WHO CONQUERED SOUTH AFRICA?

Neocolonialism and Economic Sovereignty

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ABSTRACT: The right of conquest is a doctrine in the theory of international law in terms of which victory in war entitles the victor both to the title to territory of the vanquished as well as sovereignty over them. Far from being a mere event, however, conquest is an ongoing process, structure, and relation of domination. Despite the widely celebrated "transition to democracy" and the supposed triumph of popular sovereignty in South Africa in the past three decades, we argue that South Africa's "democratic" constitutional order remains firmly rooted in the dubious right of conquest asserted since the defeat of its indigenous people in the unjust wars of Western colonization, which began in the mid-seventeenth century. In this article we critically reflect on South African historiography by asking "Who conquered South Africa"? The question is necessary because sovereign power is both misunderstood and obfuscated in South African contemporary history and public discourse. We argue that conquest, and its attendant concepts of sovereignty and war, are deliberately underemphasized in South African historiography despite being at the root of problems regarding economic sovereignty. Our argument considers the problem of succession to conquest, in terms of which both the title to territory and sovereignty over the conquered is transferred from the conqueror to another party who then enjoys these entitlements and powers. We trace various successors in title to Conquest South Africa, and show that their

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economic power originates in the right of conquest. Their ownership of South Africa's natural resources originates in the title to territory acquired through its disseisin following the conquest of the indigenous people, and in the same way their continued de facto sovereignty over that population now takes the form of the wanton and relentless exploitation of their labor power.

KEYWORDS: economy, sovereignty, conquest, South Africa, Azanian philosophical tradition

Introduction

> 'The king of mining in South Africa, indeed in Africa, is Harry Frederick Oppenheimer. One might almost call him the king of South Africa, even the emperor, with an ever-extending empire.'[1]

To understand the problem of neo-colonialism in South Africa, we must first understand who conquered Her. At the root of contemporary questions related to outstanding sovereignty—the land question, the economic question, the epistemic question—is the question who is the sovereign—where sovereignty is understood as the ability to make and implement decisions in the last instance. In theory, this power is located in the figure of a formal and recognized political authority. However, South African history undermines this traditional location of sovereign power. If the conquest of the indigenous people in the unjust wars of colonization and the establishment of a political economic, legal, and cultural order upon the foundation of that conquest is the "original sin" of South Africa, as *Azanian* theoreticians and practitioners such as Bhambatha ka Mancinza, Mangaliso Robert Sobukwe, Oshadi Mangena, and Mogobe Ramose have argued, then the identity of its conqueror: "what, or who conquered South Africa?" is central to understanding its history.[2] Liberation and self-determination have no meaning unless we know who the sovereign is.

Kwame Nkrumah described neo-colonialism as an order which had the theoretical and outward appearance of sovereignty while it was in fact being driven by a hidden master from without.[3] The Nazi jurist Carl Schmitt, writing in a different context, suggested that this master, the sovereign, can be identified by their sole possession of the power to decide the state of exception. According to him,

> What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes. Because the exception is different from anarchy and chaos, order in the juristic sense still prevails even if it is not of the ordinary kind.[4]

Since the conquest of the indigenous people in the unjust wars of Western colonization there has in South Africa been such a master which, although it binds others by law, is not itself bound. We put forward here that neither the president of South Africa, the ruling party, the present parliament, nor the constitution are the sovereign, despite all appearances and representations. Mis-locating power in the political party, government, and indeed the constitution misses the imperial component of the South African past and present—power has been and continues to be largely directed from without.

We initiate our investigation by examining the question of what or who conquered South Africa and who continues to enjoy Her unfreedom? In attempting to answer this question we explore how, despite the wide celebration of South Africa's "road to democracy", sovereign power does not appear to be vested in its populace even through their elected representatives and their government.[5] We also offer a critical reading of South African historiography through the Azanian tradition, with particular attention to the question of economic sovereignty. In order to complete this examination of South African economic historiography, we first define three key terms—economics, sovereignty, and conquest.

Economics, Sovereignty, Conquest

Economics

Economics traces its historical conceptual roots as a discipline to the Greek word *oikonomia,* which means household management or the management of a house's affairs. In its earliest connotation, *oikonomia* referred to the earnings of a household and their spending on particular goods and services.[6] While the question does not arise of necessity from a reading of this etymology, a query posed repeatedly by the descendants of indigenous peoples conquered in the unjust wars of colonization has been whose house is it that is being managed? For example, following the Zimbabwean wars for independence, peace negotiations culminated in the 1979 Lancaster House agreement, which defended the "property" rights of the conqueror in Rhodesia through the "willing seller willing buyer" policy. According to Mogobe Ramose, at the expiration of the agreement, the government of Zimbabwe did not provide a solution to the question of title to territory and sovereignty

over it. By reducing the collective right of the indigenous conquered people to a matter of the individual right to property, the government condoned

> The principal myth of the Lancaster Agreement, namely, that sovereignty can be conferred without the simultaneous recognition that the sovereign holds, either potentially or actually, title to a specific territory. This myth and the inherent injustice that attaches to it is the legacy of the Lancaster Agreement. It is the ghost that continues to haunt decolonization in Africa and many other formerly colonized countries.[7]

While political independence "bequeathed a neo-colonial state in Zimbabwe, the late nineties saw a rebellion against neo-colonialism."[8] At the time of the Third Chimurenga, which saw the eviction of the English colonial conqueror's descendants from prime and fertile farming land, Western commentators described the process as the destruction of Zimbabwe's economy, which was subsequently burdened with economic sanctions, unparalleled price inflation, and overall contraction.[9] Indigenous peoples instead retorted that it was the restoration of Zimbabwe's economy through continuing the struggle for substantive independence.[10] The state radicalized, taking an "interventionist role in the economy" by suspending structural adjustment programs, and registering 1,471 farms for expropriation.[11] The Zimbabwean government pursued heterodox plans with regards to monetary, fiscal, investment, trade, land, and foreign policies towards securing its economic and political sovereignty in relation to western imperial powers, and South African "sub-imperialism".[12]

Because of the metaphoric appositeness and elasticity of the house and household for our discussion, we will continue to draw on this image in our discussion of conquest, territory and sovereignty. It is our understanding that the ownership of the house is no small determining factor in the way in which it is accordingly managed. This brings us to the next term of discussion, namely sovereignty.

Sovereignty

In coming to a general sense of what sovereignty is, here too we will take the etymological approach as our starting point. Daniel Lee traces the linguistic origins of "sovereignty" to its "French cognate, *souveraineté,* a nominalisation of the adjective *souverain*. One of its simple meanings is supreme, which in turn is said to be traceable to the Latin preposition, *super,* meaning 'above' or 'beyond'". Lee concludes his etymological excavation by writing that sovereignty signalled not a concept of omnipotence but rather one of supremacy.[13]

In its famous Hobbesian iteration, social contract theory suggests that the sovereign comes into being as a result of the movement from *status*

naturalis (state of nature) to *status civilis* (society). According to Hobbes, prior to the forming of political society, life can be described as *bellum omnium contra omnes* (a war of all against all), where might is right and the law of the strong applies. According to his thought experiment, because life is unstable, unpredictable, and dangerous in such a world, the members of this state come together to establish a sovereign who is vested with a monopoly on violence. The members of the state give up their natural right to freedom, which includes violence, and vest it in a sovereign who inherits the right to regulate *and* mete out the violence on behalf of all. According to Hobbes, writing in the person of a member of the state of nature who undertakes to enter into political society, "I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner."[14]

For Hobbes, the possession of sufficient force to be able to enforce one's commands was itself sufficient to establish the fact of sovereignty. If this sovereignty was itself acquired by force, he differentiated it from the consensual sort by referring to it as sovereignty by acquisition. The fundamental difference for Hobbes is not in the rights that either the sovereign by institution or by acquisition enjoy, rather it is in the reasons out of which the commonwealth by either is established. He writes that the sovereignty by acquisition "differeth from Soveraignty by Institution, onely in this, That men who choose their Soveraign, do it for fear of one another, and not of him whom they Institute: But in this case, they subject themselves, to him they are afraid of."[15]

In *Walled States, Waning Sovereignty*, Wendy Brown provides a useful definition of sovereignty, placing Hobbes alongside Schmitt and Bodin:

> A composite figure of sovereignty drawn from classical theorists of modern sovereignty including Thomas Hobbes, Jean Bodin and Carl Schmitt, suggests that sovereignty's indispensable features include supremacy (no higher power), pepertuity over time (no time limits), decisionism (no boundeness by or submission to law), absoluteness and completeness (sovereignty cannot be probable or partial), nontransferability (sovereignty cannot be conferred without canceling itself), and specified jurisdiction (territoriality).

According to Lee, however, Bodin's thinking about sovereignty differs from Hobbes because of Bodin's conception of necessitation of right. For Bodin, although force is a necessary condition for effective sovereignty, sovereignty consists also of "right"—it is a right. Its legitimacy depends not exclusively on the possession of the necessary force to compel the obedience of one's subjects, but also of the additional requirement that the one who issues the commands be in fact the rightful sovereign. In this formulation, sovereignty

can be described as the right to make law which is binding. The key to this implied legal bond, however, is not simply that one is compelled by the force at the disposal of the commander to obey, but that one recognizes the right of the ruler to command. Bodin's sovereign as *legibus solutus* (not bound by laws) had the additional component of not himself being subject to his own commands. His power was not absolute *per se*, since he was bound by both the *jus gentium* (law of nations) and *jus naturale* (natural law), but his power had to extend to the capacity not only to make laws but also to unmake and amend them without recourse to any higher authority. The sovereign then within its own territory could be described accurately as "the un-commanded commander".[16]

Conquest

Hobbes' *Leviathan* listed two methods in terms of which sovereignty could be established, either by institution or by acquisition. It is the latter that is of interest to us here. Unlike sovereignty by institution, sovereignty by acquisition is no covenant amongst individuals, but a covenant between conqueror and conquered. Hobbes' basic idea was that conquest was not the victory itself. Rather, it was "the Acquisition by Victory of a Right over the persons of men. He therefore that is slain, is Overcome, but not Conquered: He that is taken, and put into prison, or chaines, is not Conquered [. . .] But he that upon promise of Obedience, hath his Life and Liberty allowed him, is then Conquered, and a Subject; and not before."[17]

In this way it would appear in Hobbes's version, that conquest requires consent by the conquered, even if the choice was only between conquered life or death. If the conquered agreed to "choose life," then his conqueror had rights over him. These rights to command, to effectively bind by law the conquered by the conqueror is what is referred to as "the right of conquest". In a study of the history of the right of conquest in international law, Sharon Korman defines the right of conquest as "the right of the victor, in virtue of military defeat over the conquered territory and its inhabitants."[18]

To put it more precisely then, the right of conquest is the legal acquisition of title to territory and sovereignty over it and its inhabitants by the conqueror following their defeat in war. Both Korman and Yves Winter's studies of conquest establish that the collective interests of the supposedly civilized or Western powers led to the eventual virtual extinction of conquest as a method of acquiring territory and establishing sovereignty over its inhabitants in the West.[19] The reasons are numerous. In addition to the instability caused by existence in an international state of nature in which might would be the foundation of the legal order, the increased recognition of the rights of man meant the acceptance, at least among Western

nations, of the necessity of the consent of inhabitants of a territory for the establishment of sovereignty over them. That is what Hobbes referred to as sovereignty by institution. On the other hand, these developments were not applied to the "barbarian races" over whom sovereignty by acquisition was thought to still apply.

The entire enterprise of colonialism and slavery, after all, has its foundations on the dubious right of conquest. Where colonialism was born out of the acquisition of the title to territory and sovereignty over the indigenous conquered people, slavery was born out of the transferrable right of sovereignty of these conquered and enslaved peoples by sale to a purchaser who would enjoy the right of conquest over them. If sovereignty is understood in the Bodinian sense discussed earlier as the supremacy entitling a sovereign to make and enforce law itself, then the economic system and policy of the conquered territory would be part of the law of the conqueror.

The reader may be wondering why an article on South African economic history has spent so much time discussing 16th and 17th century Western political theory regarding war, conquest, and sovereignty. The answer to this question is twofold. On the one hand, the thesis to be defended in this article is that conquest, and its attendant concepts of sovereignty and war are deliberately underemphasized in South African historiography despite being at the root of problems regarding economic sovereignty. On the other hand, understood in one way the thesis itself arises directly out of these old political theorists of Europe writing about how to successfully mount a claim to sovereignty acquired by conquest. Anjuli Webster, drawing on Machiavelli and Winter, argues that since conquest is not reducible to exclusive force, "its subsistence depends on the production of an epistemic and symbolic order and power over the representation of history". The "paradox of conquest" requires both epistemic rupture and reordering—"This is possible only by supressing the historical fact of its own foundation as well as its animating principles. In other words, conquest is successful as it disappears. This negation requires symbolic production in order to make the conqueror appear legitimate or 'ancient'."[20]

The point is that conquest as pure force or violence stands in violation of the natural legal principle *ex injuria jus non oritur,* that is no right or law can arise out of an injury. Conquest creates the right of sovereignty from the injury of the rapacious violence of the unjust wars of colonization waged out of greed and racism. As a foundation for sovereignty, then, conquest is perpetually fragile to the potential violence which the indigenous conquered people may turn on the conqueror to recover their title to territory and sovereignty. It is also vulnerable to the fracturing of the symbolic architecture that sustains it—the ideational dimension of violent resistance. The command of

the conqueror was in fact rejected as law by some of the indigenous conquered people arguing that the conqueror was no sovereign but himself a criminal and brigand with mere *force* at his disposal but no *right* of sovereignty at all.[21] If the conqueror does not simply eliminate the conquered people through, for example, genocide, but wishes to exert sovereignty over them, then the challenge is to convert the mere force at his disposal into right. This then becomes the task for the historians in particular, who must write and re-write history to erase the fact of conquest, and convert it instead into a right. And indeed, South African historiography has obfuscated the history of conquest.

Economic Sovereignty before Conquest

To reject the right of conquest on which South Africa depends, we turn now to a discussion of the social and political life of a time before the destruction of indigenous sovereignty. To properly conceive of the transformations wrought through conquest, we must place them in a broader historical context. The object of this section is to provide a very general overview of the political economy of Southern Africa before conquest.

Southern Africa's Iron Age (AD 900–1320) was characterized by the domestication of crops like sorghum and millet, and animals such as cattle, sheep, and goats. Domestication facilitated the expansion of agriculture and settlement. With the development of iron technologies over two thousand years ago, economic and agricultural production expanded, shaping new forms of family and political life.[22]

At the centre of developing indigenous economies during the Iron Age, was what some scholars have called "the central cattle pattern".[23] The pattern describes a set of relationships between settlement, kinship, life forces, and status. The centre of settlements typically consisted of a cattle byre where esteemed people were buried, "sunken grain pits or raised grain bins for long term storage, a public smithing area, and an assembly area where men resolve[d] disputes and [made] political decisions. The outer residential zone, the domain of married women, incorporate[d] the households of individual wives with their private sleeping houses, kitchen, grain bins and graves."[24]

In exploring the significance of major political economic transformations in later farming communities in the second millennium AD, historians and archaeologists have focused on developments in the Shashe-Limpopo Valley in the eleventh to the thirteenth centuries, and in the history of relations between Venda-, Sotho/Tswana-, and Nguni-speaking communities from the fourteenth through the nineteenth centuries.[25] Between 1000 and 1300 AD, developments in the Shashe-Limpopo region produced larger and more integrated political and economic systems than had existed in the early

farming communities of the first millennium AD. The "Zimbabwe Culture" was characterized by the development of a unique class distinction and sacred leadership at Schroda, K2, Mapungubwe, and later at Great Zimbabwe. An increase in population and wealth devised from long distance trade "stimulated a series of internal transformations involving economy, social organisation, ideology, religion and settlement patterns."[26]

The development of more hierarchized communities depended on wealth produced through trade, in particular along the Indian Ocean Coast. Even though wealth had existed in the form of cattle since the first millennium AD, it "was simply not sufficient to support a separate noble class. Trade wealth, instead, served this function."[27] Despite increased class differentiation, elites still practised mutual aid across class lines. To expand agricultural production in line with population growth, leaders often "placed their capitals near secondary farming land and reserved the best for the ordinary people."[28]

While social differentiation and hierarchization increased at the cities of the Zimbabwe Culture complex, the majority of social and political life developed beyond these growing centres of power. The related phenomena of the genesis and development of Sotho/Tswana- and Nguni-speaking communities from AD 1100 in the coastal regions of KwaZulu-Natal, and the highveld regions around the Soutpansberg overlapped with the emergence of the Zimbabwe Culture further to the north.[29] For early Sotho-Tswana homesteads before the seventeenth century, there is no archaeological evidence based on the size of cattle enclosures and settlements to indicate major differences in wealth or status, and no "extravagant midden deposits", usually indicating the existence of a central court.[30] This is not to imply that communities were completely egalitarian, or lacked internal tension and conflict. Uncertainty and violence often shaped social and political relations. Inter-generational conflict and disputes over use of land and livestock were common, and informed the dynamism of Sotho-Tswana and Nguni societies.[31]

Since at least the early sixteenth century, peoples moved and integrated between the coastal Nguni-speaking and inland Sotho-Tswana-speaking regions, newcomers often "acceding" and integrating into existing social and cultural structures.[32] Communities practised a mixed economy of agriculture and pastoralism, and traded locally and across long distances. Social life was largely organized around familial and homestead modes of production, and wealth redistribution was organized primarily through kinship structures. The political economy of dispersal and redistribution maintained what Colin Bundy has termed a "working economic equilibrium of society," which was disrupted through colonial conquest and consequent competition over land, resources, and labor power in the eighteenth and nineteenth centuries.[33]

Since at least AD 1100, Southern African sovereignty was often characterized by populations in motion.[34] Social and political life was constituted by layered and fluid forms of political formation, ranging from the level of the central cattle pattern homestead to the centralized city states of the Zimbabwe Culture complex. The expansion of trade from the Indian Ocean Coast from AD 1000, and later colonial conquest and settlement at Sofala and Mozambique in the sixteenth century, the Cape, and Natal in the seventeenth and nineteenth centuries respectively undermined existing diffuse forms of sovereignty, affecting historic title to territory, and economic sovereignty. Several factors combined to undermine food security and economic sovereignty through colonial conquest and violence from the sixteenth century, including enclosure, dispossession, the introduction of maize, and a colonial tax regime. Between 1800 and 1900 political economic landscapes underwent dramatic changes. At the broadest level, this constituted a shift from self sufficient indigenous social-political systems, based on shifting communal access to land and resources, to a racial capitalist colonial order.

The destruction wrought by colonial conquest and violence shaped the livelihoods, security, and vulnerability of indigenous communities for decades and even centuries therafter.[35] Wars of conquest and dispossession decimated African populations. The British and the Boers dominated and enslaved those that survived.[36] In the Eastern Cape Wars of Dispossession (1779–1878), the British systematically invaded African lands, confiscating cattle and engaging in scorched-earth campaigns "meant to deprive Africans of all means of independent livelihood."[37] Officials and soldiers burned huts, confiscated herds of cattle, and destroyed crops.[38] African communities turned to maize production as they sought to reconstruct their lives in the context of subsistence crises, peasantization, and environmental crisis. Longlasting and "fundamental historical patterns" first emerged through the process of conquest—"agrarian production for colonial markets, wage labor, and new patters of urbanization" were just a few.[39]

It is the case that some of the acquisition of territory after the conclusion of the conquest of the indigenous peoples in the unjust wars of colonization took place not because of the desire of the conqueror to put it to "productive use," as is much thought. Instead it was done to extinguish its thitherto productive use by the indigenous conquered peoples. Bernard Magubane has argued that the colonial wars of the nineteenth century were not intended to clear the land of native peoples, but to secure for the white settlers "the best lands and a considerable measure of control over African labor."[40] Their productive use of this land for dwelling, animal husbandry, and agriculture offered the last vestiges of their economic sovereignty. So long as they had the ability to subsist and constitute a life world outside the

absolute dominion of the conqueror, it proved difficult to entice them into the conqueror's economy.

Colonial taxation further undermined the vestiges of economic sovereignty sustained through land and independence from money markets. The colonial government forced chiefs not only to collect an annual hut tax, but also to supply *isibhalo* (forced labor) to the state. These institutions caused "considerable strains within African society and undermined the position of many chiefs."[41]

Officials punished those who resisted colonial institutions which undermined their economic and material sovereignty. In 1873, when Langalibalele refused to comply with the demand of the colonial magistrate to register guns brought from the diamond fields, and later to appear before the Natal Secretary of Native Affairs, Theophilus Shepstone, the colonial administrator "reacted with a ferocity out of all proportion to the occasion". There was widescale shooting and killing and "homestead burning among the Hlubi and related Ngwe peoples. Once all signs of opposition had been crushed, harsh punishments were meted out to these chiefdoms and they were deprived of their land and cattle. Langalibalele was banished for life while seven of his sons, two *izinduna* and 200 followers were imprisoned."[42]

The colonial administration combined the attack on material and economic sovereignty with an attack on indigenous political and legal institutions. Before colonial conquest, the jurisdiction of indigenous political and religious leaders depended on consensus, rather than lawmaking from above. "Law making was the function of the chief acting in concert with his advisers, important elders. A chief who did not consult in this way was seen as acting unconstitutionally."[43] With the passing of the Native Administration Act in 1875, and the Code of Native Law in 1878, the colonial asministration subordinated African legal institutions to a codified colonial legal authority.

After the discovery of diamonds and gold, the "need" the conqueror developed for African labor could hardly be incentivized by minted money, when they had all the necessities for the sustenance of life. In order to compel them and thus convert them from workers into employees it became necessary to use the sovereign right of making law to both seize their productive land and tax their existing wealth until they had no option but to sell their very freedom itself in the form of wage labor.

In 1884, in the midst of extended drought, the colonial government called outstanding taxes to account by threatening seizure of native livestock. African households could not pay taxes on account of the "succession of dry seasons," as well as confusion regarding the timeline and period of payment. At the time, cattle were "going for comparatively nothing in the market," and yet Africans still had to sell "on account of the famine and the taxes".

Despite the widespread famine, the colonial Government threatened seizure of "drought-stricken beasts". "Destitute" people "at their wits' ends in want of grain for sowing" were pushed towards wage work in order to pay taxes, forced to abandon tending to their own fields, and securing their own food and livelihoods.[44]

The 1913 Land Act, and related legislative pressures further undermined the remainders of economic sovereignty in the form of independent African peasant communities. State aid for the commercialization of white agriculture, provision of credit facilities, and the expansion of infrastructures supporting settler colonial development affected "the competitiveness of peasant production," and even peasant farmers were increasingly forced into the mass labor market of mining and agricultural production.[45] According to Bundy, 1913 preserved an "underdeveloped peasantry"—"a peasantry whose productive capacity had been so inhibited, whose access to land so confined, whose access to markets rendered so unfavourable, that its members must have recourse to labor for white employers even at the very low wage levels prevailing."[46]

Social and political life in pre-conquest Southern Africa were relatively egalitarian, and economic sovereignty was generally secured at the level of the household and homestead. Conquest shaped household decisions about food production and security, interactions with the emergent colonial market, and existing economic and generational relations. These historical processes undermined economic sovereignty at the levels of the household, the community, and the state, and continue to shape inequality and social relations more broadly in South Africa today.[47] We turn now to discuss the question of outstanding sovereignty.

Outstanding Sovereignty

One of the paradoxes which Africa's students and critics perpetually return to is how it is so that the continent is on the one hand so well-endowed with much demanded natural resources and a work-age population, and yet suffers amongst the worst degrees of poverty in the world. Scholars like Walter Rodney and Kwame Nkrumah have suggested that the key to the paradox is that Africa is poor because of its wealth not in spite of it. Their reasoning, supported by considerable evidence, suggests that the many grubby hands whose own economies rely so heavily on Africa's resources have made them enemies of Africa's economic and social development despite suggestions otherwise.[48]

The stubborn question which subsists in the minds of all observers of Africa's contemporary affairs is "what is wrong with Africans?" Given that

there is nothing inherently wrong with the air, water, and land itself, the question, sometimes described as Afropessimism 1.0, leans on earlier, supposedly discredited, theories of scientific racism which held that there was something different and strange in the being of Africans themselves.[49] Without entering into a discussion of the history of scientific racism and its persistence in what is today called Development Studies we examine the basic assumptions of this pessimism.[50]

According to the conventional account of Africa's history, it was conquered and then colonized by Europeans for varying periods lasting as long as three and a half centuries. This account goes on to hold that at least since the mid-twentieth century African countries began to regain their independence, and their colonial masters relinquished both the title to territory, as well as the sovereignty over African peoples themselves. The argument goes on then that it is African peoples and their governments who have been responsible for the various regrettable economic and political developments which have made the paradox referred to above the basic condition of life on the continent since political independence.

Our focus, because of the scope of this special issue, will be upon the particular history of South Africa in relation to its being a party to the paradox discussed above. One of Africa's most gifted statesmen and theoreticians of the so-called post-independence period, Kwame Nkrumah, dedicated an entire book to the paradox described above entitled *Neo-colonialism: The Last Stage of Imperialism* in 1965. According to recently declassified documents of the United States of America's Central Intelligence Agency's (CIA) files, the publication of this book was one of the reasons which led to the Anglo-American sponsored *coup d'état* in Ghana in 1966.[51] In this book Nkrumah writes in the opening page that "The essence of neo-colonialism is that the State which is subject to it is, in theory independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside."[52] In painstaking detail, the book provides evidence about exactly who and what institutions are responsible for this external direction and rule with notable chapters like "Monopoly Capitalism and the American Dollar" (chapter 4), "The Oppenheimer Empire" (chapter 7), and "The Anglo-American Corporation Limited" (chapter 9) among others. These titles and their subjects prove surprisingly relevant even almost three decades after Nkrumah's writing when South Africa had its own "transition to democracy".[53]

Seen from the point of view of legal and political philosophy, neocolonialism is nothing but the surreptitious maintenance or transfer of sovereign title to territory acquired by the right of conquest. The reader will remember that we established earlier that the right of conquest consists of

the acquisition of both title to territory and sovereignty over it. Liberation would consist in the restoration of the title as well as a reversion of sovereignty over it to the indigenous conquered people. Neo-colonialism is the mere announcement of such a transition. Its real status, however, is the maintenance of the state of conquest either by the erstwhile conqueror or the transfer of its entitlements to other sovereigns (which have historically tended to been either another state or multinational corporation or corporations). Furthermore, neo-colonialism can introduce further disunities in sovereignty, where right and might are splintered between different public and private sovereigns, or "quasi-sovereigns," whether Western imperial institutions, multi-national corporations, non-governmental organizations, or local whites.[54]

Very often transitions to neo-colonialism were accompanied by cosmetic changes in the political system. Leaders of postcolonial nation-states were restricted in their ability to make sovereign decisions and commands by the real and silent sovereigns who maintained ownership of and control over the territory and resources of states which they acquired by the right of conquest. As such the capacity of postcolonial independent nation states to develop by redistributing profits among populations or creating state-funded medical and education policies was undermined by conqueror ownership of land and mineral and financial resources. Furthermore, the management of natural resources, land, and monetary policies was undermined by external bodies such as the International Monetary Fund. We find again and again, that the final decision on national policy comes from a power hidden behind the scenes, which is running the household or economic affairs of an apparently sovereign nation state.[55] How is this the case? We turn briefly to the history of South Africa's liberation struggle to consider this question.

Transitions in Conquest—The ANC and the 1996 Constitution

Although the African National Congress (ANC) is often described as Africa's oldest liberation movement, some of its own members who left the party to form the Pan Africanist Congress in 1959 argued that the ANC left the liberation movement in 1955, with the adoption of the Freedom Charter. The charter, produced through the ANC's influence by white leftist entryists of the Congress of Democrats posits that "South Africa belongs to all who live in it black and white".[56]

The Africanists who rejected the adoption of the Freedom Charter argued that colonial conquest could be likened to the invasion, through the force of arms, by a belligerent foreigner who, after killing the members of a large and

wealthy household, had evicted them from their house. After this forcible eviction into the garden, they had taken over the right to make decisions in the household and forced its owners to become workers of the garden.[57] They lived at the mercy of the dictation emanating from the household. The Africanists argued that the "Freedom" Charter's resolution to this problem was both unethical and inadequate for its accession to the right of conquest. It in effect asserted that the house now belonged both to the forced garden workers and the belligerent invader without restoring the garden workers unlawfully violated rights to and original ownership of the household. The charter proposed that the rightful owners, now dispossessed, might be allowed to have a say in the making of decisions in the house and be given rooms in proportion with their number.

The ideals of the Freedom Charter were confirmed and reproduced in the passing of the 1996 Constitution of South Africa. Constitutional triumphalists claim that the constitution is a culmination of the Freedom Charter.[58] According to some, the Charter was the "foundation stone" on which the ANC's Constitutional Guidelines were published in 1988. In the 1980s, the ANC needed to "provide a clearer picture of what the [Freedom Charter] would mean in practice," leading to a "process of re-examination and reformulation of the ANC's constitutional demands at the Kabwe Consultative Conference of 1985."[59] The South African Constitution is therefore to be understood as "an extension" of the Freedom Charter—the realization of its vision in a "constitutional reality".[60]

Some scholars of law and history in South Africa have described the uncritical praise, fetishization, and ideological resistance to any critical examination of South Africa's latest constitution as "constitutional worship".[61] Indeed, much like the Christian religion's bible, a holy book famous mostly for being the word of god, but largely unstudied by most of its devotees, the constitution of South Africa has also been valorized, often being described as the "best in the world" and thought of as good by many who have not read let alone studied it.[62] In recent years, however, the problem of outstanding economic sovereignty has found expression in mass Black poverty, precarity, and vulnerability to unnatural and preventable death despite the supposed distance in time between "the constitutional present" and the "Apartheid past". The constitution itself has come under increasing suspicion from a variety of parties in public and academic discourse, and even among politicians of the ruling party—until recently thought to be proudly responsible for delivering the constitution.[63]

Criticisms of the constitution have elicited many spirited defences from members of the legal profession, academics, and judges. The strategy of defences of the constitution have come in two basic forms. The first sort of

defence has been to suggest that proponents of the critique have mis-identified the problem. According to this defence, the country's economic and political problems are the result of poor public administration, policy problems, and corruption on the part of the ANC government. The constitution is, according to this defence, perfect as is. It is only that the wrong government presides over it and critics ought to rather criticize the government instead of the constitution.[64]

The other sort of defence has been pioneered by Tembeka Ngcukaitobi, whose misleadingly titled book *The Land is Ours* attempts to make an argument indigenizing the constitution, and suggesting it is the work of Black lawyers and their valiant legal struggles, rather than their conquerors in the unjust wars of colonization, as constitutional abolitionists have maintained.[65] Ngcukaitobi has recently been joined in the indigenization school of defence by ANC historian Andre Odendaal, whose recent *Dear Comrade President: Oliver Tambo and the Foundations of South Africa's Constitution* also attempts to mount a defence against "attacks" of the constitution by recourse to its indigeneity in the history of the ANC.[66] It is not at all our intention here to discuss in detail the works of the defenders of South Africa's legal bible. Instructive reviews have been published dealing with Ngcukaitobi's book, and our own review of Odendaal will appear elsewhere.[67]

What we want to do with the rest of this section is to address briefly, with recourse to the history of thinking within the "liberation" struggle, the idea that the ANC "sold out" at the negotiations for a new South Africa which culminated in the 1996 constitution. One kind of defence of the constitution against abolitionists is that they simplistically represent the ANC has having sold out at the negotiations.[68] This line of defence argues that critics misunderstand the history of the time, and have an unrealistic assessment of what was possible. Indeed, the author of the Foreword of Odendaal's book, historian Nomalanga Mkhize, credits Odendaal with "implicitly addressing what I have come to call constitutional scepticism, a pervasive feeling among the young that the ANC 'sold out' a more radical project to deliver a constitution that has betrayed the people of South Africa."[69] Odendaal, according to Mkhize, does this through meticulous historical excavation. This meticulous excavation begins early in his introduction with an ideological assumption stated as fact. Writing of the ANC's own internal Constitution Committee, he avers "While the broad struggle led to the oppressed people in South Africa reclaiming their self-determination and national sovereignty, the Committee helped lay the conceptual foundation for the country's constitutional democracy".[70] This assertion by Odendaal certainly invites serious challenge.

At its inaugural conference in Orlando 1959, The Pan Africanst Congress of Azania (PAC) alleged that the ANC had left the liberation movement. The

PAC's judgment was based on its interpretation of the Freedom Charter adopted by the ANC in 1955, which held South Africa belonged to all who lived in it Black and White. In the PAC's interpretation, this was effectively a voluntary accession to the right of conquest since whites claimed title to territory and sovereignty over it by precisely this right.[71] The meaning of the ANC's charter then was that either the right of conquest, which the liberation struggle was waged to negate and abolish, was in fact valid and binding, or that it had over time been converted from an injury into a right in violation of the Ubu-ntu principle *icala aliboli* (an injury or injustice cannot be extinguished by the passage of time, literally a crime does not decay).

The ANC's 1955 Freedom Charter was continuous with its foundational petitions in the early twentieth century which voluntarily ceded sovereignty and title to territory to the throne and person of the British King. In a 20 July 1914 petition to King George V, two years after the formation of the South African Native National Congress (SANNC, later to become the ANC), the petitioners write that they

> . . . are Your Majesty's most loyal and humble subjects, who have always been loyal to Your Majesty's throne and person, and still desire to continue being loyal to Your Majesty's throne and person. That petitioners, in their capacity as representatives of the SANNC, which is again the representative body of the natives of the union of South Africa, most humbly approach Your Majesty as *their* King, *their* father and protector and say: . . . The petitioners are descendants of a race which when their forebears were conquered by Your Majesty's might, and their land taken from them, their laws and customs mangled and their military and other institutions brought to nought, loyally and cheerfully submitted to Your Majesty's sway in full belief that they would be allowed to possess their land as British subjects, and would be given the full benefits of British rule like all other British subjects . . . That the petitioners say that when their forebears submitted themselves to the rule of the British government and paid homage to them, they fully accepted the Sovereignty of Great Britain and no other, but fully believed that their land would be reserved for them, and that they would have the full right of British subjects, more especially with regard to possession of land and all the right incident thereto.[72]

The most important parts of the excerpt in relation to our discussion are the following. Firstly, that the SANNC recognized themselves as conquered subjects and children of the British Crown who lost their title to territory and sovereignty through war. Secondly, that they upheld the right of conquest as having given rise to a succession of sovereignty by the throne and person of the British Crown which they understood as their rightful king, father, and protector. And finally, that their plea was to be treated together

with the pleas of other British subjects (which probably referred to whites and not the colonized communities subject to the horrors of British rule).[73]

If the above is taken seriously, then it is clear that the ANC was no liberation movement at all, since its inception as the SANNC. Instead, we must accept the judgment of Motsoko Pheko that they were indeed a civil rights movement.[74] If we take their accession to conquest at this early stage for granted, then what does it mean to speak of a sell-out during the negotiations to end apartheid South Africa between 1990–1993? If to sell-out is described by the dictionary as "to betray one's cause or associates especially for personal gain" we must agree with the defenders of the constitution and the ANC on this count that the negotiations consisted of no betrayal of principles.[75] Instead, they marked an agreement between the ANC and white South Africa on the succession of one conqueror constitution by another, in which at least the members of the ANC and some chosen few could now have the full rights of British subjects. This is a long way from the reclamation of sovereignty and self-determination that Odendaal claims occurred.[76]

History as Conquest

We turn now to the acceptance and silencing of the right of conquest in South African historiography. Historians, perhaps to a greater degree than other intellectuals, are political creatures. Perhaps because the legitimacy of political regimes rests on the historical foundations of their power, the historians of different political communities are often that branch of it which produces the historical interpretation necessary to buttress and legitimate power.

The well-established schools of South African historiography which are (i) the conservative (imperial, settler, Afrikaner-nationalist), (ii) the liberal, and (iii) the neo-Marxist, describe at once both recognized schools of historical interpretation as well as recognized historical communities of white settlers who have claimed both the title to territory in South Africa, as well as sovereignty over it and its inhabitants (including the indigenous conquered peoples). Their differences have involved analytic and ideological questions about the mechanics and distribution of power, property, status and rights, but none among them have ever differed about the title to territory itself and sovereignty over it.

From de Kiewet's *A History of South Africa: Social and Economic* through to the neo-Marxist turn, historians have taken for granted the legitimacy of conquest, and have thereby contributed to its silencing.[77] With few exceptions, they take 1652 to be their starting point, taking for granted the right of conquest, and "Modern South Africa" to be their frame.[78] The major transitions in conquest South Africa's historical timeline are the

emergence of an agrarian economy at the Cape, the mineral discoveries in the southern African hinterland, the growth of the "Modern" South African state, and the consolidation of industrial manufacturing in the first half of the twentieth century.

Recent historiographical surveys have introduced into the discussion of South African historiography a poorly defined species variously described as Black Nationalist, African Nationalist, and most recently Afrocentric historiography.[79] What appears to earn this species the name is none other than the racial identity of its authors. None of the historians described under the auspices of this species, except for David Dube in the case of Visser, actually belong to Nationalist formations or identify with the Black Nationalist intellectual tradition.

The conservative historical interpretations were largely discredited on both moral and scientific grounds. On the moral front, old school scientific racism with pretentions to a basis in biology fell out of favour after the conclusion of the Second World War, even as the global white supremacy which saw the rise and support of Apartheid South Africa by most Western countries thrived. On intellectual grounds also, its various dogmas, such as the empty land thesis or biologically based justifications for conquest, were undone by work in archaeology, historical linguistics, and history itself.[80] Conservative historiography, like its political counterpart, is often identified by Black radical thought as the most honest variety of white intellection.[81] This is because many Black thinkers have concluded that its progressive (liberal and neo-marxist) relatives share its basic assumptions but differ only at the level of tactics, analytics, and representation.

The most enduring contention between liberals and radicals was of political-economic variety. The liberals largely held that Apartheid and capitalism were incompatible, and the growth of the latter would force the former to end by gradual and eventually destructive reforms. The radicals, on the other hand, believed that the two systems were in fact thoroughly compatible and mutually sustaining, and that the prevailing political order of Apartheid would eventually be brought to its end by a proletarian revolution.

The radicals variously accused the liberals of ignoring structural economic conditions. Writing little more than a decade after the adoption of the new liberal constitution of South Africa, and 14 years after the first multi-party democratic election based on a universal franchise, Merle Lipton suggested that the radicals have humble pie to eat. She argued that the liberals clearly had superior explanatory power and grasp of history as could be seen by the predictive capacity of their enterprise demonstrated by the conclusion of Apartheid through legal and constitutional reform rather than revolution. She went even further than this, arguing that the radicals were far greater

masters of rhetoric and self-promotion than their liberal counterparts.[82] She maintained that the radicals were deceptive in their caricature of liberals' ignorance of structural and economic problems, showing that even long before her critically acclaimed Opus *Capitalism and Apartheid,* many esteemed liberal historians had emphasized precisely forces such as labor and production in their treatises. Lipton's conclusion, which she showed was supported by many-self identified radical historians, is that the difference between the two schools was overemphasized, being ultimately a matter of professional competition between two settler groups.[83]

To be sure, the right of conquest is not itself entirely absent from South African historiography. The conservatives assert it explicitly in their earliest accounts, representing the indigenous peoples as savage obstacles to the spread of Christian civilization and those eliminated through genocide as having "disappeared" to make way for a superior civilization.[84] Many of the liberal scholars who are credited with bringing Blacks into history of course recognized the fact of conquest, but without any attendant examination of its normative significance or ethical and legal soundness.[85] Even legal histories written by liberal authors simply obfuscated the fact of conquest, pretending as if the transplantation of Roman-Dutch law was a mere fact, both necessary and natural.[86]

In other words, The *fact* of conquest is well established, what is not questioned is the *right* and *rightness* of conquest. All the entitlements which arrive from conquest are based on treating conquest as a fact. The basis of racially differentiated law and social reality rests on the right of conquest. By merely treating conquest as fact, there is an implicit accession to the right. Because it is treated as a fact, it is at the same time upheld as a right. Our contribution is in examining the right (or more precisely the *wrong*) of conquest.

We turn now to the historiographical traditions' political counterparts, the conservatives, liberals, and radicals/Marxists at the negotiation table to show how, just as their history writing was united in its upholding and silencing the right of conquest, so too was the political and economic future they were to negotiate for united in its upholding of conquest. Whereas the recent tendency is to assume that the ANC was duped, defeated, or bought into agreeing to this reality, we maintain that it was always its position, and a fulfilment of its founding aims.

Despite the territory called "South Africa" having had several constitutions prior to the present one, none of them have enjoyed the status of supreme law until 1996. In other words, it was not until the indigenous peoples conquered in the unjust wars of colonization were finally and formally an integral part of the political and legal order of conqueror South Africa that parliament was subjected to a superior constitution to limit its

exercise of popular power. When popular power to make and change law was exclusively in the hands of the white population, there was no supreme constitution, since the citizens (white people themselves) were supreme. With the formal loss of this exclusive political power, their will was transferred to the South African constitution of 1996, which would be used to exercise the will of its drafters, regardless of whether it had a basis in the populace. The constitution may therefore be construed as a successful political strategy on the part of the successors in title to colonial conquest in the unjust wars of colonization. As such it is inherently racist despite its reference to "non-racialism" in the preamble.[87]

One need not doubt whether the appearance of constitutional supremacy and the end of parliamentary sovereignty were a coincidence. The study of the activities of Afrikaner Nationalists, Liberals and "Radicals" during the negotiations demonstrate their shared inclination towards the defence and preservation of conqueror South Africa.

Nationalists

In the case of the Afrikaner Nationalists, this can be shown by reference to the famous whites' referendum of 1992 for the National Party (NP). to continue negotiations for a "new" conqueror South Africa. Although we refer to the National Party as a representative of Afrikaner Nationalists, it really is more accurately described as the party of white nationalists since it was between 1948–1993 the ruling party of an exclusively white government (no doubt with a considerable English-speaking support base). Although many white South Africans now refer to the referendum as evidence of their ethical transformation and recognition of the wrongfulness of apartheid, the truth is that the great reason for their "Yes" vote was not the welfare of the indigenous peoples conquered in the unjust wars of colonization, but the defence and continuation of white supremacy. Shortly after the white referendum of 1992, Anette Strauss recalls an article placed in the Star Newspaper at the time which reported De Klerk saying: "A 'No' vote would be suicidal. It will scuttle all hopes of so-called white 'survival' because it would isolate whites."[88]

Virtually every large multinational corporation in South Africa encouraged its employees to vote for the continuation of the negotiations, fearing that their profits would be ruined by a "No" vote which would lead to increased international trade sanctions.[89] An advertisement placed by the National Party at the time in the *Rapport* newspaper claimed that only in "negotiating from a position of strength could it secure a democratic constitution which would prevent domination, offer security to those who had much to lose, and protect the right to political, religious, cultural freedom, property, language,

values, savings, investments, pension funds".[90] By the time of the referendum which was to establish whether negotiations should continue:

> Agreement had already been reached at Codesa on many of these questions, including: 'proportional representation for political parties with 5 per cent or more of support; a constitution and a charter of fundamental rights limiting the power of the state over individuals; strong local and regional government instead of a central regime having all the power; general consensus as a basis for decision-making; and Parliament to retain sovereign power' until a new constitution was in place. In the event of a strong 'Yes' vote, the N.P. claimed that it would have the necessary authority and support to negotiate for the strongest possible constitution.[91]

Liberals

The liberal case is best established by studying an essay written by Helen Zille, former Democratic Alliance (DA) party leader and Western Cape Premier, and current Federal Chairperson of the DA, published in a Festschrift for another famous liberal, Helen Suzman, in 2006. In that essay, entitled "Liberalism's Blind Spots," she makes it clear that the intention of the liberals was to ensure that "minorities" were not "side-lined in a winner-take-all electoral system in a sovereign Parliament".[92] After making a point about the small numbers of liberals (like all whites in South Africa) relative to the "other parties" at CODESA, she writes that "liberals witnessed the power of their ideas when their time came at CODESA, where they largely won the negotiations after decades of intellectual preparation". This win, she concludes, was the achievement of "an essentially liberal constitution" that is to be sure: one which had succeeded parliamentary sovereignty.[93]

Marxists

Finally, both the Afrikaner Nationalist and Liberal politicos of conqueror South Africa had assistance from their brethren in the struggle to maintain conquest from the Communist Party leader Joe Slovo during the negotiations. Nelson Mandela is recorded in an interview for the documentary *Mandela's Fight for Freedom* saying "Joe Slovo has been very influential in advocating a system in which we could remove the fears of the minorities in the country and also moderate the arrogance of a majority—of a black majority".[94] We will not spend time here examining what Mandela could possibly have meant about moderating the arrogance of a black majority, or why he thought it a priority in a country which has been under the yoke of white supremacy for almost four centuries. We only need to ask what connection the continuation of white supremacy today has with the "system that Joe was advocating" during the negotiations.

In contrast to the South African School, the Azanians perceived the white Communist infiltration of the ANC as ultimately a white supremacist scheme.[95] In 1957 already, Sobukwe had discerned that the ANC was concerned with political rights, rather than the substantive liberation of the indigenous peoples conquered in the unjust wars of colonization. In the *Africanist* article "The Nature of the Struggle Today", Sobukwe argued that the ANC leadership interpreted the struggle as a political one for democracy and government succession, rather than liberation and state succession.[96] The Africanist departure from the ANC in 1958 was prescient when one considers the fate of optimistic Africanists who remained in the ANC after the departure of those who formed the PAC. In 1976, under the direction of Slovo, the ANC would expel the "group of eight," charging among other things that they were racists for condemning the hi-jacking of the ANC by white Communists.[97] In doing so, the ANC removed the last internal voices critical of its multi-racial civil rights movement, as well as figures motivating for a restoration of sovereign title to territory and with it the economic sovereignty of the indigenous peoples conquered in the unjust wars of colonization. Indeed the portrayal of Black Radicals who insisted on the necessity of the repudiation of the right of conquest through the restoration of sovereign title to territory to the indigenous conquered people as "reverse" or "anti-white" racists was a stratagem employed by white politicos of both liberal and "radical" persuasion both against the PAC (since the late 1950s) and the Black Conscisouness Movement (since the late 1960s) after it.

Conclusion

After our discussion of our operative concepts, sovereignty, conquest and economics, and basing our historical examination on the Azanian philosophical tradition, we have argued that "the right of conquest" is deliberately underemphasized in South African historiography, despite being at the root of problems regarding the outstanding economic sovereignty of the indigenous conquered people. This outstanding sovereignty is treated variously in the literature under discussions of racialized inequality and poverty and unemployment, "the rise of neo-liberalism," corruption, bad governance, and state capture.[98]

Our argument is not that conquest is not acknowledged or discussed in the historical record. Rather we are arguing that conquest is taken as a fact without regard to its status as a right. One of the results of this historiographical orthodoxy is the tendency to focus upon and exceptionalize the period known as apartheid in South African history. This apartheid mania is nothing more than what Neville Alexander once referred to as an Anglo-Boer

War by historiographical means.[99] It is a white ideological preoccupation, the function of which is to apportion blame for white supremacy to a particular population group of whites in order to vindicate another. In the thought and practice of the ANC (the ruling party since 1994), the capitulation to this white historiographical and political orthodoxy was the misconception and misdirection of the struggle for liberation to a mere struggle for or "road to democracy" rather than one for the restoration of title to territory and sovereignty over it.

In light of our own historical account of the ANC on the one hand, and its white negotiation partners in the forms of the Nationalists, Liberals, and Marxists on the other, the outstanding economic sovereignty which prevails in contemporary South Africa should be understood as a creature of design rather than an unwelcome surprise. It is the telos of the South Africa school.

As for the main question posed in our title, that is "Who conquered South Africa?" or put differently "Who is the sovereign?" Our historical examination reveals an assemblage of shadowy figures in a cast of actors consisting of Western governments (Dutch and English), multinationals (From the Dutch East India Company to Anglo-American) and their viceroys (White South Africans) in a continuous play of the concealment and obfuscation of their sovereign power who may collectively be described by the term Global White Supremacy.

Until South Africa itself is taken as the fundamental problem of the history of the territory so named, power over it will continue to be directed from without, and the imperiality of South African history will continue to thrive. Unless the conquest of the indigenous people in the unjust wars of colonization and the establishment of a political economic, legal, and cultural order upon the foundation of that conquest is taken as the starting point of critical enquiry, we will continue to misunderstand the nature of contemporary power, racial domination, and sovereignty. The liberation of the indigenous peoples who make up the overwhelming majority of its inhabitants and the overdue return of their sovereignty over their own affairs—economic and otherwise—will remain incomplete. And neo-colonial relations will continue to rob her peoples of their land and its wealth, as well as of their very lives.

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Notes

1. Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (London: Panaf Books, 1970), 110.

2. For an overview of the Azanian tradition, including early theoreticians and practitioners, see Ndumiso Dladla, "The Azanian Philosophical Tradition Today," *Theoria* 68, no. 168 (September 1, 2021): 1–11.

3. Kwame Nkrumah, *Neo-Colonialism*.

4. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Cambridge, Mass: MIT Press, 1985), 12. See Chapter 1 "The Definition of Sovereignty" (5–15) for a more general discussion.

5. The phrase "road to democracy" is taken from the 10 Volume collection of political history edited under the ANC government's South African Democracy and Education Trust (see http://www.sadet.co.za/road_democracy_vol1.html) under the same title. Although the trust was established by President Thabo Mbeki in order to provide a semblance of independence from the ANC government and the contents themselves supposed to provide a fair representation of different and contending political movements and their perspectives, it was both funded and founded by actors of the ANC as well as placed under the control of an ANC intellectual Bernard Magubane as project manager and Essop Pahad (Minister in the presidency during Mbeki's tenure as the chairperson of the board of Trustees). The result is that the title itself reflects a particularly ANC view of South African political history as a march towards democracy. This view is challenged by the Azanian Tradition's own interpretation of the struggle as one for the return of sovereign title to territory. We deal with this more explicitly in the section "Transitions in Conquest: The ANC and the 1996 Constitution".

6. Dotan Leshem, "What Did the Ancient Greeks Mean by *Oikonomia*?" *Journal of Economic Perspectives* 30, no. 1 (February 2016): 225–38.

7. Mogobe B. Ramose, "I Conquer, Therefore I Am the Sovereign: Reflections upon Sovereignty, Constitutionalism, and Democracy in Zimbabwe and South Africa," in *Philosophy from Africa: A Text with Readings*, Second Edition (Oxford: Oxford University Press, 2002), 473.

8. Sam Moyo and Paris Yeros, "The Radicalised State: Zimbabwe's Interrupted Revolution," *Review of African Political Economy* 34, no. 111 (2007): 104.

9. Alois S. Mlambo, "The Zimbabwean Crisis and International Response," *Southern Journal for Contemporary History* 31, no. 2 (June 30, 2006): 54–77.

10. Richard S. Maposa, James Hlongwana, and Daniel Gamira, "'Aluta Continua': A Critical Reflection on the Chimurenga-within-Third Chimurenga among the Ndau People in Chipinge District, Southeastern Zimbabwe," *Journal of African Studies and Development* 2, no. 3 (2010.): 191–200.

11. Moyo and Yeros, "The Radicalised State," 104.

12. Moyo and Yeros, "The Radicalised State," 106–7.

13. Daniel Lee, *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations* (Oxford: Oxford University Press, 2021), 4.

14. Thomas Hobbes, *Leviathan*, (Cambridge: Cambridge University Press, 1996), 120.

15. Hobbes, *Leviathan*, 138.

16. Daniel Lee, *The Right of Sovereignty: Jean Bodin on the Sovereign State and the Law of Nations*, The History and Theory of International Law (Oxford, New York: Oxford University Press, 2021).

17. Thomas Hobbes, *Leviathan*, 485.

18. Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*, (Oxford: Oxford University Press, 1996).

19. Korman, *The Right of Conquest*; Yves Winter, "Conquest: Yves Winter". *Political Concepts: A Critical Lexicon* (2012), https://www.politicalconcepts.org/conquest-winter/.

20. Anjuli Webster, "South African Social Science and the Azanian Philosophical Tradition," *Theoria* 68, No. 3 (2021): 111–135.

21. A good example of this thinking can be found in Sobukwe's response to the regional magistrate when asked to plead on a charge of incitement of "natives to commit the offence of being without a pass by way of protest against the law". Sobukwe refused to plead and had this to say—"Your Worship, it will be remembered that when this case began we refused to plead, because we felt no moral obligation whatsoever to obey laws which, are made exclusively by a white minority . . . But I would like to quote what was said by somebody before—that an unjust law cannot be justly applied". Sobukwe Court Trial: Regina vs. R. M. Sobukwe & 23 Others. Magistrates Court, Regional division of South Transvaal held at Johannesburg before Mr. J. DE K. DU Plessis. Case no. L.173/60. 4 April 1960. The reader's attention is drawn here to the connection between "moral obligation to obey" here referred to by Sobukwe and his insistence of its absence as a result of the limping sovereign foundation of the legislation, and Bodin's insistence concerning the *right* of sovereignty.

22. Alois Mlambo, "African Economic History and Historiography," in *Oxford Research Encyclopedia of African History*, 2018.

23. T. N. Huffman, "The Central Cattle Pattern and Interpreting the Past," *Southern African Humanities* 13 (2001): 19.

24. Huffman, "The Central Cattle Pattern," 20.

25. Simon Hall, "Farming Communities of the Second Millennium: Internal Frontiers, Identity, Continuity and Change," in *The Cambridge History of South Africa: Volume 1: From Early Times to 1885*, ed. Bernard K. Mbenga, Carolyn Hamilton, and

Robert Ross, vol. 1, Cambridge History of South Africa (Cambridge: Cambridge University Press, 2009), 114–15.

26. Thomas N. Huffman, "Mapungubwe and the Origins of the Zimbabwe Culture," *Goodwin Series* 8 (2000): 14.

27. Huffman, "Mapungubwe" 27.

28. Huffman, "Mapungubwe," 25.

29. Hall, "Farming Communities of the Second Millennium," 128–29.

30. Hall, "Farming Communities," 140.

31. Colin Bundy, *The Rise and Fall of the South African Peasantry*, 2nd edition. (Cape Town: David Philip, James Currey, 1988), preface to the Second edition; 25.

32. Hall, "Farming Communities," 145.

33. Bundy, *The Rise and Fall of the South African Peasantry*, 25.

34. The material culture and built environment of southern African polities supported the mobility of homesteads, villages, and even kingdoms. Communities of varying sizes migrated and dispersed across short and longer distances throughout the Transkei, Kwa-Zulu-Natal, Maputo, Swaziland, lowveld and highveld regions over centuries. Families could opt to exit their position within a broader political network and move elsewhere. Political alliances and collaboration were not neat—they splintered, collapsed, and fused together depending on the historical conjuncture.

35. Clifton Crais, *Poverty, War, and Violence in South Africa*, 1st ed. (Cambridge University Press, 2011).

36. Bernard Magubane, *The Political Economy of Race and Class in South Africa* (New York: Monthly Review Press, 1990), 33.

37. Magubane, 38.

38. Crais, *Poverty, War, and Violence in South Africa*, 63.

39. Crais, 25.

40. Magubane, *The Political Economy of Race and Class in South Africa*, 10.

41. John Lambert, "Chiefship in Early Colonial Natal, 1843–1879," *Journal of Southern African Studies* 21, no. 2 (June 1995): 269.

42. Lambert, 281.

43. Lambert, 281.

44. Document 2. Editorial on taxation, in *Imvo Zabantsundu*, November 10, 1884 in Thomas Karis, *From Protest to Challenge : A Documentary History of African Politics in South Africa* (Stanford, Calif: Hoover Institution Press, 1972), 12–13.

45. Bundy, *The Rise and Fall of the South African Peasantry*, 240.

46. Bundy, 242.

47. Crais, *Poverty, War, and Violence in South Africa*, 123.

48. Walter Rodney, *How Europe Underdeveloped Africa* (Kampala: East African Educational Publishers Ltd., 1972); Nkrumah, *Neo-Colonialism*.

49. Greg Thomas, "Afro-Blue Notes: The Death of Afro-Pessimism (2.0)?," *Theory & Event* 21, no. 1 (2018): 282–317; Jemima Pierre, "The Racial Vernaculars of Development: A View from West Africa," *American Anthropologist* 122, no. 1 (2020): 86–98.

50. For more on this see Pierre, "The Racial Vernaculars of Development"; Sylvia Wynter, "Is 'Development' a Purely Empirical Concept or Also Teleological?: A Perspective from from 'We the Underdeveloped,'" in *Prospects for Recovery and Sustainable*

Development in Africa, ed. Aguibou Y. Yansané (Westport, Conn: Greenwood Press, 1996), 299–316.

51. A. Susan Williams, *White Malice : The CIA and the Covert Recolonization of Africa*, First edition. (New York, NY: PublicAffairs, 2021), 492–509.

52. Nkrumah, *Neo-Colonialism,* ix.

53. See for example Patrick Bond's *Elite Transition: From Apartheid to Neoliberalism*; Sampie Terreblanche's *Lost in Transformation*, Naomi Klein's *Shock Doctrine*, John Pilger's *Freedom Next Time* and John Saul's "Globalisation, Recolonisation And The Paradox Of Liberation In Southern Africa" in *One Hundred Years of the ANC: Debating Liberation Histories Today* (Eds) Lissoni A. Soske J. Erlank N and Nieftagodien N. (2012) Wits University Press, Johannesburg.

54. See Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans : Race and Self-Determination in International Law* (Minneapolis: University of Minnesota Press, 1996).

55. The directives are not always direct and explicit throughout the period of any government's administration. The very constitutional systems inherited, the pre-existing debts which succeeding adminstrations inherit which originate in colonial times and the funding of political parties by multinational and local corporations and the fear of a well orchestrated machine of economic sanctions all undermine any sovereign protential of the putative sovereigns.

56. *The Freedom Charter* (New Delhi: Asian Mission of the African National Congress of South Africa, 1965).

57. "Garden work" may seem a strange metaphor to apply here to those unfamiliar with South African socio-economic dynamics, where garden work is a racialized form of labor virtually exclusively performed by black males ranging from their early teens to the elderly who are still commonly referred to as 'garden boys' throughout the white suburbs of the country. The women counterparts of garden workers are often called house/kitchen girls in a racialized labor system which has survived the "transition to democracy".

58. Tembeka Ngcukaitobi, *The Land Is Ours: South Africa's First Black Lawyers and the Birth of Constitutionalism* (Cape Town, South Africa: Penguin Books, an imprint of Penguin Random House, 2018).

59. Hugh Corder and Dennis Davis, "The Constitutional Guidelines of the African National Congress: A Preliminary Assessment," *South African Law Journal* 106, no. 4 (n.d.): 635.

60. Corder and Davis, 638.

61. Joel M. Modiri, "Conquest and Constitutionalism: First Thoughts on an Alternative Jurisprudence," *South African Journal on Human Rights* 34, no. 3 (December 2018): 300–325.

62. Justice Mavedzenge, "How South Africa shaped a world-leading constitution," in *Mail & Guardian*, 27 October 2021.

63. Modiri 'Conquest and Constitutionalism'; Mogobe Bernard Ramose, "Towards a Post-Conquest South Africa: Beyond the Constitution of 1996," *South African Journal on Human Rights* 34, no. 3 (September 2, 2018): 326–41; Ndumiso Dladla, "The Liberation of History and the End of South Africa: Some Notes towards an Azanian

Historiography in Africa, South1," *South African Journal on Human Rights* 34, no. 3 (September 2, 2018): 415–40; Lindiwe Sisulu, "Lindiwe Sisulu: Whose Law Is It Anyway?," The Mail & Guardian, January 8, 2022, https://mg.co.za/thoughtleader/opinion/2022-01-08-lindiwe-sisulu-whose-law-is-it-anyway/.

64. Firoz Cachalia, "Democratic Constitutionalism in the Time of the Postcolony : Beyond Triumph and Betrayal," *South African Journal on Human Rights* 34, no. 3 (December 2018): 375–97,; D. M. Davis, "Is the South African Constitution an Obstacle to a Democratic Post-Colonial State?1," *South African Journal on Human Rights* 34, no. 3 (September 2, 2018): 359–74; Catherine Albertyn, "Contested Substantive Equality in the South African Constitution : Beyond Social Inclusion towards Systemic Justice," *South African Journal on Human Rights* 34, no. 3 (December 2018): 441–68.

65. Tembeka Ngcukaitobi, *The Land Is Ours: South Africa's First Black Lawyers and the Birth of Constitutionalism* (Cape Town, South Africa: Penguin Books, an imprint of Penguin Random House, 2018). The book title is mischievous for numerous reasons. Firstly, the rise of scepticism about the sanctity of the constitution was brought to the fore by the failures of post-1994 South Africa to address land ownership patterns created by colonial conquest. From this point of view, it is the recognition that the land has not been returned to the indigenous conquered people which brought rise to increased incredulity to the goodness and sanctity of the constitution. The book's commercial appeal, alloyed to its author's fleeting association with the EFF, resulted in part by its seeming appearance to deal with the land issue when it is instead a roundabout defence which attempts to indigenize South Africa's foreign constitution. Secondly the phrase "the land is ours" is an English translation of the phrase "Izwe Elethu" used by the PAC of Azania, in relation to the contentious land question. The phrase was meant to communicate with certainty against the duplicity of the Freedom Charter that the Land belonged exclusively and rightfully to Black people, a position not maintained by Ngcukaitobi and the subjects of his otherwise fascinating study.

66. André Odendaal, *Dear Comrade President : Oliver Tambo and the Foundations of South Africa's Constitution* (Cape Town, South Africa: Penguin Books, an imprint of Penguin Random House South Africa, 2022).

67. Tshepo Madlingozi, "South Africa's First Black Lawyers, amaRespectables and the Birth of Evolutionary Constitution—a Review of Tembeka Ngcukaitobi's The Land Is Ours: South Africa's First Black Lawyers and the Birth of Constitutionalism," *South African Journal on Human Rights* 34, no. 3 (December 2018): 517–29; Sanele Sibanda, "The Land Is Ours: South Africa's First Black Lawyers and the Birth of Constitutionalism. Tembeka Ngcukaitobi. Penguin Books, 2018. 312 Pp. ISBN: 978 1 77609 285 7. Lawfare: Judging Politics in South Africa. Michelle Le Roux and Dennis Davis. Jonathan Ball, 2019. 351 Pp. ISBN 978-1-86842-960-8," *South African Historical Journal* 73, no. 4 (October 2, 2021): 927–47; Masilo Lepuru, "On Tembeka's Mistitling: A Review of Tembeka Ngcukaitobi's Land Matters," *Culture Review*, March 15, 2023, https://culture-review.co.za/on-tembekas-mistitling-a-review-of-tembeka-ngcukaitobis-land-matters.

68. Firoz Cachalia, "Democratic Constitutionalism in the Time of the Postcolony: Beyond Triumph and Betrayal," *South African Journal on Human Rights* 34, no. 3 (December 2018): 375–97; D. M. Davis, "Is the South African Constitution an Obstacle to a Democratic Post-Colonial State?," *South African Journal on Human Rights* 34, no. 3 (September 2, 2018): 359–74.

69. Naledi Nomalanga Mkhize, "Foreword," in *Dear Comrade President: Oliver Tambo and the Foundations of South Africa's Constitution* (Cape Town: Penguin Books, an imprint of Penguin Random House South Africa, 2022), x. Mkhize is the daughter of former minister of health and premier of KZN in the ANC and once presidential hopeful Zweli Mkhize. She describes herself in the same foreword, and to buttress her perspectival authority, as "having grown up in the ANC and having spent her childhood in exile," ix. Although Mkhize writes of what *she has come to call* "constitutional scepticism," she could have benefited from a study of the literature in South African jurisprudence, where she would have learned that the species "constitutional scepticism" belongs to another grouping of authors closer to her own persuasion about the constitution. Her object of criticism, sometimes called constitutional denigrators or delinquents, refer to the body of their own writing as constitutional abolitionism. See Modiri, "Conquest and Constitutionalism"; Dladla, "The Liberation of History and the End of South Africa." The reference to the criticism of the constitution as continuous with the conquest of the indigenous peoples conquered in the unjust wars of colonization may be traced back as far as Mangaliso Sobukwe in the early 1960s. In academic work, however, Ramose's "In Search of Lasting Constitutional Change" appeared in 1991 and Pheko's *Betrayal of a Colonised People* appeared in 1992. Both these authors are respectively an octogenarian and septuagenarian, it is a wonder then what "young" means in this instance, if not a malicious attempt to appeal to the authority of age to dismiss what cannot be dealt with by rational critique. S. E. M. Pheko, *South Africa: Betrayal of a Colonised People: Issues of International Human Rights Law*, Skotaville ed (Johannesburg: Skotaville Publishers, 1992); Mogobe B. Ramose, Tshepo G. T. Maphala, and Thabo E. Makhabane, "In Search of a Workable and Lasting Constitutional Change In South Africa," 1991, https://philpapers.org/rec/RAMISO-2.

70. Odendaal, *Dear Comrade President*, 3.

71. Robert Sobukwe, "Document 45. 'Opening Address' by Robert Sobukwe to PAC Inaugural Convention, Orlando, Johannesburg, April 4–6, 1959," in *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1990, Volume 3*, ed. Thomas Karis and Gail M. Gerhart (Auckland Park: Jacana, 2013), 474–80; Peter Raboroko, "Document 46. "Manifesto of the Africanist Movement' by Peter Raboroko, Ratified at PAC Inaugural Convention, Orlando, Johannesburg, April 4–6, 1959," in *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1990, Volume 3*, ed. Thomas Karis and Gail M. Gerhart (Auckland Park: Jacana, 2013), 480–86.

72. South African Native National Congress, "Document 35. Petition to King George V, from the South African Native National Congress, July 20, 1914 (Published in the Cape Argus)," in *From Protest to Challenge: A Documentrary History of African*

Politics in South Africa, 1882–1964, Volume I, ed. Thomas Karis and Gwendolen M. Carter (Stanford: Hoover Institution Press, n.d.), 125–27, emphasis added.

73. In other words subjects for whom the sovereignty of the Crown had been established by institution rather than what Hobbes called sovereignty by acquisition.

74. Pheko, *South Africa*.

75. "Sell out," Merriam-Webster Online Dictionary.

76. Odendaal, *Dear Comrade President*.

77. C. W. (Cornelius William) De Kiewiet, *A History of South Africa : Social & Economic* (Oxford: The Clarendon Press, 1941); exemplary texts of South African neo-marxist revisionism include H. Wolpe, "Class, Race and the Occupational Structure," *Collected Seminar Papers. Institute of Commonwealth Studies* 12 (1972): 98–119; Stanley Trapido and Williams Gavin, "South Africa in a Comparative Study of Industrialization," *Historia* 53, no. 1 (2008): 10–23.

78. John Iliffe, "The South African Economy, 1652–1997," *The Economic History Review* 52, no. 1 (1999): 87–103.

79. Wessel Visser, "Trends in South African Historiography and the Present State of Historical Research" (Nordic Africa Institute, Uppsala, Sweden, 2004); Merle Lipton, *Liberals, Marxists and Nationalists : Competing Interpretations of South African History* (New York, NY: Palgrave Macmillan, 2007); Chris Saunders, "South African Historical Writing to the End of the Apartheid Era," in *Oxford Research Encyclopedia of African History*, 2018, https://doi.org/10.1093/acrefore/9780190277734.013.373.

80. Martin Hall, *The Changing Past : Farmers, Kings, and Traders in Southern Africa, 200–1860* (Cape Town: D. Philip, 1987); Clifton C. Crais, "The Vacant Land: The Mythology of British Expansion in the Eastern Cape, South Africa," *Journal of Social History* 25, no. 2 (1991): 255–75.

81. Ndumiso Dladla, "Contested Memory: Retrieving the Africanist (Liberatory) Conception of Non-racialism," *Theoria* 64, no. 153 (2017), 105–113.

82. Lipton, *Liberals, Marxists and Nationalists*, 1–6.

83. Merle Lipton, *Capitalism and Apartheid, South Africa, 1910–84* (Totowa, NJ: Rowman & Allanheld, 1985); Lipton, *Liberals, Marxists and Nationalists*.

84. George McCall Theal, *History of South Africa since September 1795. Volume 1, The Cape Colony from 1795 to 1828, the Zulu Wars of Devastation, and the Formation of New Bantu Communities* (London: George Allen & Unwin Ltd., 1908).

85. Monica Wilson, *Reaction to Conquest : Effects of Contact with Europeans on the Pondo of South Africa*, 2d edition. (London: Published for the International African Institute by the Oxford University Press, 1964).

86. H. R. Hahlo, *The Union of South Africa : The Development of Its Laws and Constitution* (London: Stevens, 1960); H. R. Hahlo, *The South African Legal System and Its Background* (Cape Town: Juta, 1968).

87. South Africa, *Constitution of the Republic of South Africa, 1996 : Act No. 108, 1996* (Pretoria: Govt. Printer, William S. Hein & Co., 1996).

88. Annette Strauss, "The 1992 Referendum in South Africa," *The Journal of Modern African Studies* 31, no. 2 (1993): 339–60.

89. Strauss.

90. Strauss, 346.

91. Strauss, 346–47.

92. Helen Zille, "Liberalism's Blind Spots," in *Opposing Voices : Liberalism and Opposition in South Africa Today*, ed. Milton Shain (Johannesburg: Jonathan Ball, 2006), 101.

93. Zille, 103.

94. *Mandela's Fight for Freedom*, Documentary (Discovery Channel, 1998), 1:36:21–1:36:40.

95. This is confirmed by Robert Sobukwe, "Document 45. 'Opening Address' by Robert Sobukwe to PAC Inaugural Convention, Orlando, Johannesburg, April 4–6, 1959," in From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1990, Volume 3, ed. Thomas Karis and Gail M. Gerhart (Auckland Park: Jacana, 2013), 474–80; Peter Raboroko, "Document 46. 'Manifesto of the Africanist Movement' by Peter Raboroko, Ratified at PAC Inaugural Convention, Orlando, Johannesburg, April 4–6, 1959," in From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1990, Volume 3, ed. Thomas Karis and Gail M. Gerhart (Auckland Park: Jacana, 2013), 480–86, where the authorship of the Freedom Charter as whites and its ultimate aim as the diminishing of Black liberation is made clear. Biko endorsed this interpretation more than a decade later in an essay entitled "Black Souls in White Skins," where he wrote "Very few black organisations were not under white direction. True to their image, the white liberals always knew what was good for the blacks and told them so [. . .] It was only at the end of the 50s [here referring to the exit of the Africanists from the infiltrated ANC] that blacks started demanding to be their own guardians" in *I Write What I Like: A Selection of his writings*. (Johannesburg: Picador Africa).

96. Robert Sobukwe, Thomas Karis, and Gail M. Gerhart, "Document 42. 'The Nature of the Struggle Today.' Article by Robert Sobukwe but Attributed to Potlako Leballo, the Afrcainst, December 1957," in *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1990, Volume 3* (Auckland Park: Jacana, 2013), 465.

97. South African Communist Party, "The Enemy Hidden Under the Same Colour" (The African Communist, 1976); Robert Fatton, "The African National Congress of South Africa: The Limitations of a Revolutionary Strategy," *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines* 18, no. 3 (1984): 593–608.

98. See Nicoli Nattrass and Jeremy Seekings, *Class, Race, and Inequality in South Africa* (New Haven: Yale University Press 2005); David Francis and Eddie Webster, "Poverty and inequality in South Africa: critical reflections," in *Development Southern Africa*, 36, No. 6 (2019), 788–802; Hendri Kroucamp "Corruption in South Africa with particular reference to public sector institutions: the evil of all evils," *Journal of Public Administration*, 41, no.si–1 (2006), 206–217; M J Masenya, "Neo-Patrimonialism, Corruption and Governance in South Africa," *African Journal of Public Affairs*, 9, no. 9 (2017), 146–156; Ivor Chipkin and Mark Swilling eds., *Shadow State: The Politics of State Capture* (Johannesburg: Wits University Press, 2018).

99. Neville Alexander, *An Ordinary Country: Issues in Transition from Democracy to Apartheid*, (Pietermaritzburg: University of Natal Press, 2002), 13.