# SOCIAL JUSTICE AND COVID-19 IN THE 'NEW' SOUTH AFRICA: INVOKING RAMOSEAN MEDITATIONS IN PANDEMIC TIMES

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## Abstract

*In this contributory essay to the 2021 Special Section of the PSLR spotlighting 'Social Justice and COVID-19', I attempt to challenge portrayals of the novel coronavirus (COVID-19) as an 'indiscriminate' and 'equal opportunity' assailant. In doing so, I endeavour to bring to the fore a reading of social injustices experienced during the ongoing COVID-19 pandemic that implicates not only systemic disadvantages inherited from apartheid but also the legacies of unjust colonial conquest. By underscoring memory as the possibility condition for restorative social justice within a progressively unjust South Africa, I draw on philosopher Mogobe Ramose's counter-discourse meditations problematising the pervasiveness of colonial-apartheid conquest in a post-1994 liberal democratic polity. Accordingly, I align myself with perspectives that consider substantive social justice in a stratified 'new' South Africa to be a decolonial justice carved out by an African experience and memory, with the restoration of unjustly dispossessed land as a possibility condition for social cohesion.*

# 1    Introduction

The more than three centuries long history of subjugation, exploitation and oppression in the exercise of the questionable 'right of conquest' cannot be erased from the memory of the conquered peoples merely by the prospect of a new constitutional dispensation intent upon the obliteration of such a memory. The memory cannot be buried because the conquered peoples philosophy of law upholds the principle that molato ga o bole. This means that the passage of time does not cancel an injustice nor does it change it into justice. An injustice may not be buried.[1]

It would seem as if President Cyril Ramaphosa's repeated appeals to the nation to foster a human solidarity that transcends all societal differences in the face of unprecedented, ambivalent and uncertain times of unsurmountable loss and precarity brought on by the global coronavirus (COVID-19) pandemic were only directed to those who find themselves in the *zone of being*, seeing as such petitions for unification and cohesion subjected those who already found themselves condemned and confined to the *zone of non-being* to even greater encounters with violence and vulnerability.[2]

This contribution then aligns itself with an emerging body of real-time scholarship that paints the pandemic as a catalyst for the aggravation of persisting historical social inequalities and injustices founded on *white supremacist capitalist patriarchal* domination and ontological devaluation.[3] In doing so, I borrow from thinkers who consider substantive justice a precursor to social cohesion, and are

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1   MB Ramose 'Reconciliation and reconfiliation in South Africa' (2012) 5 *Journal on African Philosophy* at 23.
2   F Fanon *Black Skin, White Masks* trans CL Markham (1952) at 2. See also B de Sousa Santos 'Beyond abyssal thinking: From global lines to ecologies of knowledges (2007) 30 *Review*; T Madlingozi 'Social justice in a time of neo-apartheid constitutionalism: Critique the anti-black economy of recognition, incorporation and distribution' (2017) 1 *Stellenbosch Law Review* at 124; I Yousuf 'Burdened by a Beast: A brief consideration of social death in South African universities' (2019) 1 *Journal of Decolonising Disciplines*. Madlingozi explains that 'the historically colonised worlds' could be divided 'into a "zone of beings" and a "zone of non-beings" with dwellers of the latter zone being regarded as not-yet beings'. The conquerors and beneficiaries of conquest in the zone of beings *doubt* the humanity of the conquered peoples in the zone of non-being. See N Dladla *Here is a table: a philosophical essay on the history of race in South Africa* (2020) at 104; and MB Ramose *African philosophy through ubuntu* (1999) at 29.
3   See b hooks *Black Looks: Race and representation* (1992) at 22. I would be remiss if I did not, at this point, briefly include a necessary caveat: the particularity of the oppressive existential and experiential situation of the gendered person or male antithesis subjugated through conquest cannot be overstated. As Oyèrónké Oyěwùmí points out: 'Colonization, besides being a racist process, was also a process by which male hegemony was instituted and legitimized in African societies. Its ultimate manifestation was the patriarchal state', thereby producing what bell hooks describes as a 'social hierarchy based on race and sex that ranked white men first, white women second, though sometimes equal to black men, who are ranked third, and black women last'. Although a thorough interrogation of the gender-based injuries inflicted by the patriarchal powers

therefore unsympathetic to pleas from the powerful elite that put the horse before the cart by encouraging the inverse. Accordingly, the axiological foundations for the claims put forward here affirm the principle articulated by philosopher Mogobe B. Ramose in the epigraph above: '… the passage of time does not cancel an injustice, nor does it change it into justice. An injustice may not be buried'.[4]

By investigating and ascribing to the philosophical insights and arguments conceptualised and developed by Ramose and his intellectual associates and supporters, the contribution foregrounds the African experience rooted in Azanian thought.[5] These thinkers question the ethics advanced by the protagonists of 'multiracialism' for their ironical reification and legitimisation of different 'races' within a supposedly *de*-racialised context,[6] as opposed to the Azanian school's devotion to the oneness of a single, but *pluriversal*,[7] human race. The current contribution is an attempt to make sense of what 'social justice' in the times of COVID-19 entails — or *should* entail — within a specific geographical context, being that of Africa; *home* to an African majority, with axiological and ontological relationships, foundations, and values that contest the proclaimed dogmatic universality and imposition of Western experiences and belief. On this view, it then naturally follows that COVID-19 related injustices within

demands special attention, regrettably, such an examination is beyond the scope of this contribution. It must further be noted that despite Ramose and his affiliates' attentiveness and sensitivity to the gender-dimensions of conquest and the special plight of the conquered women/gendered Other, I acknowledge the uncomfortable overrepresentation of the male perspective in this contribution, inspiring the need, and thereby, inviting cause, for future critical consideration. See O Ọyěwùmí *The invention of women: Making an African sense of Western gender discourses* (1997) at 156; and b hooks *Ain't I a women: Black women and feminism* (1981) at 78.

4    Ramose (n 1) 23. See also JM Modiri 'Conquest and constitutionalism: first thoughts on an alternative jurisprudence' (2018) *South African Journal on Human Rights* at 15; Madlingozi (n 2) 142.

5    See M Ramose 'To whom does the land belong?: Mogobe Bernard Ramose talks to Derek Hook' (2016) 50 *Psychology in Society*; Dladla (n 2) 117-140; T Delport '*Asazi ukuthi iyozala nkomoni*: Robert Mangaliso Sobukwe's historical imagination of the future' (2016) 50 *Psychology in Society*; and Madlingozi (n 2). 'Azania' is the preferred name for the yet-to-be decolonised territory currently known as South Africa, as endorsed by the Pan-Africanist tradition and Black Consciousness Movement; as pioneered by influential emancipatory thinkers such as Anton Muziwakhe Lembede, Robert Mangaliso Sobukwe, and Steve Bantu Biko, amongst many others. Here, we further note the denomination 'Africa' to be worthy of contestation, which Ramose problematises for being a name bestowed upon the territory unethically and unjustly seized from the indigenous conquered peoples, with such an appellation amounting to a baptismal name given to the territories by its imperial and colonial rulers. See also MB Ramose 'I doubt, therefore African philosophy exists' (2003) 22 *South African Journal of Philosophy*; Ramose (n 2) 4; AA Mazrui 'Where is Africa? The Universe According to Europe' 1986 https://www.artsrn.ualberta.ca/amcdouga/Hist247/winter_2014/readings/where_is_africa.html (accessed 18 March 2021).

6    See Dladla (n 2) 117-140.

7    Ramose (n 2) 4; SJ Ndlovu-Gatsheni 'Geopolitics of power and knowledges in the COVID-19 pandemic: Decolonial reflections on a global crisis' (2020) 36 *SAGE Publications* at 378 & 383.

the South African context cannot be remedied without a thorough espousal of 'black radical and Africanist imaginaries and vocabularies'.[8]

This essay is divided into three temporal parts: the present, the past, and the future. The logic behind this division is premised on the belief that injustices of the present can be explained by examining our past, which then, in turn, enables us to work towards an improved and just future. Or to borrow Ramose's more eloquent expression — as I shall do frequently throughout this contribution — 'My starting point is that the present is the child of the past and the present in turn is the parent of the future'.[9] In the first part, I challenge the fallacious neo-liberal depiction of COVID-19 as the 'great equaliser' for its supposedly indiscriminate disregard of all conceivable societal binaries and categories for how it has affected and halted the lives of humanity at large. In this part, I attempt to illustrate that the pandemic and the attendant lockdown regulations produced inegalitarian realities in South Africans depending on which side of the 'colour bar'[10] and its appendaged class structure they found themselves within a white supremacist settler-colonial social locale ruled by economic fundamentalist values.[11] To this end, I consider some findings reported by the latest unemployment statistics;[12] contextualising precarity in times of crisis as continuities of pre-1994 systemic disadvantages that persist almost three decades after the 'dawn of democracy'.[13] Having considered our reality at present, the next part argues that the injustices exposed and (re)produced by the state's handling of the COVID-19 pandemic can only be remedied, and justice can only be restored to the marginalised majority by ascribing to what philosopher Enrique Dussel formulates as a *philosophy and ethics of liberation,* as informed by the non-philosophical lived realities and experiential truths of the oppressed.[14] By interrogating

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8   Modiri (n 4) 6.
9   MB Ramose 'On the contested meaning of "philosophy"' (2015) 34 *South African Journal of Philosophy* at 551.
10  See S Terreblanche *A history of inequality in South Africa 1652-2002* (2002) at 47; J Seekings & N Nattrass *Class, race, and inequality in South Africa* (2005) at 3.
11  See MB Ramose 'Globalization and ubuntu' in PH Coetzee & APJ Roux (eds) *Philosophy from Africa: a text with readings* (2002) at 733. To roughly summarise, an economic fundamentalist society is one in which 'the sovereignty of money has replaced the human being as the primary value'. A capitalist economic structure that exploits people and undersells labour for profits, therefore, ascribes to the dogma of economic fundamentalism.
12  StatsSA 'Quarterly Labour Force Survey Quarter 1: 2021' 01 June 2021 http://www.statssa.gov.za/publications/P0211/P02111stQuarter2021.pdf   (accessed 2 June 2021) (QLFS).
13  Seekings & Nattrass (n 10) 166.
14  E Dussel *Philosophy of Liberation* (1985) at 3; E Dussel *Ethics of Liberation in the age of globalization and exclusion* (2013). See also Ramose (n 1) 36; and MB Ramose 'Philosophy: A particularist interpretation with universal appeal' in

the material conditions of the historically vanquished in the present — 'in light of the past'[15] — a philosophy of liberation demands the eradication of the unethical prevailing order that denies the indigenous conquered people a 'humanity second in quality to none'.[16] This demand adheres to (de)colonisation theorist, Frantz Fanon's call for a decolonial change in the presiding order of the world.[17] In doing so, existing inequalities are framed as persisting colonial-apartheid injustices introduced through unjust and unethical conquest.[18] Although the dehumanising and unethical socio-economic conditions forced onto the materially oppressed and socially excluded in our post-1994 constitutional dispensation are legacies juridically

14  JO Oguejiofor & GI Onah (eds) *African Philosophy and the Hermeneutics of Culture* (2005) at 151-152. In the latter text, Ramose emphasises that it is 'the existential out of which philosophy grows' by drawing on the work of both Dussel and Theophilus Okere.

15  MB Ramose 'A philosophy without memory cannot abolish slavery: On epistemic justice in South Africa' in G Hull (ed) *Debating African Philosophy: Perspectives on identity, decolonial ethics and comparative philosophy* (2019) at 64.
See Dladla (n 2) 6; Ramose (n 2) 4. I refer to 'indigenous conquered people and 'conquered peoples' in line with the Ramosean formulation of conquest and the resulting dispossessed title of territorial sovereignty in South Africa. Ramose distinguishes between the 'indigenous conquered peoples of South Africa' and the 'conquered peoples of South Africa' on historical grounds, the latter to include the Indian and Coloured communities who also succumbed to the white supremacist subjugation and abuse of colonial-apartheid forces introduced through unjust conquest to South Africa, albeit to varying degrees, and it is by reason of the shared title of 'human being' that they share an interest in 'natural historical justice'. I mirror Ramose's use throughout this contribution. For a brief elaboration on the logic that informs this distinction, see MB Ramose 'In memoriam: sovereignty and the "New" South Africa' (2007) 16 *Griffith Law Review* at 320-321.

16  [no text]

17  F Fanon *The wretched of the earth* trans R Philcox (1961) at 2. See also E Tuck & KW Yang 'Decolonisation is not a metaphor' (2012) 1 *Decolonization: Indigeneity, Education & Society* at 31. I also here note the apprehension among some Azanian thinkers, like Ndumiso Dladla, to readily adopt the term 'decolonial(ity)' as it is used by some Latin American counter-discourse thinkers. 'Decolonisation', as it is used in the present contribution, then understands colonialism to be an enduring injustice experienced by the indigenous conquered people; a social arrangement, and material reality that persists. Although I do rely on the work of theorists (such as Tuck & Yang, and Wolfe) to add to our understanding on the particularities of the settler-situation, the aim remains the foregrounding of the African(ist) experience when determining the *content* of 'decolonisation'. See N Dladla 'The Azanian philosophical tradition today' (2021) 68 *Theoria* at 9-10 for a brief explanation on this stated apprehension to 'decoloniality'. (Furthermore, may it suffice to mention here in brief, that the current contribution was authored prior to the publication of the aforementioned *Special Issue* of *Theoria* exploring Azanian Political Thought, guest-edited by Ndumiso Dladla. The present author considers the *Special Issue* an invaluable and invigorating collection of works with rich and powerful insights that will undoubtedly enhance the reader's understanding of the Azanian Philosophical Tradition at the heart of the current contribution.)

18  I borrow the term 'colonial-apartheid' from Modiri (n 4); Madlingozi (n 2); Dladla (n 2); and S Sibanda 'When do you call time on a compromise? South Africa's discourse on transformation and the future of transformative constitutionalism' (2020) 24 *Law, Democracy & Development*. These authors, relying on Ramosean ideations, deploy this formulation to illustrate the connection and relationship between these two situations or power structures, framing them as one ongoing operation even in the afterlife their formal demise. Ultimately, the use of

institutionalised by the pre-1994 state,[19] it remains pertinent to substantive justice that 'the original injustices of conquest in the unjust wars of colonisation',[20] as well as the subsequent naturalisation of 'settler-colonial usurpation'[21] and the entrenched economic system of racialised liberal capitalism be appropriately implicated if justice is to be achieved during pandemic times. In the final part of this contribution, I return to the unavoidable and bedevilled 'land question' with territory as a site for ethical justice in the 'new' South Africa − the importance of which became more pronounced during the ongoing COVID-19 pandemic in which being safe means to stay *home*. The Ramosean demand for 'the unambiguous restoration of title to territory to the indigenous peoples conquered in the unjust wars of colonisation' is then espoused as the chief mechanism through which people living under conditions of avoidable poverty will be able to disinvest from − and in so doing, destabilise and dismantle − the very systems that ensure their perpetual subordination [22]and subservience.

## 2    The present: Confronting calamity

> And if these things are true, as no one can deny, will it be said, in order to minimize them, that these corpses don't prove anything?[23]

Laster Pirtle and Wright put it crisply: '[t]he pandemic reveals'.[24] What has been visiblised by the enduring COVID-19 pandemic is not only determined by *where* we look, but *how* we look at that which has been revealed to us in this time of crisis. The perspective presented here then challenges the neo-liberal depiction of COVID-19 as an 'equal opportunist viral enemy' and 'great morbid equalizer'.[25] Appeals to the public encouraging social cohesion and uniform compliance with lockdown policies and restrictions aimed at mitigating the calamitic effects of COVID-19 repeatedly emphasise that the virus does not pardon anyone from its physiological and

'colonial-apartheid' serves to capture the systemic and structural nature of white domination that informed and outlived both formal colonial rule and legislated apartheid. It is the values of white supremacy that links and perpetuates these two historical situations, rendering the separation of these systems of domination superfluous.

19   See Terreblanche (n 10); Seekings & Nattrass (n 10).
20   See Ramose (n 16) 310.
21   Modiri (n 4) 4.
22   Ramose (n 16) 327.
23   A Césaire *Discourse on Colonialism* (1972) at 41.
24   WN Laster Pritle & T Wright 'Structural gendered racism revealed in pandemic times: Inter-sectional approaches to understanding race and gender health inequalities in COVID-19' (2021) 35 *Gender & Society* at 169.
25   CC Hodge 'Density and danger: Social distancing as racialised population management' (2021) 8 *Medicine Anthropology Theory* at 3; K Silva 'COVID-19 and the mundane practice of privilege' (2021) 35 Cultural Studies at 241. See also S Maistry 'South Africa's comorbidity: A chronic affliction of intersecting education, economic and health inequalities' (2021) 25 *Education as Change* at 3.

mortal consequences. Of course, the message conveyed through such appeals reverberates the post-1994 liberal portrayal of South Africa as 'non-racial':[26] *the virus does not care if you are black or white — it is blind to 'race' — it kills indiscriminately.*[27]

It may be true, in part, that the virus fails to respect socially constructed spheres of identification once it is contracted,[28] but such representations paint a dubious, distorted, and incomplete picture.[29] Much work has been done on the 'social production of disease' *prior* to COVID-19 to discredit such claims; examining how the hierarchal *white male power structure*[30] devoted to capitalist accumulation produces unequal material conditions and life experiences.[31] Systemic socio-politico factors influence and determine not only *who* is at risk of exposure, infection, and transmission of diseases, but also assigns a lower recovery and higher mortality rate to persons who find themselves at the bottom of the racialised ontological pyramid based on how systems of socio-economic exclusion and repression produce disease — and comorbidities — 'under conditions of capitalism and racial oppression'.[32] Apart from socio-economic and material vulnerability influencing *who gets* sick and *how sick* they get, disease — or the threat thereof — also has the acute tendency to intensify pre-existing socio-political vulnerabilities, rendering disease yet *another* obstacle to be endured by people living in precarity. It is this intensification of oppression brought on by COVID-19 in South Africa

26  See Modiri (n 4); Dladla (n 2).
27  See K Crenshaw 'Mapping the margins: intersectionality, identity politics, and violence against women of color' (1991) 43 *Stanford Law Review* at 1244, fn 6; Modiri (n 4) 5, fn 26. The use of 'Black', 'black', and 'white' in this contribution is synonymous with that of these scholars. Following Modiri's example and logic, I will capitalise 'Black' when referring to a particular cultural and political group, and the uncapitalised 'black' is used as a 'descriptive category'. Modiri further qualifies his use of Black/white within a settler-colonial South African context; stating that 'the term "Black"' [is] to include groups traditionally labelled as Africans, Indians and Coloureds'. He goes on to explain that the use of the capitalised 'Black' further serves as a contestation to the historical ontological inferiorisation of Black people within the white supremacist racial hierarchy. The use of 'white' in the lowercase acknowledges that this group is not a cultural group, nor is whiteness inferiorised. I am grateful to Zenia Pero for directing me towards substantiating and explanatory sources elaborating on the dichotomous use of 'Black/white'.
28  See C Ngwena *What is Africanness? Contesting nativism in race, culture and sexualities* (2018) at 25.
29  See Harvey 'Anti-capitalist politics in the time of COVID-19' 2020 https://jacob inmag.com/2020/03/david-harvey-coronavirus-political-economy-disruptions (accessed 15 May 2021).
30  See hooks (n 3) 131 & 211.
31  See N Krieger & M Bassett 'The health of black folk: disease, class, and ideology in science' (1986) 38 *Monthly Review* at 161. See, generally, CA Rentmeester 'Postcolonial bioethics: A lens for considering the historical roots of racial and ethnic inequalities in mental health' (2012) 21 *Cambridge Quarterly of Health Ethics*; ET Richardson 'On the coloniality of global public health' (2019) 6 *Medicine Anthropology Theory*; D Roberts *Fatal invention: How science, politics, and big business recreate race in the twenty-first century* (2011).
32  Krieger & Basset (n 31) 161.

that this section seeks to interrogate. To advance the argument that an *ethical* social justice in South Africa is an Africanist *decolonial* social justice informed by an ethics of liberation, I will first evidence some disparities in lived realities during the COVID-19 pandemic.

Some of the lockdown regulations and restrictions enforced by the South African government to mitigate or prevent the spread of COVID-19 have been lauded for effectively alleviating the burden of an already overstrained health sector.[33] Other restrictions — and the enforcement thereof — have been met with outright scorn for reproducing, maintaining, and deepening inequalities and oppressions marked by the *white supremacist capitalist patriarchal* devaluation of human essence. This much is evinced by the wave of protests observed during the pandemic demanding socio-economic justice and relief, certifying pandemic injustice as political injustice.

True to neo-liberal/neo-colonial form,[34] the relaxation of restrictions that encumbered profit production and halted individual liberties of those in positions of privilege in the zone of being were prioritised over the humanity of those left at the mercy of colonial-apartheid power configurations in the zone of non-being. One need only grapple with a few 'who(m) questions' incited by the pandemic and lockdown to stress the pervasiveness of white domination and racial capitalism in a supposedly deracialised South Africa: to *whom* did the regulations that allowed for the on-site consumption of liquor on weekends in licensed premises, whilst criminalising the off-site consumption of those who cannot afford such on-site expenditures, cater to?[35] *who* did the police assault with water cannons as they cued outside the Bellville SASSA offices to receive social grants — without

33  MJ Manyoni & MI Abader 'The effects of the COVID-19 lockdown and alcohol restrictions on trauma-related emergency department cases in a South African regional hospital' (2021) 11 *African Journal of Emergency Medicine* at 227-230

34  To briefly explain, within the present context, 'neo-liberalism' refers to the hegemonic -'ideology of liberal capitalism' as the globalised free-market economic policy conceived and disseminated by Western imperialist forces. According to Sampie Terreblanche, the neo-liberal ideology was the adopted economic strategy of the 'new' South Africa. See Terreblanche (n 10). 'Neo-colonialism', according to Kwame Nkrumah, describes the situation in which imperial forces 'switched tactics' after granting the ex-colonies their formal independence, whereby the 'the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its [neo-liberal] economic system and thus its political policy is directed from outside'. It is then understood that the neo-liberal economic fundamentalist approach is the mechanism through which neo-colonialists perpetuate their subjugation of historically conquered peoples by 'recolonising' ex-colonies by way of economic bondage to the former colonial ruler'. See K Nkrumah *Neocolonialism: The Last Stage of Imperialism* (1974) at ix; and Ramose (n 11) 742.

35  Department of Health 'Summary of Level 3 Regulations (as of 01st February 2021)' https://sacoronavirus.co.za/2021/02/02/summary-of-level-3-regulations-as-of-01st-february-+2021/ (accessed 02 May 2021). On this point, I wish to respond to the rebuttal that easing the restrictions on sales and on-site consumption on weekends in licensed establishments was to protect the livelihoods of those working in the industry with another question: *why* were the

which many households would be forced into starvation?[36] *who* was murdered by the police and troops deployed to militarise the compliance of lockdown regulations in peripheral townships?[37] *who* was evicted from spaces of safety and refuge during a global pandemic in which people were ordered to stay home, and when failing to do so, met with sanctioned violence?[38] *who* was branded 'uneducated' for their willingness to receive a vaccine, when vaccines will expedite their return to employment in an economy that reduces unskilled and menial labourers to mere fungibles?[39] *who* were the billions worth in state-funded food parcels and Personal Protective Equipment (PPE) meant to sustain and protect were it not for corrupt governmental officials looting state coffins?[40] *who* are the restrictions and regulations meant to police when non-compliance is met with monetary fines and/or convictions, rendering non-compliance an expensive inconvenience for some, but totally debilitating for others?

With these questions I attempt to probe the manner in which the liberties and humanity of certain bodies were considered and taken into account during the formulation of the national lockdown regulations and restrictions, whilst others were left unimagined and discounted; how the tethered and mutually reinforcing forces of white supremacy and capitalism in South Africa control certain bodies with overt and unforgiving violence — as the elite in the zone of being lament the postponement of *habitus*.[41] To borrow from Aimé Césaire, as his words arguably hold even more water today: with these

livelihoods of those who sell liquor for on-site consumption in townships and peripheral urban settlements not also deemed worthy of the same protection?

36   J Evans 'Sassa scramble: Human Rights Commission demands answers after Bellville queue chaos' *News*24 19 January 2021 https://www.news24.com/news24/southafrica/news/sassa-scramble-human-rights-commission-demands-answers-after-bellville-queue-chaos-20210119 (accessed 02 May 2021).

37   K Trippe 'Pandemic policing: South Africa's most vulnerable face a sharp increase in police-related brutality' 24 June 2020 https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/ (accessed 02 May 2021).

38   T Fish Hogson 'he lawlessness of unlawful evictions: South Africa's home invasion problem' *Maverick Citizen* 06 August 2020 https://www.dailymaverick.co.za/article/2020-08-06-the-lawlessness-of-unlawful-evictions-south-africas-home-invasion-problem/ (accessed 02 May 2021). This dehumanising and immoral state of affairs is further evidenced by the number of illegal evictions pursued during the lockdown period by public interest institutions/organisations such as the *Centre for Applied Legal Studies*, the *Legal Resource Centre*, as well as the *Socio-Economic Rights Institute of South Africa,* to name but a few. The onslaught on the residents of informal settlements and vulnerable households in and around Cape Town, Durban, and Johannesburg is well-documented by these institutions and organisations.

39   N Shange '"Black Africans more likely to be willing to accept a vaccine than white people", new survey reveals' https://www.timeslive.co.za/news/south-africa/2021-02-17-study-reveals-black-and-less-educated-people-more-willing-to-take-covid-19-vaccine/ (accessed 02 May 2021).

40   T Moche 'TIMELINE: COVID-19 food parcels, PPE corruption timeline' 31 August 2020 https://www.sabcnews.com/sabcnews/timeline-COVID-19-food-parcels-ppe-corruption-timeline/ (accessed 02 May 2021).

41   See Silva (n 25) 239 & 245; Yousuf (n 2) 84

questions I endeavour to make 'it possible to see things on a large scale and to grasp the fact that capitalist society, at its present stage, is incapable of establishing a concept of the rights of men ...'.[42]

The speciousness of the dominant elite's unethical efforts to obscure and trivialise the precarity and deprivation to which the majority of Black people in South Africa have succumbed during the ongoing pandemic was laid bare by the *Quarterly Labour Force Survey* (QLFS) for the first quarter of 2021.[43] To further demystify and defend the argument put forward in the sections to follow that social justice is necessarily *historical* justice in post-1994 South Africa — be it in times of crisis, in which death is visiblised for its ability to affect the dominant elite, or otherwise — when the social death that engenders 'the facts of being black'[44] in a post-1994 South Africa is naturalised — I briefly condense some of these findings on the South African (un)employment rates published on 01 June 2021.[45] The report, using data from interviews conducted telephonically to curtail the spread of COVID-19,[46] revealed the extent to which the structures institutionalised by the architects of pre-1994 South Africa remain unfettered; forcing those refuting the prevalence of colonial-apartheid powers in a juridically deracialised South Africa to confront the barrenness of their contentions.

According to the household-based survey, South Africa's official unemployment rate reached an all-time high since the start of the

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42   Césaire (n 23) 37.
43   QLFS (n 12).
44   Krieger & Basset (n 31) 161. Krieger and Basset draw on Fanon's formulation of Blackness, as posited in Black Skin, White Masks, in which he addresses the 'facts of Blackness'. See Fanon (n 2) 82-107.
45   Yousuf (n 2) 83-85. Drawing in the work of Fanon, Kalish, Patterson, and Turner, Yousuf succinctly explains *what* by reconceptualising 'death' to include not only the end of one's somatic or biological career, but also the 'death of the psychological, sociological and social' is to acknowledge the 'systematicity' of 'death'. By locating the origins of the 'social death' — a state of being reserved for racialised colonial subjects — in slavery, Yousuf argues that the physical death of racialised colonial subjects 'was only suspended insofar as slaves submitted to their powerlessness'. Ramose makes a similar point when he asserts that the indigenous conquered peoples were given only one right, being that they submit to the will of their conquerors or (physically) die. Accordingly, to say that those marked by race within the colonial situation are condemned to a 'social death' is to understand that white supremacy systemically and systemically denies the racialised Other their full humanity to the point where 'a person believes that they are as good as dead'. Thus, race determines not only who lives and dies physically, but also psychologically and socially. See Ramose (n 2) 17-18. Special thanks to Ntando Sindane for the introduction to the work of Iram Yousuf.
46   QLFS (n 12) 1. The survey warns that due to the change in the survey's mode of collection and the fact that Q1: 2021 estimates are not based on a full sample, comparisons with previous quarters should be made with caution. On my reading of this change in methodology, there is cause to suspect that the concluding results are actually more dire than they appear, since it is plausible that participants from the previous quarter who were not contactable for the Q1/2021 survey were non-contactable *because* their material conditions may have deteriorated to the extent that they no longer had access to resources through which they were previously contactable.

survey in 2008, standing at 32,6% in the first quarter of 2021, a 0,1% increase from the preceding period.[47] The expanded definition of unemployment — which is arguably more illustrative of the grim reality faced by South Africans since this expanded definition widens its scope to include people discouraged from seeking work due to its unavailability and/or hopelessness — rose by 0,6% to 43,2%.[48] Although some industries observed an increase in employment, such increases were limited to the formal sector with the greatest increase of 215 000 jobs in Finance, with decreases in employment concentrated to the informal sector: 87 000 losses in Construction; 84 000 losses in Trade; 70 000 losses by those working in Private households; 40 000 losses in Transport services; and 18 000 losses in Agriculture.[49] The data further demonstrates the significance of social capital in retaining employment and receiving pay/salaries during the lockdown period: people employed in the informal sector were far less likely to work from home due to the lockdown, thereby rendering them more exposed to the virus;[50] those with higher levels of education being more likely to receive their full pay/salaries during this period than their counterparts with lower levels of education;[51] noting that 90.1% of the 7,2 million officially unemployed persons in the 2021 survey did not have educational training that surpassed matric.[52]

Few would debate the axiom that in post-1994 South Africa the profiles of the people that occupy positions in the informal sector — thereby bearing the brunt of the job losses, increases in unemployment, and reduced salaries — are still patently racialised, with such 'modern forms of servitude' by and large performed by

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47 QLFS (n 12) 2.
48 QLFS (n 12) 13.
49 QLFS (n 12) 3. The fact that increases were concentrated in the Finance sector further substantiates the claim that the pandemic produced inegalitarian outcomes within the prevailing paradigm of liberal capitalism by favouring those willing and able to assimilate into the capitalist order, and disfavouring those excluded from the system by way of design.
50 QLFS (n 12) 9. See also, S Adam et aal 'Bioethics and self-isolation: What about low-resource settings?' (2020) 110 *South African Medical Journal*, touching on the impact of such realities on food security. The study showed that '[l]ow-income jobs can often not be performed remotely, and the majority of low-income jobs do not offer paid sick days. Persons performing low-income jobs are disproportionately more likely to be unable to afford medical care, or even to stock up the pantry. These individuals are at increased risk of contracting, and spreading, the COVID-19 virus. … The COVID-19 outbreak hasn't caused these underlying problems, but it has highlighted the deficits in our fragile, imbalanced society'.
51 QLFS (n 12) 10. See also, Arndt et al 'COVID-19 lockdowns, income distribution, and food security: An analysis for South Africa' (2020) 26 *Global Food Security*, examining the consequences of such realities on food security.
52 QLFS (n 12) 13. The survey showed that 37,7% of the 7.2 million unemployed people in the first quarter had matric as their highest level of formal education, and 52,4% of the unemployed had education levels below matric.

historically subordinated Black citizens.[53] The survey confirms as much with figures indicating that the unemployment rate, according to the expanded definition, *decreased* for whites during the first three months of 2021, whilst the unemployment rate for every other population group saw an increase.[54] Whites were also the only population group to experience an *increase* in employment from the previous quarter, with all other populations suffering decreases.[55]

Although the report does not address inequality directly, an increase in job losses — predominantly felt in the visibly racialised informal sector — produces more have-nots, therefore aggravating inequality between them and the haves — who also saw a racialised increase in numbers in favour of the white minority. Other studies that do address inequality in post-apartheid South Africa,[56] show that post-1994 inequalities remain categorically, although less overtly, racialised. These studies implicate pre-1994 social/state structures that favour 'existing advantage', whilst disfavouring 'the already disadvantaged'.[57] What I hope to have emphasised here, thereby contextualising the discussion to follow, is the composition of the population that comprise the have-nots and *continue* to live under conditions of socio-political injustice almost 30 years after the dawn

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53    JM Modiri 'Law's poverty' (2015) 18 *Potchefstroom Electronic Law Journal* at 232-233.
54    QLFS (n 12) 46-47. The population groups examined in the survey are denoted as 'Black/African', 'Coloured', 'Indian/Asian', and 'White'.
55    As above. Here I wish to suggest that the fact that increases in employment were (1) mainly reserved for whites, and (2) concentrated to the Finance sector should not be overlooked, nor trivialised. The correlation between these two findings illustrates that the supposedly *de*-racialised post-1994 economic system of liberal capitalism remains overtly racialised.
56    See Terreblanche (n 10); Seekings & Nattrass (n 10); World Bank 'Overcoming poverty and inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities' 2018 https://documents1.worldbank.org/curated/en/530481521735906534/pdf/124521-REV-OUO-South-Africa-Poverty-and-Inequality-Assessment-Report-2018-FINAL-WEB.pdf (accessed 02 June 2021); S Plagerson & S Mthembu 'Poverty, inequality and social exclusion in South Africa: A systemic assessment of key policies, strategies and flagship programmes' (2019) *Centre for Social Development in Africa*. The (impressive) study by Seekings & Nattrass investigates the pervasiveness of inequality in South Africa by looking at the distributional regimes from before, during, and after apartheid. The study shows that although deracialisation has meant a decrease in *inter*racial inequality (i.e., more Africans have had 'upward social mobility'), structural distributional patterns inherited from a late apartheid government has outlasted the demise of formal apartheid rule, thereby producing a rise in *intra*racial inequality post-apartheid, attributable to 'the basis of disadvantage [having] shifted from race to class'. The study shows that the gap between the rich and the poor is increasing, even if the 'rich' are now more multiracial, and that such increase in inequality remains greatly determined by apartheid legacies of racial discrimination. The cited 2018 Report illustrated that those who constitute the upper, middle, and lower classes are still greatly defined by race in post-racial South Africa, finding that 'while black South Africans make up about 80 percent of the total population, in 2014/15 they made up just above 50 percent of the middle class. On the other hand, while whites constitute a mere 10 percent of the South African population, almost one in three members of the middle class and two in three members of the elite are white' (p 38).
57    Seekings & Nattrass (n 10) 340-341.

of the post-racial 'rainbow' polity. These observations therefore act in defence of claims submitted by critical legal theorist, Joel Modiri, who stresses that: [58]

> … exploitation still remains despite the creation of a small class of enormously wealthy black elites and a slowly growing Black middle class and also despite the presence of poor whites (and here we should note that class differentials between blacks and poverty in white communities existed prior to 1994). What is important is not who constitutes the capitalist class, but *who constitutes the large majority of the poor, unemployed and working class* (viz Blacks).

Important to understand here is that poverty is not the same as inequality. According to the 2019 *Poverty, inequality and social exclusion in South Africa* report, poverty 'describes a state in which individuals or households show significant deficits in wellbeing … [with their] standards of living fall[ing] below a threshold', whereas inequality relates to 'variations in living standards across a whole population'.[59] The mentioned studies prove that *poverty* remains a state of deprivation mainly reserved for racialised colonial-apartheid subjects within settler-colonial South Africa.[60]

Following from the above contextualisation of what Ramose calls the 'living face plunged into preventable suffering' during pandemic times,[61] we may now consider what social justice in a socially unjust and bifurcated landscape *should* encompass. If the contention is, as it is here, that the injustices induced and revealed by COVID-19 are structural legacies of historical injustice, and therefore (re)productions and exacerbations of traditions of repression constructed by historically oppressive forces and its beneficiaries, then logically, social justice during the ongoing crisis will have to consult history to locate the root of the cause, for an *injustice not to be buried*, and for justice to be achieved. It is the necessity for a liberatory philosophy rooted in and fuelled by memory in the struggle for social justice in South Africa that I explore next.

## 3   The past: Implicating conquest

> … White supremacy has a broader reach, history and scope than Apartheid. … A more pertinent example of the prophetic nature of this critique is present day South Africa which while it is "post-Apartheid", is far from "post-racial", post-White Supremacist or post-conquest.[62]

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58   Modiri (n 53) 232 (own emphasis). See also Ramose (n 15) 70; Terreblanche (n 10) 460; Madlingozi (n 2) 135.
59   Plagerson & Mthembu (n 56) 7.
60   Plagerson & Mthembu (n 56) 10.
61   See Ramose (n 1) 35.
62   Dladla (n 2) 136-137.

Following from the above, we are able to now grasp *who* those in need of social justice during the ongoing COVID-19 pandemic are. Restorative justice as a precursor to social cohesion then demands the eradication of the institutions that engender exclusion and deprivation of the majoritarian population.[63] Following philosopher Ndumiso Dladla's logic, A South African society will then be a just society when the historically oppressed are *freed from* the unethical prevailing order that diminishes their human essence and they are able to (re)claim the associated *freedom to* enjoy an untainted humanity.[64] For as Dladla presents it to us: '[s]urely a human-being who comes of consciousness in a world in which her bondage is taken for granted *must of necessity reflect upon the condition of this bondage, its causes and devise ways in which to gain freedom*'.[65]

Social justice should then be understood as something to be achieved, thus, a state of affairs realised through *action*, the content of which is to be determined by a philosophy and ethics that serve as an action-*guide*, or philo-praxis, for the construction of a just society. In an oppressive settler-colonial/neo-apartheid context, the actions that will antagonise social and economic unfreedom then ascribe to what philosopher Enrique Dussel formulates as a philosophy and ethics of liberation.[66] In his critique of the (unethical) post-1994 constitutional milieu, Terblanche Delport draws on Dussel's formulation of liberationist ethics to assert that once we realise that 'the position of the victim is not a natural fact' but rather 'a creation of those in power and with privilege to keep their positions by exploiting those less powerful',[67] then what is considered to be *ethical* practice when humans interact relationally will be the action that confronts and disturbs the systems of domination that prevent and subvert the 'production, reproduction, and development of the *human life in the concrete*'.[68] Stated differently, what we *ought* to do when constructing a just society in a given context is to be determined from the perspective of the victim, being those who are

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63    SB Biko *I write what I like* (1978) at 64. Lest we forget Biko's desideratum that '[o]ne has to overhaul the whole system in South Africa *before hoping to get black and white walking hand in hand to oppose a common enemy*' (own emphasis).

64    Dladla (n 2) 44.

65    Dladla (n 2) 2 (own emphasis). See also Ngwena (n 28) 28; and P Freire *Pedagogy of the oppressed* (2000) at 85. Both these authors make similar points: Ngwena asserts that '[h]istories give us memory. When they reveal palpable injustices, they give us a foundation for a mission and a sense of remedial orientation.' Or as Freire puts it to us: 'But since people do not exist apart from the world, apart from reality, the movement must begin with the human-world relationship. Accordingly, the point of departure must always be with men and women in the "here and now," which constitutes the situation within which they are submerged, from which they emerge, and in which they intervene'.

66    Dussel (n 14). See also T Delport 'An ethical (anti-)constitutionalism? Transformation for a transfigured public' (2014) 46 *Acta Academia*.

67    Delport (n 66) 110-111.

68    Delport (n 66) 107; quoting 2013 Dussel (n 15) 56.

'materially unable to produce, reproduce, and develop her human life and formally excluded from the discursive apparatus of a specific community'.[69]

It is then a philosophy of liberation that grounds the earlier contention that social injustices today can be explained, and its origins and causes can be located and disrupted directly, by way of critical historical reflection and remembrance.[70] From this standpoint, social justice in settler-colonial post-1994 South Africa requires one to properly implicate the 'root' of the injustice if justice proper is to be achieved.[71] In doing so, memory serves as a site of resistance.[72] For Ramose, the liberationist philosophy that guides us to *ethical* actions aimed at the humanisation of the historically marginalised majority in the 'new' South Africa is certainly a philosophy of memory, and it is through a philosophy of memory that emancipation and social justice is to be achieved.[73] The question then, of course, is *which* memory, or *which historical injustice*, are we to charge as the *original* injustice from which injustices lived in the present emanate? Ramose argues that the original injustice that survived democratisation is one of unethical conquest and dispossession of the 'indigenous peoples conquered in the unjust wars of colonisation', and the consequential settlement of colonialists and their successors in title.[74]

Influenced by Ramose's philosophical insights and borrowing from Magobo More, Dladla argues that the emphasis on *apartheid* as the root or source of injustices experienced by Black people in a post-1994 South Africa is misplaced. He argues that apartheid was one particular manifestation or formal concretisation of the long-standing and uninterrupted tradition of white supremacist domination launched in 1652.[75] According to Dladla, by fixedly framing *apartheid* as an extraordinary event or 'a misstep' in need of correction:[76]

> [a]partheid as such then has limited historical significance and is often used in an obfuscatory manner to distort the length of time over which liberation has been outstanding and to deflect attention from the conquest of indigenous people in the unjust wars of colonisation.

Also in line with Ramosean meditations, and resonating with Dladla's perspective, Modiri endorses this indictment of non-racial liberal constitutionalism in post-1994 South Africa for facilitating and naturalising a less obvious but equally — if not more — devastating

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69  Delport (n 66) 110.
70  Ramose (n 15).
71  Modiri (n 4) 18.
72  hooks (n 3) 174.
73  Ramose (1); Ramose (n 15); Ramose (n 16).
74  Ramose (n 16) 310.
75  Dladla (n 2) 20.
76  As above. See also Modiri (n 4) 14.

continuation of colonial-apartheid contradictions and power configurations. Emphasising the importance of correctly implicating conquest as the original injustice in need of rectification, Modiri asserts that '[w]hereas freedom from apartheid involves the egalitarian liberal inclusion of the oppressed black majority into the conqueror's world, liberation from conquest involves dismantling the conqueror's world altogether followed by the collective construction of a new social order'.[77]

If social justice for the historically oppressed mandates an interrogation of 'the present in light of the past',[78] then social justice for subjects entrapped by the conqueror's colonial-apartheid apparatus that survived the transition to formal deracialisation, is inherently decolonial — or rather, post-conquest[79] — in essence and mission. Decolonisation can then be understood as *rupture* or a radical/revolutionary/unclean *break* from an oppressive order,[80] thereby rendering any compromise or smooth comfortable 'transition' ethically unsound.[81] A comfortable transition devoid of rupture cannot then be considered social justice proper from the perspective of the historically oppressed,[82] since such a compromise or negotiation on the content of social justice leaves the system that engenders their deprivation and exclusion intact and functional, albeit more palatable and less affronting to those in positions of privilege who wish to retain their beneficiary status without disruption or condemnation.[83] Stated differently, an unbending rupture from settler-colonial rule and subjugation rejects any compromise for preserving and obscuring the integrity of the settler polity that ensures what Patrick Wolfe describes as the continuous 'elimination of the native'.[84] In the context of the 'new' South Africa, this elimination is expedited through (1) the black elite's co-optation and integration into the zone of being as beneficiaries of a capitalist system that continues to thrive on the subservience of those in the zone of non-being,[85] and (2) by producing and intensifying conditions for both social and material death for the constituents of the zone of non-being, a systemic elimination, the concrete manifestations of which has become more visible during the ongoing pandemic. As such, settlerdom then creates a situation of uninterrupted negation, resulting in the indigenous conquered people's elimination when they

77    Modiri (n 4) 16. See also Ramose (n 21) 320.
78    Ramose (n 15) 64.
79    See Dladla (n 2) 123.
80    See Tuck & Yang (n 17) 20 & 31; and Santos (n 2) 26. See also N Wa Thiong'o *Decolonizing the Mind: the politics of language in African literature* (1986) at xii.
81    Terreblanche (n 10).
82    Madlingozi (n 2); Sibanda (n 18).
83    Modiri (n 4) 22 & 25.
84    P Wolfe 'Settler colonialism and the elimination of the native' (2006) 8 *Journal of Genocide* Research.
85    Madlingozi (n 2) 124-125 & 135.

are assimilated into the structures and spheres of the conquerors/settlers, as well as when these structures produce conditions that result in their material destruction and erasure.[86]

Modiri argues that if the denigration to which the black majority are subjected is systemic and not just exceptional interpersonal encounters,[87] then the system that favours white supremacist capitalist patriarchy to safeguard white male interests in settler-colonial South Africa is what we are to destabilise and dismantle if a socially just post-conquest future is to be attained.[88] Rupture then gives credence to Audre Lorde's proclamation that 'the master's tools [of compromise by way of gradual and slow non-racialist 'transformation'] will never dismantle the master's house',[89] and it is only by way of 'undoing the settler-created house' that the socially and materially oppressed can be humanised,[90] since it is the construction of the master's house in unethically conquered territories that is to blame for the social death to which the black majority has been condemned since the settler's arrival to present.

The reflections on contrasting lockdown realities, proffered above in part one, proves that the inauguration of the deracialised post-apartheid paradigm might have formally 'freed' the 'formerly' conquered peoples from discriminatory legislated servitude and subordination, but that the system that engineered their unfreedom under pre-1994 rule since 1652 remained unscathed by this transition.[91] Ramose explicates that with this transition to post-1994 democratisation and globalisation, 'only limping or defective sovereignty was restored to the indigenous conquered people', and that '[t]heir sovereignty remains defective because their newly acquired sovereignty was already burdened with economic bondage to the former colonial ruler'.[92] It is the defectiveness of the sovereignty and persisting unfreedom safeguarded through outward deracialisation that informs critical psychologist Kopano Ratele's description of post-1994 South Africa as a 'historically colonised, multiracial, multicultural country with significant socio-economic inequalities wherein blacks run the government and whites run the economy'.[93] Modiri endorses this view with reference to Ali Mazrui's effective crown-and-jewel analogy when he writes:[94]

86   See Fanon (n 2).
87   Modiri (n 4) 17.
88   Modiri (n 4) 16-17.
89   A Lorde *The master's tools will never dismantle the master's house* (1979) at 19.
90   Madlingozi (n 2) 141.
91   Terreblanche (n 10).
92   Ramose (n 11) 742.
93   K Ratele 'The singularity of the post-apartheid black condition' (2015) 49 *Psychology in Society* at 47.
94   Modiri (n 4) 17.

> [T]he South African case has been said to be a paradigmatic case of white people relinquishing the crown (state power) but keeping the jewels (socio-economic power). The formal abolition of legally sanctioned racial discrimination should therefore not be conflated with the elimination of the structures, practices and relations of coloniality and white supremacy.

In the white male settler-colonial structure, the devotion to dogmatic economic fundamentalist values continuously reifies and agitates a particular unfreedom marked by race.[95] Racialised subjects that depend on the deracialised state to enable the (re)production and development of their human lives are rendered disposable. If what we *ought* to do is dislodge the line that partitions humanity into zones of (non-)being to achieve social justice for the historically periheralised majority,[96] and not just include a selected elite into a system of domination that reproduces oppression,[97] then a collective commitment to a historical, substantive justice that chiefs the interests of the most vulnerable in South Africa submits to the Fanonian exigency for decolonisation, being that 'the last shall be the first'.[98]

Accordingly, social justice efforts in a stratified settler-colonial context must be *decolonial* in essence and mission when colonial conquest is correctly implicated for injustices in the 'now'. Emancipation through decolonisation, then, calls into question the legitimacy of empty gestures by those in positions of power limned as justice that circumvent and frustrate the overhauling of the system.[99] It then follows that the final part of this contribution considers and defends one such pathway towards a socially just, decolonial future particular to the pandemic.

## 3    The future: A question of return

> Whatever settlers may say — and they generally have a lot to say — the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory. Territoriality is settler colonialism's specific, irreducible element.[100]

Congruent with Ramosean formulations of justice in the 'new' South Africa, Tuck & Yang argue in their widely cited critique of the incommensurability of decolonisation with rights-based social justice

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95  Modiri (n 4) 21; Dladla (n 2).
96  Terreblanche (n 10); Madlingozi (n 2) 142.
97  Madlingozi (n 2) 135.
98  Fanon (n 17) 2.
99  Biko (n 63) 64. See also Madlingozi (n 2) 132 with reference to Robert Mangaliso Sobukwe's similar demand for the complete overhaul of the prevailing societal order. Further see Dladla (n 2) for a comprehensive but concise discussion on both Sobukwe and Biko's Black Radical abolitionist thought.
100  Wolfe (n 84) 388.

initiatives and frameworks, that the settler-colonial situation could only be rectified, and indigenous conquered people will only be able to claim social justice *through* decolonisation. In other words, decolonisation as a tool to achieve social justice in the settler-colonial situation, as well as an *alternative way of being* and co-existing in a shared and equal humanity is only possible if the settler-colonial situation is disrupted and destabilised where it matters most: the land.[101] On their broad reading of when the 'settler colonizers comes to stay',[102] the return of unjustly seized land is an indispensable element and possibility condition for decolonisation proper, without which any claim to having decolonised a settler-colonial state is premature and ethically barren. Decolonisation, when taken seriously, is then alive to the inextricable link between freedom and land, as Ramose and his intellectual predecessors and successors steadfastly emphasise. Fanon tells us as much in his pioneering work, *The Wretched of the Earth*, stating that '[f]or a colonized people, the most essential value, because it is the most meaningful, is first and foremost the land: the land, which must provide bread and, naturally, dignity'.[103]

Settler-colonialism is then understood not as an event, but as a *structure*;[104] a violent, institutionalised interference with indigenous people's relationships to land for as long as settlerdom persists at the expense of the indigenous conquered people's humanity.[105] Tuck and Yang in their dissection of the particularity of the settler-colonial

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101  Tuck & Yang (n 17) 21.
102  Wolfe (n 84) 388; Tuck & Yang (n 17) 5. It is worth noting that even though Wolfe, as well as Tuck and Yang's critiques are theoretical interrogations of the universal enterprise and structure of settler-colonialism where settler occupation of territories at the expense of indigenous people persist, they draw special attention to the settler-colonial situation in Australia and the United States, respectively. One must however appreciate — as it was by the authors in question — that, on a practical and conceptual level, settler-colonial societies look and function differently depending on the given geographical, cultural, socio-historical, and politico-economic context. Different geographies with different histories and constituent relationships produce experiences that are not universalisable. To briefly explain in oversimplistic terms, settler colonialism in the US, for example, looks different to settler-colonialism in South Africa for a variety of reasons. One such reason is for example that settlers in the US far outnumber the indigenous population, whereas in South Africa this is clearly not the case — thereby constructing a situation in the US where whites run the government, as opposed to South Africa's Black governed settler-colonial state; adding another or different layer of complexity to the settler situation in South Africa. Another example would be that the constituents of the indigenous population in the US are ethnographically different to that in South Africa, therefore creating a particular experience and claims to restoration put forward by Black people on the African continent where a white minority has settled, and African people in the diaspora where they have been forced into settlement as people forced into enslavement. These differences factor into what decolonisation entails in a particular settler-colonial situation and the mechanisms to be employed to decolonise a particular settler-colonial state.
103  Fanon (n 17) 9.
104  Wolfe (n 84) 388.
105  See Tuck & Yang (n 17) 5.

situation, explain how settler usurpation relies on the remaking of land into property with the effect that 'human relationships to land are restricted to the relationship of the owner to his property'.[106] In this way, indigenous people's '[e]pistemological, ontological, and cosmological relationships to land are interred, indeed made pre-modern and backward. Made savage'.[107]

From this viewpoint, decolonisation *should* include the abolition of the colonial system that constructs land as private property, arguing that this system legitimises and secures settler occupation, dominance, and social exclusion of the indigenous conquered peoples through private ownership.[108] It is only once the colonial system severing the indigenous conquered people's ties and relationships with the land has been dismantled, and their sovereignty has been restored that a settler-state can be claimed to be decolonised. Without addressing the 'land question', substantive social justice for the historically conquered and colonised population remains, and will continue to remain, elusive. Following on the above, the rest of the discussion considers a reading of Ramosean meditations in which *an ethical decolonial social justice* for the historically marginalised black majority in South Africa during the ongoing pandemic, and thereafter, demands an answer to this contentious 'question'.

To then return to the postulation of decolonisation as an uncompromising rupture of the oppressive prevailing order within a South African context: for Ramose, the 'limping defective sovereignty' conceded to the indigenous conquered peoples with the transition to the 'new' South Africa was one that fortified the annulment of the conquered peoples' rightful claim to the restoration of sovereign territory.[109] Contextualising the aftermath of what he describes as 'the ethically unsustainable and politically contestable 'right of conquest',[110] he writes:

> Van Riebeeck vowed that the land would be "retained" and his successors in title have ensured its survival to date. The retention means in practice that the unjustly acquired wealth of the conqueror continues to be their possessions, protected by the constitution of South Africa, Act 108 of 1996. From the point of view of the conquered, this injustice ought to be remedied. Furthermore, the retention of the land means that sovereign title to territory is yet to revert to the conquered peoples of South Africa, the "rightful" owners of the land "since the beginning of time". By opting for government succession, the "new" South Africa failed to respond to this ethical exigency of historic title. It is lunatic absurdity to justify this failure by the frivolous argument that the restoration of sovereign title to territory to the rightful owners is

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106  As above.
107  Tuck & Yang (n 17) 5.
108  Tuck & Yang (n 17) 26.
109  Ramose (n 16) 319-320.
110  Ramose (n 9) 553.

impossible since not every one of them can be allocated a piece of land.[111]

Elaborating on this point, critical scholar and social justice activist, Tshepo Madlingozi explicates that '[i]t is Ramose's contention that the Constitution, therefore, shows a bias towards Eurocentric legal doctrine, and the putative right of conquest, because it aligns itself with the doctrine of extinctive prescription in terms of which after a passage of some time illegally obtained property becomes lawful'; enabling a dominant minority in a supposedly post-racial democratic South Africa to concretise their beneficiary status through the resultant '*de facto* and *de jure* doctrine of non-reversibility with respect to loss of territory'.[112] Echoing this dissent of the decreed irreversibility of title to territory under post-1994 constitutionalism, Dladla denounces this refusal to reverse the settler's claim to territory as white supremacy at work because it allows white powers to retain benefits accrued by way of racist practices of ontological exclusion and capitalist exploitation that diminished, and continues to diminish, the humanity of the oppressed majority.[113] In a similar vein, Modiri adds that the conversion of unethically obtained settler/white interests into constitutionally enshrined and protected rights contradicts the post-1994 portrayal of the constitution as a 'non-racial' instrument; arguing that the liberal depiction of post-1994 South Africa as non-racial operates to mystify and shield unethically obtained white interests.[114] By implicating unremedied conquest as the source of injustices experienced in the present, and by further implicating liberal non-racialism under a constitutional dispensation for the preservation of white interests acquired by way of colonial-apartheid subordination, apartheid can then be understood, to quote Dladla, as 'the ugly political sister of liberalism born of the same womb of [the colonial conqueror's] White Supremacy'.[115]

To recapitulate: social justice in present-day South Africa is inherently and unavoidably *decolonial* in essence and mission if we accept that (1) it is the experience of the victims of conquest in post-1994 South Africa that is to inform what we deem ethical remedial action when confronted with injustice; and (2) we acknowledge that in the South African context the victims are constructed through white supremacist capitalist patriarchal colonial conquest. And if a decolonial social justice boils down to addressing the 'land question', then the logical and natural conclusion to draw, to borrow at length from Ramose one final time, must be that the:[116]

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111  Ramose (n 15) 65.
112  Madlingozi (n 2) 142.
113  Dladla (n 2) 122.
114  Modiri (n 4) 18. See also Dladla (n 2).
115  Dladla (n 2) 123.
116  Ramose (n 16) 310-311.

recovery and restoration of full, integral and comprehensive sovereignty to the indigenous peoples conquered in the unjust wars of colonisation is a moral and political imperative that may not be consigned to oblivion. The memory of the original injustice of conquest in the unjust wars of colonization shall not be erased until substantive justice in the form of recovery and restoration of lost sovereignty remedies the situation. *An integral part of our thesis is that recovery and restoration as the twin exigencies of justice are the necessary means to the construction of peace in South Africa. They are thus the means to challenge and overcome bounded reasoning which obscures the biological oneness of humanity ...*

Therefore, it is suggested that without an *ethical* answer from the perspective of the historically conquered to the land question, programmes of 'social justice' offered by those in positions of power during pandemic times are palliative at best. It is this connection between the land question and achievement of social justice in the ongoing COVID-19 pandemic that I now consider in brief.

Throughout the pandemic, the 'home' has featured prominently in disease-mitigating strategies. Not only were South Africans instructed to 'stay at home' with enforced restrictions on movements in the form of curfews, traveling prohibitions, and limited contact-based economic activity to varying degrees at different lockdown levels to ensure social distancing to curtail the spread of the virus, but people were confined to their homes for isolation and quarantine if they were exposed to the virus, or contracted it. The failure to abide by such 'stay at home' orders was deemed a punishable offence to ensure compliance during the National State of Disaster, as declared by President Ramaphosa on 15 March 2020.

For the conquered peoples condemned to the zone of non-being, staying at home was next to impossible when their lack of social capital and exclusion from the white-dominated liberal capitalist economic structure meant that they were to forfeit an income and sustenance. For the historically marginalised majority, instructions to 'stay at home' to avoid the virus implied that they were to accept a different demise in the form of intensified structural poverty and dehumanising material deprivation. Those deemed 'essential' enough to continue working during the pandemic in low-income 'modern forms of servitude'[117] have evaded a similar fate in exchange for an increased risk of contracting and transmitting the virus. Ultimately, the pandemic both amplified and magnified the effectiveness and force with which settler-colonialism and racial capitalism operates in a non-racial post-1994 South Africa. Clearly, the order to 'stay at home' never *truly* applied to those in the zone of non-being; serving to preserve the lives of those in the zone of being.

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117  Modiri (n 53) 232-233.

The white supremacist structures of settler-colonialism and racial capitalism collude to engender the social and material oppression of the indigenous conquered peoples during this pandemic. The former having robbed them — and continue to do so — of a home to which they could retreat to seek refuge and protection through the retention of unjustly and unethically seized land; the latter ensuring the fixation of the indigenous conquered peoples in the zone of non-being by intensifying their material deprivation and impoverishment if they *do* 'stay at home' without a source of income. As illustrated above, this state of affairs is a conundrum primarily reserved for racialised colonial-apartheid subjects in a white economic structure, which in turn ensures that these subjects *remain* disempowered and dispossessed of their sovereign title to territory.

Decolonial justice understood as the dismantling of these systems of subordination by way of returning the stolen sovereign title to territory to the indigenous conquered peoples during pandemic times will then allow the indigenous conquered peoples to disinvest from and abolish both settler-colonial occupation and the racial capitalist dehumanisation that engender their oppression: the former by way of reclaiming their territory, thereby returning a home during a time in which having one saves lives, the latter making it *possible* for them to 'stay at home' without the looming threat of dehumanising poverty and social and material death hanging like a sword over their heads. By eradicating white supremacy and by unsettling both settler-colonial usurpation and racial capitalism as tools of domination through restoration of title to land, the indigenous conquered peoples will be able to produce, reproduce, and develop human life in the concrete; something they are prevented from doing for as long as the original injustice of conquest and dispossessed title remains unremedied. Such an anti-capitalist approach to the humanisation of the indigenous conquered peoples would amount to *ethical* social justice from the perspective of the victims of conquest, if we consider that one of the fundamental principles of African liberationist philosophy demands that when confronted by the choice between the possession of wealth on the one hand, and the preservation of human life on the other, that the latter should always take priority.[118]

To summarise and conclude: based on the above reading of Ramosean meditations, it logically follows that the restoration of title constitutes *ethical* social justice during pandemic times from the perspective of the historically conquered majority in South Africa, whereas the retention of title by the conqueror's successors in title is *unethical* from the viewpoint of the victims of social injustices stemming from conquest for its inability to (re)produce and develop

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118 Ramose (n 2) 7. This imperative, according to Ramose, is expressed in the principle of '*feta kgomo o tshware motho*'.

their human lives in the concrete. Social justice in South Africa during the ongoing COVID-19 pandemic is then necessarily *decolonial* justice. By correctly identifying white supremacist capitalist patriarchal conquest as the root of injustices experienced during the pandemic, one is faced with the truism that persisting injustices could only be remedied properly through the restoration of unjustly dispossessed land, since such restoration will: (1) provide the historically marginalised black majority with a safe home during pandemic times and thereafter; (2) enable their disinvestment and eventual freedom from their '[e]conomic bondage to the successors in title to conquest'.[119] Failing to restore title to land cannot then be limned as 'non-racial', nor 'just' when such an omission serves to protect white (supremacist) interests at the expense of the indigenous conquered people's humanity.[120]

This Ramosean reflection provides insights to guide us towards a socially just future from the perspective of the victims of persisting colonial-apartheid injustices in present-day South Africa. It is then submitted that substantive justice demands of us an answer to the 'land question', which cannot be postponed until 'after' the pandemic, nor 'consigned to oblivion',[121] when its postponement is the cause of injustices in the present, and its *ethical* answer from the perspective of the historically oppressed peoples of South Africa is precisely how they get to finally enjoy an untainted humanity, second to none.

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119  Dladla (n 2) 35.
120  Dladla (n 2) 122; Modiri (n 4) 18.
121  Ramose (n 16) 310-311.