The *nomos* of white settler-colonialism in South Africa: An Afrikanist historical and philosophical analysis of conquest and law

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Abstract
This paper provides a historical and legal philosophical analysis of the political and legal foundations of white settler colonialism in 'South Africa' since 1652, through the conceptual lens of the *nomos* as formulated by the legal philosopher Carl Schmitt. It relies on an Afrikan-centred theoretical framework and a historical comparative method in this qualitative study of the relationship between conquest and law. Literature review is used to analyse scholarship on law and conquest in South Africa. This paper seeks to close a gap in the narrow legalistic focus on the 1996 constitution, which excludes politics from the exclusion of politics in the current debate about white settler constitutionalism in relation to the land question. This paper's contribution is the idea that the imposition of European law in Azania was preceded by the political act of violent land dispossession through a race war of conquest by European conquerors. This contribution seeks to respond to the following question: how can conquered indigenous people resolve the land question outside the constitution of 1996? This paper argues that land should be restored outside the constitution of 1996 through a physical war of reconquest/war of liberation by the indigenous people as a political act.
Keywords: *Nomos*, race war, white settler colonialism, constitution, land appropriation, land division and law.

Introduction

This paper relies on the concept of the *nomos* as formulated by the legal philosopher Carl Schmitt to analyse white settler colonialism in 'South Africa'. Schmitt used the *nomos* in his book titled [The Nomos of the Earth in the International Law of Jus Publicum Europaeum, 2006] to theorise about the emergence of European international law as a global system of the rule of law. This paper seeks to employ this concept in the context of South Africa. This is because this concept and its related concepts, such as land appropriation and land division, are useful in the analysis of the emergence of white settler colonialism and its constitutionalism, which culminated in the constitution of 1996. Schmitt demonstrates that colonies were created in the process of making "the nomos of the earth" (SCHMITT 2006, 49) by Europeans.

The fundamental problem in this paper is that the current debate about 'land expropriation without or with compensation' in South Africa is confined to

the contours of the constitution of 1996. By relying on Schmitt, this paper seeks to theorise about the land question outside the constitutional framework of 1996. This is in order to formulate a revolutionary strategy of restoring the land and sovereignty of the conquered indigenous people through a physical war of liberation/*chimurenga*. Through the concept of the *nomos*, this paper seeks to demonstrate that land appropriation preceded the seminal constitutional framework created by white settlers in 1853 in the Cape Colony. It is in this sense that since European conquerors appropriated the land outside a constitutional framework, the conquered indigenous people must restore it outside the current constitutional framework of 1996. This is a radical call for the continuation of the war of liberation waged by the Azanian political tradition in the form of the Azania People's Liberation Army (APLA) before the inauguration of the constitution of 1996.

This paper foregrounds the *nomos* as a way to critique conquest and the law of the European conqueror in South Africa. The core of the critique in this paper is the total normative order which the 'white strangers' (KUNENE 2017), as European conquerors, introduced into South Africa through conquest since 1652 in the unjust wars of colonisation (RAMOSE 2007). For the purposes of this paper, the name South Africa is placed in inverted commas to reflect that it is an ethically and politically contested name. The Pan Africanist Congress (PAC) and the Black Consciousness movement regard the geographical area called South Africa by the European conqueror to be Azania (DLADLA 2021; MODIRI 2021). By Afrikanism, we imply the philosophical and political tradition as originated by Anton Lembede (EDGAR and KA MSUMZA 2018) and later continued in a distorted way by Robert Sobukwe's PAC and the Azanaian Critical Tradition today(by willing to convert *abathakathi*/whites and to co-exist with them), with the fortunate exception of Poqo. Africanism is embodied by revolutionary ideas such as 'Africa for the Africans' as conceptualised by Lembede and 'one settler, one bullet' as embraced by Poqo and APLA. This paper is rooted in this Afrikanist revolutionary heritage.

By the word 'total' we imply the form rather than the operation of this normative order. Thus, this normative order consists of different but compatible and integrated components, which in its operation leaves room for the agency of its victims to overthrow it. The wars of national liberation launched by the conquered indigenous people in different forms and at different stages are a manifestation of agency on their part. This total normative order must be comprehended in its organic whole, rather than to 'autonomise' (BAUDRILLARD 1975) each component. In other words, this total normative order of white settler colonialism must be viewed in a wholistic fashion as opposed to being fragmented.

It is important to comprehend that, even though our analysis in this paper focuses on white settler colonialism in 'conqueror South Africa'(RAMOSE 2024), this analysis is fundamentally predicated on the fact that white settler colonialism is part and parcel of global 'racism/white supremacy' (WELSING 1991; MILLS 215). In other words, white settlers are local agents and beneficiaries of global white power as per their structural positionality within white settler colonialism in South Africa. Thus, in the struggle for national liberation (SIBEKO 1979; CABRAL 1973), whites, white settler colonialism and white imperialism have to

be eliminated, if there is to be real freedom, sovereignty, and collective self-determination (EDGAR and KA MSUMZA 2018) for the indigenous people of conquered Azania and all Afrikans across the globe.

This entails the restoration of Afrikan power (*ala* Garveyism) as opposed to the pursuit of equality with white settlers spearheaded by the African National Congress (ANC), which triumphed since 1994 in the form of the absurd fantasy of 'the rainbow nation' in 'post-apartheid South Africa'. A wholistic comprehension of white supremacy is very important. The totality of global European imperialism is the premise of this South African analysis. Global European imperialism created what is designated as 'the *nomos* of the earth' by Carl Schmitt in his book [The Nomos of the Earth in the International Law of Jus Publicum Europaeum, 2006]. We will use Carl Schmitt's concept of the *nomos* as the conceptual lens through which we critique white settler colonialism in 'conqueror South Africa' (RAMOSE 2024).

African nationalism/Africanism *ala* Anton Lembede (LEMBEDE 2015), will be foregrounded as the correct uncompromising ideology which the conquered indigenous peoples must use for their struggle for national liberation (EDGAR and KA MSUMZA 2018). This exclusive African nationalism is global in orientation. It is grounded in the Race-first ideology as advocated by the Garvey movement (MARTIN 1986). In the same way, white power can protect white diasporas everywhere on the globe, black power must be global in orientation to protect lives and dignity of Africans on the continent and the seeds of Africa that are all over the globe. Thus, this paper is premised on 'Black Power Pan-Africanism' (CHINWEIZU 2010). Our fundamental aim is to generate and introduce concepts which "the Palm Race" (KUNENE 2017, 216) can utilise to destroy the total normative order of 'the Pumpkin Race' (KUNENE 2017) and to wage a war of liberation to restore the land. The pumpkin race is a concept used by Mazisi Kunene to categorise the European conquerors who conquered the indigenous people whom he calls 'the Palm Race' (KUNENE 2017).

A Race-first Pan-Africanist project of nation-building should follow the elimination of conquest and its concomitant *nomos* of white settler colonialism for the restoration of Azania based on Black Power/African power. The Pan-Africanist Congress uses the concept of Azania to denote the rightful name for the territory currently called South Africa (SIBEKO 1983). Azania (CHAMI 2021) is a pre-conquest correct name for what is now called South Africa. Azania is not just an African historico-archaeological fact but also a political and social vision propagated by the Azanian liberation movement, such as the Pan-Africanist Congress of Azania and the Black

Consciousness Movement of Azania (DLADLA 2021; MODIRI 2021). This nation-building project will fundamentally aim at restoring the Azanian civilisation, following the reversal of conquest through a war of liberation to reconquer the land by and for the indigenous people. The blueprint for the Azanian civilisation will be an African constitution (WILLIAMS 1987), which is embedded in African culture and worldview (ANI 1994; and DIOP 1979), and African Law (RAMOSE 1999), which will be the supreme law of Azania as a sovereign land and nation. The symbolic meaning of Azania just like Kemet is the

uncompromising idea of the land of black people. Thus, this Azanian or preferably Kemetic civilization should be premised on the idea of 'Africa for the Africans' and Asia for the Asiatics (Europeans included). This is in line with the ancient Kemetic tradition of excluding foreginers (especially the light-skinned ones) from the land of black people.

This paper is divided into two sections, which further elaborate on the above. The first section of this paper will foreground conquest as the founding political act of the *nomos* of white settler colonialism in 'conqueror South Africa' (RAMOSE 2024). The second section will critically analyse the legal process of the consolidation of the *nomos* of white settler colonialism and will briefly provide a prescriptive analysis as to how this *nomos* of white settler colonialism can be negated to usher in an era of post-conquest Kemetic or Azanian civilisation. This is a civilisation by the natives of Kemet or Azania in terms of the Afrikan worldview and culture, and Lembede's idea of 'Africa for the Africans', thus Europe for the Europeans.

The political inauguration of the *nomos* of white settler colonialism in 'South Africa'

"The *nomos* by which a tribe, a retinue or a people settled, i.e., by which it becomes historically situated and turns a part of the earth's surface into the force-field of a particular order, becomes visible in the appropriation of land and in the founding of a city or a colony" (SCHMITT 2006, 48).

The significance of the above quotation lies in its succinct encapsulation of the relationship between the *nomos*, land appropriation and colony. Conquest in unjust wars of colonisation, for the purposes of this paper was inaugurated through the political act of land dispossession, which Schmitt (2006) calls land appropriation. The structure of settler colonialism (WOLFE 2006; 2016), which also entails the violent imposition of the legal epistemological paradigm of the European conqueror (RAMOSE 2018), was premised on the originary violent political act of land dispossession. This originary violent act in essence inaugurated a race war waged against the indigenous people by European conquerors who became white settlers through this war. For the purposes of our analysis, race war is not just an event but a structure of antagonism between white settlers and the indigenous people. Military battles are just an empirical manifeststaion of this race war. This structure of antagonism is rooted in a dyadic dialectic between white settlers and the indigenous people. This Manichean (FANON 2001) dialectic implies that to negate the race war, only one element of the dialectic must survive. There is no higher sysnthesis in this dialectic, be it in the form of Liberal non-racialism or Africanist/Liberatory non-racialism. It is in this sense that whites should not physically survive the war of liberation/*Chimurenga* waged by the indigenous people to reconquer their land. The constitutional framework of 1853 facilitated the second process of land division. The Glen Grey Act of 1894 and the Land Act of 1913 are prominent examples of this legal process of land division 'in the wake' (SHARPE 2016) of the violent founding political act of land dispossession or land appropriation.

This is not to suggest that the "Logic of Discovery" (MBEBE 2025,199), as epitomised by the doctrine of Discovery as international law of colonialism

(MILLER 2011), did not inform the violent political act of land dispossession, but that in the race war of conquest, European conquerors operated on the premise of the Hobbesian state of nature. They regarded the indigenous people as outside the category of the human and civilisation, thus outside civilised European law, which applied among European nations (SCHMITT 2006). Schmitt (2006) has endorsed European international law, which he argues has created the first global order of international law and civilisation. As Schmitt (2006, 49) states it: "The originally terrestrial world was altered in the Age of Discovery, when the earth first was encompassed and measured by the global consciousness of European peoples. This resulted in the first nomos of the earth. It was based on a particular relation between the spatial order of firm land and the spatial order of free sea, and for 400 years it supported a Eurocentric international law: the jus publicum Europaeum". However, he has acknowledged the fact that this global order was premised on the conquest of the Other in the form of land-appropriation and land division. According to Schmitt (2006), outside of Western Europe, laws did not exist. The result was that the lands and their inhabitants outside this region were free for all -*terra nullius*- to acquire according to the conventions agreed exclusively among and by the Western European powers. Indigenous people were and still are regarded as sub-persons (MILLS 2015) who are civilised by conquest, which originally takes the form of the political act of land dispossession in order to found a white settler colony as a material and normative order of white civilisation.

How the total normative order of white power was introduced in South Africa is the fundamental question that this paper, particularly this section, will explicate. It is important to note that South Africa as a social formation/politico-juridical order is a material and epistemological manifestation of the *nomos* of white settler colonialism. In other words, there is no South Africa before the inauguration through the conquest of the *nomos* of white settler colonialism by the European conquerors since 1652 in the unjust wars of colonisation (RAMOSE 2007). This *nomos* was inaugurated through a violent political act of land dispossession. This is how Jan Van Riebeeck, the racist pioneer of white settlers 'who conquered South Africa' (DLADLA and WEBSTER 2024), Azania celebrated this political act:

> The Khoikhoi sued for peace, and tried to regain rights to their pastures, "standing upon it that we (the Dutch) had gradually been taking more and more of their land, which had been theirs since the beginning of time… Asking also, whether if they came to Holland, they would be permitted to do the like". The Commander argued that if their land were restored there would not be enough grazing for both nations. The Khoikhoi replied "Have we then no cause to prevent you from getting more cattle? The more you have the more lands you will occupy. And to say the land is not big enough for both, who should give way, the rightful owner or the foreign invader?" Van Riebeeck made it clear "that they had now lost the land in war and therefore could only expect to be henceforth deprived of it… The country had thus fallen to our lot, being justly won in defensive warfare and…it was our intention to retain it. (TROUP 1975, 33-53)

This political act of land dispossession was an embodiment of a race war outside a constitutional framework. This political act, which was re-enacted by white settlers for a couple of centuries before the establishment of the white settler constitutional framework in the Cape colony in 1853, demonstrates the idea that the race war of conquest precedes and transcends law. Law in the form of a constitutional framework is imposed to consolidate land dispossession. White settler constitutions since 1853 provide a legal foundation for a 'conqueror South Africa' (RAMOSE 2024), but are preceded by land appropriation, which took place in 1652. It is in this sense that what is primary is a race war as opposed to law. Power in the form of the political act of land dispossession trumps law. Law merely solidifies what the political act creates. The fundamental contradiction is not necessarily the law of the European conquerors but the political act of land dispossession, which is outside the law. It is in this sense that there is an extra-legal and extra-constitutional dialectic between the white settler political act of land dispossession and the corresponding indigenous political act of land repossession. In other words, because the conquest of the land by white settlers took place outside the law but in a race war, the indigenous people had and have to wage a war of reconquest of their land outside the law. Their war of liberation should be the negating political act of land repossession, which seeks to reverse the originary political act of land dispossession by white settlers. This is not to state that legal epistemicide in the form of the violent imposition of the law of the European conqueror is not important, but that the primary contradiction is not law but politics. The political precedes and trumps the legal. It is in this sense that the fundamental antagonism is not the constitution of 1996 but a race war which was launched by white settlers since 1652 against indigenous people. By focusing on the political act which founds the *nomos* of white settler colonialism as opposed to focusing on white settler constitutionalism, this paper seeks to underscore the significance of race war and conquest. "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" (DLADLA and WEBSTER 2024, 13).

The critique of the legal epistemological paradigm of the European conqueror (RAMOSE 2018, DLADLA 2018; MODIRI 2018) focuses on the secondary contradiction of the *nomos* of white settler colonialism. This legalistic focus obscures the main ontological problem of regarding whites who have been waging a race war as the fundamental problem to be eliminated as opposed to the abolition of the constitution of 1996. It reduces an irreconcilable ontological antagonism between whites and the indigenous people to one of a legal conflict. This is how Van Riebeeck encapsulated the primary contradiction in the form of the political act of land dispossession through military defeat in a race war. Van Riebeeck made it clear "that they had now lost the land in war and therefore could only expect to be henceforth deprived of it… The country had thus fallen to our lot, being justly won in defensive warfare and…it was our intention to retain it" (as cited in TROUP 1975, 33-53). Van Riebeeck made this war-driven declaration in the late 1600s. This is centuries before the legal act of land division took the form of the imposition of the constitutional framework of 1853 in the Cape colony, which culminated in the constitution of 1996. It is in this sense that race

war, as opposed to law, should be the fundamental focus of the debate on the land question. War studies (what we call Afrikanist War-studies paradigm), as opposed to constitutional studies, should be the main point of departure. The legalism of the constitutional debate should be supplanted by the focus on the political in the sense of a race war. The antagonistic structural relation between white settlers and indigenous people since 1652 is one of a race war as opposed to legal subjects in conflict about their laws. Race war and the land, rather than land and the law, should be the central focus.

South Africa as a white settler colony founded on the political act of land dispossession is the current and highest embodiment of this antagonistic structural relation between white settlers and the conquered indigenous people. This is the reason why this paper's critique as a manifestation of the Black Radical Tradition (ROBINSON 2000) is predicated on the demise of South Africa and its white settlers. South Africa is here not understood merely as a geographical name, but as a politico-juridical order and social reality introduced through conquest premised on land-appropriation (SCHMITT 2006) and epistemicide (DE SOUSA SANTOS 2018). South Africa is the culmination of the *nomos* of white settler colonialism since 1652. To destroy South Africa through a war of liberation is to launch a political act of negating this *nomos*. The negation of the *nomos* of white settler colonialism means the demise of South Africa as we know it, with its current misleading 'terms of order' such as 'post-apartheid', 'rainbow nation' and 'nonracialism'. This means that *liberation in* 'South Africa' is an absurd contradiction in terms; rather, what is sensible is *liberation from* 'South Africa' into Azania. A liberation movement such as Poqo understands that ownership of land (sovereign title to territory) is the foundation of politics, in the sense of the foundation of power, the control of resources and the basis of a form of social relations, thus a politico-juridical order and social reality.

A civil rights movement such as the ANC, confuses 'the foundation of politics' and thus power with 'institutions of politics' (which merely facilitate politics rather than serve as its foundation) such as parliament and political parties and this explains why whites who are a minority demographically and in parliament without a governing/ruling party are still in power. The civil rights tradition of the ANC is traceable to the civilised natives and black lawyers who sought to democratise and indigenise European law and civilisation, instead of African power in the form of national self-determination and sovereignty. This is a testament to the ideological hegemony (liberal constitutional democracy) of the white liberals in South Africa. The ANC only succeeded in the pursuit of inclusion into these 'institutions of politics' of a white settler colonial politico- juridical order and social reality, without introducing a 'structural rupture'. This is, of course, in line with the ANC's democratisation paradigm, which triumphed in 1994 as opposed to the decolonisation paradigm (RAMOSE 2005). 'South Africa' encapsulates land dispossession and the renaming of the dispossessed land in the image and interest of the European conqueror as a dispossessor. Thus, Azania here is not just a name but a new politico-juridical order and social reality beyond conquest and the *nomos* of white settler colonialism. Azania signifies *liberation from* white settler colonialism that began in 1652 with conquest in the unjust wars of colonisation (RAMOSE 2007) and not the 1948 Apartheid regime, which is a

reconfiguration of the former just like the current 'post-apartheid' regime since 1994. Put simply, Azania signifies a 'structural rupture' with 1652 in line with the decolonisation paradigm (RAMOSE 2005) and not a mere 'struggle' against Apartheid South Africa. South Africa, as a white settler colonial name, is just one of 'the terms of order' of the *nomos* of white settler colonialism. As Modiri (2024, 86) states:

> Whereas the ANC conceived of the liberation struggle as a conflict within the same society and hence maintained a legal and constitutional continuity with the old order, the Africanists and Black radicals conceived of the liberation struggle as a conflict between two societies (with different interests and different ordering principles), instantiated by an unjust settler-colonial usurpation, dispossession and subjugation. For this latter group, legal continuity and reconciliation between these two societies cannot result in a rupture with the old order and thus cannot bring about a new society.

The total normative order of white power was introduced through conquest in 1652 by the European conqueror in line with the doctrine of Discovery (MILLER 2011). In terms of this paper, conquest since 1652 is the political founding act of the *nomos* of white settler colonialism as a system of white domination. This conquest was not just an event, but it is a structure (WOLFE 2006). It is important to bear in mind the fact that conquest is a multidimensional concept. However, in this section, I will foreground conquest in the form of land dispossession/land appropriation (SCHMITT 2006), and in the second section, I will expand on conquest in the form of epistemicide (DE SOUSA SANTOS 2018), in the form of the violent imposition of the culture and law of the European conqueror. As Schmitt (2006, 48) states: "Not only logically, but also historically, land appropriation (read here as conquest in the form of land dispossession) precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law".

Thus, land dispossession inaugurates the *nomos* of white settler colonialism in South Africa as a settler colony (WOLFE 2016). Conquest in South Africa, as a political founding act which inaugurates the *nomos* of white settler colonialism, occurred in 1652 when the European conquerors of Dutch descent decided to settle at the Cape (MAGUBANE 2001). These European conquerors were followed later around the 1800s by other European conquerors from Britain at the height of British Imperialism (MAGUBANE 1979). Motsoko Pheko (1984) provides an account of several attempts by the Portuguese and the Spanish conquerors to conquer and occupy Azania without success due to acts of resistance on the part of "the Palm Race" (as cited in KUNENE 2017).

Conquest in the form of land dispossession is a political founding act (SCHMITT 2006) embarked upon by European conquerors, which generates a new structure of power between the white settlers and the indigenous people as natives and settlers (WOLFE 2016). Conquest in the form of land appropriation (SCHMITT 2006) inaugurates the antagonism between the native and settler, which typifies settler colonies (WOLFE 2016). The structure of asymmetrical power, in our view, takes the slave-master form (MAGUBANE 2001) in the Hegelian sense. The 'white strangers' (KUNENE 2017), as a conquering nation,

regard themselves as a master race, while classifying the indigenous people as merely a collection of inferior subhuman tribes which will minister to its needs as slaves. In other words, white settlers define themselves as the master-race and the indigenous people as mere 'hewers of wood and drawers of water' (MAGUBANE 2001). This master-slave definition is concretised through a social formation called South Africa. We designate this new structure of power 'the Originary binary' (a binary that is at the very origin of conquest/originated by conquest).

This Originary binary consists of the European conqueror and the indigenous people conquered in the unjust wars of colonisation (RAMOSE 2007). This is an 'antagonistic' relation rather than a mere 'conflictual' one. This means that in the overthrowing of the total normative order of white power, the white settlers do not survive (physically and socio-ontologically). In other words, white settlers should be eliminated *en masse* from Azania if South Africa is to become Azania (i.e., the land of the blacks just like Kemet). This is how the Azanians can successfully effect a 'regime change of settler colonialism' (WOLFE 2006). In the case of a mere conflictual relation, there is room for reconciliation, which, however, sustains the structure of white settler colonialism. The illusion of 'post-apartheid South Africa' (especially the absurd fantasy of 'the rainbow-nation' consisting of both the white settlers and the indigenous people conquered in unjust wars of white settler colonialism since 1652) is a case in point in this regard. An antagonistic relation on the other hand is premised on the revolurionary idea of 'one settler, one bullet' thus only the native survives the violent process of decolonisation (FANON 2011).

The conquered indigenous people are still victims of the historic injustice of land dispossession, mainly due to the so-called 'negotiations' between the white settler elite and the black elite (TRREBLANCHE 2012 SPARKS 1994; ESTERHYSE 2012). The process of ending an antagonistic relation is a revolution, while in the case of a conflictual relation, we usually have the option of transformation premised on reconciliation, *ala* Desmond Tutu. Tutu presided over the 'reconciliation' (Truth and Reconciliation Commission) between the indigenous people and the white settlers without the resolution of the question of historic justice. The so-called 'negotiated revolution', a contradiction in terms, captures this option of transformation for the benefit of the 'negotiating' white settler elite and black elite at the expense of the ordinary conquered indigenous people. This results in an 'elite transition' (BOND 2000).

The Originary binary generates a new white settler colonial social formation. The European conqueror and the indigenous people conquered in the unjust wars of colonisation (RAMOSE 2005) are the fundamental two antagonistic components of this new white settler colonial formation. Other components which emanate from this Originary binary are of secondary significance. For instance, the Indians (who should also be eliminated *en masse* from Azania) are mere junior partners in the white settler formation, while the Coloureds are an epiphenomenon of this Originary binary. All anti-African Coloureds should be expelled from Azania. This postulation is borne out by the 1983 Tricameral system, which favoured the white settlers who structurally positioned themselves at the top, followed by Coloureds and Indians in terms of the racist age-old idea of the Great Chain of Being (ANI 1994; ROBINSON 2000). This Tricameral system

concretised what is called the political ontology of white supremacy (MILLS 2015). This is the structuration and valuation of beings and lives, in terms of the needs and interests of the white race as well as the imperatives and dictates of white supremacy.

This arrangement is a manifestation of the anti-blackness of the world as conceived and created concretely by the white race. The conquered indigenous people were nowhere to be found in this Tricameral arrangement, which was a mere reconfiguration of the total normative order of white power due to the intensification of challenge by the conquered indigenous people against the system of racism/white supremacy (WELSING 1991). In addition to the Originary binary of the European conqueror and the conquered indigenous people, we have what we designate the fundamental 'anthropo-ontological dichotomy' (a division at the level of being human). This division consists mainly of the human and the non-human or the subhuman or 'subpersons' (MILLS 2015). It is our view that this fundamental division preceded both the political founding act of conquest as well as the Originary binary.

This is simply because the yet-to-be-conquered indigenous people were classified as not human, which can be traced to Greek philosophers such as Aristotle (RAMOSE 2002) and the Enlightenment philosophers such as Immanuel Kant and David Hume (MILLS 2015). This racism/ white supremacy was used to legitimise conquest, which was regarded by the 'white strangers' (KUNENE 2017) as a 'civilising act'. This also took the form of the exclusion of Africans from the Aristotelian definition of the human as 'man is a rational animal' (RAMOSE 2002). This Eurocentric definition of what it means to be human or a person ignores the notion of personhood in African philosophy. This is how Molefe (2020,196) captures the notion of personhood:

> Scholars of the discourse of personhood in African philosophy usually point to the ambiguity and confusion surrounding this term in the literature (see WIREDU 1996; OYOWE 2014; IKUENOBE 2016; MOLEFE 2019a). Kwasi Wiredu identifies two distinct concepts of personhood: the ontological and normative (1996; 2009). The ontological notion refers to the fact of being human or the idea of human nature. At a philosophical level, this idea involves a search for an account of what constitutes human nature – is it entirely material or a combination of the material and spiritual components (GYEKYE 1995; KAPHAGWANI 2004; IKUENOBE 2016). The normative concept of personhood involves grading a human life in terms of excellence or virtue, relative to the quality of the moral agent's performance (MENKITI 1984; GYEKYE 1992; WIREDU 1992).

It is important to bear in mind that by 1652, the debate about the humanity of those on the other side of "the amity lines" (RAMOSE 2002; SCHMITT 2006) was already underway between Las Casas and Sepulveda. This is in terms of the doctrine of Discovery (MILLER 2011) and the issuing of papal bulls rationalising the conquest and enslavement of people outside of Christian Europe, such as *Romanus Pontifex* (RAMOSE 2018). Conquest as a "civilising act" was also regarded as a humanising act. This is because Europeans regarded themselves as

having the Whiteman's burden to bring the 'subhuman' indigenous people into the realm of the human, at least at the material level (e.g., industrialisation/development). Thus, almost everything which resulted from conquest was deemed to have some kind of civilising influence. It is important in this regard to note that conquest is a condition of possibility for the white settler political economy and its class formation. This is how 'racial capitalism' (ROBINSON 2000, 26) was introduced into Azania. In other words, racial capitalism as part and parcel of the *nomos* of white settler colonialism was introduced through land-appropriation (SCHMITT 2006). This means that the members of the conquered indigenous 'nation become 'workers' as a result of conquest. The conquered indigenous people lost control of their 'means of production' (CABRAL 1973). The inhabitation of the class category of a worker is due to land dispossession, which results in the loss of ownership and the control of the means of production. The introduction through coercion of the conquered indigenous people into the white settlers' racial capitalist mode of production was regarded by these white settlers as a 'civilising act'. This is despite the dehumanising and barbaric violence behind the origin and introduction of employment by white settlers. The migrant labour system destroyed the African family and dehumanised the conquered indigenous people through the destruction of their culture, such as the transformation of their notion of time into "kafir time" (ATKINS 1988, 230–232) and the erosion of their spirituality.

The fundamental anthropo-ontological dichotomy served as a rationale for conquest as well as a legitimation of the *nomos* of white settler colonialism, which stems from this political founding act of conquest. Since the conquered indigenous people are regarded as not human, the white strangers (KUNENE 2017) could simply dispossess them of their land and, for apparent reasons of power, refuse to return it to them as the rightful owners by ancestral right since time immemorial (RAMOSE 2006). In justification of the *nomos* of white settler colonialism, the white settlers pose absurd questions such as, why return a precious God-given resource to 'people' without reason (thus not human) when we know that they will simply waste it? According to the white settlers, since the conquered indigenous people are defined as not human and lazy, they will not know how to farm, and thus they need the former to own the land and employ conquered indigenous people, as has been the case since the conquest.

It is important to bear in mind that many of the white settlers who are called farmers are not farmers but farm owners due to land appropriation and land division (SCHMITT 2006). And that the real farmers with farming skills are the conquered indigenous nation (whose ancestors invented farming on the continent of Africa), who through a violent process of employment due to conquest are classified as farmworkers. They are farmworkers who work the land of their living-dead/ancestors appropriated (SCHMITT 2006) from them by the white settlers who now employ them. As Wandile and Kirsten (2025) state it "The facts presented here should allow a more nuanced interpretation of South Africa's farm structure. Firstly, there are more black farmers in South Africa than white farmers". The conquered indigenous people know that these racist absurdities are mere tools of a psychological warfare which these white settlers wage, in order to try and imprison their minds in a reality that is defined by these European

conquerors. In other words, these statements are not accurate descriptions of the conquered indigenous people but are mere ideological rationalisation of the total normative order of white power. Thus, the conquered indigenous nation has to reject this white settler definition of reality as 'imagined and instituted' (CASTORIADIS 1987) by the white settlers. The process of rejecting this white settler reality will eventuate in the negation of what Amos Wilson (1993) designates 'the falsification of African consciousness'. This white power to define is what validates and sustains the *nomos* of white settler colonialism. This, in other words, is part of the epistemicidal dimension of the *nomos* of white settler colonialism.

New ownership patterns of the means of production, the violent introduction of employment, and the concomitant legal and cultural ramifications are some of the aspects of the total normative order of white power. Their condition of possibility is land appropriation (SCHMITT 2006), and they are coterminous with land division (SCHMITT 2006). Thus, the *nomos* of white settler colonialism consists of a violent process of re-ordering and re-arrangement of the conquered indigenous people's territory and way of life in its totality. The creation of a 'frontier' which serves as a demarcation point of the land that now belongs to the European conqueror and that which still belongs to the conquered indigenous people is a process of spatial re-ordering (SCHMITT 2006) which consolidates the *nomos* of white settler colonialism. As Schmitt (2006, 52) states it "*Nomos* is the *measure* by which the land in a particular order is divided and situated; it is also the form of the political, social and religious order determined by this process". Schmitt (2006, 54) further states that "an original, constitutive act of spatial ordering. This original act of *nomos*. All subsequent developments are either results of or expansions on this act…."

This white settler territorial re-ordering accounts for the new patterns of ownership skewed in favour of the white settlers and their successors in title to conquest since 1652 (RAMOSE 2007). This spatial ordering is preceded by conquest in the form of land dispossession, since you can only divide and allocate that which you possess and control. The creation of 'the frontier', and its free burghers, slavery, British colonies, and the Boer Republics is the historical manifestation of the process of spatial re-ordering as a result of conquest as a political founding act of the *nomos* of white settler colonialism. The establishment of the Union of South Africa in 1910 (MAGUBANE 1996) and the concomitant invention by the white settlers of the so-called Native reserves and Bantustans (MAGUBANE 1979) is a process of land division (SCHMITT 2006) in accordance with the interests and needs of the white settlers. Due to the demands of the European conqueror's racial capitalist mode of production, the division between the rural and urban emerged with its brutal and humiliating influx control legislative framework used to regulate the movement of the conquered indigenous people.

The Glen Grey Act of 1894, the 1913 Land Act and the Group Areas Act of 1950 (MAGUBANE 1979) were legal instruments of legislative legitimation of land division (SCHMITT 2006) in accordance with demands and interests of the white settlers. Cecil John Rhodes, the then Prime Minister of the Cape Colony in South Africa, created the bill (Glen Grey Act of 1894) to create a land shortage for

Africans. The Act denied the local chiefs and Africans the power to influence government policy, thereby limiting their decision-making to local matters. Of course, this logic is in accordance with European imperialism as it formally manifested itself during the 1884-85 Berlin conference, when, without consultation, the European imperialists divided among themselves the continent of our ancestors. This also resulted in the creation of the so-called Protectorates or High Commission Territories, such as Botswana and Lesotho. This process of spatial re-ordering took place after the destruction of African empires (MAGUBANE 1979).

This spatial re-ordering (SCHMITT 2006) is accompanied by an epistemological re-ordering which takes the form of epistemicide (DE SOUSA SANTOS 2018). Epistemicide, simply explained, is an attempt by the European conqueror to obliterate or distort the culture and knowledge system of the indigenous people and to replace these with the new reality as defined by and in the image of the European conqueror. In other words, the *nomos* of white settler colonialism at the epistemological level consists of the European conqueror defining a new reality in which he is a superior human being, and the conquered indigenous people are correlatively categorised as his inferior counterpart. Thus, epistemicide commences fundamentally with the ontological and anthropological degradation of the indigenous people by doubting their humanity (RAMOSE 2002). By doubting their humanity, one can then doubt everything that they create, including their culture, law, and knowledge, but then one also doubts the latter because one doubts the former. Thus, the dialectic of anthropo-ontocide and epistemicide. At the material level and spatial level, it consists of the Manichean world (FANON 2001). This consists of two realms of existence with different values in accordance with the fundamental anthropo-ontological dichotomy. The lives of the conquered indigenous people in the townships, for instance, which are enveloped by poverty, ignorance and disease follow this racist logic of spatial and epistemological re-ordering which is predicated on the fundamental anthropo-ontological dichotomy of the human and the not human. The spatial ordering (Schmitt 2006) follows the racist logic of "Abyssal thinking" (DE SOUSA SANTOS 2018,45).

Thus, it is not only at the epistemological level (the level of ideas) that the conquered indigenous people in this new reality are defined and regarded as not human by the European conqueror, but most importantly, they are made to live as such (as not human). In other words, the conquered indigenous people are not merely defined as not human, but there is a social structure and reality created by these white strangers (KUNENE 2017) which corresponds to and affirms this racist definition. The *nomos* of white settler colonialism, or the total normative order of white power, consists of both epistemological and material power as explained above. The paper has thus far provided an analysis of the material nature of the *nomos* of white settler colonialism. We now turn to expand on the epistemicidal nature of the *nomos* of white settler colonialism. This will focus on the imposition of the legal epistemological paradigm of the European conqueror as the second aspect of the *nomos,* namely, land division.

The legal consolidation of the *nomos* of white settler colonialism in 'South Africa'

"Land-appropriation also precedes the distinction between private and public law, in general it creates the conditions for this distinction" (SCHMITT 2006, 46). The previous section has provided an analysis of the political act which founds the *nomos* of white settler colonialism in the form of land dispossession. It is in this sense that the section provided the material foundation of the *nomos* of white settler colonialism since 1652. One of the main points this paper underscores is that the political act preceded the legal act. Thus, the *nomos* comprises both the material and the epistemological aspects. This section seeks to further analyse the epistemological aspect of the *nomos* by focusing on the imposition of the law of the European conqueror 'in the wake' (SHARPE 2016) of the political act of land dispossession. This section focuses mainly on the legal aspect of the *nomos* of white settler colonialism as the epistemicidal aspect of conquest since 1652. Having explicated conquest as the political founding act of this *nomos* of white settler colonialism, it is logical that we expand on its legal aspect. As Schmitt (2006, 47) puts it: "Land-appropriation (read here as conquest in the form of land dispossession) thus is the archetype of a constitutive legal process externally and internally (for the ordering of land and property within a country)". A critique of the law of the European conqueror as an element of the total normative order of white power will be foregrounded in this last section of the paper. By far the most fundamental legal aspect of this total normative order is the constitutional framework, whose condition of possibility is conquest since 1652 in the unjust wars of colonisation (RAMOSE 2007).

As Schmitt (2006, 49) states: "For this reason, we will begin with land-appropriation as the primaeval act in founding law. All subsequent law and everything promulgated and enacted thereafter as decrees and commands are nourished, to use Heraclius' word, by this source". Even though we will not discuss in detail this white settler constitutional framework, it is important to deal with it briefly as a fundamental aspect of the law of the European conqueror. This is because the main legal focus of this section is the Constitution of the Republic of South Africa of 1996 (hereinafter the Constitution of 1996) and its relation to the issue of conquest in the form of land appropriation (SCHMITT 2006). The main focus will be on the current constitution of South Africa as the highest culmination and consummation of white settler colonial constitutionalism since its formal inauguration in the Cape in 1853, following land appropriation (SCHMITT 2006). While the main argument is that the constitution of 1996 is premised on the epistemological paradigm of the European conqueror in the form of Roman-Dutch law and common law at the expense of African law, the two sections of this constitution which reinforce land-appropriation and land division are sections 25 and 235.

In this section, we want to foreground the law of the European conqueror, which was introduced through white supremacy as a system of white domination since 1652. In the first section, we postulated that conquest in the form of land dispossession inaugurates a new total normative order of white power. Conquest is a political founding act which constitutes the asymmetrical power structure

between the European conquering nation and the indigenous nation. The legal aspect of this new total normative order of white power can be traced as far back as the time of the beginning of white settler colonialism through the so-called journeys of discovery (MILLER 2009). This is how Miller and DeAngelis (2011, 9) trace the papal origin of the doctrine of Discovery: "The Doctrine is one of the earliest examples of international law, that is, the accepted legal norms and principles that control the conduct of states versus other states. Discovery was specifically developed to control European actions and conflicts regarding exploration, trade, and colonisation of non-European countries, and was used to justify the domination of non-Christian, non-European peoples". The International law doctrines, such as *terra nullius* (WILLIAMS 1992), were used to rationalise the political founding act of conquest in the form of land dispossession. It was on the premise of *terra nullius*, which implies an empty land, that the European conqueror embarked on a crusade of conquest as part of the internationalisation of colonialism in the form of the doctrine of Discovery premised on *Romanus Pontifex* (MILLER 2011). Of course, the introduction of the white strangers' legal framework reflected the spatial re-ordering which followed conquest. That the white strangers' legal framework was reflective of the process of spatial re-ordering is borne out by the introduction of the franchise (the right to vote) in 1853 in the Cape colony which did not exist in other parts of South Africa. This was during the time when white settler colonialism was still fragmented. White settler colonialism was mainly consolidated during the 1900s, mainly after the so-called Anglo-Boer War.

The Peace Treaty of Vereeniging of 1902 (MAGUBANE 1979; 1996) marks that watershed point when white settler power reconfigures and consolidates itself to deal, in a unified manner, with the so-called native question. White supremacists such as Lord Milner and Jan Smuts were the architects of this stage of consolidated white power under unified white settler nationalism. There are Acts which were introduced before the Union Act of 1909 in South Africa as part and parcel of the white strangers' legal framework. This entire legal framework was part and parcel of the new total normative order of white power. This white strangers' legal framework, as an aspect of the *nomos* of white settler colonialism, consists of the values, interests, consciousness, culture, and philosophy of the white strangers (KUNENE 2017).

These Acts include but are not confined to the Land Act of 1913, the Urban Areas Act of 1923, the Native Trust and Land Act of 1936, the Group Areas Act of 1950 and the Bantu Authorities Act of 1951. These Acts, as pillars of the white strangers' legal framework, concerned themselves mainly with consolidating the process of spatial re-ordering, and to legally legitimate and sustain land appropriation and land division (SCHMITT 2006). These numerous Acts were the pillars of the new white settler colonial legal framework. They are comprehensive enough as they cover the stage of white settler colonialism, when under British Liberal Imperialism, it was called segregation, which was reconfigured later under the Afrikaner Nationalists to be Apartheid. In other words, British Liberal Imperialism in South Africa laid down the foundation for Apartheid; the Afrikaner nationalists merely improved and strengthened what was already there.

Because of the demands and exigencies of white domination, this white strangers' legal framework was used, and it is still used to degrade, distort, and destroy, where possible, the law of the conquered indigenous people in the form of the so-called Customary law (RAMOSE 2006). This eventuated in a legal antagonism between the law of the European conqueror and the law of the conquered indigenous people which followed the logic of the Originary binary (this legal antagonism should end with the law of the conquered indigenous people becoming the supreme law of the land, i.e., Azania, after the triumph of the struggle for national liberation). It is crucial to emphasise that the condition of possibility for Customary law is conquest in the form of land dispossession, as the supreme law of indigenous peoples is deeply tied to the land (Jaffe 1952).

The legal epistemological paradigm of the European conqueror (RAMOSE 2018) was premised, and it still is, on the fundamental anthropo-ontological dichotomy of the human and the non-human as already defined above. Thus, in terms of the logic of the *nomos* of white settler colonialism, the law of the European conqueror is regarded as superior because the European conqueror is a superior human being as per his self-definition and self-image (ANI 1994). Since the conquered indigenous people are regarded as inferior and not human, their law is deemed to be inferior, thus subject to degradation, distortion, and destruction. It is important to bear in mind that the so-called constitution of South Africa states that it is the supreme law of the land and that indigenous law ("customary law") which was the supreme law of the law prior to conquest (KUNENE 2017), is subject to it, and can be declared as invalid if it does not comply with this constitution in terms of the opportunistic principle of constitutional supremacy introduced only in 1994 (RAMOSE 2005) when indigenous people were allowed to join parliament. As Ramose (2024, 21) states it:

> There is no contradiction or necessary conflict between democracy and the absence of constitutional supremacy, as the British constitutional history shows. The option for constitutional supremacy is politically questionable because of its aversion to parliamentary sovereignty based on the principle of popular sovereignty. The voice of the people is no longer the voice of "God," as the theologisation of the constitution of conqueror South Africa would like us to believe. Having identified implicitly or explicitly the Christian "God" as the *locus theologicus* of the deification of the constitution, it is common—even in the case of Smuts—to write the word constitution with the capital letter "C".

The subjection of indigenous peoples to the law of the European conqueror has a long history, dating back to the conquest in 1652, which was part of the unjust wars of colonisation (RAMOSE 2007). It is also important to understand that the constitution of 1996 follows the logic of the white strangers' legal framework. Its values, spirit and philosophy are based on the tradition of the white strangers or the "Pumpkin Race" (KUNENE 2017, 217). It is nonetheless imposed on the conquered indigenous people as if it is to their benefit to follow and comply with it when the opposite is the truth.

This is because the constitution of 1996 rationalises the right of conquest (KORMAN 1996) and sustains the historic injustice of conquest by imposing the epistemological paradigm of the European conqueror on the conquered indigenous people, to the exclusion of *Ubu-ntu* as the foundation of the law and philosophy of the indigenous people (RAMOSE 1999). This constitution also in sections 25 legitimates conquest in the form of land appropriation (SCHMITT 2006) by way of regarding as a fundamental right, the right to private property without addressing the fundamental question of historic justice, namely just how did the successors in title to conquest since 1652, (the current white settlers) came to own property in South Africa? This is how section 25 reads:' 25. Property. -(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. Section 235 of the constitution of 1996 legitimates land division (SCHMITT 2006) by endowing Group rights and cultural self-determination to the white settlers who can now create exclusive white settler communities such as Orania. The constitution of 1996 is premised on the epistemological paradigm of the European conqueror which subjugates the law of the conquered indigenous people to its norms and values. Koyana (1997, 126) explains that, in terms of the 'Repugnancy clause', the law of the conquered indigenous people was to be regarded by the European conqueror as valid on condition that it is not in conflict with the European conqueror's notion of natural justice, etc.

Conquest and constitutionalism are inextricably interwoven in South Africa (MODIRI 2018). The current constitution is the most sophisticated expression of the *nomos* of white settler colonialism and cannot at the same time serve as a frame of reference for the restoration of sovereign title to territory to its rightful owners since time immemorial, namely the conquered indigenous people (RAMOSE 2005). Since land appropriation (SCHMITT 2006) preceded white settler constitutionalism that traces its formal inception to 1853 in the Cape colony, the restoration of sovereign title to territory to the conquered indigenous people should take place outside the current constitution. This means that the conquered indigenous people must wage a war of national liberation to restore their sovereign title to the territory. It is in this sense that the primary target of this revolutionary war is white settlers as opposed to their law. As Ramose (2024, 17) states:

> When Britain conceded republican status to conqueror South Africa, she condoned the expropriation of land by unjustified use of force. This concession prevailed despite the already circulating strong rumour of a declaration asserting that "South Africa belongs to all who live in it, Black and White." From the perspective of *ubuntu*, *Molato ga o bole* (Sesotho), *Ondjo kai uoro* (Herero), *Mhosva haiori hairovi* (Shona) and *Ityala ali boli* (IsiXhosa), accordingly, the Western legal principle of prescription is unknown and untenable in ubu-ntu African law. Thus, *Izwe lethu*! (the land is ours) is the ethical demand for the restoration of unencumbered, wholesome title to territory to its original owners from time immemorial. This is one unfinished business of the liberation struggle.

A *chimurenga* (RAMOSE 2002) is the only option available for the restoration of post-conquest Azanian civilisation. By *chimurenga*, we imply a series of wars of liberation waged in Rhodesia by indigenous people to bring about a liberated and sovereign Zimbabwe in the 1980s. The Azanian liberation movement in South Africa waged wars of liberation, spearheaded by Poqo and APLA, between the 1960s and 1993 in the quest to bring about a liberated and sovereign Azania. These wars of liberation were suspended due to the constitutional settlement agreed to by the ANC between 1993 and 1996 based on the legal epistemological paradigm of the European conqueror (RAMOSE 2024). However, this constitutional arrangement reinforces white supremacy and white settler colonialism by introducing section 25 as discussed above, the principle of constitutional supremacy and the constitutional court to protect the private property rights of white settlers who inherit the land from land dispossession as successors-in-title-to-conquest in unjust wars of colonisation since 1652 (RAMOSE 2018). The land has not been restored to the indigenous people since, and due to this constitutional settlement. It is in this sense that conquered indigenous people in contemporary South Africa, which remains a white settler colony, should resume the wars of liberation which were suspended in 1993 to make way for the current constitutional framework. As the analysis of this paper demonstrates, the land was dispossessed by white settlers in 1652 through wars of conquest, and thus can be restored through wars of reconquest by the conquered indigenous people.

These wars of reconquest by indigenous people commenced as soon as white settlers waged wars of conquest in 1652 until 1993 with Poqo and APLA. So, contemporary indigenous people in South Africa merely need to carry on the revolutionary tradition of their ancestors. The current constitution is only a legal 'institution' (CASTORIADIS 1987) which stems from the *nomos* of white settler colonialism and is devised to sustain this *nomos* just like all of its predecessors such as the Cape 1853 constitution, the Boer Republic's constitutions, the Union Act of South Africa of 1909, the 1961 Republican constitution, the Tricameral constitution of 1983 and the Interim constitution of 1993. The constitution of 1996 cannot be expected by the conquered indigenous people to negate the *nomos* as its function is a conservative one (to legitimate and maintain conquest) and not a revolutionary one. The *nomos* of white settler colonialism was founded on a series of wars of conquest and settlement, and thus can only be negated through a revolutionary war of land restoration by the conquered indigenous people. Only a *chimurenga* can negate the *nomos* of white settler colonialism. This will take the form of a physical war of liberation to restore the land as a process of violent decolonisation (FANON 2001). For as Schmitt (2006,78) states it "As long as world history remains open and fluid, as long as conditions are not fixed and ossified, in other words, as long as human beings and peoples have not only a past but also a future, a new *nomos* will arise in the perpetually new manifestation of world-historical events".

There are three possible objections to my revolutionary prescription of the resumption of the war of liberation, which was suspended in 1993 due to the constitutional settlement between the civilised natives in the ANC and the white

settlers in the Nationalist Party. The first one is that indigenous people should use their voting power to restore the land. The problem is that indigenous people have voted the ANC into governance for the last thirty years, and it has done nothing but protect the interests of white settlers by refusing to restore the land to its rightful owners. The infamous example of President Thabo Mbeki, who had two-thirds majority but refused to restore the land, is a case in point. The second objection is that South Africa is a democratic society, so political parties, as opposed to liberation movements, are important. The obvious rebuttal is that the entire legal and political epistemological system is European and that wealthy white settlers fund all political parties created by indigenous people. The last objection is that violence cannot solve problems in South Africa, given its history of violence, and that the constitution and rule of law should be relied on. But the problem is that the entire constitutional framework of 1996 is not based on the culture and law of the indigenous people. It is based on the epistemological paradigm of European conquerors and their current successors-in-title-to conquest. It excludes the philo-praxis of *ubuntu* and claims to be supreme to indigenous law/*molao*. As Audre Lorde once stated, the master's tools cannot be used to dismantle the master's house. Furthermore, Fanon once stated that colonisation is a violent process, which can be negated by a counter-violent process of decolonisation.

Conclusion

This paper has critically explored white settler colonialism through the lens of the notion of the *nomos* as formulated by Carl Schmitt. In so doing, this paper has posited that the *nomos* of white settler colonialism in South Africa was founded on conquest since 1652 in the form of land appropriation in a series of unjust wars of colonisation and settlement by the European conquerors. This *nomos* was then consolidated through epistemicide in the form of the imposition of the law of the European conqueror at the expense of the law of the conquered indigenous people. This paper has further argued that land division following land appropriation was a further consolidation of the *nomos* of white settler colonialism.

This land division was configured through a juridical process that took the fundamental form of white settler constitutionalism from 1853 to the present, culminating in the final constitution of 1996. This is at the diagnostic and descriptive level. At the prescriptive level, this paper argued that since land appropriation (political act) as the foundation of the *nomos* of white settler colonialism preceded the inception of white settler constitutionalism (legal act), the negation of this nomos should take place outside the current constitution, which is the highest culmination of white settler constitutionalism. Premised on the concept of the *nomos*, one of the findings of this paper is that the political act of land appropriation preceded land division, legitimised through the imposition of the law. It is this sense that another finding is that the race war of conquest was the political act which preceded the imposition of the constitutional framework from 1853. One of the recommendations of this paper is the serious study of land dispossession outside the constitutional framework. The current debate about the land question is sterile and misguided, as it is legalistic. Another recommendation is that since their land was taken through the political act of the war of conquest, the conquered indigenous people must take seriously the idea of restoring their

land through a political act of war of reconquest. *Only* a *chimurenga* was advanced as the revolutionary option to negate the *nomos* of white settler colonialism and its South Africa and usher in an era of post-conquest Kemetic or Azanian civilisation.

Declaration

*The author declares no conflict of interest or ethical issues for this work.

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