

Dewesternising the South African social security law: a leap towards an Afrocentric legal curricular

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SUMMARY

Recent calls to dewesternise the curricular are especially pertinent to the teaching of Social Security Law in South Africa, which has traditionally been dominated by the Eurocentric canon. This article argues that South African Social Security Law is a western-centric phenomenon and dewesternising it is necessary for the decolonisation of legal education. On this score, it provides a critique of the South African Social Security Law in search of pragmatic ideas that can advance the project of decolonising it and creating Third World perspectives. The article unsettles the dominant Eurocentric model on the origin of South Africa Social Security Law which marginalise the role that indigenous knowledge play in the development of this area of law. It argues that placing indigenous knowledge systems on the epicentre of the historiography of teaching South African Social Security Law will lead to some epistemic disruption of the current historic paradigm, a project necessary for the decolonisation of the legal mind and intellectual landscape. The article re-contextualising the orthodox social security theory in the historical scene of colonial and post-era; constructing alternative social security historiography; offering an Africanised dialogue on the origins of the informal strands of social security law; the elaboration of alternative methodologies of actualising the constitutionally protected right to have access to social security. The paper also contends with concepts and ideas such as the deemed trans-colonial importation of social security origins, decolonial philosophy as an epoch of transforming legal education in the context of South African Social Security Law.

1 Introduction

Recent waves of student's protests which engulfed institutions of higher learning across the world, have rekindled the call for the dewesternisation of the intellectual spaces and education from their Eurocentric heritage bequeathed by colonialism to a more nascent Afrocentric perspective.¹ South African student's movements such as

1 Fataar "Decolonising Education in South Africa: Perspectives and Debates" 2018 *Educational Research for Social Change* Vi-ix; Heleta "Decolonisation of

‘Feesmustfall’ and ‘Rhodesmustfall’ epitomise this call for the dewesternisation of the curricular, epistemic justice and transformation of the universities.² The call is located within the broader discussion on transformative constitutionalism, a philosophy and constitutional value to re-engineer society.³ This article present pragmatic ideas on the meaning of this call to dewesternise education in the context of Social Security Law. Such a reflection on legal education is not entirely new.⁴ Mpedi, among others, have considered the decolonisation and Africanisation of legal education in South Africa.⁵ Some academic commentators have examined the colonial episteme of other law modules.⁶ This article makes a novel contribution towards dewesternisation of legal education in particularly Social Security Law in

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- higher education: Dismantling epistemic violence and Eurocentrism in South Africa” 2016 *Transformation in Higher Education* 9; Manthalu and Waghid *Education for Decoloniality and Decolonisation in Africa* (2019) 1; Jansen *Decolonisation in Universities: The politics of knowledge* (2019) 4; Khoo et al “injustice and decolonisation in higher education: experiences of a cross- site teaching project” 2020 *Acta Academica* 3; Anathunga “Decolonising higher education: creating space for Southern knowledge systems” 2020 *Scholarship of Teaching and Learning in the South* 4; Fagbayibo “Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities” 2019 *International Community Law Review* 172; Foster “Decolonizing Patent Law: Postcolonial Technoscience and Indigenous Knowledge in South Africa” 2016 *Feminist Formations* 149; Himonga and Diallo “Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law” 2017 *Potchefstroom Electronic Law Journal* 6.
- 2 Ahmeda “RhodesMustFall: Decolonisation, Praxis and Disruption” 2017 *Journal of Comparative and International Higher Education* 10; Fourie “Constitutional Values, Therapeutic Jurisprudence and Legal Education in South Africa: Shaping our Legal Order 2016” 2016 *Potchefstroom Electronic Law Journal* 5; Letseka “Ubuntu and Justice as Fairness” 2014 *Mediterranean Journal of Social Sciences* 544; Fomunyan “Decolonising Teaching and Learning in Engineering Education in a South African university” 2017 *International Journal of Applied Engineering Research* 150.
 - 3 Mudau and Mtonga “Extrapolating the Role of Transformative Constitutionalism in the Decolonisation and Africanisation of Legal Education in South Africa” 2020 *Pretoria Student Law Review* 47.
 - 4 Hutchison “Decolonising South African Contract Law: An Argument for Synthesis” in Cinelli and Hutchison *The Constitutional Dimension of Contract Law* (2017) 151.
 - 5 Mpedi, Tshivhase and Reddi *Decolonisation and Africanisation of Legal Education in South Africa* (2019) 4; Ncube “Decolonising Intellectual Property Law in Pursuit of Africa’s Development” 2016 *The World Intellectual Property Organisation Journal* 34; Botha and Fourie “Decolonising the labour law curriculum in the new world of work” 2019 *Tydskrif vir Hedendaagse Romeins-Hollandse Reg* 178.
 - 6 Vandenhole “Decolonising children’s rights: of vernacularisation and interdisciplinarity” in Markowska-Manista *Childhood and Children’s Rights between Research and Activism* (2020) 187; Rahmatian “Neo-Colonial Aspects of Global Intellectual Property Protection” 2009 *Journal of World Intellectual Property* 40; Willems “Beyond normative dewesternisation: examining media culture from the vantage point of the Global South” 2015 *The Global* 7.

pursuit of an Afrocentric legal curricular which is explicitly and largely predicated on indigenous knowledge systems.⁷

The article is divided into three parts. First, it contextualises the argument(s) for dewesternising Social Security Law by ascertaining the meaning of the term de-westernisation. The objective of this part is to present a brief conceptual and terminological clarification of the term dewesternisation and its ostensive relationship to other terms such as decolonisation and Africanisation. In the second part, the article argues that insofar as the standard orthodox theory on Social Security Law present the subject as a South African phenomenon, it still largely remains a western construct both in philosophy and model, therefore dewesternising it is not only desirable but necessary for advancing epistemic justice, social justice and decolonisation of legal education.⁸ It challenges the dominant narrative on the origin of the South Africa Social Security which has been steeped in Eurocentric intellectualism marginalising the role that informal social security law plays in the development of this area of law.⁹ The primary argument is that placing informal social security system on the epicentre of the historiography of teaching South African Social Security Law will lead to some epistemic displacement or disruption of the current historic paradigm, a project necessary for the dewesternisation of the legal mind and intellectual landscape.¹⁰ It is in this light, that the article interrogates the historiography of the South African Social Security system in the context of the indigenous norms providing an argument for why such a project is necessary for the proper teaching and re-configuration of Social Security Law in post-colonial South African legal studies.¹¹ Finally, the article offers some proposal on how to re-contextualise the historicity of Social Security law in search of curricular transformation which is Afrocentric in character.¹²

2 Defining dewesternisation

Defining dewesternisation is often a cumbersome task, given that varied meaning is ascribed to this term making it an elastic, malleable, and a highly contested one.¹³ What exacerbates this illusiveness is that the

7 Adebisi “Decolonising the law school: presences, absences, silences and hope” 2020 *The law Teacher* 472.

8 Mungwini “The question of epistemic justice: Polemics, contestations and dialogue” 2018 *Phronimon* 2.

9 Motshabi “Decolonising the University: A Law Perspective” 2018 *Strategic Review for Southern Africa* 105.

10 Oelofsen “Decolonisation of the African mind and intellectual landscape” 2015 *Phronimon* 130; Morreira, Siseko, Kumalo and Ramgotra “Confronting the complexities of decolonising curricula and pedagogy in higher education” 2020 *Third World Thematics: A TWQ Journal* 3; Mpedi, Tshivhase and Reddi (2019) 4.

11 Fagbayibo 2019 *International Community Law Review* 172.

12 Himonga and Diallo 2017 *Potchefstroom Electronic Law Journal* 63.

13 Mignolo 27.

conceptualisations of the term is beleaguered with terminological complexity. There is no clarity as to the proper terminology to be utilised.¹⁴ A cursory survey of the literature shows that academic commentators make use of different terminology.¹⁵ Some prefer to use the term dewesternisation others use decolonisation as well as Africanisation.¹⁶ All three terminologies carry similarities and differences in terms of their scope and meanings.¹⁷ Mbembe argues that the three terms do not carry the same meaning.¹⁸ His trenchant critique is that calls for dewesternisation and Africanisation tinker with the design of the colonial curricular or model.¹⁹ Whereas, decolonisation is not about tinkering with the design of the curricular rather it presupposes an epistemic shift necessitated by innate rights in how knowledge is claimed against the others to achieve self-ownership.²⁰ Mbembe's view has cracks because it reduces the meaning of dewesternisation to self-ownership excluding other possibilities with minimum consideration that all three terminologies are or could be framed in the academic literature the same in an oppositional and dialectical relationship with colonisation.²¹ Chaka and others, opine that this framing of the three concepts is based on the hegemonic European centrist canon systems postured in contradistinction to the peripheral position occupied by the African canons.²² Consequently, this explicit conflation gives rise to the implied interchangeability use of the three terms, an approach which is adopted in the context of this article.²³

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- 14 Mgqwashu "Universities can't decolonise the curriculum without defining it first. The Conversation" 2016 <https://theconversation.com/universities-cant-decolonise-the-curriculum-without-defining-it-first-63948> (accessed on 2020-08-16).
- 15 Mgqwashu 3.
- 16 Mgqwashu 4.
- 17 Murphy "Decolonising the mind" <http://thowe.pbworks.com/w/page/38978159/Summary%3A%20Decolonising%20the%20Mind> (accessed on 2020-08-17).
- 18 Mbembe "Decolonising knowledge and the question of the archives" <http://wiser.wits.ac.za/system/files/Achille%20Mbembe%20%20Decolonizing%20Knowledge%20and%20the%20Question%20of%20the%20Archive.pdf> (accessed on 19-08-2020-08-19).
- 19 This view is based on the reading of Fanon who is in Mbembe's words extremely critical of the project of Africanisation because of his mistrust of the African post-colonial middle class. See Mbembe 15.
- 20 Mbembe 16.
- 21 Dewesternisation is more nuanced than what is presented by these theorists and scholars. Metz "Africanising institutional culture: What is possible and plausible" in Tabensky and Matthews *Being at home: Race, institutional culture and transformation at South African higher education institutions* (2015) 242.
- 22 Gatsheni "Decolonising the university and the problematic grammars of change in South Africa" 2016 http://www.unisa.ac.za/static/corporate_web/Content/About/Leading%20change/Documents/Keynote-Address-UKZN-6-7-October-2016.pdf (accessed on 2020-08-19).
- 23 Nakata, Nakata, Keech, and Bolt "Decolonial goals and pedagogies for indigenous studies" 2012 *Decolonisation: Indigeneity, Education and Society* 121.

Notwithstanding the above, it may be necessary for an article such as this which explores the possibility of dewesternisation of South African Social Security Law, to propose a contextual precise working definition of the term. However, a further reading of the literature on the subject demonstrate that crafting a definition would result in a needless *numerous clause* on what constitutes dewesternisation which in itself may undesirably limit the applicability of the term. Instead, the approach taken by this article is to identify elements of dewesternisation applicable to the subject at hand.²⁴ Dewesternisation can be construed as the “change” which occur when countries become “politically independent” from their erstwhile “colonisers.”²⁵ It is the inverse to the process of westernisation or colonisation which took place as a consequence of the European quest to expand imperial influence through the imposition of the colonial empire and ecosystems on indigenous people.²⁶ The contemporary westernisation process in Africa dates to the long era of European imperialism which started in the latter part of the 15th century.²⁷ The climax to this westernisation was the spreading of the European knowledge systems and influence in Africa as well as elsewhere, through the enactment of laws and policies which enabled dispossession and oppression.²⁸ Consequently, indigenous people were divested of their laws, lands, cultural identity and often positioned as inferior subjects.²⁹

However, dewesternisation transcends mere political independence and sovereignty.³⁰ To claim that the westernisation project stopped having a bearing on Africa upon the achievement of political independence and sovereignty is to misrepresent the colonial

24 Chakrabarty *Provincialising Europe: Postcolonial Thought and Historical Difference* (2000) 4.

25 Oyedemi “Decoloniality and South African academe” 2020 *Critical Studied in Education* 399.

26 Caroline and Mignolo “Introduction. “The Global South and World Disorder” 2011 *The Global South* 5.

27 Although this was a watershed period in the history of westernisation, this was neither its origin. Since the emergency of states, humanity has always nestled and manifested the drive to spread their influence through subjugating others. From the Egyptian ruler, Pharaoh Amasis who established the Greek colony at Naucratis in 570-526 BC, to the Greeks who westernised the colonies of Cyrenaica, and administration of Hellenistic dominions established by Alexander the Great around 356BC, to the Phoenician, Roman, Arabs and Islam colonies along the coast of North Africa, humanity has experienced the tentacles of westernisation long before present-day Europe came into being. Clayton “Critical Imperial and Colonial Geographies” in Mona and Thrift *Handbook of Cultural Geography* (2002) 354; Mahmood *Citizen and subject: contemporary Africa and the legacy of late colonialism* (1996) 6; Harms *Land of Tears: The exploitation of Equatorial Africa* (2020) 24.

28 Comaroff “Colonialism, Culture and the Law” 2006 *Law and Social Policy* 309.

29 Mignolo *Local Histories and Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (2000) 4.

30 Fukuyama “Westernisation vs Modernisation” 2009 *New Perspectives Quarterly* 84.

enterprise.³¹ African systems of government, extractive economic structures, together with their intellectual spaces are predominantly shaped by the former colonial powers and more recently by the Chinese in subtle neo-colonial, diplomatic ties and political power matrix.³² Therefore, in the context of this article, the notion of dewesternisation should be understood as an on-going process consisting of an Afro centred ideology postured in defence of indigenous knowledge systems.³³ In other words, the concept advances an alternative to the global imbalances in the generation and validation of knowledge.³⁴ It enriches the academic space with a polemic thesis to the dominant western axiology and epistemology, which side-line, neglect and overshadow indigenous knowledge systems.³⁵ In sum, despite of the definitional conundrum, the term presents greater prospects for relocating epistemological debates in the teaching of Social Security Law from the periphery of the knowledge economy to the centre narrative.³⁶

3 Exploring elements of the western epistemic hegemony in South African Social Security Law

The call to dewesternise South African Social Security Law offers an opportunity to liberate as well as transform our perspectives through critical reflections.³⁷ As Motshabi observes, self-reflection is the first crucial leap towards dewesternisation of legal education.³⁸ The important question which then flows from this is why we need to dewesternise Social Security Law.³⁹ Put differently, what are the merits of dewesternising South African Social Security Law? ⁴⁰ Dewesternisation

31 Mudimbe *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (1988).

32 Addis and Zuping "Criticism of neo-colonialism: clarification of SinoAfrican cooperation and its implication to the west" 2018 *Journal of Chinese Economic and Business Studies* 357.

33 Kaya and Seleti "African indigenous knowledge systems and relevance of higher education in South Africa" 2013 *The International Education Journal: Comparative Perspectives* 31.

34 Kay and Seleti 32.

35 Willems "Beyond Normative Dewesternisation: Examining Media Culture from the Vantage Point of the Global South" 2014 *The Global South* 7.

36 Heleta "Decolonisation of higher education: Dismantling epistemic violence and Eurocentrism in South Africa" 2015 *Transformation in Higher Education* 2.

37 Grosfoguel "The Epistemic Decolonial Turn: Beyond political-economy paradigms" 2007 *Cultural Studies* 211; Heleta "Decolonisation: academics must change what they teach, and how" <https://theconversation.com/decolonisation-academics-must-change-whatthey-teach-and-how-68080> (accessed on 2020-08-07); Adebanwi "The writer as social thinker" 2014 *Journal of Contemporary African Studies* 405.

38 Motshabi *Strategic Review for Southern Africa* 105.

39 Matshabi *Strategic Review for Southern Africa* 106.

40 Bagues "The University in Africa: Reflections on Epistemic Decolonisation. Social Dynamics" 2007 *A Journal of African Studies* 209.

is an important instrument which enables us to respond adequately to questions relating to the politics of knowledge such as whose idea and knowledge systems are prioritised in the economy of knowledge.⁴¹ It is rooted in the idea of knowledge placement. Proper knowledge placement empowers students by restoring their cultural knowledge.⁴² It provides avenues to re-establishing the link between knowledge and the community thereby ensuring that knowledge does not exist in a vacuum or decontextualised form.⁴³ Such linkages are essential for re-contextualising knowledge, deepening understanding, creating new episteme, encouraging the participation of the community in generating new knowledge and reconnecting students with their other beyond colonial identity and values emanating from the colonial project.⁴⁴ Therefore, dewesternisation demands us to transcend embedded colonial identity and require an epistemic transformation that challenges the centrality of Eurocentric canon.⁴⁵

Eurocentric canon, Mbembe puts it, is a canon which pretends that the truth is found only in western-based knowledge systems.⁴⁶ It is a canon that disregards access to other epistemic traditions thereby undermining free inquiry for the truth which is the primary preoccupation of academic scholarship.⁴⁷ It also whitewashes colonialism as a common way of cementing social relations between humans rather as opposed to an exploitative, extractive and oppressive regime.⁴⁸ Eurocentric canon portrays knowledge as impartial thereby obfuscate negative stereotypes about the objectification of the other's history, lands, geography and knowledge.⁴⁹ Western epistemic traditions or canons, consistent with the nature of colonialism destroys other forms of episteme with the consequence that students cannot relate. Mbembe advances:

“They rest on a division between the mind and the world as an ontological *a priori*. They are traditions in which the knowing subject is enclosed in itself

41 Mavhungu and Mavhungu “Mafukata Crisis of decolonising education: Curriculum implementation in Limpopo Province of South Africa” 2018 *Africa's Public Service Delivery and Performance Review* 2.

42 Delgado “Critical Race Theory, Latino Critical Theory, and Critical Race Gendered Epistemologies: Recognising Students of Color as Holders and Creators of Knowledge” 2002 *Qualitative Inquiry* 105.

43 Delgado 106.

44 Trunett “Decolonising the Curriculum; Transforming the University: A Discursive Perspective” <https://www.dut.ac.za/wp-content/uploads/2017/03/T-JOSEPH.pdf> (accessed on 2020-20-20).

45 Grosfoguel “The Implications of Subaltern Epistemologies for Global Capitalism: Transmodernity, Border Thinking and Global Coloniality” in Robinson and Applebaum *Critical Globalisation Studies* (2005) 20.

46 Mbembe 7.

47 Allais “Problematising Western philosophy as one part of Africanising the curriculum” 2016 *South African Journal of Philosophy* 538.

48 Allais 539.

49 Comaroff and Comaroff “Africa Observed: Discourses of the Imperial Imagination” in Grinker and Steiner *Perspectives on Africa: A reader in Culture, History, and Representation* (1997) 610.

and peeks out at a world of objects and produces objective knowledge of objects.”⁵⁰

Mbembe’s submission shows that Eurocentric epistemic construction makes a distinction between epistemic location and social location.⁵¹ Further, Grosfoguel argues that colonial construction of knowledge places humans on the other end of the spectrum of power relations so that they are not able to think epistemically beyond such colonial locations or prisms.⁵² Essentially, the present-day triumph of the colonial project hinges on creating subjects that are socially positioned and pre-condition in the opposite peripheries of the colonial prism to think epistemically as the ones in dominant locations.⁵³ This “zoning” of beings by the colonialist makes the dwellers of the inferior zone to continue suffering unremitting epistemic dehumanisation and social invisibility by being pushed below the line where their knowledge, life and voice does not count.⁵⁴ In this grand colonial scheme, epistemic perspectives coming from below will not yield much except only supporting the perspective of the hegemonic knowledge of the above in the power relations involved.⁵⁵ However, this does not always mean that knowledge produced from below is automatically an episteme of the colonisers.⁵⁶ Rather, the claim here is that in most instances knowledge epistemically located in the dominant side of the power relations is related to the geo- and body-politics of knowledge produced from below.⁵⁷ Therefore, the disembodied and neutrality fronted by the Eurocentric knowledge canon is a misconception.⁵⁸

The aforementioned Eurocentric constructions of knowledge were then explicitly imported into various domains of knowledge including South African Social Security Law.⁵⁹ Therefore, the South African Social Security Law has largely retained western-centred perspectives. It still embeds Eurocentric episteme, and little been done to displace

50 Mbembe 8.

51 Mbembe 9.

52 Grosfoguel “Decolonising Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity, Decolonial Thinking, and Global Coloniality” 2011 *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World* 6.

53 Hall and Tandon “Decolonisation of knowledge, epistemicide, participatory research and higher education” 2017 1 (1) *Research for All* 7.

54 Figlan “The Politic of Human Dignity” <http://abahlali.org/node/9325/> (accessed on 2020-10-19); B de Sousa Santos “Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges” 2007 30 *Review* 45.

55 Figlan 46.

56 Andreotti, Ahenakew and Cooper “Epistemological pluralism: Ethical and pedagogical challenges in higher education” 2011 *Alternative: An International Journal of Indigenous Peoples* 42.

57 Le Grange “Decolonising the university curriculum” 2016 *South African Journal of Higher Education* 7.

58 Le Grange 8.

59 By definition Eurocentrism refers to a set of doctrine or ethical views derived from European context but presented as universal values. It has its base in inheriting a European rational philosophy which is considered unique and superior to other views.

hegemonic assumptions that centre European thought at the core of the development of Social Security Law.⁶⁰ This thematic critique of Eurocentrism is not only confined to the Social Security Law but rather, has deep roots in many centuries of resistance to modern westernisation project prevalent in all areas of the law including human rights, family law, intellectual property law, among others.⁶¹ This incipient discourse on dewesternisation has been presented as a core demand of self-knowing, self-validation and epistemic sovereignty made by the different schools of thoughts including the Non-Aligned Movement, Pan-African Movement, Postcolonial Theory and Orientalism, Critical Race Theory, Black Atlantic Studies and Third World Feminism.⁶² From this vintage point, some insights posited by the Third World Approach to legal studies are relevant for the infusion of Afrocentric perspectives in South African Social Security Law.⁶³

Importantly, core Afrocentric perspectives to the South African Social Security Law are foregrounded on scholarship advanced by Fanon, B de Sousa Santos, Mbembe, Ngugi and Moglio, among others.⁶⁴ These scholars point to the continuations of colonialism and westernisation through Europe's provinciation of knowledge in our current curricular.⁶⁵ As Fanon in *Black skin, White Masks* writes that "imperialism leaves behind germs of rot which we must clinically detect and remove from our land as well as our minds."⁶⁶ In *Wretched Earth*, Fanon advances that colonialism is not satisfied merely with the imposition of political control but with the colonality of power and distribution of knowledge.⁶⁷ Motshabi further maintains that the demand for political independence based on dialectics of identity, liberation, recognition and distribution is inadequate for achieving decolonisation of being.⁶⁸ This is because colonial curricular as taught in higher education presents biased western-centric logic by turning to the past of the people, distorting, disfiguring,

60 Mignolo (2012) 27.

61 Barkaskas "Beyond Reconciliation: Decolonizing Clinical Legal Education" 2017 *Journal of Law and Social Policy* ; Tshivhase *et al Decolonisation and Africanisation of Legal Education in South Africa* (2015) 9; Kline M "The Colour of Law: Ideological Representations of First Nations in Legal Discourse" 1994 *Social and Legal Studies* 452; Chaka Chaka, Miriam Lephala, and Nandipha Ngesi "English studies: Decolonisation, deparochialising knowledge and the null curriculum" 2017 *Perspectives in Education* 208.

62 Hudson "Decolonising gender and peacebuilding: Feminist frontiers and border thinking in Africa" 2016 *Peacebuilding* 197.

63 Escobar "Beyond the Third World; Imperial Globality, Global Coloniality and Antiglobalisation Social Movements" 2004 *Third World Quarterly* 207; Lenta "Just Gaming? The case for Postmodernism in South African Legal Theory" 2001 *South African Journal on Human Rights* 177.

64 De Sousa Santos "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges" 2007 *Review* 46.

65 Mbembe 4; Fanon *The wretched of the earth* (1965) 2; Thiong'o *Decolonising the mind: The politics of language in African literature* (1986) 30.

66 Fanon *Black Skin, White Masks* (1952) 23.

67 Fanon 4.

68 Motshabi *Strategic Review for Southern Africa* 33.

and misrepresenting their history and laws.⁶⁹ Therefore, due to the aforementioned legacy of colonialism embedded in South African legal systems, the call for the dewesternisation of the law including Social Security Law remains valid.⁷⁰

However, dewesternisation as an emancipatory construct is often criticised on two fronts. The first criticism is that it is too general, anachronistic and has been overtaken by events.⁷¹ This charge may be justified.⁷² Some academic commentators argue that the idea of dewesternisation is anti-development because it seeks to reverse the benefits of modernity by rejecting European episteme thereby returning to the pre-colonial status quo.⁷³ However, this latter charge has many pitfalls.⁷⁴ First, modernity in Africa predates colonialism.⁷⁵ Second, the idea that dewesternisation means that the existing western-based knowledge system must be overthrown and replaced by another version in an opposite manner is faulty. Such a view is based on the misinterpretation of the concept of dewesternisation.⁷⁶ Current attempts to dewesternise Social Security law should be based on the reading of Thiong'o version of the concept which does not focus on the rejection or side-lining of Eurocentric episteme but focuses on placing Africa canon at the centre of legal education.⁷⁷ This localisation and re-centring of the African perspective is a practical approach informed by present realities.⁷⁸

Further, Ngugi Wa Thiong'o version of dewesternisation require African writers to tell their own story through their own perspectives.⁷⁹ This is what is termed the decolonisation of the mind.⁸⁰ According to Wa Thiong'o, the colonisation of the African mind happened as a result of its contact with the West.⁸¹ This contact ensured the training and conditioning of the African mind to conceptualise and analyse events and phenomenon according to Western fashion.⁸² Wa Thiong'o version of

69 Motshabi 34.

70 Graaff "Pandering to pedagogy or consumed by content: Brief thoughts on Mahmood Mamdani's teaching Africa at the post-apartheid University of Cape Town" 1999 *Social Dynamics* 76.

71 Mignolo (2012) 27.

72 Motshabi *Strategic Review for Southern Africa* 35.

73 Ncube *The World Intellectual Property Organisation Journal* 37.

74 Ncube 38.

75 Gyekye *Tradition and Modernity: Philosophical Reflections on the African Experience* (1997) 4.

76 Gyekye 5.

77 Recep Taş "Güç Wa Thiong'o'nun Decolonising the Mind: The Politics of Language in African 1986 Literature *Adli Eserinin Sömürgecilik - Dil İlişkisi Açısından İncelenmesi*" 2017 *International Journal of Language Academy* 190.

78 Thiong'o (1986) 12.

79 Thiong'o (1986) 13.

80 Thiong'o (1986) 14.

81 Thiong'o (1986) 15.

82 Chukwuebuka and Ezeanya, Chioma "Mental decolonisation: A Pathway to Sustainable development in Africa" 2020 *Addaiyan Journal of Arts, Humanities and Social Sciences* 1247.

dewesternisation accepts that colonialism is a total project which does not leave any part of the human person including the mind and its reality untouched.⁸³ In the context of Social Security Law, it has shaped and whitewashed the historiography of Social Security law by advancing the crucial assumption according to which the origin of legitimate thinking is confined to a certain geopolitical location, Europe, excluding the existence of other sites of knowledge generation.⁸⁴ In South Africa, the way the development of Social Security Law is understood is a consequence of this dynamic.⁸⁵ Having been shaped in the European events and thinking, the standard orthodox theory on social security law offered in the mainstream Social Security Textbook pays little attention to the contribution made by non-European canons.⁸⁶

4 The Orthodox construct

The standard orthodox theory on the origin of Social Security Law frames its content on the statutory measures introduced during the Industrial Revolution, the Great Depression of the 1930, the first and second World Wars of the 20th Century as significant events which contributed to the development of the current systems of social security Law.⁸⁷ Whilst it is beyond doubt that these western centred events contributed to the emergency of Social Security Law, their role was not decisive but rather minimum and remote. The theory unequivocally argues that the involvement of society in the welfare of its members although it is now a common phenomenon, was not always the case.⁸⁸ It was only through the promulgation of the so-called pro-poor laws in the United Kingdom, and other European countries as well as in the US that societal members could rely on their government for social security assistance.⁸⁹

The aforementioned assumptions propagated by the standard orthodox theory on the origin of Social Security Law in South Africa have cracks.⁹⁰ The assumptions are a clear demonstration of the dominance

83 Mamdani "Between the public intellectual and the scholar: Decolonization and some post-independence initiatives in African higher education" 2016 *Inter-Asia Cultural Studies* 70.

84 Strydom (eds) *Essential Social Security Law* (2009) 2.

85 Seekings "Not a Single White Person Should Be Allowed to Go Under: Swartgevaar and the Origins of South Africa's Welfare State, 1924–1929" 2007 *Journal of African History* 375.

86 Strydom (2009) 1. This is the same argument made in the context of rape law. See Deere "Decolonising Rape Law: A Native Feminist Synthesis of Safety and Sovereignty" (2009) *Wicazo Sa Rev.* 149

87 Samir "Underdevelopment and Dependence in Black Africa-Origins and Contemporary Forms" 1972 *Journal of Modern African Studies* 105.

88 Samir *Journal of Modern African Studies* 106.

89 Poole *The Segregated Origins of Social Security: African Americans and the Welfare State* (2006) 3.

90 Fraser *The evolution of the British welfare state: a history of social policy since the Industrial Revolution* (Macmillan International Higher Education 1992); De Vries "The industrial revolution and the industrious revolution" 1994 *Journal of Economic History* 249.

of western episteme which affords a greater stature to the European perspectives as the linchpin of the development of social security law.⁹¹ Lamentably, the current Social Security Law while it has been revamped still retains Bismarckian, old west minister social security episteme.⁹² This episteme has been the anchor of colonisation for a long time. In the process of centering Social Security law to western episteme, the standard orthodox theory on the origin of Social Security ignores the role that informal Social Security which is underpinned by indigenous values played in the development of social welfare systems in South Africa.⁹³ It is noteworthy that long before colonisation, indigenous communities in Africa including South Africa had systems put in place to provide social welfare benefits to destitute members of the society and to those who had fallen on hard times.⁹⁴ These benefits were availed and protected under an ever-evolving African customary law, a system of law that govern African societies.⁹⁵

It can be strongly argued that the centering of the origin of the South African Social Security Law on European canon legitimatise and promote the colonial project in a way that decontextualize the teaching of this subject.⁹⁶ Such an approach cause epistemicide which marginalises the role played by indigenous knowledge systems in the development of Social Security systems in particular the traditional social welfare system of *Ukusisa or Mafias* for the caring of destitute people, orphans, and vulnerable children in society practised by the Nguni tribes such as the

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- 91 Bhorat "The South African social safety net: past, present and future" 1995 *Development Southern Africa* 595; Proudlock, Paula "Lessons Learned from the Campaigns to Expand the Child Support Grant in South Africa" in Devereux and Webb *Social Protection for Africa's Children* (2011); Carina "Social Security Development and the Colonial Legacy" 2015 *World Development* 333.
- 92 Tshoose "The Emerging Role of the Constitutional Value of Ubuntu for Informal Social Security in South Africa" 2009 *African Journal of Legal Studies* 12.
- 93 Woolard and Klasen "The evolution and impact of social security in South Africa" https://www.researchgate.net/publication/242595464_The_evolution_and_impact_of_social_security_in_South_Africa (accessed on 2020-10-18); Pollak "State social pensions, grants and social welfare" in Van der Horst and Reid *Race Discrimination in South Africa - A Review* (1981) 157; Leila *Social Welfare and Social Development* (2015) 2; Seekings, "Visions and Hopes and Views about the Future: The Radical Moment of South African Welfare Reform" in Dubow and Jeeves *In Worlds of Possibility: South Africa in the 1940s* (2005) 5.
- 94 Hujo "The Politics of Domestic Resource Mobilisation for Social Development" in Mkandawire *Colonial Legacies and Social Welfare Regimes in Africa an Empirical Exercise* (2020) 139.
- 95 Schmidt "From Colonisation to Aid: External Actors and Social Protection in Global South" in Seekings *The Effects of Colonialism on Social Protection in South Africa and Botswana* (2020) 109 Palgrave Macmillan
- 96 Servaas "South African social security under apartheid and beyond." 1997 *Development South Africa* 14.

Zulu, Tswana and Sotho peoples.⁹⁷ In terms of this system, a wealthy man would “loan” cattle to a poor person without a herd of his own. Each recipient of cattle through this practice was responsible for their care and retained the right to milk them for nourishment and could keep some of their offspring when he returned or repaid the loan to the owner.⁹⁸ Although this practice had elements of contractual obligations, it is also a form of social security system. Several advantages emanating from this social welfare system. It provided an opportunity to spread livestock over large geographical areas, which prevented complete decimation of the herds in the event of community crisis caused by natural disasters such as drought or cattle diseases.⁹⁹ The practice was also a form of distributive justice. Indeed, *Ukusisa* is evidence of the existence of strong Social Security systems in precolonial African societies long before the deemed inception of western-oriented Social Security system.¹⁰⁰

Notwithstanding the above, the standard orthodox theory on the origin of Social Security Law is rooted in the concept of a welfare state which is underpinned mainly by the Eurocentric concept of social liberalism.¹⁰¹ This concept contends that there is a social contract between the state and their citizens which obliges the former to uphold the freedom of the latter.¹⁰² According to John Rawls whether individuals are free is determined by the rights and duties established by the government.¹⁰³ Rawls theory of justice explains the terms of the “social contract” and is commonly held as a basis of the welfare state. One of the terms is that social liberalism requires the state to guarantee genuine freedom by ensuring that citizens are educated, health and free from extreme poverty.¹⁰⁴ This can only be assured when the state provides social assistance to those in need and promulgate laws that prohibit unfair discrimination.¹⁰⁵

97 Epistemicide refers to the killing or destruction of knowledge systems. See Idang “African Culture and Values” 2015 *Phronimon* 99. Currently, there are indigenous social security measures such as Letsema whose membership is based on periodic contribution such as peer lending arrangement which requires no financial collateral involve relatively substantial amounts of capital for business purposes, consumption or income smoothing.

98 Mottiar “Philanthropy and Development in Southern Africa” <https://africanphilanthropy.issuelab.org/resources/21809/21809.pdf> (accessed on 2020-10-22).

99 Anyanwu “The African World-view and Theory Knowledge” in Ruch and Anyanwu *African philosophy: An introduction to the main philosophical trends in contemporary Africa* (1981) 9.

100 Nussbaum “Ubuntu: Reflections of a South African on Our Common Humanity” 2003 *Reflections The SoL Journal* 5.

101 Cooper *Decolonisation and African Society* (1996) 2.

102 Noyo “Social policy and welfare regimes typologies: Any relevance to South Africa” 2017 *Comparative social policy in Africa* 4.

103 Rawls: *A Theory of Justice* (1971) 8.

104 Rawls 9.

105 Bennett “Ubuntu: an African Equity” 2011 *Potchefstroom Electronic Law Journal* 30.

Similarly, other scholars foreground Social Security Law on the Eurocentric philosophy of utilitarianism premised on the idea of taxation and redistribution of wealth.¹⁰⁶ Utilitarianism requires the state to aim for the greatest total happiness across the population.¹⁰⁷ In order to achieve that the government must ensure that basic needs and services such as food, water and shelter, health care and amenities are widely available to allow the greatest number of people to have the greatest possible quality of life.¹⁰⁸ Another western philosophy that underpins the current Social Security Law is that of egalitarianism, which actively advocates for the removal of economic inequalities among people to create an egalitarian society.¹⁰⁹ The modern notion of egalitarianism requires society to institute policies and enact laws that secure at least a minimally acceptable threshold of social welfare for all its members.¹¹⁰

Based on the above submission, an argument can be made that the standard orthodox theory on Social Security Law with its western-centric perspective does not promote pluriversality.¹¹¹ Pluriversality as conceptualised by Motshabi requires a genuine totality of global knowledge, with its multiplicity theorised all over, that permits a true search for the truth.¹¹² A pluriversality approach to Social Security law would ground this subject not only on Eurocentric theory but rather on African based philosophy such as Ubuntu.¹¹³ The African construct of “ubuntu” enables Social Security Law to be viewed through an African perspective or constructions of the world thereby unravelling the legacy of colonialism.¹¹⁴ The concept of ubuntu has been well explored repeating it is not warranted. However, in brief, ubuntu is an African idea of humaneness between people within a community. It is described in the isiZulu phrase, “*umuntu ngumuntu ngabantu*” translated to a person is

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- 106 Jackson “The Uses of Utilitarianism: Social Justice, Welfare Economics and British Socialism, 1931–48” 3007 *History of Political Thought* 509; Kelly *Utilitarianism and Distributive Justice* (1990) 6; Knight “In Defence of Global Egalitarianism” 2012 *Journal of Global Ethics* 107.
- 107 Knight “Theories of distributive justice and post-apartheid South Africa” 2014 *Politikon* 23.
- 108 Gravel “Utilitarianism or Welfarism: Does it make a Difference?” 2013 *Social Choice and Welfare* 533.
- 109 Daryl “Should an Egalitarian Support Black Economic Empowerment?” 2007 *Politikon* 123; Daryl “Class as a Normative Category: Egalitarian Reasons to Take it Seriously with a South African Case Study” 2010 *Politics and Society* 287.
- 110 Eithne and Baker “Equality, social justice and social welfare : a road map to the new egalitarianisms” 2007 *Social Policy and Society* 53.
- 111 Lund “State Social Benefits in South Africa” 1993 *International Social Security Review* 25.
- 112 Motshabi *Strategic Review for Southern Africa* 110.
- 113 Mokgoro “Ubuntu and the Law in South Africa” 1998 *Potchefstroom Electronic Law Journal* 2.
- 114 Himonga, Taylor and Pope “Reflections on Judicial Views of Ubuntu” 2013 *Potchefstroom Electronic Law Journal* 67.

a person through other people. Ubuntu as a concept date back to precolonial days and is a part of a long oral tradition.¹¹⁵

The concept of Ubuntu continues to play an important role in the contemporary South African society.¹¹⁶ It is regarded as the key cultural strength of families, an important foundation for resilience among the youth and can potentially shape community responses to disaster or crisis through informing society's approach to welfare.¹¹⁷ In *S v Makwanyane*, the Constitutional Court, per Langa J defined *Ubuntu* as follows:

"A culture which places some emphasis on communality and on the interdependence of the members of the community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such a person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance [to] each member of that community."¹¹⁸

Conceptually, there are two distinct clusters of the meaning to the concept of ubuntu. First, ubuntu is understood as referring to the moral qualities of a person, particularly features like generosity, empathy, forgiveness and considerateness.¹¹⁹ Some refer to ubuntu as the presence of the divine, directing a person away from bad behaviour towards good. Second, ubuntu refers to the values of interconnectedness between people, in the form of a worldview or philosophy.¹²⁰ It can be argued that the principles and values of ubuntu provide a theoretical framework for Social Security Law which serves two main purposes: to make sense of the world (explanatory theory) and to guide social security provision (practice theory).¹²¹ This Afrocentric approach introduces a new paradigm in the teaching and delivery of Social Security which supplements the dominant west-oriented canon or concept of social security.¹²²

115 Mbigi and Maree *Ubuntu: The Spirit of African Transformation Management* (1995) 7.

116 Gyekye *Tradition and Modernity: Philosophical Reflections on the African Experience* (1997) 16.

117 Mpedi "The role of Religious Values in Extending Social Protection: Observations from a South African Perspective" 2008 *Acta Theologica* 105;

118 *S v Makwanyane* 1995 6 BCLR 665 (CC) para 300.

119 English "Ubuntu: The Quest for an Indigenous Jurisprudence" 1996 *South African Journal of Human Rights* 641.

120 English *South African Journal of Human Rights* 643.

121 Mpedi and Darimont "The Dualist approach to Social Security in Developing Countries: Perspectives from China and South Africa" 2007 *Journal of Social Development in Africa* 9

122 Skelton "Face to Face: Sachs on Restorative Justice" 2010 *South African Public Law* 97.

5 Towards an afrocentric social security law paradigm

What emerges from the above exegesis is that dewesternisation of Social Security Law opens up important new insights into the politics of social security curricular, pedagogy and the dominant Eurocentrism which characterise this politics. These insights show blind spots in the way Social Security Law is understood, taught and conceptualised. The theoretical approach underpinning Social Security Law should be foregrounding most on the Afrocentric concept of Ubuntu which advances interdependent human relationships, community based solidarity, champion social justice, fosters generosity and has implications for the delivery of social security.¹²³ This is vital for the development of a comprehensive approach to social security aimed at achieving sustainable development.¹²⁴ As Seepamore posits:

“Indigenous social protection are based on people’s cultural beliefs and norms and are self-organised, self-regulating systems of both obligation and entitlement offering not only financial aid but also psychological and emotional support.”¹²⁵

As aforementioned, Ubuntu as a theoretical construct informing the conceptualisation of a comprehensive approach to social security will overcome the epistemological barriers presented by the Western-oriented concept of social security.¹²⁶

In addition, foregrounding Social Security Law on the concept of Ubuntu would enable students and policy makers to understand the subject in terms of multiple traditional perspectives.¹²⁷ This is vital for the development of a comprehensive indigenised approach to social security aimed at sustainable development.¹²⁸ Ubuntu as a theoretical construct informing the conceptualisation of a comprehensive approach to social security will actualise the right to have access to social security.¹²⁹ It is clear that western oriented perspective is unable to comprehend, sufficient recognise and support informal forms of social

123 Keep and Midgley “The Emerging Role of Ubuntu botho in Developing a Consensual South African Legal Culture” in Bruinsma and Nelken *Recht der Werkelijkheid* (2007) 29.

124 Himonga “Exploring the Concept of Ubuntu in the South African Legal System” in Kischel U *et al* (eds) *Ideologie und Weltanschauung im Recht* (2012) 2.

125 Seepamore “Indigenous Social Security Systems: A South African Perspective” http://www.saspen.org/home/wp-content/uploads/2016/04/Informal-Social-Security-Systems-Workshop-UJ-2016_Presentation_Boitumelo-Indigenous-Social-Security-Systems.pdf (accessed on 2020-10-22).

126 Himonga “The Right to Health in an African Cultural Context: the Role of Ubuntu in the Realisation of the Right to Health with Special Reference to South Africa” 2013 *Journal of African Law* 165; Battle *The Ubuntu Theology of Bishop Desmond Tutu* (1997) 13.

127 Keep and Midgley 30.

128 Himonga 3.

security obtaining in marginalised South African communities mainly the poor as well as the structurally unemployed and the informally employed.¹³⁰ These groups are for the most part excluded from the formal social security framework as they are not in formal employment and often not qualify for social assistance, unless they meet the requirements for accessing narrow categories of social grants such as old-age, child support, disability.¹³¹

6 Conclusion

To conclude, it has been demonstrated that centring Pan-African epistemic in legal education through transforming, decolonising and dewesternising Social Security Law in South Africa demands re-contextualising the standard orthodox social security theory in light of the indigenous knowledge systems.¹³² In other words, there a need to re-think or un-think what constitutes Social Security law episteme from an Afrocentric location of enunciation.¹³³ This is important because the hegemonic Eurocentric construct of Social Security Law does not fully accommodate alternative Afrocentric based methodologies of actualising the constitutionality protected right to have access to social security obtaining in informal social security for marginalised groups such as those unemployed and the informally employed.¹³⁴ Therefore, there is a need to place African canon at the centre of the Social Security Law in South Africa. This will result in the indigenisation of Social Security Law and an epistemic leap towards an Afrocentric legal curricular.¹³⁵

129 Himonga “The Right to Health in an African Cultural Context: the Role of Ubuntu in the Realization of the Right to Health with Special Reference to South Africa” 2013 *Journal of African Law* 165; Battle *The Ubuntu Theology of Bishop Desmond Tutu* (1997) 3.

130 Cornell and Muvangua *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence* (2012) 8.

131 Anne, Hosegood and Lund “The Reach and Impact of Child Support Grants: Evidence from KwaZulu-Natal” 2005 *Development Southern Africa* 467.

132 Mokgoro *Ubuntu and the Law in South Africa* (1997) 51.

133 Fagbayibo *International Community Law Review* 173; Foster “Decolonizing Patent Law: Postcolonial Technoscience and Indigenous Knowledge in South Africa” 2016 *Feminist Formations* 149.

134 Olivier and Mpedi “Extending Social protection to families in the African context: Complementary role of formal and informal social security” <https://www.eldis.org/document/A13617> (accessed on 2021-01-10); Himonga *Potchefstroom Electronic Law Journal* 7.

135 Bhengu *Ubuntu: The Essence of Democracy* (1996) 24.