

White Settler-colonialism and Epistemic Violence in “Post-apartheid South Africa”: An Azanian Philosophical Analysis

Masilo Lepuru

<https://orcid.org/0000-0001-9768-1022>

University of South Africa

lepurumasilo@yahoo.com

Abstract

This article is a critical attempt to problematise the notions of European Modernity and Rationality. It is fundamentally an Afrikan philosophical critique of epistemic violence that comes with European Modernity and Rationality. It argues that European Modernity triumphed in “South Africa” following unjust conquest of the Indigenous people since 1652, which was characterised by loss of sovereignty and epistemicide. This resulted in the violent imposition of the law and jurisprudence of White settlers, which are antithetical to Afrikan law and jurisprudence. This epistemicidal nature of White settler colonialism manifests itself through the legal technicalisation of issues of historical injustice.

Keywords: conquest; post-apartheid “South Africa”; White settler colonialism; epistemicide; Modernity; Rationality; Afrikan law; Afrikan jurisprudence

Introduction

This article discusses the idea that Modernity is the triumph of reason or logos over mythos. The Modernity that the present writer is critiquing is the European one, which enveloped the globe through so-called journeys of discovery in terms of European international law and the doctrine of discovery, but beginning properly with the crusades and Papal bulls like *Romanus Pontifex*. In other words, from the perspective of the Indigenous conquered people who were conquered in unjust wars of colonisation, European Modernity is coterminous with global White supremacy.

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The fundamental point of departure is that European Modernity “arrives” in “South Africa,”¹ which is its product, in 1652 with the unjust conquest of the Indigenous people by Europeans who became White settlers of “South Africa” through land dispossession. We will also show the logic of the myth of Rationality and its White settler colonial relation to law. European Modernity and Rationality aim primarily at historical and cultural discontinuity in the form of an attempted transformation of the globe in the image of White supremacy. Since European Modernity has a long and complex history, we will limit ourselves to its legal manifestation in “South Africa” in terms of White settler colonialism and the epistemological paradigm of the White settlers. In other words, this article will not examine extensively European Modernity and international law and its attendant doctrine of discovery, although it assumes the fundamental influence of the latter in White settler colonial law and jurisprudence in “South Africa.”

The underlying argument is that the “scientisation” of the law in the form of legal positivism led to the dismissal of the idea of knowledge as symbolic in nature through the argument that there are “objective legal facts” and thus “objective legal problems” that need “objective or neutral adjudication and resolution” without a committed consideration of their cultural and historical context. This is an imposition of legal colonial epistemology on the Indigenous conquered people, and this imposition made it possible for the European conquerors to entrench their colonisation legally through the distortion and subjugation of Afrika² law and jurisprudence, specifically the underlying ethical dimension thereof, which is *Ubuntu*. A conspicuous manifestation of this is the “deliberate absence” of *Abantu/Batho* and *Ubuntu/Botho* in the current South African constitution. This distortion of Afrikan jurisprudence is conspicuous in the 1996 constitution, and this very distortion led to the legal colonisation of Afrikan jurisprudence through the shift to constitutional supremacy. Distorted Afrikan jurisprudence and law are now “subject” to the constitution, and one cannot fail to notice the connotations of colonial power-relation accompanying the operative word “subject.” The Indigenous conquered people are a “subject race” with a “subject law”; thus, the liberation of the Indigenous conquered people implies the liberation of their law. This article is divided into four sections, which discuss the above in detail.

A Brief Note on Conceptual Decolonisation

This article fundamentally underscores the fact that European Modernity is coextensive with “rampant” rationalisation of existence, which is destructive to the ontologico-metaphysical and epistemologico-legal paradigm of the Indigenous conquered people

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- 1 For the purposes of this study the name “South Africa” is placed in inverted commas to reflect that it is an ethically and politically contested name. The Pan-Africanist Congress and the Black Consciousness movement regard the geographical area called “South Africa” by the European conqueror to be Azania.
 - 2 The spelling of Afrika is a conscious choice, validated by many authors. The main reason is that Afrikans themselves use the letter “k” in many of their vernacular languages. The use of “c” is considered an unnecessary Europeanisation. See Madhubuti, Haki R. 1994, “Four Reasons for Using “k” in “Afrika.” <https://soh.omeka.chass.ncsu.edu/items/show/692>.

who are colonised by this Eurocentric view of reason as “better” than myth. Our usage of capital (R) when referring to European Rationality is not to suggest that it is rationality as such or it is a superior rationality (as Hegel and other Eurocentric scholars would have us believe) but is to characterise it as very different from the rationality of the Indigenous conquered people, as we posit that it is characterised by violence, destruction, control, and domination.

Thus, it is a Rationality which is peculiar to the European worldview, culture and civilisation, and it is also the very type of rationality which is responsible for European Modernity’s process of colonisation and genocidal destruction of the Indigenous conquered people’s civilisation and culture, which were constructed on a different rationality and thus, are not predicated on control and domination like the European Rationality that I denounce in this article. European Rationality is regarded as a myth since it is presented as the only true form of rationality, whereas it is merely a Eurocentric ideological cloak under which Europe conceals its project of destruction, domination, and control. Its treatment as a myth is not to suggest that it does not exist, but it is to postulate, by relying on Wynter’s (2006, 117) term, that it “over-represents” itself as “rationality as such.”

The ontologico-metaphysical and epistemologico-legal paradigm of the Indigenous conquered people grounds the manner in which they conceive of their “Afrikan mode of being-in-the-world” (Manganyi 1973, 37) (which is premised on the notion of knowledge as a symbolic process) and also as a legal subject through Afrikan jurisprudence, which is colonised by constitutional supremacy following the epistemological triumph of the White settler coloniser through the imposition of “South African” liberal-democratic constitutionalism premised on the rationalisation of the law.

This article will also critically examine how the colonisation of Afrikan jurisprudence made it possible for the White settler coloniser to “legally gloss over” the urgent issue of the disseizing of land and the legal entrenchment of this through extinctive prescription and the constitution, specifically the “property clause,” which I designate the “injustice clause.” This is what we can designate “legal consummation” of White settler colonialism based on conquest, to rely on Jaffe (1952, 63). We use the term “constitution” in lowercase (c) deliberately as a way to effect a “conceptual revolution” which challenges the supremacy of the constitution. Most scholars who use the term “constitution” give the impression of idolising it as if there is a legal hierarchy in which Afrikan jurisprudence and law should be subservient to Western law and jurisprudence, which are positioned in this fictional legal hierarchy as the apex of all law and reign supreme. This argument is predicated on the Eurocentric proclivity to write the Western God differently from Afrikan Gods, who are traditionally written as “gods” in lowercase (g), implying the supremacy of the Western God with a capital (G), which is a form of “conceptual colonisation” that we must extirpate. This, according to me, is to defend the current White settler degradation of Afrikan law by re-naming it “Customary law”—a racist invention of White settler colonialism since 1652, which is said to be “subject”

to the constitution. One should not fail to notice the colonial connotations attached to the word “subject” to the constitution.

It is through this White settler colonial “subalternation” of Afrikan jurisprudence and law that the Indigenous conquered people are legally “silenced” in their endeavours to attain historical justice of the restoration of their sovereign title to territory, humanity, and dignity. In an excellent article, Ramose (2002) constructs a philosophical refutation of extinctive prescription, which is a basis on which the White settler coloniser came to acquire ownership of the land deprived immorally from the Indigenous conquered people. Ramose’s philosophical refutation is based on Afrikan jurisprudence that is currently colonised by the constitution.

Ramose, relying on his conception of law through Afrikan philosophy, posits that “the paradox of democratisation and independence in “South Africa” is that the compromises which the political representatives of the conquered made are philosophically and inconsistent with their people’s understanding of historical justice.” Philosophically, the people hold that *molato ga o bole*, that is, “extinctive prescription is untenable in the African understanding of law” (Ramose 2002, 20). The underlying thesis is that for Europeans, the passage of time is capable of investing one with ownership because of their linear conception of time, which contradicts that of the Indigenous conquered people who view time as circular and symbolic in nature, thus incapable of endowing one with ownership based on historical injustice. We now turn to discuss the “pitfalls” and hubris of European Rationality.

Eurocentric Rationality and Mythos

Eurocentric Rationality is here defined as the technicalisation of social life so that social problems are viewed as requiring what Horkheimer (1972, 4–5) designates “instrumental reason,” which is predicated only on the means-end pattern that neglects issues such as justice and fairness. By “Mythos” we imply a mythical way of perceiving, interpreting and understanding the world that transcends the fallacious binarism between the “rational” and the “mythical,” thus the mythical is also rational. Ramose (2002, 151) confirms our postulation when he argues that:

... all human experience involves reason, the faculty to perceive, comprehend, interpret and act according to some understanding of the world in which we are. In this sense there is reason or rationality even in myth. Accordingly, to assert that the mythical is the irrational is already an interpretation of myth. This interpretation is based on reason. Now the construction of a myth also involves the use of reason to depict experience.

The technicalisation of social life is driven by the passion for control that characterises European culture, worldview, and civilisation, as critiqued brilliantly by Ani (1994, 30). Serequeberhan (1994, 49) correctly posits that Eurocentrism is “the belief that European existence is the true and proper manifestation of humanity in its concrete development and self-realisation. This belief is grounded on the metaphysical delusion, interior to

their culture, that Europe's specific particularity is the true and proper actuality of human existence as such."

The idea of law as science is a typical manifestation of this "belief" above, which takes the form of the technicalisation of social life and its attendant problems that are then entrusted to a bureaucratic legal machinery to resolve without looking at the cultural and historical dimensions of these social problems, what Habermas (1984, 251–252), in line with Weber, calls the "rationalisation of law." The technicalisation of social life and its problems is the cloak under which European cultural imperialism hides as it embarks on genocidal destruction and "epistemicide" (De Sousa Santos 2014, 153) of the Indigenous conquered people's epistemological foundation of "symbolic framework as embedded in the Afrikan worldview and culture. Dussel (1993, 66) underlines the genocidal aspect of Modernity despite its myth of emancipation and posits that "modernity includes a rational concept of emancipation that we affirm and subsume. But at the same time, it develops an irrational myth, a justification for genocidal violence. The postmodernists criticise modern reason as a reason of terror; we criticise modern reason because of the irrational myth that it conceals." In another article, Ramose (2007, 313) extends the genocidal argument by positing that "colonial conquest was 'genocidal' as Williams, appositely observes. However, it was also epistemicidal at the same time."

The underlying argument is that knowledge in the Afrikan worldview and epistemology is symbolic in nature. I am not arguing that the Indigenous conquered people lack reason, but that they have a particular form of reason which is the substance of humanity and dignity in general. Their rationality is different because it is not driven by domination and control like the European Rationality we denounce in this article. The main problem with the technicalisation of social life and its problems is that it is then argued that through this process of technicalisation, social problems are removed from the cultural and historical matrix from which they emanated and are said to be amenable to objective or neutral resolution.

Mythos in this article entails the acknowledgement of the symbolic nature of knowledge, which takes seriously into consideration issues such as memories, cultural and historical context in conceptualising social life and its problems, and is also, most importantly, averse to domination and control. Our grave indictment against Eurocentric Rationality is that it is monolithic and "monorational." By "monorational" we mean that it is dogmatic as it is not compatible with the Indigenous conquered people's ways of rationalisation, which are not conducive to control and domination but seek harmony and solidarity of Afrikan humanity and nature as per their Afrikan worldview and spirituality.

We now turn to discuss the logic of destruction inherent in Eurocentric Rationality. Ramose (2007, 313) provides a pithier argument when he posits that "the superiority complex of Western Europe, with its totalising and universal ambitions, rested on its

unilateral appropriation of ‘reason,’ claiming it as its sole and exclusive possession.” The following section discusses the cultural roots and essence of European Rationality and briefly lays the foundation for the section on European Modernity and its notion of time.

The Myth of Rationality and its Logic of Destruction.

Due to the subliminal psychological colonisation by Eurocentric Modernity, most people tend to think that Modernity represents progress. However, we posit that progress is the ideology of Modernity. Modernity doesn’t necessarily imply progress. Progress, in our opinion, denotes an improvement of the essence and structure of historico-social and economico-political conditions for the benefit of the “constituent elements” of society. It entails the harmonisation of existence through solidarity and the concretisation of the notion of cosmic interrelatedness as epitomised by the Kemetic notion of Maat. This type of progress is not probable within the Eurocentric view of Modernity.

The first reason for this improbability is the fact that the European cognitive pattern of binary opposition doesn’t allow for harmonisation of existence through solidarity and the concretisation of the notion of cosmic interrelatedness. The second reason is that because the European cognitive pattern is predicated on binary opposition, it fosters destruction because of its obsession with power and control. This postulation is explicated very well by Ani (1994, 12), using her concept of *asili*, which designates the “germinating seed of a culture.” Ani argues that the *asili* of European culture is power-driven. It is our argument that the “rampant” Rationality characteristic of European Modernity is embedded in this power-driven and control-obsessed *asili* of European culture. This implies that the technicalisation of social life and issues is a manifestation of this *asili*.

Thus, in accordance with the above-mentioned reasons, I posit that Modernity is premised on disharmony, which is concretised through the genocidal destruction of the epistemologico-metaphysical paradigm of the Indigenous conquered people. This obsession with Rationality tends to universalise the European particular, and propagates the myth that this European particular is the founder and bearer of Modern History and that the marginalised Indigenous conquered people (with their mythico-epistemology) must “participate” in this myth of Modern Rationality. This White supremacist fallacy is captured very well by Hegel (2001, 117) when he degrades Afrika as “not part of world history.”

The European cognitive pattern of binary-opposition makes it plausible for the Rationalising European to arrogate reason to himself and to dismiss the modes of knowledge of the Indigenous conquered people as mythological, implying that they are “primitive” in the derogatory anthropological sense. The premise on which the European dismisses the modes of knowledge of the Indigenous conquered people as “primitive” is informed by the idea that Modernity is predicated on the ideology of

progress and the “societal rationalisation” (Habermas 1984, 216–219). This ideology of progress emanates from the European linear modality. Here, time is viewed as reflecting linear progression, moving from one point to another point on a straight line, which symbolises the notion of time as the European sees it. Of course this is different from how the Indigenous conquered people envision time, which the conquering White settlers dismissed as incompatible with the logic of capitalism, and regarded as “primitive temporality” or “kaffir time” (Atkins 1988, 230–232).

Thus, “armed” with the ideology of progress, the European regards himself as the “end” of history. By the “end” of history, I mean the telos of universal history, as Hegel posited in the text referred to above. The European can regard himself as the subject which is constitutive of history. This, the European derives from the idea that he is the only subject of reason and thus the only “constituting” subject of Modernity as a movement away from “primitive” modes of knowledge. As the “constituting” subject of Modernity, the European endows himself with a right to impose Rationality and destroy the mythico-epistemological modes of the Indigenous conquered people, who are treated as the object and “beneficiary” of European Modernity.

The Rationalising European is the subject as such because through his constitution of Modernity as a “new epoch of history as such,” he is in a superior position to “interpellate” (Althusser 1971, 48) individuals who still operate within the mythico-epistemological paradigm into Rational subjects of Modernity. Thus, as a result of this “rational interpellation” the rationalising European subject can regard himself as a proto-subject and view the “rationally interpellated subjects” as derivative subjects, implying that their subjectivity is derived from the “European interpellating subject as such.”

Through this delusional project of interpellating people who still operate within the mythico-epistemological paradigm, the European subject, as such, attempts to eradicate the “symbolic framework” of the Indigenous conquered people who derive their subjectivity from this “symbolic framework,” which, according to the Rationalising European subject is mythological and thus “primitive.” The Rationalising European subject regards “mythological” in this case as backward in terms of its linear temporality and the fallacies of evolutionism.

The “destructively” rationalising European subject relegates the “symbolic framework” of the conquered to the past and puts his myth of Rationality in the present and future on a pedestal. In this absurd arrogance, the European subject refuses to recognise the Indigenous conquered people’s different conceptualisation of time, which differs from his. This argument should not be construed to imply that the Indigenous conquered people are “petitioning” to be included in the European conceptualisation of temporality, but that what they seek is the autonomy of their own Indigenous conceptualisation of time. The Indigenous conquered people’s different conceptualisation of time entails the fact of regarding time as circular in the spiritual

sense, as per the Afrikan worldview, as opposed to only linear as the Rationalising European subject would have us believe. The Indigenous conquered people as Afrikans are immersed in the Afrikan worldview of cosmic interrelatedness; they embrace “sacred time” and are thus not “prisoners” of mere “profane time” (Eliade 1963, 68–69).

The Indigenous conquered people’s circular modality is permeated with “symbols” (Schwaller de Lubicz 1981, 23); it is embedded in the “symbolic framework” which the Rationalising European subject dismisses and destroys in his delusional and destructive project of Modernity. We posit that the destruction of the Indigenous conquered people’s “symbolic framework” entails the annihilation of their memories, histories and dignity with which the “symbolic framework” is suffused.

European Modernity, as a project of the Rationalisation of existence at all levels, attempts to legitimate the colonial Imagination’s project and to impose it on the Indigenous conquered people at their expense, as they are in this White settler colonial process, destroyed both physically and psychically by this inhuman project. This project entails a very destructive and violent erasure of the memories, histories and dignity of the Indigenous conquered people. This results in the colonial Imagination’s exercise of power over them through the imposition of new names and identities, and thus their “coercion into” participating in the myth of Rationality.

Thus, the myth of Rationality in the form of Modernity is a capitalistic White supremacist ideology, which by Rationalising existence attempts to extirpate the symbols and symbolism that inform and constitute the foundation of the social relations of the Indigenous conquered people, which preceded the destructive logic and myth of Rationality. This means that Rationality, as the substance of Modernity, is an ideological justification of White settler colonialism rather than an objective and value-free fact with a “universal” import and benefit, as we are often led to believe by its proponents and defenders such as Habermas, who according to Dussel (2000, 417), seeks to “fulfil it.”

It is through the destructive myth of Rationality that the exploiting European attempts to strip the Indigenous conquered people of their original mode of being and relation to reality and, thus, subliminally and violently “coerce” them into this capitalistic and inhumane Modernity. The racist assumption is that once the myth of Rationality has destroyed the “symbolic framework” of the Indigenous conquered people, the desired outcome is that they will “by themselves” participate in the system of European Modernity, which operates at their expense because their “symbolic framework” (which once grounded their social relations) will be eradicated. This is the epistemicidal fantasy that motivates the project of European Modernity.

In the next section, the last of this article, we will discuss the European linear modality of temporality, which we have briefly alluded to above, and this time we will contrast it

with the Indigenous conquered people's circular modality that grounds their conception of law and justice.

Time and the Notions of Justice and Law

This section will contend that the Indigenous conquered people's idea of time is the basis on which they conceive of the idea of justice. The European conqueror's notion of time is one predicated on linear modality. What this means is that the European conqueror views time as a process of progression from one point to another point. This is the European conqueror's idea of time, which is abstract and "rational." The abstractness and the "rationality" of linear modality are devoid of the idea of a symbolic connection between the past and the present, as what the European conqueror observes is a teleological and successive motion towards an unknown future. The basis of this linear temporality is the European conqueror's metaphysico-epistemological paradigm, which differs from that of the Indigenous conquered people as Afrikans embedded in the Afrikan worldview despite epistemicide.

The European conqueror's metaphysico-epistemological paradigm is one predicated on binary-opposition. This binary-opposition is not complementary. It is through this binary-opposition that the European conqueror can fragment time and construct the ideology of progress on which the myth of Rationality is predicated. For the European conqueror, there is no relationship between the natural and the supernatural, which is the case as far as the Afrikan worldview and epistemology are concerned, as attested to by Hallen and Wiredu (2013, 1). This leads the European conqueror to construct a form of knowledge through which he can control and dominate nature and that which is regarded by him as still part of nature, such as the Indigenous conquered people. Hegel captured this racist sentiment when he dismissed the Afrikans as part of nature and thus not part of "world history" as he envisioned it. At this stage, we leave Hegel alone and will not mention him again, for he is a typical racist dead White man of the so-called Enlightenment tradition. By being deemed as still part of nature, the Indigenous conquered people are categorised as "uncivilised." This is because Marx considered one of the criteria of "civilisation" in the European sense, of course, the technological conquest of nature. This European conception of conquering nature was pioneered by Francis Bacon.

The relationship between the natural and the supernatural can only be conceived based on complementary binary-opposition, which characterises the Indigenous conquered people's metaphysico-epistemological paradigm, which seeks harmony with Afrikan humanity and nature. The European conqueror's metaphysico-epistemological paradigm prohibits the inclusion and connection with the supernatural. It regards the connection thereof as "irrational" and "primitive" and not conducive to the passion for control and domination, which characterise the European conqueror's "civilisation" in general and its overt manifestation in scientism.

This is the substratum on which the idea of abstract and “rational” time is constructed and endowed with the ideology of progress. Progress here, for the European conqueror, implies a movement away from the “irrational” and the “primitive” in terms of evolutionism as peddled by anthropology, which ultimately leads to the severing of the connection between the natural and the supernatural. In essence, the European conqueror’s notion of time is predicated on his metaphysico-epistemological paradigm, which rejects the connection between the natural and the supernatural by regarding it as “irrational” and primitive, and thus endeavours to construct a linear temporality that he deems as progress-driven and, therefore, rational. This is a result of the European conqueror’s materialistic worldview, which strips the universe of spirit, and escapes his qualitative/mathematical epistemology. In this sense, that which is regarded as still operating differently from the European conqueror’s linear temporality (which is abstract and rational) is subjected to violence and destruction unleashed by his Rationality, which seeks to transform everything into its own image as part of European collective narcissism.

The Indigenous conquered people, on the other hand, conceive of time very differently from the European conqueror. The former’s notion of time is fundamentally, but not completely, circular and symbolic in nature. The symbolic and the circular time of the Indigenous conquered people is predicated on their metaphysico-epistemological paradigm, which is premised on binary-complementarity. The metaphysics from which they derive their notion of time is holistic in nature. What this means is that for them, there is a cosmic connection between the natural and the supernatural. Thus, their notion of time is informed by this cosmic connection between the natural and the supernatural. This symbolic nature of their notion of time entails a constant communication and relationship between the natural and supernatural, that is, the yet-to-be-born, living and living-dead who were also subjected to the unjust and immoral conquest, violent destruction, control, and domination.

The symbolic nature of time for the Indigenous conquered people is based on the “ontology of invisible beings,” which implies the connection and acknowledgement of the influence of supernatural entities such as ancestors, spirits and Gods of the Indigenous conquered people. Thus, the connection between the ancestors of the Indigenous conquered and the living Indigenous conquered people is always maintained. This is precisely how the Indigenous conquered people conceive of justice. For the living Indigenous conquered people, justice invokes the memories of the historical injustice the Indigenous conquered’s ancestors suffered at the hands of the European conqueror. This is fundamental to the Afrikan philosophy of liberation as conceptualised by Anton Lembede and Robert Sobukwe. This is also how Afrikan memory is weaponised against White settler colonialism in the struggle for national liberation.

The possibility of the invocation of the memories of the Indigenous conquered’s living-dead/ancestors in the conceptualisation of justice is predicated on the symbolic nature

of their notion of time. Thus, for the living Indigenous conquered, the ideology of progress is a colonial strategy employed by the European conqueror to extirpate the memories of historical injustice and thus to sever the connection between the Indigenous conquered living and their living-dead/ancestors. The invocation of the memories of the historical injustice suffered by the Indigenous conquered's living-dead/ancestors is not probable in the abstract and rational linear temporality that grounds the European conqueror's notion of law. If it is ever alluded to, it is often disdainfully treated as a "past event" of misguided resistance to "civilisation" or collateral damage of the inauguration of this "civilisation." This is why even the current White beneficiaries of White settler colonialism can merely dismiss this "past event" by claiming with barefaced insouciance that "they were not there" (they never occupied that point in time, but only have to do with the current point in time, which is disconnected from the former) and thus have nothing to do with it, despite benefiting daily at the expense of the Indigenous conquered people from the very system of White settler domination that is based on this "past event." They will continue to enjoy White privilege precisely because, as Wolfe (2006, 388) argues, White settler colonialism is not an "event" but a "structure," and thus it persists over time.

In this abstract and rational linear temporality there is preoccupation with progress, which leads to the legal insignificance of what happened to the Indigenous conquered's ancestors as the European conqueror's time marches forward to an unknown future. The logic behind the post-1994 "South African" Truth and Reconciliation Commission (TRC) was based on this White settlers' notion of time, which understandably led to their "exoneration" from their "past brutalities" against the Indigenous conquered people, based on whose notion of time this "exoneration" is a farce. This also explains the vicious tendency among the European conqueror/current White beneficiaries of conquest and their colonial discourse to refer to the historical injustice of the Indigenous conquered people's loss of sovereign title to territory and epistemicide as "past injustice"; "wrongs of the past"; "past discrimination"; and the living Indigenous conquered people as "previously disadvantaged groups/people."

This is the basis on which the European conqueror can conceive of the passage of time as capable of endowing him with ownership of the land unethically taken away from the Indigenous conquered people's ancestors during unjust and immoral conquest. For the European conqueror, the passage of time can "bring into extinction" the legal right of the Indigenous conquered living to the land of their living-dead/ancestors. This is the substance of the European conqueror's Rationalistic/reason-obsessed jurisprudence, which is markedly dissimilar to the Indigenous conquered people's Afrikan law jurisprudence that is premised on *Ubuntu*, as Ramose (2002, 7) so convincingly demonstrates.

The Indigenous conquered people, who were deprived of their land, hold that *molato ga o bole*. This *Ubuntu* legal aphorism, in a nutshell, posits, in this context, that time cannot endow the European conqueror with a legal right over the land that was taken away

from its rightful owners since time immemorial, namely the Indigenous conquered's living-dead/ancestors in unprovoked and unjust wars of colonisation since 1652. This aphorism also captures the argument that memories inform the Indigenous conquered people's notion of justice. This means that despite the passage of time since the dispossession of land from the Indigenous conquered's living-dead/ancestors, the Indigenous conquered living will not forget that a historical injustice was committed against them and their living-dead/ancestors, notwithstanding attempts on the part of the European conqueror to make the Indigenous conquered living sever their symbolic connection and communication between them and their living-dead/ancestors.

The attempts at the severance of the symbolic connection and communication between the living Indigenous conquered people and their living-dead/ancestors through the rationalisation of the law is futile as far as the use of "memory as a weapon" (Mattera 2007) is concerned in the Indigenous conquered people's struggle for post-conquest *Azania*. The point is that the idea of memory as a weapon suggests a contestation of power and, specifically, epistemological power. Those who are in power have a particular memory, which they weaponise against those over whom they exercise power. Those over whom power is exercised can also weaponise their memory to fight their dominators. Those who are in power in White settler regimes such as "conqueror South Africa" (Ramosé 2018) of necessity to maintain power, propagate "forgeries of memory and meaning" (Robinson 2007). The Indigenous conquered people will always maintain the symbolic connection and communication between them and their ancestors, and they do this based on what Ramosé (2001, 5) designates "triadic structure." This, according to Ramosé, is composed of the living, the living dead and the yet-to-be-born and the accompanying communication between them. This is in accordance with the Afrikan worldview, which is fundamentally spiritual. Thus, the search for justice is premised on this "triadic structure," as Ramosé (2001, 5) calls it:

... justice is determined by supernatural forces. Their determination seeks to restore harmony and promote the maintenance of peace. This determination by the supernatural forces is consistent with metaphysics of *Ubuntu* law. This consists in a triadic structure of the living, the living dead [supernatural forces] and the yet-to-be-born. This metaphysical structure ensures communication among the three levels of being. Based on this structure, justice determined by the supernatural forces is declared on their behalf by the living who are in authority.

The 1996 "South African" constitution upon which the so-called post-apartheid "new" "South Africa" is based, is another attempt at severing the symbolic connection and communication between the Indigenous conquered living and their living-dead/ancestors through the "property clause," which is found in section 25 of the 1996 constitution. This is not to be interpreted as implying that the present writer is merely concerned with a single aspect of this constitution, but as it can be gathered throughout the text, we are of the view that the entire constitution is an epiphenomenon of European Modernity that takes the form of White settler colonialism in "South Africa." The entire constitution is a legal embodiment of the epistemological paradigm of the European

conqueror. Its norms, values and spirit are foreign to the Indigenous conquered people. A narrow critique, which confines itself to one aspect to the exclusion of the “totality” we believe, is tantamount to what Castoriadis (1987, 17) appellates “legal cretinism.” The focus on section 25 in this article is informed by the idea that this section embodies the fundamental problem of/in “South Africa”, which is territory/land and the legal technicalisation of issues of historical injustice. This clause, among other things, demands that the restoration of land to the living Indigenous conquered people be accompanied by compensation to the White settlers who acquired it through unjust conquest without compensation and in a Hobbesian state of nature without law and order but only by war and destruction. Put simply, this section encapsulates the doctrine of discovery (Miller 2011, 851), as its underlying and insidious presupposition is that due to unjust conquest since 1652 by the Dutch and British “discoverers”/White settlers, the Indigenous conquered people are no longer the rightful owners of their territory since time immemorial, but are now mere “native occupants” at the mercy of the White settler legal owners whose property is to be expropriated. It is “as if” the “native occupants” “now” want to be legal owners. This explains why, when these “native occupants” “occupy” private property mainly of White settlers, they are misleadingly labelled as “illegal occupants”/squatters and are “subjected” to evictions in terms of White settler law imbricated with White settler historiography, which distorts their history and identity just as it distorted their law by renaming it “customary law” and “subjecting” it to the supremacy of the current constitution. The present writer rejects this interpretation of the clause as contradicting the *Ubuntu* legal aphorism of *molato ga o bole*, which is the basis on which extinctive prescription, as per the European conqueror’s law and jurisprudence, is refuted.

At any rate, the present writer must register his animus to the terms of this section 25, namely expropriation with/without compensation. These terms amount to what Armah (1973, xvii) aptly calls the “loud nonsense of the destroyers (Whites).” In terms of the *Azanian* tradition’s critique of the current constitution, a constitution which is vehemently rejected in its entirety, the fundamental problem is one of restoration of “untrammelled” sovereign title to territory and not expropriation in whatever form. This is part of the *Azanian* tradition’s rebellion against the White settler’s power to define a reality in which the *Azanians* are regarded as not human and without notions of law and governance, a “child race” in need of White settler colonial trusteeship.

The entire current constitution and its predecessors, of which it is a mere reconfiguration, are epiphenomena of conquest; that is, their condition of possibility for existence is land dispossession, and as manifestations of epistemicide, their fundamental objective is to preserve White settler colonialism, both materially and epistemologically. The name “South Africa” is based on and embodies the loss of sovereign title to territory by the Indigenous conquered people; thus, the current constitution of “South Africa” is a legal mechanism that sustains conquest and not a legal framework which inaugurates a “structural rupture” with 1652. Thus both the White settler colonial name “South Africa” and the current constitution epitomise a

material and epistemological symbiotic relation of what Welsing (1991, ii) designates racism/White supremacy in Afrika since the “catastrophic” coming of the Europeans.

Thus, because *molato ga o bole*, the move to the “new” “South Africa” is not an authority on which the European conqueror can argue that acquisition of the legal right to the land is attained “constitutionally.” What this means is that section 25 is an “injustice clause” as it is a colonial legal mechanism through which historical injustice of land dispossession is “constitutionalised” based on the White settlers’ notion of linear temporality and extinctive prescription. This section 25 embodies succinctly the White settlers’ jurisprudence and notion of time. The intimate imbrication of these two is captured by the White settlers’ notion of extinctive prescription, which is the exact antithesis of *molato ga o bole*. In terms of this notion, if one loses possession of a certain property over time, one eventually loses the legal right over this property. Thus, because the Indigenous conquered people lost possession of their territory during the time of wars of White settler colonialism and its concomitant legislative consolidation through Acts like the Glen Grey Act of 1894 and the Land Act of 1913, they have lost sovereign title to it, which is now vested in the White settlers who are now regarded as the rightful owners whose property is regarded as expropriated and, therefore, the rider of with/without compensation. This section forecloses the fundamental question of historical justice, namely, when and how did White settlers come to be property owners whose property is assumed to be expropriated?

Our radical submission in this regard is that the fundamental question is not one of land redistribution but one of restoring “untrammelled” sovereign title to territory. Then the Indigenous people, as the rightful holders of “untrammelled” sovereign title to territory since time immemorial, can “re-enjoy” one of its privileges, namely the “absolute” collective right to decide what to do with their land without White settler colonial tutelage. Once the entire territory is restored to them and by them, they can then exercise Afrikan national self-determination by collectively determining, on their own terms, how and to whom the land must be “redistributed.” Thus, to speak of land redistribution before restoration of “untrammelled” sovereign title to territory is to put the cart before the horse, so to speak. First, the *Azanians*, in terms of race-first Afrikan nationalism, must resolve the fundamental antagonism of “South Africa” as an unjust conquest-based White settler state by destroying it, restore a post-conquest *Azania* in its place, and then address issues of belonging and constitution of a post-conquest *Azanian* society, which is usually categorised as “nation-building.” Lembede’s Africanist uncompromising battle-cry of “Africa for the Africans” must be used to resolve the national question with the liberatory view to restore an independent Azania.

Therefore, section 25, which contradicts the *Ubuntu* legal aphorism of *molato ga o bole*, is a colonial legal impediment which obstructs the transition to a post-conquest epoch in which the rightful owners of land, namely the living Indigenous conquered people, are re-endowed with their “absolute” legal right to the land of their living-dead/ancestors. The pecuniary demands of this “injustice clause” are irrational and

immoral as they defeat the Afrikan nationalist objective of the liberation of the Indigenous conquered people, who are currently highly underprivileged because of, among others, the unjust disseizing of their indispensable resource, namely the land and its mineral wealth. The Indigenous conquered people cannot, without self-contradiction, be expected to pay for what, without a doubt, is what belongs to them since time immemorial. To paraphrase Armah (1973, 3–4), the Indigenous people know with a great degree of certainty that “here they began and here they will continue ...”

Conclusion

By way of conclusion, it is important that we underscore the fact that the fiction of the “transition” to the post-apartheid “new” “South Africa” since 1994 is premised on the ideology of progress, which in this case implies that the movement from the point of apartheid to the point of democracy as per the linear temporality of the European conqueror, signifies improvement. Besides, the fundamental problem was never apartheid, which was a mere overt and clumsy manifestation of White settler colonialism, but conquest since 1652, which is the foundation of White settler colonialism and White supremacy. However, this “transition” (which was nothing but the reconfiguration of White supremacy) has been demonstrated to be a fallacy based on the treacherous celebration of Black economic empowerment and the ridiculous fantasy of the “Rainbow nation” in the midst of “South Africa” being subject to US-led imperialism under neoliberal free market fundamentalism and “business-managed democracy” (Beder 2010, 1).

The urgent need for decolonisation in the form of the restoration of sovereign title to territory and epistemological autonomy, which will liberate the living Indigenous conquered people, is probable through the extirpation of the entire current constitution with its “injustice clause.” The Indigenous people can then restore their material and epistemic autonomy beyond European Modernity and its Rationality, which have victimised them in several ways, as discussed above. Until then, it is not yet *Uhuru* and thus the urgent imperative for another *Chimurenga* for a post-conquest *Azania* for the natives only in terms of Lembede’s uncompromising Garveyite sentiment of “Africa for the Africans.”

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