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IS CANON LAW AN INSTRUMENT
OF NEO-COLONISATION?
RECEPTION OF CANON LAW IN AFRICA
AND THE CONTRIBUTION OF JOHN PAUL II

A b s t r a c t. The thought of conveying Fr. Israel Madziakaphwa's paper was borne during Canon Law classes in the group of brilliant, young students preparing themselves to receive in short licentiate in Canon Law. Analysing the African heritage of John Paul II, focus is given unusual attention on the issue of inculturation, and birthed issues such as the reception of Canon Law in Africa. The topic, analysed and discussed with the students was later on proposed as the opening one for the 1st international videoconference held in conjunction with Catholic University of Lublin, Faculty of Law, Canon Law and Administration. That still remains the main structure of presentation. Most importantly, we highlight the precise analysis of the paper that in answering the question of neo-colonialism in law we're asking ourselves about the spirit of law and rejecting this term as the outline of cultural imperialism. In discussing Canon Law we put emphasis on *unitas in varietate*, unity in diversity, that doesn't mean uniformity. Principles of inculturation remain the same: *ratio legis* – in our case – salvation of souls; *sentire cum Ecclesia* and subsidiarity. I hope this research will be a helpful instrument in facilitating, the evasion of "colonialism" in terms of "cultural imperialism" and always speak to the people (this time we mean Africans) in their "own language, being totally aware, that it's always a kind of dismixture and challenge.

Key words: neo-colonialism in Africa, canon law in Africa, an instruments of neo-colonialism.

INTRODUCTION

This paper gives a general understanding of Canon Law and how it has been received in Africa. It shows that Canon Law is not a means of neo-colonisation. Actually Canon Law is a way through which the unity of the Church is expressed while at the same time giving favourable conditions for the customs of the people to be systematically mingled with the general law. The paper explores why, though foreign to most of the customs of Africa, the law has been well received by the Christians in the African society. The background to such reception of canon law will be noted from the contribution that John Paul II has made through the doctrinal teaching of inculturation.

1. UNDERSTANDING CANON LAW IN GENERAL

In general, Canon Law can be understood as a law governing the behaviour of a specific group of people (the people of God) and provides order for that group. On top of this, canon law, unlike other legislations is formulated and presented as a unit; it is all inclusive, usually having no mechanism for easy or automatic change and updating¹. The specific group of people, to which Canon Law pertains, is that of the baptised in the Catholic Church or received into it². This law stands out for the Church because as an independent and self-governing society, the Church needs laws for her own governance³. Canon Law has a unique character in that it extends to all territories where the Church has her members⁴.

1.1. CANON LAW: UNIVERSAL ORDINANCE OF THE CHURCH

According to St. Thomas Aquinas, in his *Summa Theologiae*, a juridical norm, or a law, is an ordinance of practical reason for the common good, made by one who has authority in the community, and (it is) promulgated⁵.

¹ E. R i n e r e (Ed.), *New Law and Life. 60 Practical Questions and Answers on the New Code of Canon Law*, Washington, DC: CLSA 1985, p. 1.

² Cf. Can. 11, CIC/1983.

³ T. P a z h a y a m p a l l i l, *A Commentary on the New Code of Canon Law*, Bangalore, India: Kristu Jyoti Publications 1998, p. 40.

⁴ Cf. R. M e t z, *What is Canon Law*, New York: Hawthorn Book Publishers 1960, p. 23.

⁵ Cf. T. A q u i n a s, *Summa Theologiae*, I-II, 90, 4; cf. G. M i c h i e l s, *Normae*

In that sense, Canon Law, is a law by which the authority of the Church has promulgated in order to serve the purposes to which the Church is oriented, thus, for the salvation of mankind. Ladislav Orsy says:

Canon law is principally concerned with the practical life of the Church and of every single Christian. It contains norms of action for the whole community and for each member. Basically it springs from the will of Christ, but its minute and detailed rules come from human agents who carry the dignity of being the divinely instituted shepherds of the Church, that is, the pope and the bishops⁶.

And indeed pope Paul VI emphasises that this authority should not be misconstrued as by its source, because it has been established for the guidance and salvation of the people of God⁷. The universal law differs from the particular law which only binds the Christian faithful of a determinate territory, nation, province or diocese⁸. The universal law is like a general law that is made for all the baptised so that pluralism which is often deeply embedded in human experience is avoided. Thus it also helps to avoid confusions by so many, say mobile people (the *vagi* or *peregrini*), as they are all bound the same universal law which ordains the operations of the whole Church.

1.2. PROVISION OF PARTICULAR LAWS IN THE CHURCH

For the good ordering of the local Churches but also for the good of the Christians, the Church provides for particular legislations which should be made within the ambit of the universal law and not contrary to it. In canonical practice, particular laws are established for a particular territory and bind those people for whom they were issued as well as those who have a domicile or quasi-domicile in it⁹. As an example of the practical use of the canonical provision to promulgate particular laws, the paper turns to the particular Churches of Gambia, Liberia and Sierra Leone, of Nigeria and of South Africa which are the models to the African Church¹⁰.

generales iuris canonici, Vol. I, Parisiis–Tornaci–Romae 1949, p. 184-185.

⁶ L. O r s y, *Towards the Theological Conception of Canon Law*, in J. H i t e & D.J. W a r d, *Reading, Cases, Materials in Canon Law. A Textbook for Ministerial Students. Revised edition*, Collegeville, MN: The Liturgical Press 1990, p. 11.

⁷ Cf. P a u l VI, *Address on Canon Law, 27th January 1969, The Pope Speaks*, 14(1969-1970), p. 40.

⁸ Cf. P a z h a y a m p a l l i l, *A Commentary on the New Code of Canon Law*, p. 7.

⁹ Cf. Cann. 12 and 13.

¹⁰ The particular laws of these Episcopal Conferences, which are called “Complementary

From the laws promulgated from these conferences for their particular Churches, a recurring example can be given of canons 230 and 236 which the universal law invites the particular churches to make for themselves modifications. All the Episcopal conferences, as mentioned above, have established in their particular laws the age, talents and requirements which are needed for one to become an acolyte or a lector¹¹. Likewise they have also made the provisions for the formation and instruction that should be given to permanent deacons in order to fulfil their duties well¹². This shows how the Church has given room for a better realisation of the universal law within every particular Church.

2. AFRICAN UNDERSTANDING OF LAW IN GENERAL

The concept of law in Africa is not new or foreign though most African law today has developed from other laws, especially from common law¹³. Africans have had laws prior to the affiliation to the common law. Therefore, no African can claim that “laws” are a new concept to them in whatever form they may have experienced such laws. It is from this understanding that many Africans accepted the Church and its law despite their ethnic groupings which were traditionally governed by customs. Because of this plurality in customs of different ethnic groups, it was easy for them to receive the law of the Church, which was brought in by the missionaries, to be their own laws.

2.1. PERSPECTIVE OF CANON LAW IN THE AFRICAN CHURCH

Africans, though having their own law, they are also receptive to other ideologies that come creeping into their legal systems. Originally it is seen that Africans did not feel bad about new laws and even the Church law. Prac-

norms to the Code of canon law for these particular Churches, can be found” in E. C a p a r r o s [et al.], *Code of Canon Law Annotated*, Montréal: Wilson and Lafleur Limitée 2004, p. 1683-1692, 1721-1749, 1775-1789.

¹¹ Cf. Ibid., p. 1683, pp. 1723-1724, 1775.

¹² Cf. Ibid., p. 1683, 1724-1726, 1775.

¹³ Common law is a branch of the law of England which was developed by the English courts on the basis of the ancient customs of the English people. Osborne’s Law Dictionary defines this law as “a branch of the law of England formulated, developed and administered by the old common law courts on the basis of the common custom of the country.”

tically speaking, when Africans welcomed the missionaries, most of them, if not all, did not know anything about the law that will be binding them as they accepted the religion.

Today, after the Church has been received by many, it is clear on how people relate to it and its laws. This is in relation to the fact that the African “Church” could not live long in her own laws (customs), because her laws had not been juridically systematised, still more, they had less technique or any science of law within them, though such customs, were considered true laws by them¹⁴. And because the law of the Church was to some extent foreign to the way the African people lived, it was difficult for them to easily forget all about their customs and be bound fully by the Church law. This leads to the conclusion that despite the acceptance of the Church laws, the African Church, to some level considered her customs as another way living.

2.2. REVISION OF THE 1983 CODE: THE AFRICANS’ PARTICIPATION

By the time the revision of the Code was called for, many African Churches were only mission territories. Many of them had no established leadership system except to rely on the missionaries. Let it be known that despite their efforts to learn the traditions and customs of Africans, the missionaries nevertheless remained part of their own customs and ideologies. The question that may be asked is: when these missionaries, some of whom were prefects in the prefectures and vicars in the vicariates, went for the revision of the Code of Canon Law, did they have any input from the African perspective or from their own background of Canon Law?

John Alessandro notes that in the process of the revision of the Code of Canon law, there was an involvement of people throughout the world—not just lawyers, not simply theologians and other academics, not only administrative personnel, but also diocesan bishops of the world and, through them, the Christian faithful¹⁵. This involvement, by almost every member of the Christian faithful cannot be doubted; what can be doubted, however, is the real voice of involvement from the African perspective. In the period of the revision of the Code, the only voice that came up from the African side was from

¹⁴ Cf. Metz, *What is Canon Law*, p. 12.

¹⁵ J.A. Alessandro, *The Revision of the Code of Canon Law. A Background Study*, *Studia Canonica*, 24 (1990), p. 96-97.

the 1978 Symposium of Bishops of Africa and Madagascar (SECAM) who were proposing that there should be an African canon law which should flow from African theology just as the new Code emanates from western theology¹⁶. From the list of the members of the commission that was involved in the revision and consultation process very few members came from Africa¹⁷. This indicates how the participation of Africans may have been too small to influence an African understanding of the law and consequently make an all-inclusive canon law.

2.3. CUSTOMARY LAW AND CANONISATION OF “CIVIL LAW”

The Code of Canon Law has a provision to remit some issues to civil law, with the same effect as in Canon Law, especially those which are not contrary to divine law and as far as it is not otherwise stipulated in Canon Law¹⁸. It has also a particular regulation on custom despite the general axiom that “custom is the best interpreter of law”¹⁹. Africans have for a long time relied on customary law, which has been built on the people’s customs, most of them immemorial. However, with the advent of the Church and her laws, as the Church was received in Africa, most of these customs became “unreasonable”²⁰ notably to the mind of the missionaries who first witnessed the customs and traditions of the Africans.

However, it has to be made clear that the customs in Africa have been respected and followed for some time, even before the coming in of established laws like Canon Law. When the people in Africa prayed, for example, they did so with prescribed rules and regulations, indicating that, though

¹⁶ Symposium of Bishops of Africa and Madagascar, Acts of the 5th Assembly of SECAM, Accra, p. 225 – quoted in R.A. B u r n s, *Roman Catholicism after Vatican II*, Washington, DC: Georgetown University Press 2001, p. 100.

¹⁷ Appendix 3, in the work of John A. Alesandro, he tabulates that there were only five Africans in the final commission of 1981; cf. A l e s a n d r o, *The Revision of the Code of Canon Law*, p. 144-146.

¹⁸ Cf. Can. 22, CIC/1983.

¹⁹ Can. 27, CIC/1983.

²⁰ According to Pedro Lombardía, “*reasonableness*” implies that a customary norm should be in consonance not only with the principles of divine law, but also with what classical law referred to as “the core of ecclesiastical discipline,” i.e., the elements of canonical control over the matter which custom serves to modify, complete, or qualify. Cf. P. L o m b a r d í a, *Book I. General Norms*, in E. C a p a r r o s [et al.], *Code of Canon Law Annotated*, Montréal: Wilson and Lafleur Limitée 2004, p. 49.

unwritten (*non-scriptum*), customs were but laws. It is from this perspective that the call for a particular Canon Law for Africa may be sustained. Thus, to have a Canon Law that to some extent “canonises” the customs to befit the traditions of the people but also to be compliant to the teaching and doctrine of the Church.

3. RECEIVED OR REJECTED? REACTION TO CANON LAW.

The exploration of the law in general and the background of it in Africa helps to find out whether Canon Law has been received or rejected by the African Church. Since Africans attach a great value to their customs, it seems impossible for them to accept a law which to some extent contravenes their customs. On the other hand, it is also certain that Africans cannot claim to be in the Church, which is universal, without accepting the laws that govern the juridical operations of the Church. James Coriden puts this aspect better when he explains that the community’s reception of a rule is decisive for that rule’s application to them. He states that the authority and force of a law depends in part on its reception by the community. By receiving, i.e., obeying, a rule, the Christian community affirms its truth, its validity, and its sustainability for them²¹.

This therefore implies that Canon Law can be said to be received in Africa when there are no objections in any way among the people in Africa. By that fact, the African Church, acknowledges to be a complete Catholic Church which conforms to the principle of subsidiarity which allows a legislative unity and at the same time doing justice to the reasonableness and need for individual institutions to provide for themselves particular law²². This proposition therefore, deduces how the law should be felt as received or rejected in the African perspective.

3.1. CANON LAW (NOT) AN INSTRUMENT OF NEO-COLONISATION

There is always a feeling that every time Europeans come into Africa with various initiatives, it is nothing else that they want than to colonise once

²¹ J.A. C o r i d e n, *An Introduction to Canon Law. Revised Edition*, New York: Paulist Press 2004, p. 204.

²² Cf. A. N d e u k o y a, *New Trends in Canon Law*, in *Towards African Christian Maturity. CHIEA Extension Programme 1987*, Kampala: St. Paul Publications-Africa 1987, p. 162.

again; to find a way to penetrate with their ideologies as they did in the 18th and 19th centuries. Such sentiments do not apply however to all aspects. There are other things that are brought in which do not imply ideological colonisation. The question about the use of Canon Law as an instrument of neo-colonisation comes in because, as Kristin Mann and Richard Roberts report, when most missionaries came to Africa, they were mostly used by their nationalities to be agents of colonisation. Thus, in most places where they went for missionary work, they also taught a new way of living, new customs and new laws which were, generally speaking, nothing else but their own laws. They identified religion with cultural conversion and called converts to embrace Western social practices and religious beliefs²³. Catholic missionaries therefore, also came, bringing the Church with them, but also with the laws that governed its juridical system.

This understanding was coupled with the modern emancipation of most African countries from European way of doing things which included way of living, system of laws and even the culture. On one hand it was necessary for Africans to defend their African cultural heritage and social conditions, which indeed were different from those of Europeans, while on the other hand it was also necessary to keep the *status quo* of the ecclesial law. It is true, therefore, that in whatever regard, the regulation and ordering of human structures, cannot remain untouched by people's setting and cultural milieu²⁴. Hence, while canon law may be of such character as to disturb some well established cultural heritage, it is nonetheless a weapon used for a new form of colonisation of Africa. The only problem in the ecclesial law is that it is difficult to satisfy the desires of the local churches, since the cultures of every particular church are different²⁵.

The Church, while being the Mystical body of Christ, her historical character necessarily brings forth a juridical system and juridical institutions²⁶. It is from this perspective, therefore, that whoever accepts to be a member

²³ Cf. K. M a n n & R. R o b e r t s, *Law in Colonial Africa. Social History of Africa*, Portsmouth: Heinemann Educational Books 1991, p. 14-15.

²⁴ Cf. R.T. M w a n g u l u, *Selected Themes in Church Law. Celebrating 25 Years of Priesthood*, Balaka, Malawi: Montfort Media 2009, p. 42.

²⁵ Cf. F.G. M o r r i s e y, *The Role of Canon Law Today*, in G.J. D y e r, (Ed.), *A Pastoral Guide to Canon Law*, Dublin: Gill and Macmillan 1977, p. 24.

²⁶ Cf. M e t z, *What is Canon Law*, p. 17.

of the Church, through baptism or through incorporation into it²⁷, accepts also the juridical system that the Church has. By that acceptance, it should be noted to the person that he/she accepts a canon law which is universal; which is concerned with vast polyglot multitude representing all the nations and all the races of the globe. But this universality, which is a source of unity, must be offset by key diversity²⁸. Since the ecclesial law is universal-despite having a Greco-Roman cultural background, it therefore neither becomes a means nor an instrument to colonise anybody who accepts to become a Christian and who is consequently bound by the laws of that Christian Church.

This can also be understood analogically from the answer given by Pope Paul VI when there was a quest to have an authentically African Church, based on authentically African theology and liturgy. The pope replied to the Symposium of the African bishops of Africa and Madagascar (SECAM) saying “the Church should always be Catholic; thus, it must entirely be founded upon identical, essential, constitutional patrimony of the self-same teaching of Christ, as professed by the authentic and authoritative tradition of the one true Church. This condition is fundamental and indisputable”²⁹. That same answer can be applied to the quest for a canon law that is not contrary to culture in Africa and that seems not to become an instrument of neo-colonisation. The gist of that answer is to be that such a law should always respect the universality of the Church in her juridical system. The fact that up to date the Church has not more explicitly sanctioned the inculturation of Church law³⁰, does not mean on the other hand, that Africans are colonised by the universal law.

²⁷ Cf. Cann. 11, 96, CIC/1983.

²⁸ Metz, *What is Canon Law*, p. 23.

²⁹ Paul VI, *African Christianity*, (The Kampala Address 1969) quoted in Ndoye, *New Trends in Canon Law*, p. 161.

³⁰ The proponents of the theory of having an African Canon Law, which is to some extent based on the inculturation doctrine, see many areas in which the universal law does not satisfy the cultural texture of the African. The church in Africa has expressed this through bishops, priests, religious, theologians and other laity in many articles and books, in councils and conferences, as well as in special assemblies and synods. Cf. *African Interventions at the 1980 Synod of Bishops*, in *AFER*, 23 (1981), p. 33-35, 47-49, 275-291; also John Paul II, Post-Synodal Apostolic Exhortation *Ecclesia in Africa*, Paulines Publications Africa, Limuru 1995; cf. also R.T. Mwangulu, *Selected Themes in Church Law. Celebrating 25 Years of Priesthood*, Balaka, Malawi: Montfort Media 2009, p. 43.

3.2. AFRICAN PARTICULAR LAWS: A CONTRIBUTION TO THE CANONICAL TRADITION

James Coriden defines particular law, from the canonical point of view, as that law which applies only to a determined area or group of people, like the Church in one nation or diocese³¹. This differs from universal, proper and special laws. The provision for particular law is but a great modification made during the revision of the code. The principle of subsidiarity in the Church, which was one of the guiding principles in the revision of the Code, implies that, canon law while remaining a unified system for the universal Church, greater weight is provided for the particular legislation, even at national and regional levels, so that the unique characteristics of individual Churches becomes apparent³². Through this provision therefore, the African Church can help in the growth of the canonical tradition of the universal Church and in that way bringing the unity of the juridical system.

The contribution towards the canonical tradition of the universal Church is realised better when the particular laws of Africa are made to solve different *lacunae* between the universal ecclesiastical law and the customs of the people. There are several occasions where the Church has, in her history, attempted to adapt her laws to the peculiar conditions in the mission countries of Africa, Asia, and the Americas, through the so-called mission faculties³³. Through this opening for legislation of particular laws, canon law is well received because to some extent, though still keeping its universal nature it is at the heart of the people.

3.3. CONTRIBUTION OF JOHN PAUL II TO THE RECEPTION OF CANON LAW IN AFRICA

There is no explicit effort that John Paul II made, particularly for Africa, so that the Church in Africa can receive canon law in a special way. Implicitly however, from the African perspective, it can only be deduced from his insistence on the doctrine of inculturation that he wanted the Africans to receive the Church in their own tradition. Through inculturation, the pope wanted the people of Africa to own the Church with all her various systems

³¹ C o r i d e n, *An Introduction to Canon Law*, p. 36.

³² Cf. A l e s a n d r o, *The Revision of the Code of Canon Law*, p. 108.

³³ Cf. A. V e r m e e r s c h, *Commentaria de formulis facultatum quas S. Congregatio de propaganda fide conedere solet*, *Periodica*, 11 (1922), p. 47-55.

but with a touch of an African culture. Borrowing the teaching of Vatican Council II, the decree on the missionary activity of the Church, *Ad Gentes*, which states “faith (in the Church) should be imparted by means of a well adapted catechesis and celebrated in a liturgy that is in harmony with the character of the people; it should also be embodied by suitable canonical legislation in the health institutions and customs of the locality”³⁴, it would seem that the council was foreshadowing a new era of the Church in Africa. This can be tolerated as a significant statement and a major landmark on the subject of the inculturation of Church law³⁵.

John Paul II, through the Post-Synodal Apostolic Exhortation *Ecclesia in Africa*, has in a very strong, though general way, supported inculturation by stating that “the Synod recommended to Bishops and to the Episcopal Conferences to take note that inculturation includes the whole life of the Church and the whole process of evangelisation. This includes theology, liturgy, the Church’s life and structures”³⁶. In other ways, John Paul II was implicitly calling on the people of Africa to accept the structure and laws of the Church and slowly and appropriately to inculturate their customs within the Church. This opening made the people become flexible in the reception of the law, knowing that it is not a burden, but an ordinance for their participation in the Church. It can also be said that because of this provision, of inculturation, John Paul II contributed immensely in the legislation of particular laws of many Episcopal conferences and dioceses. This is a clear indication that he contributed to the reception of canon law in the African Church.

CONCLUSION

This paper has established that canon law is a universal ordinance for the whole Church. As a result, it obliges everyone who has been baptised or been received into the Church to follow its precepts. However, the following of this universal law is relaxed with the canonical provision for a legislation of particular laws which articulates well the needs of the particular Churches.

³⁴ Vatican Council II, *Decree on the Mission Activity of the Church Ad Gentes*, No. 19, 7th December 1965, AAS, 58(1966).

³⁵ Cf. M w a u n g u l u, *Selected Themes in Church Law*, p. 44.

³⁶ J o h n P a u l II, Post-Synodal Apostolic Exhortation *Ecclesia in Africa*, no. 62, Limuru, Kenya: Pauline Publications Africa (1995).

Based on this fact, it has been determined in the paper that canon law is not an instrument of neo-colonisation to the African Christian, rather it is an opening for them to participate better in the unity of the Church.

Using logical deductions the paper affirms positively that canon law has been received in the African Church because it is part of the Church system. John Paul II has contributed to this by encouraging the doctrine of inculturation and in that way implicitly allowing canon law, which is another element in the Church, to be accepted and be “inculturated” in the lives of the people. John Paul II therefore played a greater role in the reception of canon law because through the doctrine of inculturation, he encouraged the Africans to own the Church (and her laws) and to participate positively in the spread and growth of the Church.

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CZY PRAWO KANONICZNE JEST NARZĘDZIEM NEOKOLONIALIZMU?
RECEPCJA PRAWA KANONICZNEGO W AFRYCE
I WKŁAD W TYM ZAKRESIE JANA PAWŁA II

S t r e s z c z e n i e

Idea przekazania myśli o. Israela Madziakaphwy, zawartej w jego artykule, narodziła się podczas zajęć z prawa kanonicznego, w czasie których grupa ambitnych młodych studentów przygotowywała się do sfinalizowania skróconego kursu licencjackiego w zakresie prawa kanonicznego. Analizując afrykańskie dziedzictwo nauczania Jana Pawła II, można zauważyć, jak znaczącą uwagę poświęcił on kwestiom takim, jak inkulturacja czy recepcja prawa kanonicznego w Afryce. Temat ten, przedyskutowany i przeanalizowany ze studentami, został przedstawiony jako wykład otwierający I Międzynarodową Wideokonferencję, zorganizowaną wspólnie z Wydziałem Prawa, Prawa Kanonicznego i Administracji KUL. Istotne jest podkreślenie, którego dokonujemy w niniejszym artykule, iż poprzez postawienie pytania o neokolonialny charakter prawa, pytamy także o ducha prawa, a z perspektywy ducha kolonializm powinien zostać odrzucony, jako niemożliwa do zaakceptowania norma kulturowa. Analizując tę problematykę w kontekście norm wynikających z prawa kanonicznego, podkreślamy także zasadę *unitas in varietate*, która nie oznacza uniformizacji. Zasady inkulturacji pozostają niezmienione: *ratio legis* jest – w naszym wypadku – zbawienie dusz, myślenie i współodczuwanie z Kościołem, a także zasada pomocniczości.

Przedstawiane tu badania przyczynią się do wykorzenia „kolonializmu” jako wersji „imperializmu kulturowego” oraz do wykształcenia się takich metod komunikacji, które będą opierać się na komunikacji ludzi, do których kierowane jest przesłanie Kościoła, mimo świadomości utrudnień, jakie tak pojęta komunikacja napotyka.

Słowa kluczowe: neokolonializm w Afryce, prawo kanoniczne w Afryce, instrumenty neokolonializmu.