penality (i.e., conditionality).

Whose crime – protecting Europe or Africa?

The EU's external policies are based on the principle of the 'internal-external security nexus:' Europe's internal security is inter-dependent on the security in Africa (see e.g. Council of the European Union, 2015). The concept of security encompasses the fight against various forms of transnational crime and terrorism, which the EU views as 'externally originating threats to its internal security' (Stambøl, 2019). A blunt quote from an EU member state diplomat about the engagement of his country in Mali illustrates this well:

> Why is [European country X] so engaged in Mali? In 2013 France became very active and saved the territorial integrity of Mali. [France] asked for help: MINUSMA,[5] EU. At this time many politicians [in my country] had a discourse on international engagement. They thought Mali was the perfect place to show international commitment. (…) [Our] strategic objectives are: 1) Terrorism – contain the threat; 2) Fight root causes of migration; 3) Foster French-[X] cooperation and [EU Common Security and Defence Policy]. For this Mali is just a theatre.[6]

The quote also underscores the increasing tendency towards the member states' internal security interests dominating EU external action, entailing a shift away from a discourse of spreading EU values and norms such as democracy, human rights and good governance. Still, these policies assume (at least officially) that European and African interests converge and that the fight against transnational terrorism, migration and crime benefits Europe and Africa simultaneously. However, this is not always the case; for instance, the EU-supported police crackdowns, arrests and detention of so-called 'migrant smugglers' in Niger created widespread harm locally as the economy of the Agadez region collapsed and insecurity grew to the extent that it threatened the country's stability (see e.g. Molenaar et al., 2017; Raineri, 2018; Stambøl, 2019).

Economic dependency and European penal aid

The aid dependency of West African countries such as Senegal, Mali and Niger is high, and in the case of the latter two Official Development Assistance (ODA) provides for more than one-third of the annual costs of running the state.[7] The largest donors in all three countries are the World Bank, the EU, the US and France.[8] In the case of the EU as a donor, penal aid has become an increasingly important type of aid to the three countries and the region as a whole. The past 15 years, the EU spent more than €1,5 billion in aid to fight transnational crime in the wider Southern neighbourhood, of which €414 million went to the Sahel/Lake Chad region, mainly to police and border security but also to the criminal justice and penitentiary sector (Russo and Stambøl, Forthcoming). EU penal aid contracts are typically awarded to EU member states' agencies along the lines of internal security interests and postcolonial ties, with French agencies being main implementing partners of penal models in Francophone Africa, Italian in Libya, and Spanish in Senegal and Mauritania (Russo and Stambøl, Forthcoming). Additionally, the two EU police training missions in Niger and Mali build capacity in the entire criminal justice chain, each with *annual* running costs of around €15 – 60 million, and have been increasingly geared towards objectives of fighting illicit and irregular mobility (see Stambøl, 2019). The composition of mission staff reflects member states' strategic priorities, with 60% of the staff of the Niger and Mali missions being either French or Belgian nationals (Smit, 2019: 11).

Political conditionality

The EU has started using political conditionality in the criminal justice sector; meaning that the economic dependency is used actively by the EU to push the Sahel countries to change their penality (see CONCORD, 2018). The EU's 'more for more approach' (i.e., more development aid in exchange for cooperation on EU objectives), which originally was conceived of to support democratization in North Africa after the Arab Spring, has become geared instead towards internal security objectives (Wolff and Pawlak, 2018). For instance, in 2017 the European Commission announced an increase in aid to Niger up to a total of €1 billion by 2020 as the country had demonstrated 'strong political willingness and leadership' to confront common challenges.[9] While the type of challenges was not mentioned, it is well known that Niger due to EU pressure adopted a law criminalizing migrant smuggling in 2015 followed by arrests of more than 283 so-called migrant smugglers and confiscation of at least 169 pickup trucks in 2016–2017, in the northern town of Agadez through which migrants were passing on their way northwards to Libya and Algeria (Molenaar et al., 2017). This move by President Issoufou was celebrated by the EU as an exemplary partnership in the fight against transnational crime (European Commission, 2017; see also Brachet, 2018; Raineri, 2018; Stambøl, 2019). In this case, we observe a general elevation of total aid, not only penal aid, in exchange for cooperation on the EU's fight against transnational

crime. In other words, we see that the EU's aid monies and political pressure and leverage are used to shape Niger's penality in ways that create a particular kind of penal state that can protect Europe from illicit flows of people and goods.

Langan (2015) asserts that even aid modalities that were conceived of as 'post-conditionality' tools (i.e., respecting sovereignty and country-ownership), such as budget support through which aid is channelled towards the country's own political agenda, are used by the EU as more subtle and hidden forms of influence. Budget support increases the donors' access to policy discussions, expands their power in all stages of the policy processes, and puts pressure on recipients 'from within' (Langan, 2015: 111). While Langan (2015, 2018) details how budget support is still used for purposes of economic liberalization benefitting the EU for market penetration, the author's interviews with EU diplomats and Commission staff in Brussels revealed that the conditions of budget support are also now being directly tied to objectives in the criminal justice sector. In the case of Mali, an EU diplomat said that:

> For the first time ever [there are] security indicators [i.e., conditions] enshrined in direct budget support. One of the indicators is directly related to the mandate of [the EU police-training mission – EUCAP Mali]. This has completely changed the dynamics of the Malian authorities [as the Ministry of Finances is now pushing the police and military – the Ministries of Interior and Defence – to pull themselves together so the money can be released].[10]

Other research has also observed that 'clear conditionalities are set for direct [EU] budget support to the Nigerien authorities, linked to progress in the fields of migration control and security', and play a key role in negotiations over future aid allocations (CONCORD, 2018: 23). This means that development funding is being 'diverted from the fight against poverty to contribute to strengthening migration and border control and fighting against human smuggling and trafficking' (CONCORD, 2018: 23). While evidence of such tying of aid to conditionalities in the penal sector underscores the relevance of Nkrumah's theory in conceptualizing the EU's 'penal neo-colonialism' in Africa, the following section turns to arguments that refute such a theorization.

Arguing against 'penal neo-colonialism': Welcomed transfer, rent-seeking, and 'externalization in reverse'

Researchers have, contrary to what the previous section argued, claimed that European penal aid to West Africa is not neo-colonial yet marked by coloniality (Frowd, 2018: 187). Although the security agenda itself is often initially set by the Europeans, 'outright coercion is replaced by a shared common agenda' (Frowd, 2018: 187). EU assistance to criminal justice always comes at the request of the recipient. According to Frowd, the voluntariness is apparent not only at the

government level but also '(...) African security officials willingly partake in their own internationalization through repeated participation in events such as the Euro-African police conferences' (Frowd, 2018: 188). In other words, assistance to build their internal security and penal power is welcomed by African states, as a means to bolster their own sovereignty.

The concepts of ownership and legitimacy are crucial aspects of EU security sector reform policies (at least on paper) (European Commission, 2016), and both criminological and IR literatures on SSR note that without these two elements the implementation of donor-supported penal reform and crime policies will fail (Ellison and Pino, 2012; Schröder et al., 2014). In reality, recipients selectively adopt, adapt, resist or reject elements from external SSR interventions as they see fit, often leading to 'ceremonial structures' and piecemeal implementation of penal norms and policies (Schröder et al., 2014). According to EU external governance theory, the extent of leverage attributed the EU as a neo-colonizer is inflated as it does not have strong enough incentives to induce real change (Lavenex and Wichmann, 2009): with regard to countries with 'limited statehood,' the EU has less 'transformative power' (Börzel, 2011). To illustrate this point, an EU diplomat interviewed lamented that EU penal aid to Mali does not lead to any real difference on the ground:

> The system is smiling to the donors but will not transform itself fundamentally. (...)
> In Mali they accept SSR because they need to please the donors, show that they have
> a window for SSR. They don't want to transform.[11]

The same thing can be said for Niger and its crackdown on 'migrant smugglers.' While the Nigerien government put up a show for European donors to demonstrate itself as the ideal partner in Europe's fight against transnational crime and migration to get an increase in aid, the clandestine transport of migrants not only continues but is even 'institutionalized in the framework of a state-sponsored protection racket' (Raineri, 2018: 69). This leads us to the issue of agency of African elites in aid and rent-seeking, and the role of aid as a lubricant of patronage politics.

African studies scholars have problematized what they have seen as an overly simplistic antagonism between colonizer and colonized: arguing that not only were many societal groups across Africa mobilized in their own colonization, but some also used colonization for their own political purposes (for example, 'The Songhai and Zerma used colonial rule to defend themselves against the Touareg and the Peul', Bayart, 2000: 222). Bayart (1993), among others, strongly criticized neo-Marxist theories (dependency theory in particular) for their reductionist view of African states as simply passive entities victims of economic structures and dependency. Calling for empirical analyses of different forms of political organization and agency, Bayart (1993, 2000) developed the concept of 'extraversion' to denote strategies by which African elites actively court donors for aid and rent, which they

then divert to their own political and private purposes (see also Langan, 2018: 17f.).

That there is power asymmetry between Africa and Europe does not mean that African governments cannot exert political agency and leverage vis-à-vis the EU. Indeed, several African countries, especially those labelled as migration 'origin' or 'transit' countries, have played on their strategic position and increased bargaining power to align EU aid objectives with their own political agenda (Adam and Trauner, 2019; Van Criekinge, 2009). Notably, African countries have cooperated on many aspects of EU migration and security policies but have often resisted cooperation on the issue of forced returns of their nationals as this would make the government unpopular at home (Adam and Trauner, 2019). Migration is among the issues where African and European interests diverge the most, and one should bear in mind that remittances from the diasporas outnumber development aid to many West African countries (World Bank Group, 2018).

Scholars have even referred to the EU's cooperation with (particularly North) Africa as 'externalization in reverse' (Joffé, 2008) or 'reversed diffusion' (Cassarino, 2018): it was rather the Southern neighbours who convinced the EU to abandon its normative aspirations of spreading democracy and human rights in favour of a focus on security and the status quo. This argument is also relevant with regard to countries further south with autocratic tendencies, such as Niger, where the EU is turning a blind eye on the government's arrests and detention of members from civil society and human rights organizations because Niger is its key partner in stopping 'migrant smuggling' (Raineri, 2018; Stambøl, Eva, 2019). So where does this leave neo-colonial theory?

Discussing neo-colonial theory: The issues of agency, (penal) power, and sovereignty

The first of the above counter-arguments, that EU penal aid is not neo-colonial because the beneficiary government invites external assistance, seems to stem from a misreading of neo-colonial theory. Neo-colonial theory did not exclude agency on part of the 'neo-colonized' nor did it assume that aid would be imposed on resisting elites against their will. On the contrary, it is expected that co-opted elites (often put in power with the support of the external actors in the first place) would be inviting and accountable to the donors (patrons) that pay their salary: 'the rulers of the neo-colonial States derive their authority to govern, not from the will of the people, but from the support which they obtain from their neo-colonialist masters' (Nkrumah, 1965: xv). There is room for agency and some resistance on part of neo-colonial elites, as long as they are overall aligned with their patrons.

The second counter-argument asserted that the EU does not have any 'transformative power' to induce real change and that African elites co-opt the aid for their own purposes. However, I have argued elsewhere that it now seems to matter

less to the EU whether the state transforms or not, more important being the technical capabilities which enable them to stop transnational crime and illegalized mobility before reaching Europe (Stambøl, 2021). Moreover, Langan (2018) argues that Bayart's concept of 'extraversion' is in fact compatible with neo-colonial theory: while 'extraversion' explains the *agency* and strategies of African elites in seeking aid and rent that feed their patronage networks, the asymmetrical power context highlighted by neo-colonial theory explains the economic and political *structure* which makes this corruption of elites possible in the first place. This structural argument may find a criminological parallel in what Nikos Passas (2000) called 'criminogenic asymmetries:' global neoliberal structures that produce illegal opportunities for economic crime.

The third argument, that the heightening of security objectives on the EU's foreign policy agenda has increased the bargaining power of African migration 'origin' or 'transit' countries vis-à-vis the EU, does not destroy neo-colonial theory but it exposes its (in my opinion) most serious weakness, which has to do with the way in which power is conceptualized. Not only is neo-colonial theory better at theorizing dominative structural power than agency and nuances of non-dominative power, but the main problem is that it categorizes power in binary terms: the country (or in our case the penal sector) is either neo-colonial – or not. Reality, however, is rarely that clear-cut. Where is the (operational) limit between a neo-colonial and a non-neo-colonial state; between a neo-colonial penality and a non-neo-colonial penality? If we understand neo-colonialism as degrees of external co-optation, then how much co-optation is neo-colonial, and how do we measure and determine that empirically and scientifically? This limitation is obfuscated by the confirmation bias in studies that apply neo-colonial theory: to explore the 'boundaries' of neo-colonial theory there is a need to go beyond the most obvious cases of neo-colonialism (e.g. French military intervention in its former colonies) to look at cases on the 'border' (e.g. EU penal aid to Egypt or Turkey). My suggestion is that in order to overcome neo-colonial theory's limitations of binary categorization of power, and to explore the various levels of external infiltration and pressure but also acts of resistance, analyses may be supplemented and complemented by poststructuralist perspectives on the constitutive role of power as dispersed microphysics.

Harrison (2004), drawing rather on a Foucauldian understanding of power as productive, argues that aid can simultaneously boost *and* hollow out African states' sovereignty. This should be even more the case for penal aid which reinforces the (symbolic) violence and coercive capacities of the state (cf. Barker, 2017), meaning penal aid to African countries may not only decrease or hollow out their sovereignty, but may also buttress it. Following such a line of argument, European penal power projection can be productive of African countries' own penality and state sovereignty, thereby functioning to govern transnational crime and security threats 'at a distance.' In this case, sovereignty is partly contingent (cf. Duffield, 2007) upon penal power emanating from Europe, and crime and mobility governed *through* African 'governance' and 'security' states. Indeed, it has been argued that

global politics work through the 'governmentalization of sovereignty', in which 'ownership' and participatory processes function as indirect modes of control (Neumann and Sending, 2010). In other words, sovereignty is part of the episteme within which international organizations govern 'fragile' countries 'through freedom' (Neumann and Sending, 2010: 145). However, proponents of neo-colonial theory have rejected such understandings of sovereignty, arguing that seeing 'contingent sovereignty' as a naturalized, integral part of the 'governance state' downplays the fact that there is a conflict of interests that has to be resisted (Langan, 2018).

On the other hand, the de jure and rather Westphalian conception of sovereignty propagated by Nkrumah and proponents of neo-colonial theory has been contested by Africanists, who claim that measuring African countries against Eurocentric ideal-type abstractions of sovereignty is precisely what renders them 'fragile,' 'failed,' or 'limited.' Many African countries do not have monopolies of force with Weberian type bureaucracies, accountable criminal justice institutions nor territorial control, and 'the state' is often but one player among various competing political actors (Hüsken, 2017). Generally, political power across the African continent has been expressed more as control over people rather than territory (Bayart, 2000: 34). Conceptualizing sovereignty in Africa rather as 'shared' (Hüsken, 2017) or 'hybrid' (Boege et al., 2008), scholars have called for exploring African states for what they *are* instead of what they are not, focusing on 'empirical' rather than 'de jure' statehood and the ways in which it is negotiated and performed (Hagmann and Péclard, 2010).

Thus, researchers have understood African countries' sovereignty as hollowed out from 'above' (by the international political economy and the Westphalian inter-state system dominated by hegemonic Western states) and from 'below' (from contesting political orders and the lack of monopoly of force). This further complicates ownership and legitimacy in donor-sponsored SSR and penal reform, as donors most often focus on state actors and thus tend to cement existing power structures instead of building democratic states as such (Ellison and Pino, 2012; Schröder et al., 2014). Penal power in these states sometimes becomes more accountable to (or in a Foucauldian optic: flows from) the donors that co-opt and influence their penal sectors; more so than to the populations. Penal aid, moreover, creates its own dependencies in the beneficiary countries' penal sector (Blaustein, 2015: 47). This has important consequences for how we conceptualize penal power and the 'penal state' in postcolonial contexts.

Conclusion

Investigating Western donors of penal aid and 'the state in Africa' (Bayart, 1993) forces us to re-think the relationship between penal power and state sovereignty. Neo-colonial theory, with its strong focus on state sovereignty, is relevant for making sense of this relationship.

An important contribution of neo-colonial theory to conceptualizing travelling penal power is attention to international political economy and asymmetrical power structures within which travel is embedded. Put differently, the purpose of neo-colonialism as a distinct concept is to capture the qualitative shift from formal to informal and hidden forms of structural domination – as well as the significance of neoliberal economic structures and political conditionality for imposing penal policy on aid dependent countries. The theory also considers the micro-dynamics of external political pressure and influence in the penal sector, as well as to penal aid as 'revolving credit'. Still, there are also limitations to the analytical potential of the theory, as its binary categorization of power as neo-colonialism/not-neo-colonialism poses serious problems for operationalization, as well as for analysing less dominative and non-material forms of power. While arguing for retaining the basic premises of neo-colonial theory, the article intends to extend an invitation to think beyond a binary structure (neo-colonial/non-neo-colonial) and 'clear' or 'extreme' cases of penal aid and external co-optation, to illuminate the more hybrid situations in which different local actors in various settings present greater degrees of resistance and obstruction to such external influence. It is important to note that this does not imply denying reality to the neo-colonial but placing it in a broader and more complex range of possibilities.

Furthermore, while the 'positive', a priori and de jure conception of sovereignty embodies a potential for emancipation and a clear goal for political struggle, it is less helpful if we are to explore what Hüsken (2017: 914) refers to as 'the real practice of African governance.' Concerning the latter, neo-colonial theory could be complemented by poststructuralist analyses of power as productive: seeing EU penal power projection as constitutive of African countries' ability to criminalize, police, prosecute and punish. Such an analysis is compatible with African studies' suggestion to conceptualize statehood as 'performance'. Still, neo-colonial theory reminds us not to lose sight of the politically contested nature of external intervention, and the way in which it may subvert the accountability of penal power away from the people of the state.

'Neo-colonial penality', then, is fundamentally about the power asymmetries that make it possible for external donors to dictate aid and loan dependent states' penal policies and practices. While such states are often found in the global South for the same structural reasons, it must be noted that neo-colonial theory is not reserved only for postcolonial or global South contexts – something the examples of the EU's relations with the Western Balkans or even its own member state Greece illustrate. Thus, neo-colonial theory is not primarily about continuities of (formal) colonialism in the present like postcolonial theory – yet the post- and neo-colonial often overlap and converge. Future studies could explore more in-depth the differences, similarities and entanglements between post- and neo-colonial theory, as well as their empirical manifestations in current penal systems around the world.

Acknowledgements

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Notes

1. The case is based on the author's research which comprised the compilation of a database on EU 'penal aid' to the wider Southern neighbourhood the past 15 years, as well as fieldwork in Senegal, Mali, Niger and Brussels between 2017 and 2019; including 101 interviews with 133 people (some in groups). Interviewees included, inter alia, EU policy makers, diplomats and staff, International Organizations such as Interpol, United Nations Office on Drugs and Crime (UNODC) and the International Organization for Migration (IOM), European and United States' diplomatic missions, NGOs, civil servants in the three Sahel countries' Ministries of Justice, Interior, and Foreign Affairs, criminal justice actors (police, border police, gendarmes, lawyers, prosecutors, judges, penitentiary authorities, etc.), human rights organizations, and Touareg rebel groups.
2. Due to space limitations, it is beyond the scope of this article to elaborate on the similarities and differences of neo-colonial theory to related theories such as dependency theory, World Systems Theory and postcolonial theory.
3. Ghana was the first sub-Saharan African country to gain independence, on 6 March 1957. Nkrumah was himself toppled in 1966 allegedly with support from the CIA, having seen other fellow socialist African state leaders ousted or assassinated with support from their former colonial powers, the most famous case being Patrice Lumumba in Congo who was murdered with help of the Belgian secret service in 1961 – for an intriguing account, see Sartre's (1964/2001) essay '*The Political Thought of Patrice Lumumba.*'
4. It should be noted that what IR scholars and international donors of penal aid refer to as a state's 'internal security' (and in Francophone West Africa is referred to as *sécurité intérieure*) encompasses what sociologists of punishment refer to as 'penal institutions'. For example, security sector reform (SSR) includes the making of penal legislation and policies (advising Ministries of Interior and Justice) and reform of police, border control, criminal courts and prisons. Thus, these are not different phenomena but rather different vocabularies for broadly the same coercive state functions and institutions.
5. UN Multidimensional Integrated Stabilization Mission in Mali.
6. Interview with diplomat from an EU member state, Bamako, Nov. 2017, who specifically asked for anonymization his country.

7. In the case of Niger, 45% of the state budget is financed by external support, 25% of which comes from the EU and its member states (see https://eeas.europa.eu/head quarters/headquarters-homepage/4356/niger-and-eu_en). Similar figures can be produced for Mali, which has a €3 billion annual state budget and a €1 billion EU multi-annual aid portfolio, according to EU officials interviewed in Bamako, Oct. 2017.

8. See: https://public.tableau.com/views/OECDDACAidataglancebyrecipient_new/ Recipients?:embed = y&:display_count = yes&:showTabs = y&:toolbar = no?&:sh owVizHome = no (accessed 22 November 2019).

9. See: https://ec.europa.eu/europeaid/news-and-events/eu-will-support-niger-assis tance-eu1-billion-2020_en (accessed 24 November 2019).

10. Interview with diplomats at EU External Action Service (EEAS), Brussels, Nov. 2018. While the interviewees also noted that this is the first time the Commission's Directorate-General for International Cooperation and Development (DG DEVCO) included an indicator from CSDP in Mali, it seems to be increasingly common that DG DEVCO-managed projects are partly disbursed as project aid and partly as budget support, with the latter conditional upon fulfilment of objectives within the project. An example of this is the €30 million project 'Support for justice and security in Niger to fight organised crime, smuggling and human trafficking' (AJUSEN).

11. Interview with diplomat, EEAS, Brussels Nov. 2018.

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