THE PHILOSOPHY OF HUMAN RIGHTS AND THE QUESTION OF GOOD GOVERNANCE IN AFRICA

BY

THOMAS MOLOMO LETSEPE

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TABLE OF CONTENTS

CONTENTS   **PAGES**

CHAPTER TWO

DECOLONIZATION

CHAPTER THREE

THE BIRTH OF "HUMAN RIGHTS"

CHAPTER FOUR

THE AFRICAN CONDITION

CHAPTER FIVE

DEMOCRATIZATION AND "HUMAN RIGHTS" IN AFIRCA

INTRODUCTION

Statement of the Question

a) **What is the Specific Question Investigated**?

Africa's independent evolutionary development has suffered from the scrambles and partitions of extra-African powers with far-reaching identity implications from as early as the twelfth century B.C.[1] Whereas the experience and concept of identity is a matter of particular philosophical interest, given the context of African history, the meaning of the term "Africa" may not be taken for granted.[2] The investigation into the origin of the term "Africa" shows that, like our colonial names - addresses and street names, "Africa" is stamped with the trade mark, "made in Europe".[3] Similarly the term "Africa" shares the same fate of reversion to indigenous African names as that of other colonial names like Basutoland that reverted to Lesotho. Africa is still faced with the

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[1] Afigbo, A.E., Scrambles and Partitions in African History, In: Okere, I.T., & Njoku, C.A., (eds.) The Scramble for Africa, Owerri: Assumpta Press, 2005. p. 11.

[2] Ramose, M.B., Philosophy: A Particularist Interpretation with Universal Appeal, In: Oguejiofor, J.O., & Onah, G.I., (eds.) African Philosophy and the Hermeneutics of Culture, Munster: LIT VERLAG Munster, 2005. pp. 146-150. Many scholars have and continue to probe into the meaning of the term "Africa". In his investigations concerning the origin and meaning of the term "Africa" Ali Mazrui concedes that the term might be Semitic and Greco-Roman, but the application of the name in more recent centuries is due to Western Europe's decisions about boundaries of Africa and the identity of Africans. Ramose is noted for questioning the "Europe's decisions about boundaries of Africa and the identity of the Africans". While we accept the continental definition as presently defined internationally, we nontheless affirm and assert that ethically, it is unfair and unjust to alter and distort the identity of another without legitimate and sufficient cause for doing so.

[3] Ibid.

problem of political and moral legitimacy of Europe's colonial decisions about its boundaries and the identity of the Africans.

On surveying the impact and extent of extra-African damage to African independent evolution and self-determination, many Africans admit that no other experience in the course of African history has deflected Africa's independent evolution and self-determination like the trans-Atlantic slave trade and European colonialism.[4] That we consider the period of trans-Atlantic slave trade[5] and European colonialism[6]

> as the starting point of our exploration of what ruined Africa, despite decades of African political independence is simply because, this adversity not only affected Africa's past, but colored the future trajectory of her development, and ripped the African history into two epochs, namely the coming of the Whiteman and After the coming of the Whiteman.[7]

European colonialism has brought with it a condition whereby the African's right to life – the inalienable right to subsistence – is violated from colonization to decolonization.[8] From the condition of relative peace and reasonable certainty to satisfy basic necessities of life, the indigenous African peoples were suddenly

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[4] Ogbunwezeh, E.F.O., The Scandal of African Poverty: Exploring the factors sustaining the African Predicament, In: Okere, T.I., Njoku, C.A., op. cit., pp. 160-161.

[5] This is a period of more than three hundred years during which European slave-hunters captured and shipped across the Atlantic Ocean wealth creating indigenous Africa peoples. Slave trade entailed insecurity, depopulation, economic loss and the denigration of the African humanity.

[6] European colonization of Africa followed immediately after the trans-Atlantic slave trade. It was characterized by the wars of conquest, scramble and partition, and colonization of Africa that continued for decades and centuries on end.

[7] Ogbunwezeh, E.F.O., op. cit., p. 161.

[8] Ramose, M.B., African Philosophy Through Ubuntu, Harare: Mond Books Publishers, 2002 p. 3.

dominated and plunged into poverty and discrimination.[9] The European wars of colonization in Africa have caused the indigenous African peoples injury of their title to property (territorial) and political sovereignty rights.[10] African identity and humanity have been denigrated in the face of the dehumanizing experience from outside and inferiority feeling from within.[11]

At decolonization most African countries urged for state succession,[12] the colonial masters were reluctant to relinquish or even share their enviable position of privilege, power and domination.[13] In an attempt to secure possessions and privileges obtained in colonial conquest, the conquerors granted formal equal constitutional status to both the successors in title to the "right of conquest" and the indigenous conquered peoples of Africa.[14] The lure of immediate political independence, coupled with the belief that constraints could be revisited after the gaining of political independence, tricked the indigenous African peoples conquered in the unjust wars of colonization into yielding

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[9] Ibid.
[10] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) Philosophy from Africa, Cape Town: Oxford University Press Southern Africa, 2002. p. 462.
[11] Oguejiofor, J.O., Contemporary African Philosophy: from Identity to Governance, In: Oguejiofor, J.O., (ed.) Philosophy, Democracy and Responsible Governance in Africa, Munster: LIT VERLAG Munster, 2003. pp. 26-27.
[12] Ramose, M.B., Justice and Restitution in African Political Thought, op. cit., p. 462. State succession as a mode of decolonization demands reversion to the unencumbered and unmodified sovereignty to the same quantum and degree as was lost at conquest.
[13] Nkrumah, K., Africa Must Unite, London: Panaf, 1963. pp. 57-65.
[14] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.

to pressure in accepting the injurious option of government succession.[15] The violation of the right to life of the indigenous African peoples has rendered human rights and freedoms subservient to "the right of conquest" and therefore hardly meaningful to the indigenous African peoples.[16] As Ramose correctly observes, "To be meaningful, human rights discourse must restore material and practical recognition, protection and respect for the African's inalienable right to subsistence."[17]

Without reversion to the unencumbered and unmodified sovereignty as at conquest,[18] the indigenous peoples of Africa are immersed in many debilitating problems: lack of social and cultural identity, economic poverty, and political instability, to mention but a few. Constitutional rule in post-colonial Africa tends to respect and protect the claims of the successors in title to the "right of conquest".[19] Thus the entire process of decolonization and democratic constitutional rule in Africa has, among others, upheld and not jettisoned colonialism.[20] Attempts by the independent African states to reverse the adverse consequences of "the right of conquest" prove to be fruitless, especially on

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[15] Government succession entailed the dissolution of the sovereignty of the indigenous conquered African peoples over their territory, whereby at independence both the successors in title to the "right of conquest" and the indigenous conquered African peoples are granted formal equal constitutional status.

[16] Ramose, M.B., The King as Memory and Symbol of African Customary Law, In: O Hinz, M., (ed.), The Shade of New Leaves: Governance in Traditional Authority, Munster: LIT VERLAG Berlin, 2006. pp. 351-372.

[17] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 3.

[18] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., pp. 490-491.

[19] Mazrui, A., Neo-dependency and African fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., pp.528-529.

[20] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., pp. 1-2.

issues such as: territorial boundaries,[21]land distribution and re-distribution, employment and unemployment, foreign economic development aid and debt, political instability, cultural and religious identity, poverty, and disease.[22]

The situation arising from the independence of the African States has led to a reversal of the position in relation to charges of disregarding human rights: "it used to be the colonizer who had to be reminded of his declared support for human rights, but it is the black African critic of apartheid and colonialism who is reproached with the defective state of the enforcement of human rights in his own country."[23] The stability of democratic constitutional dispensation in post-colonial Africa seems to be a case of trading political independence of African States for their economic dependence.[24] The problem facing the independent States of Africa is the glaring contrast between the political independence and economic dependence.[25] Yet, without economic independence, the full exercise of political independence is necessarily restricted and circumscribed. This particularity of the African condition necessitates and reaffirms

[21] Lelimo, M. M., The Question of Lesotho's Conquered Territory, Morija: Morija Museum & Archives, 1998. p. 205.
[22] Meredith, M., The State of Africa, London: The Free Press, 2005. pp. 13-14.
[23] Delbruck, J., Fiedler, W., Kewenig, William, A., Wolfrum, R., (eds.) German Yearbook of international Law, Berlin: Ducker & Humblot, 1982. p. 139.
[24] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., pp. 528-529.
[25] Smith, S., U.S. Neocolonialism in Africa, New York: International Publishers, 1974. p. 41.

the continuation of the struggle for the full and integral sovereignty and the payment of reparations to the indigenous conquered peoples.[26]

In view of the preceding considerations, the question to be investigated in this study is: What are the chances of success for the imposition of "democratization" and "human rights" upon Africa at a time when the freedom of the continent and, Southern Africa in particular, is still the prisoner of material and intellectual poverty?

b) **Why and how does the Question Arise**?

The majority of independent African countries, having been denied reversion to unencumbered and unmodified sovereignty as was lost at conquest, find themselves faced with chronic problems of "democratization" and "human rights".[27] This African predicament demands some clarification. The African predicament lies with the colonial masters' reluctance to make reparations for the injury to property (territorial) and political sovereignty rights of the indigenous conquered African peoples. Europe's denial to make restoration, restitution, reparation, or compensation to Africa is questionable on both political and ethical grounds. Politically the loss of sovereignty by the African peoples means that from colonization to decolonization

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[26] Ramose, M.B., The King as Memory and Symbol of African Customary Law, op. cit. pp. 357-363.
[27] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., pp. 490-491.

they remain mere shadows of their former selves. In practice Africa's rulers remain subjects of European powers.[28] In terms of historical justice, it is ethically incumbent upon the indigenous African peoples "to find a corrective which will reverse the adverse effects of the logic of the unsustainable claim to the "right of conquest".[29] The question to be investigated arises on this basis.

c) **Justification of the Study**

But one may as well ask why after the many years of political independence in Africa we consider the questioning of democratization and human rights in Africa. This moral questioning of democratization and human rights in Africa is justified because the African predicament still remains to be addressed. That is, economic and political vulnerability of the majority of the post-colonial African countries remains to date a serious and pertinent issue. There is no doubt that after the many years of political independence, the problem of neo-colonialism has not left Africa. The overly cited human rights and "good governance" problems in post-independence Africa could best be investigated and addressed in conjunction with the constraints resulting from the granting of formal equal constitutional status to both the successors in title to the "right of conquest" and indigenous African peoples.

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[28] Mazrui, A., Neo-dependency and African fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 529.
[29] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 462.

d) **Thesis**

In the light of the above, the thesis we wish to defend is that: Both colonization and decolonization have robbed the indigenous African peoples of their rightful claim to pre-colonial titles to territory and political independence. The end of colonial rule is not synonymous with genuine decolonization and independence.[30] The attempts to revisit and correct constraints caused by decolonization in Africa – without recognition of historical justice and restitution for the indigenous African peoples – are a self-defeating and problematic exercise.

Democratic constitutional rule derived from decolonization according to government succession in post-independent Africa, perpetuates the claims of the "right of conquest" and gives them protection under "human rights" and "good governance". In order to correct and reverse the prevailing deleterious effects of the "right of conquest" in Africa, democratic constitutional rule together with "human rights" and "good governance" must be examined in the light of the exigencies of historical justice due to the indigenous conquered peoples. Thus, "human rights" and "good governance" need to be divested of all titles and benefits of the claim of "right of conquest" in order to

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[30] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., pp. 528-541.

ensure that the transition from colonization to decolonization is conducive to fundamental rights and good governance in Africa.

e) **Method**

The method and approach of this study has as its point of departure the historic and analytic orientation to historical justice, "the right of conquest", human rights and good governance in Africa. The method and approach of this study are pre-eminently philosophical. This then is a study in philosophy taking history seriously but without claiming, by so doing, to be a historical study in the narrow and strict sense of history. The impact of colonization and decolonization on the indigenous peoples of Southern Africa will be established from pre-colonial era to post-colonial era. The quest for historical justice on the basis of the territorial land and sovereignty claims by the respective indigenous peoples of each territory will be considered. The legal and constitutional system of Lesotho will be investigated to determine the manner and extent to which it protects the claims of the "right of conquest" against those lost by the indigenous conquered African peoples. An investigation of historic titles of the indigenous peoples of Southern Africa is conducted in a period divided into four different parts: pre-colonization, colonization, decolonization and the post-colonial era in Africa.

The originality or authenticity of the sources of peoples' works and ideas that we shall use in this study will be derived from both primary and secondary sources. Thus we shall endeavor to reinforce our work with other peoples' works and ideas gathered from different sources. Some of this material will be firsthand, published or unpublished works of the authors themselves, while some will be second hand, in the form of translations, commentaries or other forms of secondary source.

This study will comprise of seven main divisions: introduction, five chapters and conclusion. The logical connection between the chapters of the thesis revolves around the argumentation centered on three main issues: injury of Africa's independent evolution and self-determination by European colonization; Africa's demand for decolonization and the independence granting formal equal constitutional status to both successors in title to the "right of conquest" and the conquered indigenous African peoples; the African condition: "democratization", "human rights" and "good governance" without reversion to unencumbered and unmodified sovereignty. The general substantive statements of the chapters are arranged consecutively in the following order: Introduction; Conquest and Africa's right to self-determination; Decolonization; The Birth of "human rights"; The African Condition; Democratization and "Human Rights" in Africa; Conclusion.

CONGUEST AND AFRICA'S RIGHT TO SELF-DETERMINTION

1.1 The Morality of Conquest in War

Africa's story in the context of world history from as early times as the 12th century B.C. up to the present, can be considered as a history of scrambles and partitions by extra-African powers.[31] This long period of extra-African influence acquired through conquest in unjust wars in general and colonization in particular, is considered here from the point of view of the violation of Africa's right to self-determination. The issue of the morality of colonial conquest is addressed in connection with the scramble and partition of Africa by the European conquerors in an attempt to dissolve, assimilate and integrate Africa.[32] The point of argument from this perspective is that Europe and the other extra-African powers that scrambled and partitioned Africa had no moral justification for their action. Africa is entitled to her full right to self-determination. We characterize colonial conquest as:

> any attempt by an extra-African power to seize and occupy a piece of African territory without due regard for the inalienable rights of the African owners of the land and for rival claims, justified or unjustified, of other powers or contestants (active or potential) who might have their eyes on the same piece of territory, and

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[31] Afigbo, A.E., Scrambles and Partitions in African History, In: Okere, I.T., & Njoku, C.A., (eds.) op. cit., p. 11.

[32] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. viii.

the encroaching power operating simply on the basis of its military and economic might.[33]

It is in the context of extra-African power, to wit Western Europe, that we hereby deal with colonial conquest and Africa's right to self-determination.

1.1.1 **The Context within which the European Conqueror's Urge to Colonize was Nurtured**

We now turn to identify the conqueror and consider the cultural context within which the urge to conquer was nurtured.[34] We consider a culture to be a way of life of a society or a people as a whole. A culture of a people demonstrates among other things, a people's celebrated achievements in thought, morals, and material production. The culture of a people represents their attainment and exercise of a way of life proper to the human spirit. Borrowing from H. Odera Oruka, the content of culture in totality is a people's body of knowledge, beliefs and values, behavior, goals, social institutions plus tools, techniques, and material construction.[35] Culture consists of the great thoughtful minds that it has produced and the areas of life that such minds have helped to illuminate. In any given culture, celebrated achievements in thought consist of ideas

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[33] Afigbo, A.E., Scrambles and Partitions in African History, In: Okere, I.T., & Njoku, C.A., (eds.) op. cit., p. 14.

[34] Ramose, M.B., I Conquer, therefore I am the Sovereign: Reflections upon Sovereignty, Constitutionalism and Democracy in Zimbabwe and South Africa, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., p. 463.

[35] Oruka, O.H., Ideology and Culture: The African Experience, In: Coetzee, P. H., & A.P. J.Roux, (eds.) op. cit., p. 58.

of the sages, scientists, artists, poets, prophets, philosophers, statesmen and moralists.[36]

The culture of a people is the fabric into which everything about that people is woven and in which alterations are made by every new generation, for better or for worse.[37] Thus culture is dynamic – it grows and can deteriorate, and it can be rejuvenated, but always from within itself in accordance with its own unlimited possibilities to dialogue, communicate and be enriched in an exchange of values with other cultures.[38]

1.1.1.1 **The European Conqueror's Exclusive Claim to Reason and Humanity**

Among the great thoughtful minds produced by European culture that helped to illumine the Western philosophic tradition is the student of Plato (428-347BC) by the name of Aristotle (382-322BC). It is to the same Aristotle that the genealogy of the claim "man is a rational animal" is traced. According to Aristotle, as cited by Monarch Notes, there are two kinds of potentialities or powers:

> the power of being acted upon, or passive power; the power of acting upon something else, or active power. The potential exists in both inanimate and animate objects. The difference between the two is that the potential in bodies which have no reason can only produce a specific effect, while man has the power to produce contrary effects. Aristotle thought that the potential in man is specifically evident in his power to make things. The potential, then, differs according to the degree in which its subject has reason….Aristotle calls man's capacities rational, and those of inanimate beings, non-rational.[39]

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[36] Ibid.

[37] Onyegiri, A.I., Architecture without Culture: The Lost Traditional Architecture of Igbo People, In: Okere, T.I., & Njoku, C.A., op. cit., p. 14.

[38] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., pp. vii-viii.

[39] Jancar, B., Monarch Notes: The Philosophy of Aristotle, New York: Monarch Press, 1966. pp. 130-131.

Aristotle's definition of "man" became deeply inscribed into the European social ethos and of those communities and societies which undertook the voyages of "discovery" from Europe. At the dawn of colonization, the definition that "man is a rational animal" was invoked and interpreted restrictively in order to exclude the yet-to-be-colonized peoples (African, Amerindian and Australasian) from membership of "rational animals".[40] The interpretation and application of "man is a rational animal" by the European rational animals and with regard to extra-Europeans permitted them to treat these peoples as subhumans. Ramose correctly describes it for us thus:

> The exclusion was critical in at least two respects. One is that it allowed for colonization on the false premise that the yet-to-be-colonized peoples were not and, could not be true and full human beings. They were regarded only as animals without reason, without a soul and, therefore devoid of human dignity. They were deemed to be pre-Adamite animals ready to be preyed on, devoured and used by the putatively only rational animals on planet Earth, namely the human being from the West. The logic of derecognition and exclusion preferred conquest to persuasion. Out of this flows the second respect in which the exclusion from membership of "rational animals" was critical, namely, the justification of the unjustifiable violence of colonization and slavery on the ground that the colonized enslaved peoples were after all only sub-human beings. The point is that this definition of the human being was used as the basis for colonization and slavery just as Aristotle's blindness to the inconsistency between justice and slavery was repeated as in the case of the United States of America. On this reasoning, Aristotle inadvertently laid the foundations for the injustice of colonization and the enslavement of the colonized peoples.[41]

Thus the line drawn between reason and unreason assigned competences, rights, and obligations. So, the right to freedom and the competence to exercise one's will were

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[40] Ramose, M.B., Justice is Human, Injustice Un-African: An African Philosophical Reflection, Unpublished Paper, 2006. pp. 1-2.
[41] Ibid.

assigned only to the rational. In their relationship with one another rational animals had the obligation to recognize, respect and protect the right to freedom and freedom of the will.[42] This relationship of rational animals with one another is demonstrated by the Berlin Conference of 1884-1885. At this conference the various colonial possessions in Africa were consolidated, arbitrary boundaries were defined and delimited, and some sections of African land were exchanged, and effective occupation of African territories was established by the European colonial powers of Britain, France, Germany, Belgium and Portugal.[43]

The exclusion of the African from among the rational animals and inclusion among animals with unreason laid the foundation for the conquest and the slave trade that have been the main features of the relationship between the conqueror from the West and the African.[44] The features of the relationship between the European conqueror and the indigenous conquered African peoples have been described by many conquerors, among them was Sir Philip Mitchell, Britain's governor in Uganda and Kenya from 1948-1954 who had this to say about the African people: "They went naked or clad in the bark of trees or the skins of animals….They are a people who in

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[42] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op, cit., p. 464.
[43] Afigbo, A.E., Scramble and Partition in African History, In: Okere, I.T., & Njoku, C.A., (eds.) op. cit., pp. 28-31.
[44] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 464.

1890 were in a more primitive condition than anything of which there is any record in pre-Roman Britain."[45] Aime Cesaire characterized the unjust and immoral behavior of the European conqueror to claim reason and humanity for themselves at the exclusion of the Africans thus:

> They prove that colonization, I repeat, dehumanizes even the most civilized man: that colonial activity, colonial enterprise, colonial conquest, which is based on contempt for the native and justified by that contempt, inevitably tends to change him who undertakes it; that the colonizer, who in order to ease his conscience gets into the habit of seeing the other man as animal, accustoms himself to treating him like an animal, and tends objectively to transform himself into an animal. This is the result, this boomerang effect of colonization, that I wanted to point out.[46]

1.1.1.2 The A priori Arrogation of Civilization to European and Barbarism to African

Another perspective within which the European urge to conquer Africa was nurtured, and which is closely related to that of reason and unreason above, is the dividing line between civilization and barbarism. According to Ramose, the line between civilization and barbarism was an extension of the boundary between reason and unreason. The conqueror based his claim to have a superior civilization on the level and capacity he had managed to investigate nature in order to use it to improve the

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[45] Mitchell, P., Land and Population in East Africa, In: Gavshon, A., (ed.) Crisis in Africa: Battleground of East and West, Harmondsworth: Penguin Books, 1981. p. 57.
[46] Cesaire, A., Discourse on Colonialism, New York: Presence Africaine, 1955. pp. 19-20.

quality of human life (the conqueror's own quality of life only).[47] Thus any advancement designed to improve the chances of survival came to be called progress, and sustaining this progress in depth and complexity came to be known as civilization.[48]

While the contribution of European civilization towards the investigation of nature and its use towards the improvement of human life remains admirable, the European colonization of Africa has demonstrated that European civilization managed to investigate nature in order to improve the colonial conquerors' life at the expense of the Africans. Thus Cesaire was fair in his description of European colonization as "the baleful projected shadow of a form of civilization which, at a certain point in its history, finds itself obliged, for internal reasons, to extend to a world scale the competition of its antagonistic economies."[49] In order to hide the danger posed by his true intentions (the tradition to deny the obvious concessions, the expropriation, the exploitation of the slaves and the great wretchedness of the indigenous African peoples) the colonial conqueror emphasized the highly civilized intentions of their

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[47] Dutch settlers among the Khoisan "thought of themselves as superior because of their culture, especially their language, customs and religion. But as more Khoisan and colored people adopted Dutch culture the settlers came to believe that Europeans were born into a superior race. They did not want to share their wealth or their burgher rights with a mass of non-Europeans." (See, Parsons, N.A., New History of Southern Africa, London: Macmillan, 1993. p. 61

[48] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 464.

[49] Cesaire, A., op. cit., pp. 10-11.

countries and the barbarism of the indigenous conquered African peoples.[50] According

to Fanon, the true intentions of the colonial conqueror got exposed when time came for

them to withdraw from the colonial territory:

> In the negotiations on independence, the first matters at issue were the economic
> interests: monetary areas, research permits, commercial concessions, inviolability
> of properties stolen from the peasants at the time of conquest, etc….Of civilizing,
> religious, or cultural works, there was no longer any question. The time had come
> for serious things, and trivialities had to be left behind. Such attitudes were to
> open the eyes of men struggling in other regions of the world.[51]

By the time the conqueror met the indigenous African peoples,[52] the respective

competences, rights, and obligations of the civilized and the barbarian were already

predetermined by the Western conqueror.[53] According to the reasoning of the

European conqueror, the European conqueror was civilized while the African was the

barbarian.[54] The line between civilization and barbarian established the relationship of

superior European and inferior African. The competences and rights of the conqueror

against the Africans are described by Lelimo in his account of the British need to

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[50] Fanon, F., (trans. by Haakon Chevalier) Toward the African Revolution, New York: Grove Press, 1964. pp. 120-121
[51]. Ibid.
[52] The European impulse towards the indigenous conquered African peoples is illustrated in a quotation by Cesaire: "There was only too much truth in this first impulse of the Europeans who, in the century of Columbus, refused to recognize as their fellow men the degraded inhabitants of the new world….One cannot gaze upon the savage for an instant reading the anathema written, I do not say upon his soul alone, but even on the external form of his body." (See, Cesaire, A., op. cit., p. 28
[53] Mitchell, P., Land and Population in East Africa, In: Gavshon, A., op. cit., p. 57.
[54] Parsons, N., A History of Southern Africa, London: Macmillan, 1982. p. 58. During the Dutch conquest and settlement of Khoisan land at the Cape Khoisan leaders complained to the Dutch pointing to the unfairness of European competences and rights against Africans without obligations.

humble Moshoeshoe following the British withdrawal from the Orange River Sovereignty:

> As we come to look at events surrounding the Battle of Berea, it is important to note the following. The first phase of the withdrawal as per the agreed plan in the Colonial Office necessitated that Moshoeshoe should be subdued or attacked as a precondition for withdrawal. In the words of Earl Grey, the Colonial Secretary, in his dispatch of September 15th 1851, problems would arise if any course which were taken by this barbarous people might be regarded as showing a defiance of power in the British authorities….The role of previous treaties that forged links between Moshoeshoe and the British were totally disregarded in the framework of withdrawal. Further the attack on Moshoeshoe as a precondition for withdrawal was meant to strike fear in the hearts of those forces who were still aggrieved by Smith's and Warden's bungling. Where Moshoeshoe was concerned in particular, the British felt they had an axe to grind because the British troops had lost to the Basotho in the Battle of Viervoet, during 1851. The point of departure of the Battle of Berea was a definition of the supremacy of the White race where the Black race was concerned. Central to the motive of the Battle of Berea of 1852 was the desire and the objective to stop the threat constituted by Moshoeshoe's forces regarding the survival of the White race.[55]

Accordingly, the conqueror had competences and rights against the African but without any obligations to the African. The African had only obligations towards the conqueror but no rights.[56] Thus the African culture and society were presented as being so rudimentary and primitive that colonialism was the sacred duty of Christianity and civilization.[57] Emphasizing the line between civilization and barbarism and the superiority of the conqueror, M. Jules Romains is reported to have said:

> Would there not have been the slightest apprehension if the question had arisen of turning all powers over to these Negroes, the sons of slaves?….I once had

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[55] Lelimo, M., op. cit., p. 49.

[56] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 464.

[57] Nkrumah, K., Consciencism, London: Panaf Books, 1970. p. 62.

opposite me a row of some twenty pure blacks….I will not even censure our Negroes and Negresses for chewing gum. I will only note….that this movement has the effect of emphasizing the jaws, and that the associations which come to mind evoke the equatorial forest rather than the procession of the Panathenaea….The black race has not yet produced, will never produce, an Einstein, a Stravinsky, a Gerswin.[58]

The competences and rights of the conquerors against the Africans but without any obligations to the Africans were founded on conquest ungoverned by law, morality or humanity.[59] A good case of this is observed between the Dutch East India Company (VOC)[60] and the Khoisan[61] peoples at the Cape. The Khoisan peoples had lived in Southern Africa for at least 8,000 years before the Dutch arrived.[62] Following the 1659 war that broke out between Khoikhoi people and the former employees of VOC, peace negotiations were held in April, 1660. It is reported that at the negotiations, Van Riebeck who was the commander of VOC at the Cape told Autshumao who was the leader of the Khoikhoi people "that not enough grazing land was available for the cattle of both the colonists and the Khoikhoi. Autshumao then asked: "If the country is

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[58] Cesaire, A., op. cit., p. 30.

[59] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 474.

[60] The Dutch East India Company (VOC) was a trading company of Dutch origin established at the Cape. It received extraordinary privileges and support from the Dutch government. With enormous power at its disposal, VOC adopted all the mercantilist measures such as tariffs, a monopoly, favoritism, patronage, corruption, slavery, dismissal without legal process, corporal punishment,– to promote its business interests and entrench the privileges given to it in terms of the charter. For all practical purposes, the VOC was law unto itself. Consequently the company and its representatives at the Cape – could use legal and illegal, moral and immoral measures as long as its commercial interests were served.

[61] This is a collective name for the groups of indigenous African Peoples, the Khoikhoi who kept cattle and sheep and the San, who were hunter-gatherers. The Khoisan lived in the Cape and were the first African people whose property (territory) and political sovereignty rights were malevolently injured by European conquerors at the Cape in Southern Africa.

[62] Terreblanche, S., A History of Inequality in South Africa, 1652-2002, Sandton: KMM Review Publishing Company Pty Ltd., 2002. p. 155.

too small, who has the greater right: the true owner, or the foreign intruder?" Van Riebeck recorded his answer in his diary:….('We have won this country in a just manner through a defensive war, and it is our intention to keep it')."[63] Van Riebeeck's response to Autshumao was nothing but a plea to deal with a factual situation of conquest in the unjust war of colonization. But Autshumao was referring to the Khoisan people's right to ownership of land and sovereign title over the same territory from time immemorial. Thus the scene was set for the yet to be concluded contention over sovereign title to the territory of South Africa.

1.1.1.3 Christian Conquerors and their Mission to Save African Souls

Another perspective within which the conqueror drew the line between the conquered and the conqueror was that of the fidels and the infidels. The conqueror's long tradition of the mythic gods of the pagan world was interrupted and discarded to a large extent when Christianity replaced it.[64] Christianity justified the abandonment of paganism by appeal to reason and revelation. Reason was used to show that irrationality was the basis for belief in the mythic gods. Reason justified the destruction of superstition. This was strengthened by the claim of the twelve Apostles and Paul, among others, that God now revealed himself through Jesus. Since

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[63] Ibid., pp. 154-155
[64] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 464.

revelation provided certainty about the being and the destiny of humanity, it was no longer necessary to have faith in the mythic gods.[65]

Christianity in North Africa is so old that it can rightly be described as an indigenous, traditional and African religion. Long before the start of Islam in the seventeenth century, Christianity was well established in Egypt, parts of the Sudan and Ethiopia.[66] The conversion of Africa to Christianity could not help to arrest the scramble and partition of Africa. Portugal's bold initiative in attempting to secure the souls of Africans for Christianity and her wealth for Europe by seeking to outflank the Muslims in the Mediterranean, was soon challenged by the other nations of Europe, especially by the Dutch and the English.[67] Thus Christianity from Western Europe and North America has come to Africa, not simply carrying the Gospel of the New Testament, but as a complex phenomenon made up of Western culture, politics, science,

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[65] St. Paul was famous for his appeal to both reason and revelation in preaching for conversion among the gentiles: "Even a few Epicurean and Stoic philosophers argued with him. Some said, 'Does this parrot know what he's talking about? And, because he was preaching about Jesus and the resurrection, others said, 'He sounds like a propagandist for some outlandish gods'….So Paul stood before the whole Council of the Areopagus and made this speech: "….Yet in fact he is not far from any one of us, since it is in him that we live, and move, and exist, as indeed some of your own writers have said: "We are all his children." 'Since we are the children of God, we have no excuse for thinking that the deity looks like anything in gold, silver, or stone that has been carved and designed by a man. God overlooked that sort of thing when men were ignorant, but now he is telling everyone everywhere that they must repent, because he has fixed a day when the whole world will be judged, and judged in righteousness, and he has appointed a man to be the judge. And god has publicly proved this by raising this man from the dead." Acts 17:17-32.

[66] Mbiti. J.S., African Religions and Philosophy, London: Heinemann, 1969. p. 229.

[67] Afigbo, A.E., Scrambles and Partitions in African History, In: Okere, I.T., & Njoku, C.A., (eds.) op. cit., p. 20.

technology, medicine, schools and new methods of conquering nature.[68] According to Mbiti, the image that Africa received of Christianity in Africa was very colored by colonial rule and all that was involved in it. For example, the supporters of apartheid in South Africa used Christianity to justify their practice of segregation and oppression.[69] In discussing what he considers a white-dominated Church in Africa, John Baur[70] indicates that the ambiguity of a largely local Church that is hardly African-run is the product of South Africa's heavy colonization that established white supremacy, strongly reflected in all its mission churches. Baur indicates that while the South African Catholic Church had sufficient number of white local priests for its white population, its 80% black members depended up to 90% on missionaries. Among the Catholic churches in Africa, South Africa was the first to have an Apostolic Delegation erected in 1922, and again the first in sub-Saharan Africa to have an established hierarchy corresponding to the political provinces (Cape Town, Durban, Pretoria and Bloemfontein in 1951). But the same Church comes last in terms of Africanization.[71]

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[68] Mbiti, J.S., op. cit., p. 217.
[69] Ibid., pp. 229-241.
[70] John Baur is a Catholic missionary priest of the Benedictine Order. He is the author of a book on an African Church History under the title of "2000 Years of Christianity in Africa".
[71] Baur, J., 2000 Years of Christianity in Africa: An African Church History, Nairobi: Paulines Publications Africa, 1998. pp. 295-296.

The dividing line between fidels and infidels has been observed as part of the explanation given for the Great Trek (1836-1840). Thus when in 1828 some civil rights were granted to the Hottentots, including the right to appeal to court and freedom to work, and in 1835 the slaves were to be emancipated to enjoy equal rights, there was a Boer settlers' reaction in the form of the Great Trek. The migration of some 6,000 Boers beyond the Orange River was more and further encroachment into the territory of the indigenous African peoples. This was the Boers' attempt to find a new home, unmolested by the Anglicizing British administration. The main reason for the Great Trek was not much the freedom given to the slaves but "their being placed on an equal footing with Christians, contrary to the laws of God and the natural distinction of race and color, so that it was intolerable for any decent Christian."[72]

The Boers' social superiority was for them a clear confirmation of the "indubitable certainty of grace" in which all heirs of Calvin believed more than he himself did. For Calvin the community of the elect formed the invisible Church, but the Boers identified it with their racial community sojourning in a heathen land. Like Israel of old they experienced a great exodus from British oppression into a land of freedom and prosperity. They too claimed to be God's chosen people entitled to take possession of

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[72] Ibid., p. 191.

the land into which they were led. In their covenant of the Trek they promised not to attack, only to defend themselves, but in practice they subdued all the indigenous African peoples they came across. Thus the Boers subdued and made servants of the indigenous conquered African peoples in the social structure of white masters and black servants. The dividing line of fidels and infidels was not enough for the Boers, for in 1857 the Dutch Reformed Church introduced the law demanding that Whites sit apart from colored during Church services and required the building of special churches for the Hottentots. In 1859 an exclusively indigenous conquered African people's Church was founded in the Cape.

1.1.1.4 The Tradition of Just War

Another perspective from which the urge to conquer Africa was nurtured was that of just and unjust war. The art of war is the oldest practice in the European society, especially among the Greeks, and it has contributed to the development of the European civilization. The European civilization is proud of its Greek contribution: the Achaeans and the invaders of Troy city-state (1900-750 B.C.); the famous battles for supremacy between Sparta and Athens; Alexander the Great (356-323 B.C.) and

the Greek empire; the Roman Empire and the internal power struggles (31 B.C. – A.D. 180); the Germanic barbarians invasion and the fall of the Roman Empire.[73]

Cesaire quotes for us one Western humanist who had this to say about the European society and war:

> ….with us, the common man is nearly always a déclassé nobleman, his heavy hand is better suited to handling the sword than the menial tool. Rather than work, he chooses to fight, that is, he returns to his first estate. Regere imperio populos, that is our vocation….a race of masters and soldiers, the European. Reduce this noble race to working ….like the Negroes and Chinese, and they rebel. In Europe, every rebel is, more whom you are setting a task contrary to his race – a poor worker, too good a soldier….Let each one do what he is made for, and all will be fine.[74]

Thus war was known in the broad geographic expanse inhabited by the European conqueror of Africa. The causes and objectives of war differed according to time and place, and in time principles governing the humanization of war were established among the Europeans. It was on the basis of the principles governing war that the line between just and unjust wars was drawn. That war can be just or unjust means that there are laid down conditions to be fulfilled before resort to war may be justified. It was during the Middle Ages when St. Thomas Aquinas (1225-1274) gave an outline of

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[73] Neil, McGarry, Hohl, A History of Western Civilization, Milwaukee: The Bruce Publishing Company, 1962. pp. 123-233.
[74] Cesaire, A., op. cit., p. 16.

principles regulating the conduct of war. The theory of the just war existed before the onset of the voyages of discovery.[75]

According to St. Thomas, the conditions that have to be fulfilled before resort to war may be considered just are based on the following principles: (1) war is waged at the command of the sovereign; (2) there is a just cause; (3) there is the right intention. These principles are predicated on the premise that all means of peaceful resolution of the conflict have been exhausted. The same principles must be simultaneously present and verifiable in any single act of war for it to qualify as just.[76]

Some observations about the principles of just war indicate that war is exclusively a matter between sovereign powers and is a prerogative command of a head of state, but this exclusivity becomes questionable with regard to self-determination and humanitarian intervention. The conquest of the indigenous peoples of Africa in the wars of colonization is cited here as another example of the questionable right to war that is the prerogative only of the sovereign. Whereas the principle of the just cause means that war may be initiated in order to repel an injury and gain vindication against an offence such as national honor, the conquerors of the indigenous African peoples

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[75] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 466.
[76] Ibid.

acted contrary to this principle when they colonized Africa. In fact, the European wars of colonization in Africa were conducted in contempt of the conditions that have to be fulfilled before resort to war may be considered just. The just war doctrine has been applied against the indigenous African peoples in a manner that is impermissible with regard to the right intention. The European conquest of the indigenous African peoples is cited here as unjust war against which reparation, restoration restitution claims oblige in justice.

1.1.1.5 The UNO on Conquest

Since 1970, and in accordance with Article 2(4) United Nations Charter: 1970 Declaration on principles of International Law, section on the principle on the use of force, paragraph 10, Appendix II, there is some attitude change towards conquest according to International Law. It has been established that the "territory of a state shall not be object of acquisition by another state resulting from the threat or use of force."[77] Thus it was only in 1970, following the 1928 Kellogg-Briand Pact, that the United Nations Charter officially outlawed the use of force in the acquisition of territory. But there was no mention in the 1970 United Nations Charter of restitution arising from the injustice of colonization and slavery. "So the law of conquest has

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[77] Harris, D.J., Cases and Materials on International Law, (ed.) London: Sweet & Maxwell, 1991. p. 201.

declined to the point where it provides, under the doctrine of intertemporal law, justification only for the titles acquired before the force used to obtain them as declared illegal by customary international law."[78]Thus the position of the United Nations Charter on conquest still upholds the former application of International Law on conquest.

But the indigenous conquered African peoples are still awaiting restitution arising from the injustice of colonization and decolonization. "The 1994 Kampala conference on reparations to Africa is a pertinent example of Africa's demand for the material and practical restoration of her inalienable right to subsistence. Reparations, though not technically due to the conquered, is in this case morally and legally appropriate."[79] Again, among the issues that were proposed for agenda of the United Nations Conference of August 2001 in Durban, South Africa, was restitution arising from the injustice of colonization and slavery. But the United States (USA) insisted on the exclusion of restitution arising from the injustice of colonization and slavery.[80] The United States' insistence on the exclusion of restitution arising from colonization and slavery, and to which Africa relented in the name of compromise, was another wrench in favor of government succession and the denial of state succession. Thus the United

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[78] Ibid.
[79] Ramose, M.B., The Struggle for Reason in Africa, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., pp. 2-3.
[80] Ibid.

Nations Conference of August 2001, in Durban, South Africa was another occasion for the failure in the attempts to revisit and correct decolonization in Africa. Africa's right to life continues to be denied, derecognized and practically unprotected by the beneficiaries of the violence of colonization.

1.1.2 Africa and the Right to Self-Determination

Africa's claim to the right to self-determination justifies her liberation struggle against colonial conquest. We hold that there is one and the same human dignity to be equally respected in every human species. We also hold that each species is entitled to the right to self-determination and to freedom against conquest.

Africa had no choice but to affirm and assert her right to self-determination against European colonization. Kwame Nkrumah,[81] in demand of "self-determination now" in June 1949, launched his own political party called Convention People's Party. In his campaigns for Gold Coast political independence, Nkrumah is noted to have told his followers "seek ye first the political kingdom, and everything else shall be added to

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[81] Kwame Nkrumah was born in 1909 and became in 1957 the first Prime Minister of Ghana. Ghana became the first of all the colonies of black Africa to achieve political independence. In 1966 he was overthrown by a military and police coup d'etat. He died in 1972. Basil Davidson in his account of the life and times of Kwame Nkrumah, agrees with those who say that Nkrumah was a strategist of genius in the African struggle against classical colonization. Nkrumah is therefore regarded as the "Black Star" of Africa, and thus holding a creative and important place in the political life of the twentieth century.

you." In March, 1957 Britain pronounced Ghana independent.[82] Nkrumah was determined to turn Accra into the center of African liberation, to provide a base from which nationalist leaders from colonial Africa could draw support and encouragement. On Ghana's Independence Day we are told he said: "Our independence is meaningless unless it is linked up with the total liberation of the African continent."[83]Nkrumah's motive and commitment to the liberation struggle of Africa from European colonial conquest was a legitimate demand for Africa's autonomy and right to self-determination.

1.1.2.1 **Africa Speaks to the World about her Right to Self-Determination**

Addressing the fifteenth and sixteenth sessions of the United Nations General Assembly held consecutively in 1960 and 1961, some African leaders took the opportunity to bring home the point that, Africa is entitled to the exercise of its right of self-determination, and as such, it was not supposed to have been subjected to colonization. From among the many African leaders at the United Nations Assembly, we quote from KatemaYifru and Kwame Nkrumah. Katema Yifru, the then acting minister of state of Ethiopia said:

> High on the list of topics, and clamoring for our attention, is the final liquidation
> of colonialism….We can settle for no less and will be satisfied with nothing

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[82] Meredith, M., op. cit., pp. 16,141.
[83] Ibid., pp. 28-29.

else….every dependent African territory must be free….We call upon the government of the United Kingdom to grant the right of equal suffrage to the African population, so that each territory may determine its own future no matter what the desire of the settlers might be….The only policy that is realistic and acceptable to Africans is the transfer of power to Africans….Last year, by an overwhelming vote, the General Assembly called for the speedy dissolution of the last strongholds of colonialism. Unhappily, this resolution has remained largely unimplemented….Let us act now, forthrightly and honestly, to dispel this problem and to remove it permanently from the agenda of this body.[84]

The final liquidation of the colonization of Africa demands much more than a sympathetic listener and donations. It is an admission of guilt on the part of the conquerors and the final settlement made in accordance with the demands of restorative justice acceptable to the indigenous African peoples.

Kwame Nkrumah, President of the Republic of Ghana said:

The great tide of history flows, and as it flows it carries to the shores of reality the stubborn facts of life and men's relations one with another. One cardinal fact of our time is the momentous impact of Africa's awakening upon the modern world. The flowing tide of African nationalism sweeps everything before it and constitutes a challenge to the colonial powers to make a just restitution for the years of injustice and crime committed against our continent. But Africa does not seek vengeance. It is against her very nature to harbor malice. Over 200 millions of our people cry with one voice of tremendous power – and what do we say? We do not ask for death for our oppressors; we do not pronounce wishes of ill-fate for our slave-masters; we make an assertion of a just and positive demand; our voice booms across the oceans and mountains, over the hills and valleys, in the desert places and through the vast expanse of mankind's habitation, and it calls out for freedom of Africa….It is a simple call, but it is also….a red light of warning to those who would tend to ignore it….I look upon the United Nations as the only organization that holds out any hope for the future of mankind. Cast your eyes across Africa: the colonialists and imperialists are still there. In the twentieth century of enlightenment, some nations still extol the vain glories of colonialism

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[84] Padelford, N.J., & Emerson, R., (eds.) Africa and World Order, New York: Frederick A. Praeger, 1963. pp. 36-37.

and imperialism. As long as a single foot of African soil remains under foreign domination, the world will know no peace. The United Nations must therefore face its responsibilities, and ask those who would bury their heads like the proverbial ostrich in their imperialist sands, to put their heads out and look at the blazing African sun now traveling across the sky of Africa's redemption. The United Nations must call upon all nations that have colonies in Africa to grant complete independence to the territories still under their control. In my view possession of colonies is now quite incompatible with membership in the United Nations.[85]

It is incumbent upon the indigenous conquered African peoples to be vigilant and constantly remind themselves that their history of independent evolution for millennia was permanently interrupted by colonial conquest. The indigenous African peoples must now learn to survive better and avoid the recurrence of slavery and colonial conquest.[86] A vivid description of the landmarks of the history of European colonization of Africa helps to refresh Africa's memory and to avoid the recurrence of the interruption of her independent evolution. The history of European colonial conquest of Africa must be exposed for the world to see and judge. Europe is morally and legally obliged to restore the original African and human dignity.[87]

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[85] Ibid., p. 48
[86] Okere, T.I., Keynote Address, In: Okere, T.I. & Njoku, C.A. op. cit., p. 6.
[87] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., pp. 474-476.

1.1.2.2 **The Problem of Reparation to Victims of Conquest and Oppression**

It is as the enslaved and colonized-decolonized that Africa is endowed with moral high ground to challenge Europe for its history of slavery and colonization. It is as the cradle of human civilization that Africa is called upon to help divest the European civilization of the attitude and acts of inhumanity and derecognition of human dignity committed in slavery and colonialism. For Europe to be in harmony with the cradle of human civilization, and thus to be civilized, it must divest its civilization of the attachments and gains from slavery and colonial conquest of Africa.

On the other hand whereas we appreciate that Germany has done an honorable good on compensating Israel for the Holocaust, we are also of the opinion that:

> The German experience of reparations to the Jewish people ought to have been preceded by reparation to the Herero people. Refusing reparations to the Herero people speaks of a defect in German moral sensitivity….The rationale for the above thesis is that the battle of Ohamakari was fought at least thirty years before the Holocaust. There is no reason to suppose that at the time German moral sensitivity was rather underdeveloped. Nor can it be plausibly argued that the Germany of 1904 was ethically incapable of distinguishing between humane and inhuman acts. On this basis, Germany ought to have demonstrated ethical aptitude by acknowledging the injustice of the war with the Hereros. Acknowledging the injustice means responding concretely to the triple exigencies of justice to the Hereros, namely restitution, restoration and reparations. It is odd that Germany was willing to fulfill the triple exigencies with regard to the Jews in respect of the Holocaust and, yet declined to do the same to the Hereros with regard to the "pesticide" she had committed on the Hereros.[88]

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[88] Ramose, M.B., But Genocide is not Pesticide, Unpublished paper, p. 2-3.

History was made when Italy which colonized Libya from 1911 to 1943 stepped forward at long last on the 30/08/2008 and signed a deal to pay compensation settlement to Libya to the amount of US $5 billion. According to the Italian Prime Minister Silvio Berlusconi the deal represented a "complete and moral acknowledgement of the damage inflicted on Libya by Italy during the colonial era".[89] Following the 1994 Kampala conference on reparations to Africa, the Italian government compensation deal to Libya, although it comes late, is a praiseworthy deed for material and practical restoration of Africa's inalienable right to subsistence.[90] So far Italy is the first ever European colonial country to compensate an African Country for colonization. We keep hoping that other European colonial masters will follow suit.

1.1.2.3 The European Conqueror Pleads Innocence about the Colonization of Africa

In an attempt to conceal the history of European enslavement and conquest of Africa, the conqueror pleads innocence and is bent on dissociating her present privileged

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[89] File:///C:/Documents%20and%20Settings/new/Settings/new/My%Documents/Italy Seals Libya Colonial Deal.htm 04-Sep-08 22:07

[90] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 3.

position from its historical ancestry.[91]   Instead of seeking the option of "baptism",

"conversion" and "repentance" for the evil committed in their name, in the slavery and

unjust conquest of Africa, the conquerors justify the immorality of their action:

> There is nothing odd about some people ruling others. Romans ruled from the
> Euphrates to the Clyde and Norsemen from Sicily to Greenland. In history we
> accept this as one of the facts of life. The colonies settled by the Romans or the
> Norsemen were not weak because they were colonies; they were colonies because
> they were weak.[92]

The injustice associated with the European conquest of the indigenous African peoples

in the unjust war of colonization had nothing to do with the weakness of the Africans

but rather the European urge to conquer and colonize. Following the history of the wars

of colonization in Africa by the European conquerors the majority of African countries

remain weak and dependent on their former colonial masters. In the long list of their

self-justification and concealment, the statement that has been too successfully sold to

the world is "Africans themselves are to blame."[93]

It is very strange that, while the God of Judaism and Christianity, the Eternal and

Absolute, just in His ways, intervened on behalf of the weak and unsuspecting Abel

against his strong killer brother Cain, the "Christian" conquerors are proud to defend

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[91] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.
[92] Townley, R., The United Nations, New York: Charles Scribner's Sons, 1968. p. 116.
[93] Okere, T., Keynote Address, In: Okere, T.I., & Njoku, C.A., op. cit., p. 8.

colonial conquest on the basis of the weakness of the conquered.[94] Thus as the conquerors enjoy the benefits of the wars of colonization, the conquered are supposed to forget about the past and quietly renounce their right to self-determination and to seek a remedy to the loss of property and political sovereignty.[95] Devoid of recourse to restoration, reparation, restitution or compensation, the trans-Atlantic slave trade and European colonization of the indigenous conquered African peoples leaves the Africans in a perpetual state of the colonized-decolonized.[96]

The colonial masters and their beneficiaries of the right of conquest are visible, active in their enjoyment of the privileges of conquest, and objectively identifiable; they have to be constantly reminded of the need for historical justice of their colonial past.[97] And until such time that there is restitution, restoration, reparation and compensation, the story must be told that:

> The slave trade was continued for 3-400 years by both Christian Europeans and Muslim Arabs that is, for as long as it profited them and harmed only the black Africans….African slave trade and slavery were "abolished" in the sense of being updated and refined in the way to guarantee their perpetuity. The powerful nations of Europe that had carried on the slave trade now decided to make slaves of all African people not in faraway America, but owning them wholesale. They issued themselves a certificate of occupancy over the entire land of Africa and a title of ownership. They withdrew the peoples' sovereignty, declared virtually all

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[94] Genesis 4:1-16
[95] Oguejiofor, J.O., op. cit., pp. 28-29.
[96] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. v.
[97] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.

Africa a subject people and went ahead to reprogram their lives, economies, cultures, and religions. There was some slight embarrassment about sorting out who owned what, but it was sorted out amicably in Berlin. The white man now completely owned the dark continent. Ever since then, they have continued to behave like gods in this land, more powerful than the ancestors or the native gods, using and abusing, exploiting, granting independence whenever and for as long as they would, to the extent they would, changing tactics and proxies, but always present and in control, squabbling and quarreling at times like the Olympian gods, using the people and land of Africa as puns in games whose rules they invent and change as it pleases them.[98]

The demand for reparations following the European conquest in the unjust wars of colonization in Africa affirms and asserts the inalienable right of the colonized-decolonized indigenous African peoples to protection of the equality of human dignity.

1.2 Loss of Sovereign Title to Territory

1.2.1 The Partition and Invention of Botswana [99]

The partition and invention of Botswana started with the wars of conquest and colonization that took place in the Boer invasion to north beyond the Lekoa/Vaal River in what later became the Boer Republic of Transvaal. According to Terreblanche, the majority of Boers were interested in establishing Boer republics in the interior, but their attempts at state formation were disrupted by conflicts between the accumulating elite groups, the intervention of the British, and the resistance of the indigenous

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[98] Okere, T.I., Keynote Address, In: Okere, I.T., & Njoku, A.C., op. cit., pp. 7-8.
[99] We find in the partition and invention of Botswana a typical European conquest in Africa: conquest ungoverned by law, morality and humanity, whereby there is malevolent injury of titles to property (territorial) and political rights of the indigenous conquered African peoples.

African peoples.[100] The territory they encroached into was inhabited by among others the Batswana, some of whom had been unsettled by the Ndebele and went south to Moshoeshoe's territory – Thaba Nchu.[101] The Boers, upon conquering the indigenous African peoples' territory, were recognized as independent by the British. Thus the "South African Republic" of Transvaal was born in 1852 Sand River Convention. The British agreed to sell arms and ammunition to the Republic and promised not to supply these to the indigenous African peoples. In 1848 the British through Harry Smith – the Cape Governor, had annexed the whole region between the Senqu/Orange and Lekoa Rivers, and named it the "Orange River Sovereignty".[102]

In 1854 at the Bloemfontein Convention the British formally withdrew from the Orange River Sovereignty and handed over its government to the Boers who renamed it Orange Free State. The Boers were given by the British the territory originally and rightfully belonging to the indigenous peoples of Africa, to make it their independent Republic with no settled boundary between the Boers and the indigenous peoples, thus leading to a situation of incessant hostilities between the two. In 1870 the Presidents of the Boer Republic of Transvaal and Orange Free State agreed to divide the whole

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[100] Terreblanche, S., op. cit., p. 222.
[101] In 1836 the Boer trekkers arrived and gathered near Thaba-Nchu. The Batswana – Barolong of Moroka had just crossed Lekoa/Vaal River from the north to Thaba-Nchu after clashing with Mzilikazi who occupied their territory after them. The Batswana were accepted into the territory of Moshoeshoe.
[102] Shillington, K., History of Southern Africa, Essex: Longman Limited, 1987. pp. 66-67.

region between their republics along the Lekoa River. Following the settlement mediation in favor of the British interests, the Boers were supposed to allow for trade route to the north. At the instigation of the British, Batswana laid claims against the Transvaal Republic that were recognized by the British. But instead of giving back the territory concerned to its original and rightful owners, the whole of diamond fields of Kimberly were taken by the British and became the colony of Griqualand West.[103] In 1877 Britain annexed the South African Republic of Transvaal (ZAR) with the aim to get indigenous African migrant labor for the Kimberly diamond mines. They had targeted Bapedi whose autonomy they intended to destroy by alienating them from land, inter alia, by forcing them to pay taxes. Thus when, in 1881, the ZAR's independence was restored, the British were satisfied they had secured a steady supply of migrant labor.[104]

Following the annexation of "South West Africa" (Namibia) by Germany in 1884, the British, fearful of the German or Boer expansion, annexed both Southern and Northern Bechuanaland in 1884-1885. By the British proclamation of 1885, Bechuanaland was divided along the line of Molopo River. Bechuanaland north was extended as far as Latitude 22 degrees south, cutting off northern Khama's Nqwato Kingdom and

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[103] Ibid., pp. 85-86.
[104] Terreblanche, S., op. cit., p. 228.

omitting altogether the region of Ngamiland thus exposing it to the control of British Southern African Company (BSA). The British, in consideration of the good number of white settlers already established in this part, subjected Bechuanaland South of the Molopo River under direct British rule as the "Crown colony of British Bechuanaland", and later joined it to the Cape Colony in 1895.[105] The northern Bechuanaland was brought under nominal authority, and became the Bechuanaland Protectorate. The British had granted BSA Company its Royal Charter in 1889 whereby the whole Bechuanaland was included within its future territory. The British were anxious to keep the Boers, Germans and Portuguese out of the region. They tricked Lobengula into signing a treaty of friendship in 1888. BSA Company soon after occupied Mashonaland and invaded Matebeleland claiming all the Ndebele for themselves by right of conquest and pushed the Ndebele into reserves. BSA Company laid claim to the whole of modern Zimbabwe which was named "Rhodesia", after their founder, Rhodes.[106] In 1895, following the orchestrated protest campaigns by Batswana representatives to the British public in England, Chamberlain agreed to cancel the transfer of the Bechuanaland Protectorate to BSA company. In view of its independence from Britain, Bechuanaland was consolidated whereby among some interesting decisions of European colonial conquest in Africa, Mafikeng – the capital

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[105] Shillington, K., op. cit., pp. 124-125.
[106] Ibid., pp. 120-123.

of Bechuanaland for eighty years – was left part of South Africa, while Gaborone became the new capital of Botswana on gaining independence from Britain on September 30, 1966.[107] Thus through conquest ungoverned by law, morality and humanity, Botswana was partitioned and invented by European conquers – the British and the Boers. The indigenous conquered African peoples were deprived of the fertile land that was originally and rightfully theirs from time immemorial. The Africans were taken out of their land and confined to territories considered by the white colonists to be mostly desert land. Their land was given out for private ownership by the European settlers who subjected the Africans to servitude and poverty.[108] And as Terreblanche correctly puts it in another context, "all the members of the white master class remained landowners and used their political and military power to turn indigenous conquered African peoples into an unfree and exploitable labor force."[109]

At the moment of the giving of independence to Bechuanaland Protectorate in 1966, the British had made no effort in the name of restoration, restitution, reparation or compensation for the territorial and political sovereignty rights of the indigenous conquered African peoples. Botswana's independence was given by the British and received in accordance with the technique of government succession.

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[107] Stevens, R.P., Lesotho, Botswana and Swaziland, London: Pall Mall Press Ltd., 1967. p. 152.
[108] Shillington, K., op. cit., p. 126
[109] Terreblanche, S., op. cit., p. 264.

1.2.2 **The British Colonization Policy and the Basotho Legal System**

The British Annexation Proclamation of Basotholand in 1868 was quite in line with the European and British policy and practice of conquest and colonization in South Africa: the 1806 British occupation of the Cape;[110]the British annexation of Natal in 1842;[111]the annexation of the Orange River Sovereignty in 1848; the Sand River Convention of 1852 whereby the British recognized the South African Republic north of the Vaal River; the British annexation of British Kaffraria to the Cape in 1866; the annexation of Basotholand in 1868, the annexation of Transvaal Republic in 1877; the annexation of Bechuanaland in 1884-1885; the annexation of Zululand in 1886-1887; the British South African Company conquest of Mashonaland and Matebeleland and the founding of Rhodesia in 1896-1897; the annexation of Swaziland in 1899; the British formation of the Union of South Africa in 1910.[112] The British rewarded the Boers with independence status for the use of British war machinery to kill and chase the indigenous African peoples from their territory.[113]

It is in appreciation of the same British colonial policy that we share the following the conclusion about the British Annexation Proclamation of Basutholand:

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[110] Shillington, K., op. cit., p. 53.
[111] Ibid., p. 66.
[112] Parsons, N., op. cit., pp. 229-230.
[113] Terreblanche, S., op. cit., pp. 244-247.

the Proclamation of 1868 came as a negotiated settlement in circumstances that were dictated by the British commitment to the continued existence of the Orange Free State, further aggravated by British commercial interests, the balance of power in South Africa, and only marginally the security of the Kingdom of Lesotho.[114]

In the final analysis British commercial interests prevailed. The territory of Basutholand was reduced to a mere source of cheap labor for both the British commercial and industrial interests and the development of European economy in South Africa.

The Proclamation was a foreign law administered on the indigenous conquered African peoples. It was contrary to the African legal system. It relegated it to a subordinate role subject to the law of the conqueror. The philosophical construction of the Proclamation was based on the British and Western epistemological paradigms. The general incompatibility of the British and Basotho legal system was such that "….the laws of the indigenous conquered peoples of Africa were denied their legitimate right and status as law, second to none. They became a kind of foreign law on their own natural soil and in their habitat."[115] The Proclamation was an unjust interference with Basotho's right to govern themselves in accordance with their own laws as the law of their land. Thus the Proclamation was a basis for intriguing queries from Basotho:

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[114] Machobane, L.B.B.J., op. cit., p. 43.
[115] Ramose, M.B., The King as Memory and Symbol of African Customary Law, op. cit., p. 354.

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> Before Chief Moshoeshoe asked for protection from Queen Victoria he had laws with which he governed his country, but now we have no laws because I understand that Basotho law can be law if it is published by the High Commissioner….My view is that before Moshoeshoe was taken under the protection of the Queen he had laws, and I do not know when these were repealed.[116]

The Annexation Proclamation of Basotholand had departed from Moshoeshoe's request of vassalage. It introduced a conqueror/conquered relationship between Basotho and the British. It was total and deliberate departure from the friendship alliance between sovereigns of 1843. According to the Proclamation, King Moshoeshoe and his successors were to be relegated to the status of "Paramount Chief", and totally responsible to Her Majesty the Queen of England.[117]

1.2.3 **The 1868 British Annexation Proclamation of Lesotho**

The apparent innocence of the Annexation Proclamation with the putative neutrality in the separation between Basotho law (Basotho Customary Law[118]) and British legal system as the law of the land, was based on the questionable "right of conquest". The Proclamation was a European legal provision for introducing a colonial constitution as

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[116] Machobane, L.B.B.J., Government and Change in Lesotho, 1800-1966", London: Macmillan Press, 1990. p. 203.
[117] Ibid., p. 89.
[118] The 12th March, 1868 British Annexation Proclamation of Basotholand established the constitutional basis of law of the land for British political authority and legal system in Lesotho – over and above the laws of Basotho that were styled as Basotho customary law due to their constitutional derecognition.

the law of the land in Lesotho. Thus we fully agree with Ramose in his explanation of the problem behind the colonialists' introduction of African customary law:

> African customary law may be construed as one of the specific results of conquest in the unjust wars of colonization. At conquest, ancient African kingdoms were not abolished completely. Instead the erstwhile African kings were converted into chiefs to act as guardians of the law of the conqueror imposed upon the indigenous conquered African peoples. Thus the institution of African customary law became one of the many problems that the colonial conqueror brought upon the indigenous conquered peoples of Africa.[119]

The institution of African customary law has helped the course of European colonization in Africa in many ways. Among others, it helped to mitigate the severity of problems caused by an abrupt imposition of a colonial legal system upon the conquered indigenous African peoples. While it helped to mislead the majority of the indigenous conquered African peoples into believing and hoping that their colonial master's interests could also be of equal benefit to them, it became a very significant stepping stone towards the introduction of decolonization.

The British Annexation Proclamation of Basotholand came with such titles as "Paramount Chief" in place of King of Lesotho (Morena e Moholo) and concepts such as "Basotho Customary Law" for Basotho Law. These were the manifestation of power relations privileging the position and ideas of the powerful over the weak (the

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[119] Ramose, M.B., The King as Memory and Symbol of African Customary Law, op. cit., p. 357.

British over Basotho). Basotho law has ever since been subordinated and subjected to the British and Western legal system, thus facilitating the loss of cultural and social identity of Basotho.   Poulter has correctly observed the racial discrimination introduced by the British among the Basotho.

> The system of legal dualism established in 1884 by the High Commissioner's Proclamation was accompanied, naturally enough, by a parallel court structure. The imported law was to be applied by courts held by the Resident Commissioner (who was the chief administrative officer) and his Assistant Commissioner (in their respective districts), while customary law was to be administered in the traditional courts of the chiefs. Since the common law had been introduced specifically to meet the needs of the white population no case in which a white person was a party could be judged by a chief unless all the parties consented. Appeals lay from decisions of the chiefs, first to a combined court of the chief and an Assistant Commissioner and then to the Resident Commissioner.[120]

And among those who reaped some benefits from the apparent innocence of the British Annexation Proclamation were the Christian Missionaries:

> We thank God that Great Britain has taken Basotholand under her protection….Then will the Queen's name and her laws and her ministries be blessed in every hut in the country. The cause of Christianity – and that is something – will prosper….Assuredly, to save a people, to raise it gradually, to civilize it, to christianize a nation is, in the eyes of God, something better than to obliterate it from the face of the Earth.[121]

The description of British colonial activities culminating in loss of Basotho titles to property (territorial) and political sovereignty rights as the "course of Christianity" affirms and asserts our point that the conversion of Africa by the Western Christian

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[120] Poulter, S., Legal Dualism in Lesotho, Morija: Morija Sesuto Book Depot, 1979. p. 14
[121] Germond, R.C., (Trans. by Germond) Chronicles of Basotholand, Morija: Morija Sesuto Book Depot, 1967. pp. 350-351.

missionaries could not help to arrest the scramble and partition of Africa by the European colonial conquerors. The British employed Basotho chiefs and their chiefdom as extensions of their law,[122]and during the political independence era the chiefs have become building blocks for the power of some politicians.[123]

1.2.4 Basotho Law and the Law of the Land in Basotholand

King Moshoeshoe, in his letter of the 6th December 1861, to Sir Philip Wodehouse, the British High Commissioner in Cape Town had requested to be a vassal of Queen Victoria.[124] The request was a follow-up to the 1843 Napier "faithful ally and friendship" treaty[125]initially aimed at, among other things, destabilizing movement of armed Boer trekkers escaping British authority in the Cape.[126] At the conference held at Thaba-Bosiu from the 11th – 21st February, 1862, Moshoeshoe is recorded to have said:

> I wish to govern my own people by native law, by our own laws, but if the Queen
> wishes after this to introduce other laws into my country, I would be willing, but I
> should wish such laws to be submitted to the council, of the Basotho, and when

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[122]Paramount Chief Letsie had complied with the British order to disarm Basotho against their will in the following words: "The Queen says we must surrender our arms….The decision of the Queen is ratified by the Cape Parliament. Bakuena (as honorific designation which is only bestowed on Basotho belonging to the same clan as the Chief), I say the matter is settled. We have no other choice. Obey the Government. This week, on July 21st , surrender your arms. Your chiefs, obey and issue orders to the men under you. Bakuena, surrender your arms and preserve the peace."

[123] Ramose, M.B., The King as Memory and Symbol of African Customary law, op. cit., p. 359.

[124] Theal, Basutoland Records, Vol.II, Cape Town: C. Struik. 1964. p. 608.

[125] Lelimo, M., op. cit., p. 14.

[126] Theal, Basotholand Records, Vol.II, op. cit., p. 608

they are accepted by my council, I will send to the Queen and inform her that they have become law.[127]

Moshoeshoe did not request his country to be a colony of the British. This was something foreign and unknown to him. He wished and requested to be a vassal of the British and in these words he described what he wanted:

> I am like a man who has a house, the man rules the house and all that is in it, and the Government rules him. My 'house' is Basotholand. So that the Queen rules my people only through me. The man whom I ask from the Queen to live with me will guide and direct me, and communicate me and the government. I shall then consider myself to be under the Queen's authority. I shall be like a blind man, but when he directs me I shall be considered wise; when the agent and I agree as to what is right, I shall carry it out, and he will report it to Government.[128]

King Moshoeshoe had requested to place himself under the British as a vassal: a status that he enjoyed under King Shaka of the AmaZulu, and one that King Faku of the AmaPondo enjoyed under him. From Moshoeshoe's letter, Sir Philip Wodehouse should have grasped that Moshoeshoe did not wish to cede his sovereignty. Moshoeshoe did not wish to be substantially a British subject and he was not prepared to submit to British laws.[129]

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[127]Theal, Basutoland Records, Vol.IIIA, Cape Town: C. Struik. 1964. p. 144.

[128] Ibid.

[129] Machobane, L.B.B.J., op. cit., p. 35.

1.2.5 **The Partition and Invention of Lesotho**

We have already indicated that Basotho are an indigenous African people and members of a broad linguistic family group called Basotho that includes Bapedi and Batswana. Basotho are distinguishable from two other Sotho linguistic family group members by the following names: Southern Sotho or Bashoeshoe.[130] Thus together with other indigenous peoples of Southern Africa in the region, Basotho are the original and rightful inhabitants of the territory between Lekoa and Senqu and the Maloti/Drakensburg Mountains to the east.[131] King Moshoeshoe,[132] the founder of the Basotho nation had

> claimed sovereignty over all the Basotho and the entire….territory on historical grounds. Before 1818, he declared the country….exclusively known and owned by….Basotho, who spoke one language, had the same habits and customs, intermarried, and considered each other as having had, at some remote period, one common origin.[133]

Among the people that Moshoeshoe regarded as his subjects were originally fugitives of warfare and devastations of Lifaqane. Some of the fugitives like Barolong who settled around Thaba-Nchu were later turned against Moshoeshoe in dispute of his territorial and sovereignty rights over them. Moshoeshoe received "strangers" in his territory in accordance with the custom "universally followed" by the Batswana,

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[130] Ellenburger, D.F., History of the Basuto: Ancient and Modern, Morija: Morija: Morija Museum & Archives, 1997. pp. 14-20.
[131] Stevens, R.P., op. cit., p. 15
[132] Machobane, L.B.B.J., op. cit., p. 10.
[133] Thompson, L., Survival in Two Worlds, London: Oxford University Press, 1975, p. 130.

Bapedi and Basotho. Moshoeshoe allotted fugitives some lands within his territory, where he also allowed their chiefs to administer them but always under his own supreme authority. Moshoeshoe could not have done more, because no chief could sell land to strangers, nor could a chief make a radical innovation without the approval of his subjects.[134] Basotho are renowned among the indigenous peoples of Africa for their hospitality and good accommodation they give to strangers on their land.[135] The way of living of the indigenous African peoples was of a totally different culture and civilization from that of the European conquerors, especially when it came to the practice of land ownership and use. The cultural and civilizational difference between Africans and Europeans was of the nature that European concepts such as "the right of conquest", "extinctive prescription", "title deeds and land rights" and "private property" became tools for the expropriation of land from the indigenous conquered peoples of Africa.[136]

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[134] Ibid.
[135] Germond, R.C., op. cit., pp. 23-48
[136] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., pp. 2-3.

1.2.5.1 **Lesotho and the Formation of the Cape, Transvaal, Natal and Free State Provinces**

The habitation of Basotho in the interior between Senqu and Lekoa rivers predates the Lifaqane devastations[137] that reached Basotho territory by 1821–1822. The "Whites did not reach Lesotho until the 1830s,"[138] and by that time Basotho were already a nation and the inhabitants of the territory of their own by the name of "Lesotho". In reference to the Griquas[139] Moshoeshoe

> rebutted the Wesleyan contention that the newcomers had acquired independent rights by virtue of occupation, numbers and power. Even when they had arrived in his territory, although the country appeared rather desolate, that was only because the people were hiding in fear of further attacks by Nguni and Colored bands.[140]

History was on the side of Moshoeshoe that until about 1825 white trekkboers were few in the Basotho territory – a mere trickle of fugitives from the British Cape Colony.[141] The occupancy of Basotho territory by the trekkboers was subject to regulation by the law and tradition of the indigenous African peoples. In accordance

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[137] The Nguni (AmaHlubi and AmaNgoane) invasions west of the Maloti Mountains set off a chain reaction of warfare and devastations known among Basotho as Lifaqane that swept right through the Basotho and Batswana territories. The warfare and devastations unsettled the Basotho such that some of them: Bafokeng, Bataung, Baphuthi and others left for the north beyond Lekoa River into Batswana Territory whereby they caused some chain warfare and devastations.

[138] Thompson, L., op. cit., p. 107.

[139] Already before the 1830s there were some "intruders including groups of Khoi (Kora), whose ancestors had moved northwards in the seventeenth century to avoid Dutch control; people of mixed descent (Griqua) who had crossed the Orange River in about 1800; and other colored people who had left the Cape Colony more recently and still called themselves by their colonial name, Bastards.

[140] Thompson, L., op. cit., p. 131.

[141] Ibid., p. 107

with the Basotho tradition the trekkboers could not acquire independent rights over territory by virtue of occupation, numbers and power. Thus it was wrong and absolutely un-African of the Napier Treaty of December 1843, to limit Basotho territory to the region just around the Mohokare/Caledon Valley and to accommodate the trekkboers with independent rights in Basotho territory. To the indigenous African peoples and the Basotho in particular, the Napier Treaty could best be explained in terms of colonial distortions of historical injustice by European conquerors, and a colonization ploy calculated at re-allocating the territory of the indigenous African peoples to the non-African runaway settlers from the Cape.[142]

In pre-colonial South African political communities "each political community knew where its territorial jurisdiction stopped and where that of its neighbor began. The spoor law….was enforced in recognition of this territorial principle."[143] Thus Lesotho like many other political communities of pre-colonial South Africa had defined boundaries of its territory that subscribed to the notion of "our country".[144] Moshoeshoe's claim to political sovereignty over his territory was done in accordance with tradition of the indigenous African peoples, and thus his sovereignty was over people and their territory. The political sovereignty of Moshoeshoe was informed by

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[142] Lelimo, M., op. cit., p. 15.
[143] Machobane, L.B.B.J., op. cit., p. 17.
[144] Ibid.

among others, the saying that "Morena ke morena ka sechaba" – meaning, the sovereignty of the king derives from and belongs to its subjects.[145] In regard to the Boers' entry into Moshoeshoe's territory, Moshoeshoe had made it clear to the British that "from the beginning he had explained to the Boers that he had given them permission to settle in his country only temporarily….He further explained in a letter that as the ruler of the Basotho he was of the opinion that they were passing to Natal."[146]

Notwithstanding Moshoeshoe's categorical objection to the European settlement in Basotho territory, the Europeans continued to claim land rights over Basotho territory by the "right of conquest". As the Europeans scrambled and partitioned indigenous African peoples' territory, they formed exclusive political communities of Europeans in the name of Cape, Natal, Transvaal and Orange Free State provinces of South Africa.[147]

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[145] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 97.
[146] Lelimo, M., op. cit., pp. 15-18.
[147] Shillington, K., op. cit., p. 67.

1.2.5.2 **The British relations with Basotho and the Boers**

King Moshoeshoe was keen and able to put order in the territory between Senqu and Lekoa rivers.[148] But the British were fearful that Moshoeshoe would settle matters by expelling all the whites including the Griguas from the north of Senqu and threaten the security of the British Cape Colony itself.[149] The treaty signed between Sir George Napier and King Moshoeshoe was a friendly treaty whereby Moshoeshoe formally acquired the title of "a friend and ally of Cape Colony". According to the treaty, Lesotho was entitled to a status of a "sovereign state" and thus could not be treated as either a colony or a protectorate.[150] Just from the beginning of their friendship treaty with the British, Basotho could see that the British had harbored some intentions of securing their territory and maintaining a very supportive relationship with the Boers. In retrospect, in terms of the Napier Treaty of 1843, Basotho could see that it "opened the floodgates to what can best be described as the systematic robbery of Lesotho and Moshoeshoe."[151]Whereas Moshoeshoe was concerned with the protection of his nation and its territory, he voluntarily opted for the treaty with the British. But the British proved to be neither the protector of the rights of Basotho nor those of other

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[148] Germond, R.C., op. cit., p. 24
[149] Shillington, K., op. cit., p. 67.
[150] Stevens, R.P. op. cit., p. 19.
[151] Lelimo, M., op. cit., p. 19.

indigenous African peoples, except "rights of conquest" of the Boers and the British themselves. Thus the Napier Treaty of 1843 was the means by which

> ….Sir George Cathcart….felt the show of force against Moshoeshoe would make it possible to abandon the Orange River jurisdiction with less likelihood of a Basotho attack against the four Transvaal Republics (recognized by Britain in the Sand River Convention of 1852 and united in 1860 to form the South African Republic). As Britain drew closer to the Boers and thus undermined the whole humanitarian assumption that one of the main functions of British power in South Africa was to supervise and manage the relations between whites and natives', Moshoshoe was given no alternative but to fight or be ruined.[152]

During the 1840s the British through Major Warden (British representative placed at Bloemfontein following the 1843 "Napier friendship treaty" with Moshoeshoe) supported insubordination of the Griquas, Batlokoa,[153] Barolong[154] and the Boers against Moshoeshoe.[155] In 1848, the British annexed the whole territory between Senqu and Lekoa rivers and named it Orange River Sovereignty, with the aim to provide Europeans with secure land titles, and to incorporate Basotho, Barolong and Batlokoa.[156] The Warden line, drawn up in 1849, left Moshoeshoe with a great deal of less land and thus Basotho territory west of the Mohokare River was given to the

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[152] Stevens, R.P., op. cit., pp. 19-20.
[153] Batlokoa are a member of Sotho (Basotho) group independent from Moshoeshoe and serious power contestants against him under Manthatisi and Sekonyela. They were weakened by the Lifaqane wars (AmaHlubi) following which Moshoeshoe subjected them under him.
[154] Moshoeshoe had pointed out to the British that Moroka – the chief of Barolong – a group of Batswana at Thaba-Nchu was his vassal whom he had received in his territory in 1831 after he had left his territory north of the Lekoa to the Kumalos under Mzilikazi.
[155] Shillington, K., op. cit., p. 67.
[156] Lelimo, M., op. cit., p. 18.

Boers.[157] Moshoeshoe had been tricked by Sir Harry Smith in 1848 into readily affixing his mark to a document in agreement with the Warden Line proposals.[158] In 1851 Warden was showing his true British attitude towards Moshoeshoe and Basotho, when 160 British troops and 800 Barolong attacked the Bataung who were by then part of Basotho Kingdom.[159] In 1854 the British authority was formally withdrawn from Orange River Sovereignty, whereby at the Bloemfontein Convention, Britain handed over government to the Boers who renamed it the Orange Free State. The British handover of Orange River Sovereignty to the Boers was another important indication to Moshoeshoe of the British disregard of the Napier Treaty.[160] The Boers were the real allies of Britain, while the indigenous African peoples were the enemies.[161] The British freely supplied the Orange Free State Republic (O.F.S.) with arms in the 1850s and 1860s, while officially banning their sale to Basotho.[162]

Fearful of the Orange Free State bankruptcy from the war with Basotho, and interested in encircling the Boers, in order to deny them a route to sea, the British supported the peace treaty of April 1866 between Basotho and Boers. Thus Lesotho was annexed as

[157] Shillington, K., op. cit., pp. 67-68.
[158] Lelimo, M., op. cit., p. 18.
[159] Ibid., p. 31.
[160] Theal, Basotuland Records Vol.II, op. cit., pp. 99-107.
[161] Lelimo, M., op. cit., p. 46.
[162] Parsons, N., A History of Southern Africa, London: Macmillan, 1982. p. 128.

the British Protectorate of Basotholand not so much with the interests of the Basotho at heart but rather those of the British vis-à-vis the Boers. Basotho territory that was conquered by the Boers was never restored to them but was given to the Boers by the British at the Convention of Aliwal North in 1869.[163] Thus Lesotho was left a small mountainous country, deprived of its much valuable agricultural land and mineral resources at independence on 4th October, 1966.[164] The unfortunate thing to the indigenous conquered African peoples about the great loss of their conquered territory is that the conquerors have not yet acknowledged this. There has not yet been any restitution, restoration, reparation or compensation for the unjust acquisition of property (territorial) and political sovereignty rights of Basotho since the granting of independence on 4th October, 1966. Among the beneficiaries of the "right of conquest" and descendants of the colonists there are many who consider themselves undefiled by the wrongs committed in the past. However, some beneficiaries and descendents of the colonialists admit of the evilness of colonialism and its ugly consequences and the hypocrisy of those who benefited from colonialism but decline any responsibility. Thus

> Many whites (especially younger people) are inclined to say that they themselves did nothing wrong, and can therefore not be blamed for the effects of white domination of colonization, segregation, and apartheid, and their collective responsibility for what has happened….It is rather hypocritical of whites to claim

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[163] Machobane, L.B.B.J., op. cit. p. 140.
[164] Shillington, K., op. cit., p. 126.

these benefits with greedy self-righteousness but decline any responsibility (directly or indirectly) for the evil of colonialism and its ugly consequences….without a willingness to make substantial sacrifices – materially and symbolically – as part of an open commitment to the restoration of social justice.[165]

The fact that some beneficiaries of the "right of conquest" and descendants of the colonialists admit of the history of Africa from the perspective of the indigenous African people vindicates the course of a peaceful solution to the problem of historical justice; in this case a historical injustice.

1.2.5.3 Moshoeshoe's Disapproval communicated to the British

Moshoeshoe's disapproval of the British and their unjust policy to give away Basotho territory to Boers, and to disregard agreements entered with him was succinctly communicated to the British on many occasions. When Prince Alfred visited South Africa in August, 1860, Moshoeshoe gave him a letter to Queen Victoria. This letter read as follows:

> I am the oldest of the Queen's Ministers in this country from Napier, Maitland, H. Smith, down to Sir George Clarke (who succeeded Cathcart in 1853), and in spite of everything that has happened to me,….I have been faithful in my allegiance to Her Majesty. My prayer to-day is that I may be restored to the same position among the Queen's servants that I first held, for I am become as the least of them….I have come to have the peace which I enjoy increased and confirmed.[166]

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[165] Terreblanche, S., op. cit., p. 5.
[166] Machobane, L.B.B.J., op. cit., p. 33.

In July 1866, Moshoeshoe, expressed his loss of faith in the Cape British High Commissioner's abilities and bona fides, and he wrote a letter to Governor Robert Keate of Natal:

> The Orange Free State and Basotho nation are both on friendly terms with the British Government….Our enemies in time of war are supplied with arms and ammunition to any extent they may require and may be able to purchase any either in time of peace or war; surely this is not neutrality. If the British government will not receive us and our country….if it looks upon us and the Orange Free State equally as friends and children,….and that therefore we should be left to punish each other, let it not supply arms and ammunition to one side and withhold them from the other, but let both have an equal chance, and if the Basotho must perish let them perish defending themselves with means to procure which they are allowed the same facilities as their enemies from neutral source.[167]

The conquerors had to be told time and again that no amount of time and military power spent on conquest in an unjust war of colonization is sufficient to obliterate the titles to property (territorial) and political sovereignty rights of the indigenous conquered African peoples.

In the Aliwal North Treaty talks of 4-12 February, 1869, Wodehouse, the British High Commissioner to the Cape "had alone and on his own authority been negotiating Lesotho's boundary with the Orange Free State President Brand and his officers….he lost about one third of Lesotho's most valuable agrarian land to the

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[167] Ibid., p. 39.

Republic."[168]Moshoeshoe seized the opportunity to protest to the British High Commissioner that despite his earlier promise to restore all of Moshoeshoe's country back to him, the Commissioner had in fact handed it to the Free State. Lesotho was annexed by the British on 12th March, 1868 as the British Colony of Basotholand.[169]

1.2.5.4 **Basotho and the Incorporation into the Union of South Africa**

During the period leading up to the formation of the Union of South Africa in 1910, Basotho were keen to prevent the incorporation of Basotholand into the Union because of the split on the issue of equality. Before the Act of Union of South Africa, the Cape "stood by the principle of "equality of rights for all civilized men" and those from the two northern colonies who stood for the opposing concept of 'no rights in church and state'."[170]A compromise reached was that the formation of the Union of South Africa was to proceed, but meanwhile to forgo the prospect of immediate incorporation of Basotholand, Bechuanaland and Swaziland, decisions about whose future status were to remain the British responsibility. Section 151 of the South Africa Act (1909) provided for the possibility of transforming the three territories to the jurisdiction of South Africa as follows: "the King in council may, on addresses from both Houses of the Union Parliament, agree to this, subject to certain conditions designed to protect

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[168] Ibid., p. 44.
[169] Lelimo, M., op. cit., pp. 153-159.
[170] Espence, J.E., Lesotho: The Politics of Dependence, London: Oxford University Press, 1968.p. 23.

native rights and interests and embodied in a schedule to the South Africa Act."[171]But what transpired after all is that, the High Commission Territories were never incorporated into South Africa, even when the "equal rights" issue was finally settled by the 1994 all inclusive democratic South African constitution. The native rights and interests of High Commission Territories have not been realized, thus Botswana, Lesotho and Swaziland were decolonized by the British without due restoration made for injury of their territorial and political sovereignty rights. The British High Commission Territories were left out and subjected to the "pressing political and economic problems that faced each of the colonies separately and hampered their economic development."[172]The British had succeeded in pursuing their tradition of undermining the legitimate aspirations of the indigenous conquered peoples of Africa, who were expected to compromise in all matters for the sake of Britain's larger regional interests.[173] Even after independence from Britain on 4th October, 1966, the issue of the conquered territories has remained alive and fresh in the minds of the Lesotho political leadership. Slogans such as "Ea khutla naha" (let the land return) still epitomize the feelings of many Basotho on the issue of the Conquered Territory.[174] The Apartheid South African Government had scornfully rejected appeals by Leabua

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[171] Ibid.
[172] Ibid.
[173] Lelimo, M., op. cit., p. 204.
[174] Ibid.

Jonathan to discuss the return to Lesotho of the fertile conquered territory, taken in the wars with the Orange Free State in the 1850s and 1860s.[175]

1.2.6 **The Significance of the Partition and Invention of Southern Africa**

The British and the Boers, through the wars of colonization and conquest created South Africa and in the process partitioned and invented Botswana, Lesotho and Swaziland. In the process of partition and invention, the original and rightful inhabitants of Africa since time immemorial suffered injury and undeserved violation of both their territorial and political sovereignty. The partition and invention of Botswana, Lesotho and Swaziland (including all of Africa) constitutes an unjustifiable moral injustice of impoverishing the indigenous African peoples and their descendants.

In accordance with the theory of just war, the forcibly deprived peoples of South Africa, Botswana, Lesotho, and Swaziland are still morally entitled and are left with no moral choice but to invoke the principle of recoverability with regard to the conquered territories.

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[175] Shillington, K., op. cit., p. 187.

We hereby seek and propose a peaceful solution to the problem of historical justice in regard to the partitioned and invented African territories. The solution we seek is based on the legal maxim that *ex injuria ius non oritur*. In line with the African legal philosophy "molato ha o bole", meaning that the disturbed equilibrium requires restoration regardless of the time when the disturbance occurred, the partitioned and invented African territories even after independence are in need of compensation. The principle of extinctive prescription and the claims of the "right of conquest" upon which the partition and invention of Africa took place still remain untenable and demand correction. The length of time now transpired since the wars of colonization, partition and invention of these countries does not necessarily permit the view that the conquest has been perfected into a legal right.[176]

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[176] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 95.

CHAPTER TWO

DECOLONIZATION

Introduction

The discussion in chapter one was around the thesis that the conquest of Africa by European colonial powers interfered with Africa's right to self-determination and independent evolution. We critiqued the European wars of colonization in Africa to show that they were morally unjustified. On the basis of historical justice we raised objection against the European colonization in Africa.[177] Now we turn to discuss decolonization in chapter two.

Under "Decolonization" we discuss the pertinent issues related to the indigenous African peoples and their response to European colonization of Africa. The discussion on "Decolonization" is conducted under three main sub-topics: 2.1 The Indigenous Conquered African Peoples and the Demand for Decolonization; 2.2 Colonial Legacy: Neo-Colonialism; 2.3 Governance in Africa.

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[177] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P.H. & A.P.J. Roux, (eds.) op. cit., p. 462.

The aim of the discussion on "Decolonization" is to expose Africa's situation developed from the European colonization and to justify the indigenous conquered African peoples' demand for decolonization in accordance with the clean slate principle – state succession. While apparently the colonizers were giving the impression that they wanted the freedom and independence of the colonized, an attempt is made to expose their unwillingness to let Africa free: their resort to neo-colonialism. The indigenous conquered African peoples struggle for independence is considered to have been frustrated by the granting and gaining of independence in accordance with the technique of government succession. In line with the right to historical justice we propose restoration, reparation, restitution, and compensation for the indigenous conquered African peoples. The independence constitutions are construed as the colonial conqueror's means for the protection of colonial master's interests in former colonies.

2.1 The indigenous Conquered African Peoples and the Demand for Decolonization

African decolonization is here considered in terms of the reversal of the adverse effects of European colonization in Africa, and the logic of its unsustainable claim to the

"right of conquest".[178] Decolonization of Africa is seen as a counter ideological project principally meant to liberate all that is African from colonial European oppression, exploitation and enslavement. The demand for decolonization is observed from the point of view of an African constructively restoring, promoting and defending African liberties, virtues and values.[179] The frontline African decolonialists are liberation activists, analysts and people who act upon their understanding that the European colonization of Africa was immoral. Among these are found not only peoples of African origin – the indigenous conquered African peoples, but also all those who seek and promote the freedom, justice and liberation of Africa and the Africans. Among the many of these liberation analysts we have the indulgence to mention Sampie Terreblanche[180]and John Pilger.[181] The liberation of Africa lies first with the indigenous conquered African peoples. This liberation is based on the recognition that in granting independence to the indigenous conquered African peoples in accordance with the technique of government succession the colonial masters secured their own interests:

> ….a proper scrutiny leads one to discover nothing but deception, hypocrisy, oppression and exploitation. Such expression as "colonial charter', 'trusteeship',

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[178] Ibid.

[179] Osuagwu, I.M., A Contemporary History of African Philosophy, Owerri: Amamihe Publications, 1999. p. 178.

[180] Sampie Terreblanche was among the Afrikaner academics engaged in some meetings with some ANC members during the apartheid era for the transition to democracy in South Africa.

[181] John Pilger is the author of Freedom Next Time, a renowned journalist and film maker. He challenges the West to 'look in the mirror' at the actions of their governments for the true source of much of the world's fear and insecurity – terrorism.

'partnership', 'guardianship', 'condominium', 'freedom' from fear of permanent 'subjection', and 'constitutional reform', and other shabby sham gestures of setting up a fake machinery for 'gradual evolution towards self-government' are means to cover the eyes of colonial peoples with the veil of imperialist chicanery.[182]

The demand for the decolonization of Africa by the indigenous conquered African peoples is hereby considered from within the context of Africa's independent evolution and right to self-determination. The colonial conquerors and their beneficiaries have benefited from the unsustainable claim to the "right of conquest" at the exclusion of the indigenous conquered African peoples. The result of the European colonization in Africa is that the indigenous conquered African peoples continue to suffer indignities and humiliation.[183]

The European colonial powers (Holland, Britain, France, Germany, Belgium, Italy and Spain), without regard for the inalienable rights of the indigenous conquered African and Amerindian peoples, partitioned, invented and carved Africa up into colonies that were governed and exploited by the nations of Europe.[184] Considered in the light of a radical questioning of the legal maxim that malevolent injury may not change into a

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[182] Nkrumah, K., Towards Colonial Freedom. Africa in the Struggle Against World Imperialism, London: Panaf, 1962. p. xvi.
[183] Alxandrowicz, C.H., New and Original States, International Affairs, Vol. 45 No.3. 1969. pp. 484-492.
[184] Afigbo, A.E., Scrambles and Partitions in African History, In: Okere, I.T., & Njoku, C.A., op. cit., pp. 22-31.

right nor may it transform an injustice into justice (*ex injuria ius non oritur*), the European wars of colonization in Africa are conquest ungoverned by law, morality, or humanity.[185] The conquered indigenous African peoples do not acknowledge the "right of conquest" over their land, and thus in their demand for historical justice have challenged the "right of conquest" and demanded decolonization.[186]

From the earliest stages of European colonization of Africa, the indigenous African peoples have stated and staged their resistance to it; and when-ever colonial conquest had taken place the Africans demanded its reversal. This demand for decolonization was already epitomized in the April 1660 'peace negotiations' between Khoikhoi leader of an indigenous African people by the name of Autshumao and the colonist leader of the Dutch Verenigde Oostindische Compagnie (VOC) by the name of Jan Van Riebeek. Autshumao in his response to Jan Van Riebeek's statement that not enough grazing land was available for the cattle of both the colonists and the Khoikhoi declared that: "If the country is too small, who has the greater right: the true owner, or the foreign intruder?" Van Riebeek's answer to Autshumao's question was: "We have won this country in a just manner through a defensive war, and it is our intention to

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[185] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P.H. & A.P.J. Roux, (eds.) op. cit., p. 474.
[186] Shillington, K., op. cit., p. 80. The typical case of the African unceasing resistance against the European colonization of Africa is that found in Nongqawuse's "prophesy".

keep it."[187]Van Riebeek's answer to Autshumao's question was never acceptable to the indigenous conquered African peoples. Thus in the quest for historical justice, the indigenous conquered African peoples demanded decolonization.

2.1.1 Demand for Decolonization of Africa not Expected by Colonial Powers

History witnesses to the fact that European colonial conquerors acceded readily to the demand for independence of the white settler colonies. For example, already in 1852 the South African Republic of Transvaal was born at the Sand River Convention. In 1854 at the Bloemfontein Convention the British formally withdrew from the Orange River Sovereignty and handed over its government to the Boers who renamed it Orange Free State. Thus at the same time when European colonial powers scrambled and partitioned the territories of the indigenous peoples, they on the other hand granted independence to white settlers in the conquered territories.

> Britain accepted granting dominion status to its old colonies of white settlers in Canada, Australia, and New Zealand; but it withdrew self-determination from West Indies when the white planters were ousted from the legislative assemblies by black (or brown) people. As far as Africa is concerned, Englishmen violently opposed black self-government such as the Fante Confederation on the Gold Coast in the 1860s….It was economics that determined that Europe should invest in Africa and control the continent's raw materials and labor. It was racism which confirmed the decision that the form of control should be direct colonial rule.[188]

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[187] Terreblanche, S., op. cit., pp. 154-155.
[188] Rodney, W., How Europe Underdeveloped Africa, Washington: Howard University Press, 1982. p. 141.

The European wars of colonization in Africa had promoted the disparaging presentation of the history of Africa as the history of the collapse of the African traditional societies under European colonialism and imperialism. Indeed, the devastation of European colonization of Africa was so huge that Africa was reduced to such cultural shock and debasement that Africa failed to appear to Europe like she is the cradle of human civilization. The "European civilization is but a derivation of African Achievement."[189] Thus it was after the devastation of Africa by European colonial conquest, slavery, and exploitation that Hegel, seemingly uninformed and with no sympathy for Africa and African wrote:

> From these various traits it is manifest that want of self-control distinguishes the character of the Negroes. This condition is capable of no development or culture, and as we see them at this day, such have they always been. The only essential connection that has existed and continued between the Negroes and the Europeans is that of slavery. In this the Negroes see nothing unbecoming them, and the English who have done most for abolishing the slave-trade and slavery, are treated by the Negroes themselves as enemies. For it is a point of first importance with the Kings to sell their captured enemies or even their own subjects; and viewed in the light of such facts, we may conclude slavery to have been the occasion of the increase of human feeling among the Negroes[190]

Africa cannot be validly treated merely as the space in which Europe swelled up.[191]

Thus Nkrumah was correct to raise the issue that "the European contact needs to be

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[189] Diop, C.A., (trans. by Cook, M.) The African Origin of Civilization: Myth or Reality, Chicago: Lawrence Hills Books, 1967. p. x
[190] Hegel, G.W.F., (Trans. by Sibree, J.) The Philosophy of History, New York: Dover Publications, 1956. pp. 98-99.
[191]Nkrumah, K., Towards Colonial Freedom. op. cit., pp. 62-63.

assessed and judged from the point of view of the principles animating African society, and from the point of view of the harmony and progress of this society."[192]

The Africa we see today is the result of the wars of colonization and decolonization according to government succession. This is the impact of the decision against state succession requested by the partitioned and invented African countries and denied by the colonial masters at the moment of granting the limping independence to the Africans.[193] The colonial masters and the beneficiaries of "right of conquest" have a historically causal relationship which engendered the hunger, poverty and unemployment crisis of contemporary Africa.[194] It is rather hypocritical of the beneficiaries of the "right of conquest" to fail to realize that the benefits they claim with greedy self-righteousness were largely accumulated by means of exploitation.[195]

The call for the decolonization of Africa serves as a reminder to the beneficiaries of the "right of conquest" that their present economic, social and political position is derived

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[192] Ibid.

[193] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 3. According to Ramose, whose idea I share, decolonization has failed to restore full sovereignty to the indigenous conquered African peoples. The Africans were granted independence according to the mode of government succession - that is, the Africans were designed a constitution according to which they took over from the colonial masters who reserved for themselves the benefits of the "right of conquest". As a result the African received a defective and limping sovereignty, that is to say, political sovereignty bereft of economic sovereignty.

[194] Meredith, M., op. cit., pp. 686-688.

[195] Terreblanche, S., op. cit., p. 5.

from a moral injustice.[196] The indigenous colonized-decolonized peoples of Africa[197]still demand historical justice as the only adequate remedy of the unresolved question of sovereignty and title to territory.[198]

Just as government succession has ignored the exigency of reparation, restoration and restitution as the demands of historical justice, the democratization paradigm has conformed to and is consistent with the conqueror's claims concerning the extinctive prescription.[199] The democratization paradigm has lost sight of the fact that there has been malevolent injury to property (territorial) and political sovereignty rights of indigenous conquered peoples of Africa. Thus the democratization and constitutionalization programs introduced as part of the decolonization process served the colonialists' interests.

2.1.2 The African Intelligentsia and the Quest for Historical Justice

In the quest for historical justice, some Western trained intellectual Africans shared a passionate attachment to their African roots.[200] By identifying themselves with their

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[196] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P.H. & A.P.J. Roux, op. cit., p. 462.
[197] Ibid., p. v.
[198] Ramose, M.B., The King as Memory and Symbol of African Customary law, op. cit., p. 358.
[199] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P.H. & A.P.J. Roux, (eds.) op. cit., p. 470.
[200] Nkrumah, K., Consciencism, op. cit., p. 78.

customs, traditions and beliefs formerly denied and passed over, these indigenous conquered African peoples revitalized their quest for historical justice. Behind the simplifying analysis and the passionate attachment to their African roots, the African intelligentsia was in touch with the spontaneous truth of its original roots and futility of its alienation.[201] We briefly recall some of the liberation statements and ideas from three African intelligentsia: Isaka ka Seme, Kwame Nkrumah and Frantz Fanon.

2.1.2.1 Pixley Isaka ka Seme

Seme studied law at Columbia University in the United States of America. He practiced law in Johannesburg and was appalled by the humiliating conditions under which the indigenous conquered African peoples lived in the compounds and shanty towns of Johannesburg and other South African cities.[202] In 1912, Seme with three other African lawyers summoned the conference of African kings and princes and other leaders at Bloemfontein. This was the conference that resulted in the formation of the South African Native Congress (forerunner of the African National Congress). In the speech he delivered at the conference Seme said:

> I am an African, and I set my pride in my race over against a hostile public opinion. Men have tried to compare races on the basis of some quality. In the works of nature, equality, if by it we mean identity, is an impossible dream! Search the universe! You will find no two units alike….Man, the crowning

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[201] Fanon, F., op. cit., p. 41.
[202] Makgoba, M.W., (ed.) African Renaissance, Cape Town: Mafube Publishing Ltd, 1999.pp. 31

achievement of nature, defies analysis. He is a majesty through all ages and for all time. The races of mankind are composed of free and unique individuals. An attempt to compare them on the basis of equality can never be finally satisfactory. Each is self.[203]

On defying the denigration of the indigenous African peoples to inferiority complex, Isaka ka Seme reaffirmed the humanity of the African. His were words of wisdom by an indigenous African before the overwhelming attack on the structure of his existence![204]

2.1.2.2 **Kwame Nkrumah** [205]

In his reflections on the philosophy of consciencism[206] Nkrumah was convinced that for the decolonization of Africa to be successful, the thinking and philosophy of Africans should be directed towards the situation of indigenous conquered African peoples:

> What is called for as a first step is a body of connected thought which will determine the general nature of our action in unifying the society which we have inherited, this unification to take account at all times, of the elevated ideals underlying the traditional African society. Social revolution must therefore have, standing firmly behind it, an intellectual revolution, a revolution in which thinking and philosophy are directed towards the redemption of our society. Our

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[203] Ibid., p. 32.
[204] Oguejiofor, J.O., op. cit., pp. 25-26.
[205] Kwame Nkrumah was the first president of the post-colonial state of Ghana on gaining independence on 6th March, 1957.
[206] Nkrumah, K., Consciencism, op. cit., pp. 78,98. According to Nkrumah, consciencism is an ideology for decolonization; it is the map in intellectual terms of the disposition of forces which will enable African society to digest the Western and Islamic and the Euro-Christian elements in Africa, and develop them in such a way that they fit into the African personality. In its political aspect, philosophical consciencism is faced with the realities of colonialism, imperialism, disunity and underdevelopment.

philosophy must find its weapons in the environment and living conditions of the African people. It is from those conditions that the intellectual content of our philosophy must be created. The emancipation of the African continent is the emancipation of man. This requires two aims: first, the restitution of the egalitarianism of human society, and, second, the logistic mobilization of all our resources towards the attainment of that restitution.[207]

Nkrumah was convinced that the motivation of European colonialism in Africa is economic, and that, decolonization or "renaissance" is the period of the phased achievement of freedom. The first phase is the achievement of political freedom to be followed by the economic. "Seek ye first the political kingdom and all things shall be added unto you" is the well-known prescription of Nkrumah's philosophy for decolonization.[208] Thus Nkrumah could write: "the solution to the colonial problem lies in political action, in a fierce and constant struggle for emancipation as an indispensable first step towards securing economic independence and integrity."[209]Nkrumah encouraged unity among the indigenous conquered African peoples in order to make difficult choices in the reversal of European colonialism.

Nkrumah sought and found philosophical weapons to battle against European colonization and exploitation of Africa in the environment and living conditions of the colonized African people themselves. Nkrumah has inspired Africans to be proud

[207] Ibid.
[208] Ramose, M.B., 'African Renaissance': A Northbound gaze, In: Coetzee, P.H. & A.P.J. Roux, (eds.) op. cit., p. 605.
[209] Ibid., pp. 98-99.

achievers of their own their liberation. While "Our history needs to be written as the history of our society, not as the story of European adventures,"[210]much still remains to be done in the line of restoration and economic independence of Africa. Nkrumah has emerged victorious against the myths of black inferiority, servitude and backwardness orchestrated by centuries of trans-Atlantic slavery and European colonization in Africa. Like Nkrumah "we dedicated ourselves to the attainment of total African freedom."[211]Together with him we are challenged by the observation that the ideas of freedom and democracy, which the Western world is busily propagating to engage support for their cause, are being eagerly absorbed by those to whom true decolonization has been most strenuously denied.[212]

2.1.2.3 **Frantz Fanon** [213]

According to Fanon, decolonization happens when the conquered on

> Discovering the futility of his alienation, his progressive deprivation, the inferiorized individual, after this phase of deculturation, of extraneousness, comes back to his original positions….The logical end of this will to struggle is the total liberation of the national territory. In order to achieve this liberation, the inferiorized man brings all his resources into play, all his acquisitions, the old and

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[210] Nkrumah, K., Consciencism, op. cit., p. 63.
[211] Nkrumah, K., Africa Must Unite, op. cit., p. xi.
[212] Ibid.
[213] Fanon, F., op. cit., p. 43. Having completed his medical studies he employed his daily medical experience in Algeria to give a scientific account of the situation of the colonized in Algeria. Fanon had to choose to live and fight among other colonized people like himself than to practice in Algeria. His work as an FLN (National Liberation Front) militant soon attracted the attention of the French police. His diagnosis of racism fitted well in the pattern of the exploitation of one group of men by another whose solution he discovered to be: "The logical end of this will to struggle is the total liberation of the national territory."

the new, his own and those of the occupant.... Rediscovering tradition, living it as a defense mechanism, as symbol of purity, of salvation, the decultured individual leaves the impression that the mediation takes vengeance by substantializing itself....It is at this point that the incorrigible character of the inferiorized is brought to mention....."Collaborating" intellectuals try to justify their new attitude. The customs, traditions, beliefs, formerly denied and passed over in silence are violently valorized and affirmed.[214]

Very few, among the bourgeoisie descendents of African slaves carried from Africa during the trans-Atlantic slave trade have so dedicated their life to the cause of decolonization of Africa like Frantz Fanon.[215] Having rediscovered himself to be a transplanted son of slaves Fanon felt the vibration of Africa in the very depth of his body and aspiration.[216] Leaving behind his privileged economic class and the Martinique West Indian pretensions to white superiority attitude, Fanon came to Africa to rediscover the source and to suckle at the authentic breasts of the African earth.[217] Fanon came to Africa and committed himself body and soul in the liberation struggle of those he referred to as: "my dear brothers."[218] Fanon identified himself as a black man of Africa, who had returned from trans-Atlantic slavery as a militant and as the theoretician of African independence. He symbolized both the link between the two

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[214] Ibid.

[215] Zahar, R., (trans. by Feuser, W.) Frantz Fanon: Colonialism & Alienation, New York: Monthly Review Press, 1974. p. vii.

[216] Fanon, F., op. cit., p. 27.

[217] Ibid., pp. 25-26.

[218] Ibid., p. 25.

traditional Africas North and South of the Sahara and internationalism of the struggle of the oppressed and colonized.[219]

2.1.3 **The Liberation Struggle vis-à-vis Constitution by the conqueror: Gold Coast**

It was under the conqueror's pressure that Nkrumah tuned his 1957 political campaign slogan to "seek ye first the political kingdom and all things shall be added unto you."[220] Nkrumah engaged in the titanic mission of mobilizing the people of Gold Coast towards independence. On marshaling the Gold Coast towards independence Nkrumah had to bear with most of the pressure from the two sources: the well-organized Convention People's Party, representative of the broad mass following vigorously campaigning for "self-government now" and demanding the attainment of total African freedom, and the frustration by the reluctant British unwilling to retire from political control over the Gold Coast. The latter proved to be the most formidable obstacle. Nkrumah considered that the longer the Gold Coast would take before independence, the more the British would go further into creating schisms and rivalries in the country.[221] For tactical reasons, Nkrumah succumbed to British pressure. He envisaged African decolonization or renaissance period in terms of the phased achievement: political freedom to be followed by the economic. Thus he

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[219] Zahar, R., op. cit., pp. xiv-xv.
[220] Nkrumah, K., Africa Must Unite, op. cit., p. 50.
[221] Ibid., pp. 53, 57.

adopted this separation and timing in spite of his acute awareness that political

kingdom without the economic is empty.[222] Nkrumah changed his party slogan to seek

"freedom first" and then development.[223] Determined to facilitate the gaining of

independence, Nkrumah conceded to a constitution. He hoped he would be in the

position to alter it later. Nkrumah soon made clear his resentment concerning the

British made Ghanaian constitution:

> Although Ghana achieved what is called 'full independence' on 6 March 1957,
> there were certain provisions in the constitution imposed on us which limited the
> full employment of our freedom, which were an affront to our sovereignty, a
> fetter upon our free development. These were the entrenched clauses which the
> British Government insisted upon writing into the constitution as a condition of
> our accession to independence. We raised our arguments against their inclusion,
> but the concern in British official quarters for the protection of minority rights and
> the welfare of British civil servants in Ghanaian employ outweighed consideration
> for the prerogatives of our independence and expressed will of our people. Our
> resentment at being forced to keep the time-table of independence that we had
> given our people, was made quite plain by me and my Government, as was our
> determination to divest ourselves of the objectionable clauses as soon as we were
> in a position to do so constitutionally.[224]

2.1.4 Lesotho Independence Constitution and the "Right of Conquest"

With regard to Lesotho's independence, the Queen of England had ordered as follows:

> Subject to the provisions of this Order, the Constitution set out in the schedule to
> this Order shall come into effect at the commencement of this Order. The
> existing laws shall, as from the appointed day, be construed with such
> modifications, adaptations, qualifications and exceptions as may be necessary to
> bring them into conformity with the Lesotho Independence Act 1966 and this
> Order. Where any matter that falls to be prescribed or otherwise provided for

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[222] Ramose, M.B., 'African Renaissance': A Northbound gaze, In: Coetzee, P.H. & A.P.J. Roux, (eds.) op. cit., p. 605.
[223] Nkrumah, K., Africa Must Unite, op. cit., p. 56.
[224] Ibid., p. 59.

under the Constitution by Parliament or by any authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing Order or the existing Court of Appeal Orders, that prescription or provision shall, as from appointed day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Lesotho Independence Act 1966 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.[225]

By adopting the British colonial laws for Basotholand (with minor modifications, qualifications and exceptions), the Lesotho Independence Order committed the Lesotho Independence Act of 1966 to a constitutional arrangement that ensured claims to the "right of conquest". The Lesotho Independence Order encapsulated decolonizaiton according to government succession and the independence granting formal equal constitutional status to both beneficiaries of the right of conquest and the indigenous conquered African peoples.

During the preparation for independence, Basotho distrusted their colonial master (Britain) for lack of interest in the reparation, restoration and restitution of Lesotho property and sovereign rights. The Stanford Commission reflected the distrust as follows:

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[225]Supplement to Gazette No. 4, The Lesotho Independence Order 1966 No.1172, 3-4(2), pp. 1-2.

> We do not think it would serve any useful purpose to go over the long and – to the Basotho – painful history of how the boundaries of the territory at present known as Basutoland came to be drawn. The original territory of Lesotho was, however much more extensive than the present area of Basutoland, and the Basotho have never given up hope that one day the boundaries will be equitably re-adjusted. Accordingly, in describing Basutholand in a formal document by its old authentic name of Lesotho, the Commission would wish to ensure – along the lines suggested in the 1937 Constitution of Eire – that the Basotho do not thereby abandon such claims as they may have to eventual territorial re-adjustment.[226]

The present Constitution of Lesotho (amended in 1993), like the Independence Constitution of 1966, remains practically silent about the quest for historical justice and the demand for the return of Lesotho's conquered territory.[227] As if it were not supposed to make a demand for historical justice,[228]Lesotho's post-colonial independence constitution provides as follows with regard to Lesotho's territorial and sovereignty rights: "The territory of Lesotho shall comprise all the areas that immediately before 4[th]October 1966 were Basutoland together with such other areas as may from time to time be declared by an Act of Parliament to form part of Lesotho."[229] From the wars of colonization up till now, Basotho conquered territory has not been restored to its rightful owners. Lesotho still remains partitioned and invented as during the era of colonization.[230]

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[226]Report of the Basutoland Constitutional Commission 1963, pp. 43-44.
[227] Lelimo, M.M., op. cit., pp. 203-205.
[228] Fanon, F., op. cit., pp. 100-101.
[229] The Constitution of Lesotho, 1993. Chapt. I. Section 1.
[230] Lelimo, M., op. cit., pp. 202-205.

2.1.5 **Basotho culture vis-à-vis the Colonial Laws and Independence Constitution**

In an attempt to disembowel and get rid of the cultural values and ways of life of Basotho, the Griffith Report of Special Commission on Laws and Customs of the Basutos 1873 had this to say:

> The three customs which appear to be most injurious to the people, morally, socially, and politically, and to retard them in progress of civilization, are the "Lebollo" or circumcision, the "Sethepu" or polygamy, and the "Bohadi" or marriage with cattle. With regard to the first-named of the customs, the "Lebollo".… there is no question about it that it ought to be abolished as soon as possible; ….The second and third of these customs, ….are too deeply founded to be easily abolished. That will be a question of time; and as by the influence of the Government and the missionaries the people are raised in the scale of civilization, so will these customs disappear…With regard to the missionaries, your Commissioners would wish respectfully to bring to the notice of government that they disagree entirely with these zealous men, who have the interests of the natives entirely at heart, but who wish to make Christians of them by legislation, being firmly convinced that this much-to-be-desired object can only be brought about by conviction…. the Government should take every opportunity of showing the Basutos that it does not approve of these heathenish and barbarous customs, and that it would gladly see them abolished.[231]

From the report, it becomes apparent that British colonialism with its political mechanisms did not only deprive the indigenous African peoples of their territory and political sovereignty rights but in collaboration with some missionaries engaged in cultural racism as well. The colonial masters and missionaries consolidated efforts exerted in the name of civilization and christianization of the inferiorized and oppressed Basotho so that they might fling themselves upon the British imposed

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[231] Report and Evidence of Commission on Native Laws and Customs of the Basutos 1873. pp. 4-5.

culture with desperation.[232] The deculturation of the indigenous African peoples in the name of European civilization and christianization has had long term effects in the cultural destabilization and dependency on European cultural ways. For whereas European cultural ways were imposed on the Africans, there was never an attempt to put in place the necessary economic substructure to sustain them independently and to avoid always looking up to the missionary and the colonial masters to maintain the European structures left desolate in post-colonial rule.

In the case of Lesotho ever since independence, the constitution of Lesotho has not been reviewed with an intention to eliminate colonial laws and practices whose inclusion in the legal system of Lesotho could be detrimental to Basotho laws and culture. For example, in the case of initiation (Lebollo) and marriage (bohali) there is not much in the name of post-colonial era in Lesotho found in The Constitution of Lesotho.

2.1.6 **Decolonization and the Need for the Traditional face of Africa**

The demand for decolonization in Africa takes into consideration the traditional face of Africa which includes an attitude towards the human being regarded as primarily a

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[232] Fanon, F., op. cit., pp. 38-39.

spiritual being, a being endowed originally with certain inward integrity and value.[233]

Decolonization becomes an occasion for dialogue and reconciliation whereby the principles of restitution, restoration, reparation and compensation preside over in the finalization of decisions. Thus the necessity to protect the traditional face of Africa against such European attitudes as reflected in the findings of the Griffith commission report of 19th August, 1872, on Basotho laws and customs becomes the more imperative.

In conducting the process of decolonization one has to recall that in the traditional African society - indigenous peoples of Africa:

> No sectional interest could be regarded as supreme; nor did legislative and executive power aid the interests of any particular group. The welfare of the people was supreme. But colonialism came and changed all this….But neither economic nor political subjugation could be considered as being in tune with the traditional African egalitarian view of man and society. Colonialism had in any case to be done away with. The African Hercules has his club poised ready to smite any new head which the colonialist hydra may care to put out.[234]

The true independence is an expression of the African demand to take their destiny wholly in their hands, and relies on the original humanist principles of Africa. Considered from a social-political point of view, decolonization becomes an egalitarian principle by which the oppressor and the oppressed, the exploiter and

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[233] Nkrumah, K., Consciencism, op. cit., pp. 68-69.
[234] Ibid., pp. 69-70.

exploited relationships of colonialism and capitalism are finally addressed and resolved in accordance with the demands of historical justice.

2.2 **Colonial Legacy: Neo-Colonialism**

2.2.1 **The Phenomenology of Neo-Colonialism**

When the indigenous conquered African peoples engaged in the freedom struggle they were looking forward to the reversal of the adverse consequences of the European wars of colonization. Africa in some cases demanded decolonization according to state succession. But the colonial masters did not give in to this demand. They engaged in delaying tactics aimed at buying time in order to arrange their goal and condition for independence.[235] African liberation activists were quite informed of the colonial masters' tactics. For example, Nkrumah wrote: "The colonial powers do not willingly retire from political control over any given land. Before they go they make supernatural efforts to create schisms and rivalries which they hope to exploit after they have gone."[236] Before they could grant independence, the colonial masters arranged for the constitution according to which independence would be conducted to secure their "right of conquest" in the post-colonial era. And when in the case of

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[235] Nkrumah, K., African Must Unite, op. cit., p. 60. "The British government was adamant. They made it unequivocally clear that unless we entered into constitutional negotiations they would take no further steps towards the grant of independence."

[236] Ibid., p. 57

Congo's independence the "right of conquest" ran the risk of being put in danger, independence was discredited and ruthlessly sabotaged with the fermentation of propaganda and assassinations:

> …Lumumba had sold out to the Ghanaians. That Gizenga had been bought by the Guineans, Kashamura by the Yugoslavs. That the Belgian civilizers were leaving too soon. But if one took it into one's head to get one of these Congolese into a corner, to question him, then one discovered that something very serious was being plotted against Congo's independence and against Africa.[237]

Thus the newly independent African countries became subjected immediately to a set of entrenched constitutional provisions according to which they admitted to the irreversible loss of economic power. The imposed multiparty parliamentary democracy was primarily a device to monitor and control the unjustly acquired privileges of the conqueror.[238] Fair enough, the colonial conquerors are to be blamed for creating a political situation conducive to dictatorships and democratic instability among the independent African countries. The root cause of the present economic and political problems in post-colonial Africa, lies with the technique of government succession and constitutional democracy dictated and imposed on the indigenous conquered African peoples by the colonial conquerors. The endeavor and resolve of the colonial conquerors to defend and consolidate all the benefits resulting from the

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[237] Fanon, F., op. cit., p. 191.
[238] Nkrumah, K., Neo-Colonialism, New York: International Publishers, 1966. ix-x.

unjustifiable extinctive prescription survives best in the situation whereby democracy is under a constant threat of dictatorship.[239]

2.2.2 Pre-Independence Ghana and the British Neo-Colonialism

In the case of Ghana, the British engaged in anti-Nkrumah and Convention People's Party campaign. Thus from his memoirs Nkrumah wrote: "During our struggle for independence, and even after, all the armory of the British press was brought into play against me and against the Convention People's Party. Special correspondents were sent to discover that we 'were not only Communist, but deep in bribery and corruption.'"[240]This peculiar colonial power behavior of exercising some pressure to influence political conduct of its formerly colonial people was a new form of colonialism – neo-colonialism. This same phenomenon Nkrumah observed the British put into practice against their own tailored 'Ghana (Constitution) in Council, 1957'. The motive behind such a departure from declared principles was a tactical move employed to administer authority of compliance and indirect rule in the post-independent era.

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[239] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 487.
[240] Nkrumah, K., Africa Must Unite, op. cit., p. 57.

As part of neo-colonialism, the British made sure that their African colonial subjects could not taste "freedom" until independence was actually placed in their hands. The British did not hesitate to point out that they held in sacred trust the rights of all the people in the Gold Coast, and it was incumbent upon them to safeguard the position of a section of the population, albeit a minority.[241] The process towards independence was full of secrecy and suspicions and the people of Gold Coast became worried as to the kind of future their independence constitution held for them. It did not take long to understand some of the intrigues behind the independence constitution.

Referring to 'Ghana (Constitution) Order in Council, 1957' Nkrumah wrote:

> The British Government had decided that constitutional change should be made as difficult as possible for us, indeed almost impossible….a simple parliamentary majority could not change any part of the Constitution, nor even a two-thirds majority of members present and voting. There had to be a supporting vote from two-thirds of the total membership of the Assembly. Our opposition was not even obliged to be present at the debate on a Bill for constitutional change. Merely by the fact of being an opposition it could, if its numbers were large enough, destroy any likelihood of constitutional change. This is surely giving an odd twist to the democratic principle.[242]

The goal to be achieved by such constitutional manipulation was to ensure and advance the predetermination that "the new constitution would exclude and ignore the

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[241] Ibid., p. 59.
[242] Ibid., pp. 60-61.

question of the reversion of title to territory as well as restoration of sovereignty over it."[243] Thus as part of neo-colonialism, the independence constitution was employed by the colonial masters as the last stand in the resistance against decolonization.

Nkrumah remarked that in constitutional provisions relating to Regional Assemblies in Ghana, Ashanti was omitted and special regulations were introduced giving it powers superior to those of other Regions. Thus whereas,

> Everywhere else the head of the Region was to be chosen by the House of Chiefs. In Ashanti, the constitution specifically stated that 'the Asantehene shall be Head of the Ashanti Region'. What kind of democracy were the British laying down on the eve of their departure, in designating the person who was to be the effective governor of a particular Region? Where was the respect for our sovereignty? Our independence was supposed to give us sovereignty over our own affairs. But there we were, a democratic Government, limited by constitutional provisions, designated by the retiring power, to designated individual to conduct the highest executive post in the most delicate national territory. It was so openly a device to concede to the opposition party the opportunities they had been deprived of by their defeat at the polls that it was difficult to believe the British could have been so deceitful to their much–vaunted respect for democracy.[244]

Whereas the indigenous conquered African peoples' demand for decolonization and independence entailed among others the dismantling of the structures of colonial conquest, the constitutional provisions designed by the colonial masters, as the basis

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[243] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, op. cit., p. 486.
[244] Nkrumah, K., Africa Must Unite, op. cit., pp. 62-63.

for granting independence, were aimed at achieving the contrary. Thus the indigenous conquered African peoples were wrong to look at the constitutional provisions designed by their colonial masters as supportive measure to achieve the African right to self-determination.

2.2.3 Neo-Colonialism and the Formation of Satellite States

According to Fanon the colonialist's true interest in the colony is qualitatively at its best when the time for granting independence is closest. This is a moment when only the essentials that the colonialist would like to see entrenched as part of post-colonial constitutional rule are being carefully re-identified and marked. Fanon could observe that at the moment of granting independence the real interest of the colonialist was that

> ….of civilizing, religious, or cultural works, there was no longer any question. The time had come for serious things, and trivialities had to be left behind. Such attitudes were to open the eyes of men struggling in other regions of the world….The acceptance of a nominal sovereignty and absolute refusal of real independence – such is the typical reaction of colonialist nations with respect to their former colonies.[245]

This typical behavior about the colonial rulers before they could grant independence Fanon described as a phenomenon of neo-colonialism.[246] The post-independent

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[245] Fanon, F., op. cit., p. 121.
[246] Ibid.

African countries, as it were, have taken orbits, or are seeking for around them the erstwhile colonial powers or some other up coming economic super powers. The post-colonial rulers in African countries failed to procure the reversion to the unencumbered and unmodified sovereignty as was lost at conquest. Nkrumah was frank enough to admit: "The Greatest danger at present facing Africa is neo-colonialism and its major instruments, balkanization."[247]According to Nkrumah, the form taken by neo-colonialism in Africa can be identified by some of the following features:

> It acts covertly, maneuvering men and government, free of the stigma attached to political rule. It creates client states, independent in name but in point of fact pawns of the very colonial power which is supposed to have given them independence. This is one of the 'divine forms of dependent countries which, politically, are formally independent, but in fact, are enmeshed in the net of financial and diplomatic dependence'…. The independence of those states is in name only, for their liberty of action is gone.[248]

2.2.4 **Migratory Labor System and the Economic Impoverishment in Africa**

Our discussion of migratory labor system in Africa is focused on South Africa and the former British High Commission Territories,[249]but it includes also other migrant labor supplier countries such as Mozambique and Malawi. The underdevelopment of the indigenous conquered African peoples and the British High Commission Territories on

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[247] Nkrumah, K, Africa Must Unite, op. cit., p. 172.
[248] Ibid.
[249] The Union of South Africa Native Land Act of 1913 stipulated that white farmers could employ pass-carrying Africans outside the 'native reserves' , while the Chamber of Mines was given the right to recruit migrant laborers in the reserves and in the British High Commission Territories.

the one hand, and the economic development of the British and Boers in South Africa on the other, considered as combined in a single system of capitalist imperialism, asserts and affirms "the trend within capitalism to concentrate or polarize wealth and poverty at two opposite extremes".[250] By granting independence in accordance with the technique of government succession to the indigenous conquered African peoples, the colonial powers defended both the "right of conquest" and capitalism. The migratory labor system was a critical device to make the "right of conquest" concrete in economic terms. The concretization entrenched structural poverty and dependency for the benefit of the colonialist.

2.2.4.1 **The South African Business and Industry in demand of Migrant Labor**

Migratory labor is discussed in connection with the labor system in South Africa. The originally conquered indigenous peoples of Africa were forced to work as an unfree[251] and exploitable labor.[252] Considered from the historical justice point of view the migrant labor system was instituted as part and parcel of the European strategy to impoverish the indigenous conquered African peoples. Migrant labor system has been

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[250] Rodney , W., op. cit., p. 136.

[251] Unfree labor was constituted uniquely of the indigenous conquered peoples and their descendants who were deprived of their property and political rights by the European conqueror settlers in South Africa, and who disenfranchised them and reduced them to cheap conquered labor for the white developed economy. Unfree labor was part of the European settler's policy to separate the indigenous conquered Peoples of Africa from the Europeans and white political life. Unfree labor was practiced as part of the color bar and limits on the upgrading of African workers.

[252] Terreblanche, S., op. cit, p. 6.

operated such that the indigenous conquered African peoples (men and woman laborers) oscillated between their homes and the white South African industrial areas - their place of work periodically.[253] The conditions conducive for migratory labor system in South Africa were originally founded on the mercantilist mentality and trend within capitalism to concentrate economic development and wealth on white South Africa and poverty on the unfree and exploitable labor of the indigenous conquered African peoples.[254]

Shortly after the discovery of diamonds in 1867 at Kimberly, the British pushed for a federation of South African colonies and republics under British sovereignty. This idea was motivated by a desire to control the flow of the indigenous conquered African labor to diamond fields. Many Pedi were forced to work as migrant laborers on the diamond mines, and thus it became necessary to protect the migrant laborer route from the north against the interference of the Boer commandos of the ZAR. When in 1877 Britain annexed the ZAR, it was because they wanted more migrant labor for the Kimberly diamond mines. The British believed that their demand for migrant labor

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[253]The geographic sources of Black labor employment furnished by the South African Chamber of Mines and Department of Statistics indicate that from 1896 – 1972 the so called 'black miners' in South Africa and those working in the Agricultural sector in South Africa were mainly from Transvaal, Natal and Zululand, Swaziland, Cape, Lesotho, Orange Free State, Botswana, Mozambique, Malawi, Zambia and Zimbabwe.

[254] Shillington, K., op. cit., p. 126.

could be satisfied by destroying Pedi autonomy and by alienating Africans generally from land, *inter alia*, by forcing them to pay taxes. When, in 1881, the ZAR's independence was restored, the British were satisfied that they had secured a steady supply of migratory labor.[255] But the British were not satisfied with what they had gained by conquest so far, thus they had as their mission to create a vast British state extending from the Cape to the Zambezi and even further. They had as their aim not only to gain control over land, but to conquer the still independent indigenous African peoples in order to turn them into a subservient labor force as well.[256]

2.2.4.2 The South African Chamber of Mines and the Exploitation of Migrant Labor

Established in 1889, the Witwatersrand Chamber of Mines (the Chamber of Mines)[257] played a key role in institutionalizing and maintaining the migrant labor and compound systems in the mining industry in South Africa. The context within which the Chamber of Mines was founded and operated is described by Terreblanche as follows:

> The judicial system in place in the 'old South Africa' protected the property rights of mainly white property owners, but Africans were systematically deprived of property right and forbidden to own property in 87% of the country..…the

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[255] Terreblanche, S., op. cit., p. 228.
[256] Ibid. , p. 242.
[257] Parsons, N., op., cit., pp. 172-173.

markets- and especially the labor market – were anything but free and competitive.[258]

The unjust wars of European conquest and colonization which started at the southern tip of Africa were later consolidated by the exploitation of the indigenous conquered African peoples for the benefit of white South Africa. The conqueror imposed upon the conquered control measures such as pass laws, labor bureaux, Bantu administration boards and single-sex living quarters. All these oppressive and exploitative measures crippled whatever political, economic, cultural and social structures of indigenous conquered African peoples. In South Africa, the indigenous conquered African peoples were confined into "native reserves" comprising 13% of the country. The indigenous conquered African peoples in "native reserves" inside South Africa, and the British High Commission Territories were subjected to cheap labor for the economic development of white South Africa.

2.2.4.3 A National work-Force consisting of a Majority of African Migrant Laborers

According to Terreblanche, the structural domination of the European powers and colonists over the indigenous conquered peoples of Africa, created by the Land Act, was such that real wages of the Africans in the mining and agriculture sectors did not

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[258] Terreblanche, S., op. cit., p. 59.

increase between 1910 and 1972. The migrant labor system was so ultra-exploitative. The average wages were below the bare subsistence level. This exploitation was considered by the settlers as merely supplementing the basic economic life of indigenous conquered African peoples in the 'native reserves'. In 1943, the investigations of the Landsdowne Commission concluded that the idea that the 'native reserves' could supply a part of the migrant workers with subsistence was an unacceptable 'myth' because of the growing poverty in the reserves. But all the same, the Chamber of Mines refused to pay the miners living wages. The wages of the migrant workers started to rise in the 1970s. It was during this time that migrant laborers from Mozambique were suspended following the gaining of independence under a Marxist government in 1975. From the 1970s onwards, large amounts of the unskilled indigenous African migrant workers were made redundant by capital intensity[259] in the gold mining industry. In 1973 almost 80% of the workforce consisted of foreign migrant workers; by 1982 this figure had dropped to less than 40%.[260]

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[259] Capital intensity (or capital –labor ratio) tends to lower the demand for unskilled labor and increases the demand for more skilled labor. This is characterized by overinvestment in capital-intensive activities in private and public sectors, and underinvestment in labor-intensive activities and in the informal sector. This is the situation whereby machines replace unskilled human labor.
[260] Terreblanche, S., op. cit., p. 328.

According to the foreign migrant labor statistics published by the South African Council of Churches in 1972, Lesotho migrant workers formed a vital part of South Africa's labor force and constituted a substantial proportion of Lesotho's total population. In 1972, up to 210,000 migrant workers were estimated to be working in South Africa, 71,000 of which were employed by the Chamber of Mines. The 1966 census indicated that no less than two-fifths of Lesotho's male population between the ages of 16 and 49 were absent as migrant workers in South Africa. While in economic terms Lesotho was considered to be a densely populated, poor, agricultural country, the migrant labor earnings, exploitative as they were, remained attractive to Basotho. The total earnings of Lesotho migrant workers were substantially higher than the country's gross domestic product. In 1965-1966 Lesotho gross domestic product at market prices was R40 million, whilst the total earnings of migrant workers was R43 million. Lesotho has been such an integral part of the South African economy that there has been always concern that: "If South Africa imposed restrictions on migrant labor from Lesotho, it is hard to see how Lesotho could cope economically…".[261] Thus Lesotho has remained a typical example of how an indigenous conquered African population was not only deprived of its territorial and political sovereignty by institutionalized or

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[261] Wilson, F., Migrant Labor in South Africa, Johannesburg: The South African Council of Churches, 1972. pp. 110-111.

systematic violence of the European conqueror settlers,[262] but also degraded by being further reduced to an ultra-exploitable proletariat.[263]

Of all the British High Commission Territories, Lesotho provided South Africa with the highest number of migrant laborers, second followed Botswana and Swaziland came third.[264] Thus among the British High Commission Territories, Lesotho has been subjected to the worst migrant labor exploitation and economic dependence on South Africa. And should South Africa one day decide abruptly to prohibit migrant labor from Lesotho this would surely have disastrous economic and political consequences for Lesotho.[265] In fact, this proved to be true in January 1986, when the Apartheid South Africa mounted a complete blockade of Lesotho's borders thereby exposing Leabua Jonathan to a military coup that took place on 20 January. Within ten days ANC refugees had been forced to leave the country and the borders were reopened. The invention of Lesotho and even after her independence the future of Lesotho does

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[262] Rodney, W., op. cit., p.150.
[263] Terreblanche, S., op. cit., p. 404.
[264] Wilson, F., op. cit., pp. 115-118.
[265] Migrant labor from Lesotho to South Africa and the income earnings it generates for Lesotho still remain even at this moment Lesotho's Achilles heel.

not look any brighter, even now when there is a change of government in South Africa.[266]

2.2.4.4 Economic Implications of the Transition to New South Africa

In accordance with the demands of historical justice one would rightfully expect that for compliance, the transition from colonial and apartheid rule in South Africa to democratization and the new South Africa, should have recognized the exigencies of reparation, restoration, restitution and compensation. While wealth had been accumulated to benefit mainly the beneficiaries of the colonial and apartheid South Africa, the transition to democratic South Africa did not address itself to the problem of state succession. The unfair economic and labor practices from colonial and apartheid South Africa were being transferred and packaged as part and parcel of a new democratic South Africa.

Whereas the choice for a democratization paradigm was agreed upon in the negotiations for the transition to the new South Africa, the same cannot be said to have taken place with migratory labor and the Chamber of Mines. But strange enough, as

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[266] Shillington, K., op. cit., pp.187-188.

part of the new democratic South Africa, the South African Chamber of Mines does not seek to compensate those exploited in the colonial and apartheid era. The Chamber of Mines, in response to the quest for historical justice of migratory workers, should be prepared to at least re-examine South Africa's past and compensate the "black victims of systematic exploitation….This implies inter alia, that they should acknowledge explicitly that they have benefited from colonialism, segregation, and apartheid…."[267] Thus, attempts like the various scenario-building exercises aimed at formulating an economic strategy that is business-friendly while perpetuating the position of power and privilege in a democratized South Africa are not a direction leading any near to historical justice.[268] As it were

> the conquered people continue to remember this original injustice. They are like Christians who continue to remember the original sin committed by Eve and Adam millions of years ago. The sin of these supposed original parents does stick even to their unborn innocent children. The beneficiaries of the "right of conquest" are visible, active in their enjoyment of the benefits and, objectively identifiable. On what ground can they plead innocence and declare that their present privileged position has nothing to do with their historical ancestry?[269]

For the sake of a democratic, peaceful and prosperous South Africa some measures should be put in place to check constitutionalization against the perpetuation of the interests of the insatiable beneficiaries of the "right of conquest" and exploitation. The

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[267] Terreblanche, S., op. cit., p. 4.
[268] Ibid., p. 80.
[269] Ramose, M.B., Justice and Restitution in Africa Political Thought, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., p. 470.

historical justice proper to the indigenous conquered African peoples and their

descendents who now constitute the impoverished and suffering masses in both

democratic South Africa and the former British High Commission Territories should

never be sacrificed to appease the beneficiaries of the "right of conquest".

In his exposition of the thesis that 'Apartheid did not die', Pilger points out that when

Oppenheimer – the mining magnate behind the gold industry in South Africa retired in

1982, his successor, Gavin Relly, said that he, like Oppenheimer,

> did not favor 'one man one vote' as that would 'simply be a formula for
> unadulterated chaos at this point in time in our history.' He supported as
> 'necessary' the imposition of vicious state of emergency by the apartheid regime
> in its attempts to stem a popular uprising. As the 1980s progressed and the old
> methods of repression were failing, Anglo American directors privately discussed
> their fear that the company would be 'remembered as the I.G. Farben of
> Apartheid', an allusion to the German company that used slave labor during the
> Third Reich and the part played by German business in underpinning the Nazis.
> Today having removed its share base to London, Anglo American has never been
> richer. In October 2005, the company announced that its share holders would
> receive profits amounting to $1 billion.[270]

Pilger goes on to show that

> South African mining companies have greeted democracy by sacking half their
> labor force, many of the men stricken with diseases such as silicosis and
> tuberculosis, the result of the hot, silica-filled, dusty and insanitary conditions in
> the gold mines. The fortunate have been compensated with a pittance. In most
> cases, their ability to walk and breathe has quickly diminished to the point where

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[270] Pilger, J., Freedom Next Time, London: Bantam Press, 2006. p. 235.

they begin to choke. Most cannot afford an oxygen tank and die in their forties. Many of the families are too poor to pay for a burial….Richard Spoor, a lawyer who has led the fight against the companies for compensation, estimates that five hundred thousand gold miners have been abandoned penniless after contracting silicosis. The mining houses knew perfectly well that their mines were killing and maiming workers on an industrial scale.[271]

Democratization and constitutionalization should not be employed to undermine but to favor the promotion of the demands of historical injustice on behalf of the indigenous conquered African peoples and their descendents.

2.2.5 Neo-Colonial Structures of Techno-Economic Enslavement

By gaining independence according to government succession, the indigenous conquered Africans were put in a situation in which they were without means to establish their own economic growth, and they were compelled to continue within the old colonial trading framework. Thus departing from the ideal freedom and independence they had fought for, they found themselves once more "….seeking alliances in Europe, which deprive them of an independent foreign policy and perpetuate their economic dependency. But this is a solution that can only lead backwards, not forwards."[272]Thus the post-colonial independent countries are

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[271] Ibid., p. 236.
[272] Ibid., pp. 176-177.

constitutionally a recipe for "bad governance in Africa". Wole Soyinka underlines this recurrent European anti-thesis to African freedom and gives council: "When ideological relations begin to deny, both theoretically and in action, the reality of a cultural entity which we define as the African world, while asserting theirs even to the extent of inviting the African world to sublimate its existence in theirs, we must begin to look seriously in their political motivation."[273]

Independence granted without restoration of sovereignty to the same quantum as was lost at conquest leads into a situation in which the newly independent African countries find themselves unable to respond to the basic demands of technological and economic freedom. There is an intimate and inextricable connection of both freedoms. On the one hand, technology generates economy, and on the other, economy informs technology. Thus the degree of the economic freedom of any nation is commensurate and proportionate to their degree of technological freedom.[274] Without the technological freedom from which the indigenous conquered African peoples were barred by their erstwhile European colonial masters, the colonies find themselves looking up to their colonial mother country for technological and economic support.

[273] Soyinka, W., Myth, Literature and the African World, Cambridge: Cambridge University Press, 1976. p. x-xi.
[274] Osuagwu, I.M., op. cit., p. 221.

Thus in the commonwealth Britain is looked upon, in the French-speaking area France is looked upon to attend to the technological and economic freedom of the former colonies. The majority of the former colonies have only lately discovered that it is not technological and economic freedom they can get from their former colonial conquerors but exploitation.

The lack of technological and economic freedom has reduced independent African countries to remain indefinitely producers of raw materials for the developed European countries. This has developed into what is called an 'inter-dependence' between a metropolitan center of industry and a colonial periphery of producers of raw materials. It was in regard to this same 'inter-dependence' that an article on EEC associate membership already in 1961 drew attention to the fact that while prices of manufactured goods had been moving slowly upwards for a decade or more, the trend of primary products over the same period has too often been going downwards. Unable to manufacture finished goods from their own primary products due to lack of technological and economic freedom, the African countries cannot avoid having the Europeans as a threat to their economic interests.[275] While the decolonized Africa's battle against their European enslavement is one side of the coin, the other side is the

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[275]Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., p. 537.

battle to liberate the Africa from Europe's techno-economic enslavement. The realization of techno-economic freedom has been too difficult in coming through, due to the unrelenting grip of European imperialism and the irresponsibility of African themselves.[276]

2.3 The Governance in Africa

2.3.1 Political and Economic Dependency

The reason for the failure of decolonization is that the European colonial powers were not willing to retire from political and economic control over any given land and property fraudulently possessed in accordance with the "right of conquest".[277] The mercantilist and capitalist basis of colonization and the "right of conquest" could not afford to cease at the call of the moral demands of historical justice.[278] The European colonialists had pressurized and out-maneuvered the indigenous conquered African peoples to reluctantly take the offer of government succession and democratization instead of state succession. The colonial masters had put a remarkable resistance to ensure that "decolonization" and independence become cosmetic changes. The indigenous conquered African peoples could only receive from the colonialists the

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[276] Osuagwu, I.M., op. cit., pp. 221-222.
[277] Nkrumah, K., Africa Must Unite, op. cit., p. 57.
[278] Terreblanche, S., op. cit., pp. 78-84.

transfer of political power already defined and entrenched in the independence constitution to undermine the sovereignty of the colonies in post-independence Africa.[279]

At independence the decolonized Africa was granted a limping sovereignty. This is contrary to what liberation pioneers have told and encouraged the political followers to look forward to: "The rewards would be national and individual dignity, the satisfaction which comes from creation and a raised standard of Life."[280] The indigenous conquered African peoples have found out after the colonialists have left that they have been with empty promises of political independence. Foremost among the empty promises would be economic independence, without which political independence would be valueless. This new situation has ever since been the recipe for "bad governance" in Africa. The African countries are independent in name.[281] The patterns of consumption and systems of organization inherited from industrialized conditions are inappropriate for African conditions. Similarly, the same countries have considered poverty in Africa as motivation for aid in terms of financial assistance. Aid not reparation remains driven by an analysis of what the North thinks the South needs.

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[279] Ramose, M.B., Justice: The Missing link in the South African Reconciliation Process, Unpublished Paper, 2005. pp. 5-7.
[280] Nkrumah, K., Africa Must Unite, op. cit., p. 107
[281] Ibid., p. 174.

The first step of boldness is to reject all forms of aid to the continent. There cannot be any relief from aid given at the expense of restitution or compensation for lost property. As long as aid does not support the underdeveloped to get out of their dependence on former colonial masters and developed countries, it destroys their natural ability to be resilient and self-supportive.[282]

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[282] Luhabe, W., Maximizing the Return of Africa's Assets, In: Makgoba, M.W., (ed.) op. cit., p. 293.

CHAPTER THREE

THE BIRTH 0F "HUMAN RIGHTS"

3.1 The Historical Development of "Human Rights"

Introduction

Our investigation of "The Birth of Human Rights" is divided into three parts: the 1st part deals with the historical development of "human rights", the 2nd part with the philosophy of "human rights", and the 3rd part with classification and hierarchization of "human rights". Under "The Historical Development of Human Rights" we trace the origins of the concept of "human rights" from the Western pre-modern doctrines of natural law. Under "The Philosophy of Human rights" we seek to undertake a critique of the experience and concept of "human rights" in the cultural history of the West. In this understanding the spread of the concept outside the boundaries of the West as well as its impact beyond the Western sphere will be subject to critical analysis. The Universal Declaration of Human Rights shall be considered from this perspective.

Under "The classification and hierarchization of Human Rights" we raise questions about the application of the Western currency of "human rights" in relation to other human values and rights currencies like the African. Our observation about "human rights" is that the post-independence African State constitutions have been anything but African. That is:

> Fundamentally they have followed a natural right-individual rights approach, implicitly based on an expectation of a political transformation of Africans into Europeans. Having inherited the liberal state from the colonial past, African countries have been held by the international (Westernized) community to the tenets of Western liberalism.[283]

The approach taken in this chapter is based on the argument that Africa has the right to self-determination. Together with Cobbah our contention is that

> to correct injustices within different cultural systems of the world it is not necessary to turn all people into Westerners. Western liberalism with its prescription of human rights has had a worthwhile effect not only on Westerners but on many peoples of this world. It is, however, by no means the only rational way of living human life.[284]

Any new agenda by the former colonial masters including "human rights" and "good governance" for the indigenous conquered African peoples should not be considered in isolation from centuries of deprivation, oppression and exploitation the latter have

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[283] Cobbah, J.A.M., African Values and the Human Rights Debate: An African Perspective, Human Rights Quarterly Vol. 9 No.3, 1987. p. 328.
[284] Ibid.

suffered. The right of the indigenous conquered African peoples to self-determination entails being respected for practicing their own version of "human rights" and "good governance".

3.1.1 **The Stoic Foundations of "Human Rights"**

The historical origin of the concept of "human rights" is traced back to ancient Greece and Rome - the two great pillars of European and Western civilization. Among the Greeks, the origin of "human rights" is closely tied to the pre-modern natural law doctrines of Greek Stoicism. Stoicism taught that a universal working force pervades all creation to the effect that human conduct should be judged according to and be brought into harmony with the law of nature.[285] According to Stoicism "God"[286] and the universe are one and the same reality, a reality of which "God" is the soul while the universe is the body. The universe is a rational, intelligible, well-ordered organism ruled by the law of nature.[287] Human reason or soul is a spark of the logos, a

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[285] Weston, B.H., Human rights. Human Rights Quarterly, 1984, Vol. 6. pp. 257-258.

[286] Long, A.A., Hellenistic Philosophy: Stoics, Epicureans, Sceptics, London: Gerald Duckworth & Co. Ltd., 1974. pp. 148,168. Unlike Aristotle who distinguished different types of causal explanation (material, formal, efficient and final) the Stoic philosophy of nature found in "creative reason" – "God", the intelligent activity which ultimately provides a single rational explanation for all particular substances and all happenings. The Stoic concept of "God", unlike in monotheistic religions of Judaism, Christianity and Islam, is fundamentally a pantheistic and "pagan" theological concept. According to Stoic philosophy "God", Creative Reason, Nature, pneuma or universal logos accounts for a rational explanation of all things in the universe. In order to distinguish the Stoics' concept of "God" from the monotheistic Judeo-Christian and Islamic concept of God, we attach quotation marks - "God".

[287] Omoregbe, J., Philosophy of Law: An Introduction to Philosophical Jurisprudence, Lagos: Joja Educational Research and Publishers Limited, 1994. p. 7.

participation in the deity and the divine element in "man"[288]. "Man" alone unlike all other natural beings is endowed by Nature[289] with the capacity to understand cosmic events and to promote the rationality of Nature by human rational efforts.[290] By giving "man" reason Nature makes "man", from the perspective of the part, an autonomous agent charged with the responsibility to conform human conduct to reason.[291] According to Stoicism reason is the common essential nature of all "men". Reason is the foundation of goodwill, mercy and forgiveness for all "men" including slaves and enemies.[292] For the Stoics, the universe is a rational, intelligent, well-ordered organism ruled by the law of nature.[293] Since the law of nature is the law of reason, it follows that to "follow nature" or to "live according to nature" means to live according to reason and not according to the passions, emotions or sentiments. To live according to "right reason" is to obey the law nature. The Stoics conceived the whole world as a single State and taught that all men are equal and brothers. They taught that all "men" are free and are citizens of the World-State (idea of the brotherhood of all "men"

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[288] The term "man" is used as such in most translations. My adaptation of the term is in conformity with the usage of the time. The usage of the term is subject to the feminist critique as the use of sexist language.

[289] By "Nature" with a capital N Stoicism meant soul of the world, mind of the world, "God", the supreme rational being who directs all events for purposes which are necessarily good.

[290] Long, A.A., op. cit., p. 182.

[291] Copleston, F., A History of Philosophy Vol. I Part II, (ed.) New York: Image Books, 1962. p. 139.

[292] Ibid., p. 143.

[293] Omoregbe, J., op. cit., p. 7.

inherited from Cynics). Thus according to Stoicism no "man" is a slave by nature, for all "men" are free citizens of the World-State.[294]

Begun in the fourth century Greece by Zeno of Citium (334-262 B.C.), Stoicism permeated as part of the Hellenistic Civilization through the Empire of Alexander the Great (356-324 B.C.).[295] Unlike Alexander's vision of a World-State, the Stoics idea of the brotherhood of "man" became more a business of individuals than of kings. By appealing to the intellectuals rather than the mass, Stoicism served as a positive force in the history of thought and conduct.[296]

The dawn and rapid spread of Christianity in the Roman Empire threatened the survival of Stoicism as an independent philosophical movement. While the survival of Stoicism as an independent philosophical movement was under the threat of Christianity, on its part, Christianity needed Stoic ideas to establish itself as a positive force of thought and conduct among its Stoic converts. It was through the active role played by the Christian Fathers that Stoic ideas were kept in circulation in the Church.

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[294] Ibid.
[295] Neil, McGarry, Hohl, op. cit., pp.58-62.
[296] Botsford, G.W., & Charles Alexander Robinson, (ed.) Hellenic History, New York: The Macmillan Company, 1956. p. 440-441.

Stoic ideas had a notable influence on the Christian Fathers.[297] The principal sources through which Western Europe in the Middle Ages attained some knowledge of Stoic moral thought were Cicero, Seneca and the Latin Patristic writers.[298] The impact of the influence of Stoic ideas was such that during the Renaissance, especially between 1590 and 1640, Stoicism was very popular in Western Europe. It was during the Renaissance that France, Germany and Italy enjoyed a big circulation of the editions of Seneca, Epictetus and Marcus Aurelius. England developed a remarkable secular interest in Cato. The influence of Stoicism as a symbol of political liberty and moral virtue during the Renaissance contributed towards the decline of feudalism. Stoic ideas were employed to resist negative influence of feudalism regarding religious intolerance, political and economic bondage.[299] The transition from feudalism to Renaissance was marked by the liberal notions of freedom and equality. The foundations of what today are called human rights were laid particularly in relation to the use and ownership of property.[300]

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[297] Long. A.A., op. cit., p. 235.
[298] Ibid., pp. 237-238.
[299] Ibid., p. 240.
[300] Weston, B.H., op. cit., p. 258.

3.1.2 **Aristotle (384-322 B.C.)**

The definition that "man is a rational animal" is said to originate from Aristotle. It was through his theory of substance that Aristotle arrived at the definition that "man is a rational animal". According to Aristotle's theory of substance, the distinguishing qualities of a thing (its essence) or "that what a thing is"

> belongs to those things of which there can be a definition, to those things whose character is a definite "what"….Essence can only belong to a species or genus whose forms of being are subordinate one to the other and whose dependent characteristics are essential to the notion of "what it means to be" that thing.[301]

In the definition, "man is rational animal", the dependent characteristics "the genus", "animal" and the species, "rational", constitute essential parts of the concept of what "man" is.[302] According to Aristotle's theory of substance, it is by virtue of their rational nature that "men" are essentially endowed with a unique human dignity distinguishing "man" from non-rational animals. Rationality as the distinguishing characteristic of "man" is identified with the unique human dignity and capacity to produce different effects. By virtue of rationality "man" is a human person and is entitled to liberty and freedom. Thus, slavery as a condition in which the life, liberty and freedom of an individual rational animal is held within the absolute power of

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[301] Aristotle <u>Metaphysics</u> IX. V, In: Jancar, B., Monarch Notes: The Philosophy of Aristotle, New York: Monarch Press, 1966. p. 112.
[302] Ibid.

another, should be considered as repugnant and an injustice to the natural rights of "man".

According to Aristotle, it is by virtue of their rational nature that "men" share a unique human dignity and capacity to freely produce contrary effects. Rationality is the distinguishing quality that excludes "man" from non-rational animals. While Aristotle observed rationality as the distinguishing quality of "man", he however, tolerated the Greek institution of slavery. Thus Aristotle's description of the institution of slavery, was also his view point according to which, some rational animals could be treated as the property of their masters, no differently from domestic animals. The theory of slavery that Aristotle subscribed to was divided slavery into two groups: "slavery by nature" and "slavery by law". According to the theory a "natural" slave is one who was born or has fallen into slavery and lacked enough reason to govern himself.[303] A "natural" slave is as different from other "men" as from human being from non-rational animal. A "natural" slave is capable only of manual labor, and shares in reason only to the extent of perceiving and obeying it.[304] Thus Aristotle likened the master-slave relationship in "slavery by nature" to the rule of the mind over the body.

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[303] Aristotle <u>Politics</u> I.IV, In: Jancar, B., op. cit. p. 199.
[304] Strauss, Leo & Cropsey, J., (eds.) History of Political Philosophy, Chicago: The University of Chicago Press, 1986. p. 137.

The slave has a total dependence of mind on the hand is in need of the mind and has no mind of its own. Thus according to Aristotle a "natural" slave is something less than normal human being. On the other hand, "Slavery by law" covers the rational and normal human beings such as those captured in war, those who were bought in the marketplace, and those born the sons of slaves. Aristotle regarded "slavery by law", especially the bondage of prisoners of war, as necessary even thought evil.[305]

The Greek institution of slavery reduced "man" – the rational animal - to the level of property and tools of the slave-master. Thus the institution of slavery negatively impacted on the legacy of the natural law doctrine as regards natural duties and natural rights. For Aristotle to give in to the practice of slavery of his day, he compromised his own definition that "man is a rational animal". He failed to give full recognition to human dignity entailed in the definition that "man is a rational animal". It was contrary to Aristotle's doctrine that "man" is a rational animal but in line with his teaching of "slavery by nature" and "slavery by law" that some "men" have been subjected to unjust wars, slavery, colonization, oppression and exploitation. By admitting of "slavery by nature", especially in relation to the enslaved non-Greeks assumed to be intellectually inferior to the Greeks, the concept of slavery was racist.

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[305] Aristotle <u>Politics</u> I.IV, In: Jancar, B., op. cit. p. 199.

The fact that Aristotle accepted the institution of slavery, contrary to his natural law doctrine and definition that "man" is a rational animal is an illustration of the slow growth of moral social consciousness.[306]

3.1.3 **St Thomas Aquinas (1225-1274 A.D.)**

St. Thomas looked upon the Aristotelian philosophy as the perfect expression of natural truth and as the philosophy which was most congruent with the truth of Christianity. St. Thomas taught that "man" is a rational being is naturally inclined toward such specifically human goods as the political life and the knowledge of the truth. It is by virtue of reason that "man" participates more perfectly than all other natural beings in the order of divine providence.[307] According to St. Thomas, reason is the rule and measure of human acts. He identified rationality with the unique human dignity. St. Thomas asserted that moral law derived from the nature of human beings, and that it is appropriate for them to behave in a way that corresponds to their rational nature. All human laws are to be judged by their conformity to natural law for they are applications of it. Natural law is less specific than human laws. If a human law deviates from the spirit of natural law, it fails to be a proper and rationally defensible

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[306] Gonsalves, M.A., (ed.) Fagothey's Right and Reason, London: Merrill Publishing Company, 1989. p. 233.
[307] Strauss, Leo & Cropsey, J., (eds.) op. cit., p 264.

application of the natural law. Such a human law becomes a perversion of law, a law in name only.[308]

St. Thomas admitted of the practice of slavery as part of the Medieval European culture of his time. The cultural practice of slavery prevented St. Thomas from seeing slavery as a gross violation of natural law and therefore morally wrong.[309] According to St. Thomas, a slave is acted upon by the command of the master, not as non-rational and inanimate thing, but in such a way as to be self-acting through freewill.[310] According to St. Thomas, and the Christian tradition before him, slavery is rooted not in "man's" nature as such but in "man's" fallen nature.[311]

St. Thomas's interpretation of Aristotle's doctrine of "slavery by law" in accordance with Roman law and the principles of the *ius gentium* defended not only the necessity but the justice of the practice of "slavery by law". He argued that "Slavery by law" is beneficial to both conqueror and conquered for it spares the life of the slave and secures the conqueror with the needed slave services. On the contrary, Aristotle

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[308] Http://www.newworldencyclopedia.org/entry/natural_law. 21-Dec-10.
[309] St. Thomas, Summa Theologica, 1a 2ae, 94.5, In: Omoregbe, J., op. cit., p. 25.
[310] St. Thomas Aquinas, Summa Theologiae, 2a2ae. 50, 2 (trans. by Gilby, T.,) Cambridge: Blackfriars, 1974. p. 87.
[311] Strauss, Leo & Cropsey, J., (eds.) op. cit., p. 268.

looked upon the bondage of "men" who are not "natural" slaves as an evil that is justified by the demands of society - an indication of a defective and self-contradictory character of human justice on civil society.[312]

The recognition of the duty of the slave to self-act through freewill upon the command of the slave master denied correlative rights of the same freewill. Thus "slavery by law" vitiates against the natural law theory according to which "man" has a natural inclination to his proper act and end constituting the participation of the rational creature in eternal law.[313] The reason why St. Thomas could not see slavery as a violation of the natural law is that, the Ancient and Medieval doctrines of natural law placed emphasis on the duties and obligations of natural law rather than the natural right conferred on "man" by this law.[314]

To appreciate better the problem encountered in the reconciliation of natural law doctrine with "slavery by law", the distinction between "nature" and "law" is necessary. According to St. Thomas law is an ordinance of reason directed towards the common good and promulgated by one who has care of a community. It is a rule

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[312]Ibid..
[313] mhtml: file://C:\Documents and Settings\new\Desktop\Medieval Sourcebook Aquinas on Law. 21-Dec-10.
[314] St. Thomas, Summa Theologica, 1a 2ae, 94.5, In: Omoregbe, J., op. cit., p. 25.

and measure of actions through which one is induced to act or restricted from acting. Law is an analogical concept applied also to categories so various as the eternal law[315], divine law,[316]natural law,[317]and human law.[318]

According to St. Thomas, nature refers to the principle of motion and rest of a thing. The nature of a being structures it to act along definite lines. It is the source of its inner dynamism and makes it natural for it to seek the good as its end. Nature and end are correlative. By virtue of their free nature human beings guide themselves to their end. Thus "slavery by law" as an interference with the human right to free nature is morally unjust.[319] In spite of the distinction both Aristotle and St. Thomas justify slavery albeit by different arguments. Our conclusion is that the justifications of slavery by both Aristotle and Aquinas are not solid to permit slavery.

3.1.4 **Natural Law and Natural Rights**

The Stoic philosophy of natural law was embraced by some Christian thinkers of Medieval and Modern eras. Christian scholars such as St Thomas Aquinas and the

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[315] It is identical to the mind of God as seen by God himself.
[316] It is derived from eternal law as it appears historically to humans, especially through revelation.
[317] It is the participation of the rational creature in eternal law. Natural law is promulgated by God.
[318] St. Thomas Aquinas, Summa Theologiae, 2a2ae. Appendix 1. (trans. by Gilby, T.,) op. cit., p. 177.
[319] Gonsalves, M., (ed.) Fagothey's Right and Reason, op. cit., p. 67

Modern scientists and philosophers like Galileo Galilei, Hugo Grotius, and John Locke, to mention but a few accepted and adopted it.[320] It was under some influence of the stoic philosophy of natural law that Aquinas taught that there are four kinds of law: the eternal law, natural law, divine law and human positive law. Aquinas described eternal law as the law by which God governs the whole creation to its appropriate end, while natural law provides for the participation of rational creatures in the eternal law of God.[321] It was in the Modern era that Grotius removed the natural law theory from the theological framework and secularized it by arguing that even if God did not exist it would not make any difference to natural law.[322]

By their nature laws impose duties at the same time they concede rights. Thus a right is always recognized or conceded by a law to which it can be traced. According to natural law philosophy, both natural law and natural share the same foundation. The natural law philosophy concepts such as right, duty, justice and law are all linked together. Thus everybody has a duty to respect the rights of other people. Just as

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[320] Omoregbe, J., op. cit., p. 12.
[321] Aquinas, Summa Theologica, 1a, 2ae, 91, 1, 2, In: Omoregbe, J., op. cit., pp. 14-15.
[322] Ibid., p. 26.

natural law is the foundation of all positive laws, natural rights are the foundation of all legal (civil) rights.[323]

Even though theoretically, laws are supposed to impose duties and concede rights at the same time, in Greco-Roman and Medieval times the natural law doctrine taught mainly the duties, as distinguished from the rights, of "man". From the writings of Aristotle and St. Thomas Aquinas there is evidence that the natural law doctrine recognized the legitimacy of slavery and serfdom and, in so doing, excluded perhaps the centralmost ideas of "human rights" as they are understood today – the ideas of freedom (or liberty) and equality.[324] The understanding of "human rights" came as a replacement of the "natural rights" which fell into disfavor in part because the concept of natural law proved to be deficient as guarantor of liberty and equality of all its members (slaves). The phrase "rights of man" as a replacement of concept of natural law was not universally understood to include the rights of women.[325] For example, in his recommendation of a government by the body of free citizens, Aristotle excluded women, slaves, manual laborers, and tradesmen.[326]

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[323] Omoregbe, J., op. cit., pp. 95-96.
[324] Weston, B.H., op. cit., p. 258.
[325] Ibid.
[326] Aristotle Politics I (Trans. by Jowett, B.,), In: Loomis (ed.,) Aristotle: On Man in the Universe, New York: Walter J. Black, INC., 1943. p. 245.

3.1.4.1 **Hugo Grotius (1583-1645 A.D.)**

Among the Modern philosophers, Grotius' natural law philosophy is uniquely characterized by the ability to enjoy both continuity with the past and embrace a new dimension. Grotius identified with the Medieval tradition of Aquinas and Suarez, and also introduced a new dimension - secular dimension of natural law. Grotius distinguished between three kinds of law: natural law, positive law and the law of the nations. Natural law is based on human nature as a dictate of right reason. It is in the nature of right reason to point out that an act is morally good or evil, according as it is or is not in conformity with the rational nature.[327] According to Grotius, the conformity of human act with right reason is pleasing to God as the author of nature, while inconformity is forbidden as evil. It is in the nature of "man" to be in the mutual relation with society (the mother of the law of nature), even if "man" had no lack of anything.[328] According to Grotius, natural law is indispensable and its fundamental principles are self-evident. In relation to civil law, natural law is superior and it takes precedence over it and over the command of any authority. Thus in the case that positive law conflicts with the natural law, the former should be rejected; and the same applies to any order that runs counter to the natural.[329] According to Grotius, necessity

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[327] Grotius, H., Prolegomena 1,1,10,1, In: Omoregbe, J. op. cit., p. 26.
[328] Grotius, H., De Jure Belli ac Pacis, 16, In: Omoregbe, J., op. cit., p. 26.
[329] Grotius, H., Prolegomena, 39, In: Omoregbe, J. ibid., p. 27.

of natural law is such that, even if God did not exist it would not make any difference to natural law; there would still be natural law.[330] Remarkably, Grotius' hypothesis that "if God did not exist it would not make any difference to natural law", became a thesis in the 17th and 18th centuries.[331]

In the West, the elaboration upon the conception of natural law as meaning or implying natural rights was done in the 17th and 18th centuries by the modernist scientists and philosophers.[332] The belief in natural law and universal order was encouraged by the discoveries of Galileo and Sir Isaac Newton, the materialism of Thomas Hobbes, the rationalism of Rene Descartes and Gottfried Wilhem Leibnitz, the pantheism of Benedict de Spinoza, the empiricism of Francis Bacon and John Locke.[333] Confined to our scope in this paper, our discussion on the modernists' contribution to the transition from "natural rights" to "human rights" will be limited to Galileo Galilei, and John Locke.

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[330] Ibid., p. 28.
[331] Omoregbe, J., op. cit., pp. 27-28.
[332] Weston, B.H., op. cit., p. 259.
[333] Ibid.

3.1.4.2 **Galileo Galilei (1564 -1642 A.D.)**

The contribution of Galileo Galilei in the 17th century elaboration upon the conception of natural law as implying natural rights broke new ground and opened the way for the new method of discovering knowledge and introduced fundamental changes in the Mediaeval world of thought. The effort he spent in astronomy and physics to demonstrate man's capacity to understand cosmic events and to promote the rationality of Nature by human rational contributed immensely towards the development of classical mechanics.[334] As an outstanding pioneer of the new method of discovering knowledge Galileo was convinced that nature is essentially mathematical.[335] According to Galileo:

> Philosophy is written in the book of the universe but it cannot be read until we have learnt the language and understand the characters in which it is written. It is written in mathematical language, and its characters are triangles, circles and other geometrical figures, without which it is impossible to understand a single word.[336]

In accordance with his mathematical language Galileo engaged in controlled experiments based on the hypothesis that "under ideal conditions an ideal law would be obeyed."[337]In his experiments Galileo focused on the mathematical demonstrations

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[334]Weston, B.H., op. cit., p. 259.
[335] Copleston, F., A History of Philosophy Vol. 3 Part II, op. cit., p. 98
[336] Galilei, G., Il Saggiatore (6), In: Copleston, F., A History of Philosophy Vol. 3 Part II, op. cit., p. 98.
[337] Copleston, F., A History of Philosophy Vol. 3 Part II, op. cit., p. 92.

aimed at avoiding information based "simply upon tradition and opposing conjectures contained in books."[338] Galileo stressed the distinction between appearance and reality. While seeking for reality Galileo insisted on avoiding appearance. Galileo taught that appearance could not be trusted as a reliable path to truth because it is made up of secondary[339]qualities. He insisted that only primary[340] qualities could be trusted for they represent reality.[341]

Among the experiments that Galileo conducted was the geocentric hypothesis that the heavenly bodies rotate around the earth.[342] With the help of the telescope Galileo was able to prove the falsity of the geocentric hypothesis and vindicated the heliocentric hypothesis that the heavenly bodies, including the earth, rotate around the sun.[343]

Galileo's work on the heavenly bodies caused him tension with some Church authorities of his time with the result that he suffered the Inquisition. Committing himself to his scientific work, Galileo wrote a letter to Grand Duchess Christina in

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[338] Stumpf, S.E., Philosophy: History and Problems, (ed.) New York: McGraw-Hill, Inc., 1994. p. 218.
[339] According to Galileo, secondary qualities include qualities such as color, taste, emotions and sounds.
[340] According to Galileo, primary qualities included such qualities as size, position, motion, density that could be dealt with mathematically
[341] Stumpf, S.E., op. cit., p. 218.
[342] The Geocentric hypothesis was associated with the Aristotelian, Platonic and Biblical traditions.
[343] Copleston, F., A History of Philosophy Vol. 3 Part II, op. cit., p. 92.

which he set out his ideas on the relation of science and theology.[344] He maintained that: "nothing physical which sense-experience sets before our eyes, or which necessary demonstration proves to us, ought to be called in question (much less condemned) upon the testimony of biblical passages which may have some different meaning beneath their words."[345] By resisting the religious intolerance towards his scientific work and together with the accompanying political-economic bondage, Galileo had contributed towards the independence of natural sciences from theology and the emergence of the transition from "natural" to human "rights". By his resistance Galileo affirmed and asserted the right to freedom of opinion and expression without interference.[346] Galileo's scientific studies were not stopped by the Inquisition; in fact, he was able to continue working until he became blind in 1637.[347] It was in 1992 that Pope John Paul II, following the report of the Commission on "Galileo's case" established in 1981, formally acknowledged that the Roman Catholic Church had erred in condemning Galileo for asserting that the earth rotates around the sun.[348]

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[344] Collinson, D., Fifty Major Philosophers, New York: Routlledge, 1987. p. 50.
[345] Galileo, Letter to the Grand Duchess Christina, In: Collinson, D., op. cit., p. 50.
[346] Universal Declaration of Human Rights, Art. 19.
[347] Copleston, F., A History of Philosophy Vol. 3 Part II, op. cit., p. 91.
[348] File:///C:/Document%20and%20settings/new/Desktop/"Galileo Case".htm 04-March-10 16:45

3.1.4.3 **John Locke (1632-1704 A.D.)**

John Locke was committed to combating the theory of the "divine right of kings" and the realization of human equality. He argued that "men" are by nature equal and free and that political power and jurisdiction is reciprocal. He pointed to the "state of nature" according to which all "men" naturally belong and remain till by their own consent they make themselves members of some political society. According to Locke, the "state of nature" has a law of nature to govern it, which obliges every one.[349] Locke argued that it by virtue of the consent to enter civil society, pursuant to a "social contract". He pointed out that "man" surrenders to the State only the right to enforce natural rights, but not the rights themselves.[350] According to Locke, in the state of nature "men" are naturally free and equal. Civil society should acknowledge that certain rights self-evidently pertain to individuals as human beings (because the same rights existed in the "state of nature" before humankind entered civil society). For Locke, the primary right was the right to subsistence, that is, the right to life. According to Locke, natural law is a universally obligatory moral law promulgated by human reason. Natural moral law binds "man" in conscience and is the foundation of "man" natural rights. Every "man" has both the right and duty to preserve and defend

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[349] Locke, J., Treatise on Civil government, Book II, Chapter 5, In: Copleston, F., A History of Philosophy Vol.5 Part I, New York: Image Books, 1957. p. 138.
[350] Ibid., p. 259.

her/his life, and the right to freedom. As morally obliged to take means at his/her disposal to preserve life, "man" does not have the right to take away his/her life or even to subject himself/herself to slavery.[351]

The failure of state to secure these reserved natural rights (the State itself being under contract to safeguard the interests of its members) gives rise to a right to popular revolution. Whereas every individual human being is entitled to life, health and possessions, no human being ought to harm another in these rights. Locke affirmed and asserted that there cannot be supposed any subordination among "men" that may authorize the destruction of one another as if "man" was made for one another's use, as the inferior ranks of creatures are for "man".[352] Locke's replacement of natural law with natural (human) rights contributed towards the postulation of equal human dignity, inalienability of rights and individualist liberalism of the Western concept of human rights.[353]

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[351] According to Locke, the state of nature is a state whereby "men" live together according to reason and without a common superior on earth with authority to judge between them. All "men" are naturally in the state of nature and remain so till by their own consent they make themselves members of some political society.

[352] Locke, J., Treatise on Civil Government, Book II, Chapter5, In: Strauss, Leo & Cropsey, J., (eds.) History of Political Philosophy, Chicago, op. cit., pp. 477-478.

[353] Cobbah, J.A.M., op. cit., p. 314.

3.1.5 **The Transition from "Natural Rights" to "Human Rights"**

The transition from "natural rights" to "human rights" took place in a process of the dialectics of historical social changes seeking for equal human dignity and the protection of human rights. For the values of equal human dignity and the protection of human rights to emerge as a general social need, some basic changes in the beliefs and practices of the society had to take place.[354] The changes were accomplished by the discoveries of the scientific method that brought about fundamental alterations in the world of thought as it existed in Ancient and Medieval Europe.[355] These changes were characterized by the resistance to religious intolerance and political-economic bondage. These changes mark a period during which the foundations of what today are called "human rights" have been laid.[356]

In the middle of the 20th century, international protection of human rights became a prominent issue. Towards the close of the century the realization of human rights was of great significance both internationally and nationally. The protection of human rights was made a constitutional duty of states. Among the industrialized Western States stress was laid upon the civil and political rights, while the socialist states gave

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[354] Weston, B.H., op. cit., pp. 257-259.
[355] Stumpf, S.E., op. cit., p. 216.
[356] Weston, B.H., op. cit., pp. 257-259.

priority to economic, social and cultural rights. Irrespective of their differing economic and social systems states recognized the need for a regulation suited to the catalogue of human rights. It is commonly accepted that the protection of human rights is rooted in the constitutions adopted in certain States (the United States of America, and France) during the 17th and 18th centuries.[357] The recognition of the need for human rights existed even when the facts of life did not everywhere, nor in every respect, accord with the provisions of the human rights philosophies. For example, it was after centuries and decades of colonial rule, loss of property (territorial) and political sovereignty rights, exploitation and impoverishment, that the constitutions of the newly independent African countries adopted the Universal Declaration of Human Rights. It is now more widely recognized that in no state can human rights be strictly implemented independently of the solution of global problems, such as the right to live in peace and the right to development.[358]

The expression "Human rights" has come into the international world everyday parlance during World War II and the founding of the United Nations in 1945. Human

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[357] Bokor-Szego, H., (ed.) Questions of International Law, Hungarian Perspectives, Vol. 5. Budapest: Akademiai Kiado, 1991. p. 20-22.
[358] Ibid.

rights came as a replacement of the phrase "natural rights".[359] The catalogue of rights set out in the Universal Declaration of Human Rights was made of the sum of all the important traditional political and civil rights of some European national constitutions and legal system. The Universal Declaration of Human Rights was adopted and chartered without dissent by the United Nations General Assembly on 10 December 1948.[360]

The catalogue of "human Rights" is a list of articles of rights nurtured from within the European and Western civilization, adopted for United Nations member states for endorsement and drafting into national constitutions. To its signatories, the catalogue is obliging both as national and international legal instrument.[361] Among the signatories, "Human rights" obliges a constitutional and legal foundation for the protection of the inherent dignity and equality of human beings including inalienable rights of each member of the human family.[362] The recognition, respect, protection and promotion of "human rights" is the foundation of justice and peace in the world. Colonization was a fundamental and serious breach of the moral imperative to recognize, respect, protect and promote "human rights". Decolonization failed to

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[359] Weston, B.H., op. cit., p. 258.
[360] Ibid., p. 273.
[361] Bokor-Szego, H., op. cit., p. 19.
[362] Townley, R., op. cit., p. 327.

respond efficiently to the breach of "human rights". Therefore "human rights" today must also serve as a vehicle for a fundamental and adequate positive response to the demands of natural and historical justice due to the indigenous peoples conquered in the unjust wars of colonization.

As a resolution of the General Assembly the Declaration is not in itself an enactment of law. It is not a treaty. It belongs to each individual country to entrench the Declaration as part and parcel of its constitutional law. As a common standard of achievement for all peoples and nations, the Declaration does not lack culprits of human rights transgression even among the founder members. There are also cases of unfair discrimination in the treatment of culprits of human rights transgressions. For instance, there is neither indictment nor arrest made to date, following the Amnesty International Report 2008 on Europe and Central Asia confirming complicity of European states in the US-led programme of secret and unlawful renditions and detentions. According to the Report, the complicity of some governments concerns the transfer of people to foreign countries outside the rule of law, enforced disappearance, torture and other ill-treatment of those subjected to the renditions and secret

detentions.[363] Again, the 2003 world report by Human Rights Watch criticized the Bush Administration (US government) over the legal status and physical condition of detainees at Guantanamo Bay Prison, but so far no arrests have been made against the wrongdoers.[364]

That some culprits of human rights are treated differently is unacceptable in as far as the Declaration of Human Rights serves as common standard of achievement for all peoples and all nations. Whatever unjustifiable discrimination is carried out with regard to the Declaration, it brings the United Nations into disrepute. A year before the Human Rights Watch criticism of the Bush Administration about Guantanamo Bay Prison, in 2002, President Charles Taylor of Sierra Leone was indicted, arrested and charged for war crimes, and Crimes Against Humanity. In this latter case, Amnesty International had made calls on the government of Ghana to act immediately and arrest President Taylor who was in Ghana then.[365]

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[363] File:///C:/Documents%20and%20Settings/new/Desktop/Amnesty International.htm 17-Feb-09 10:17
[364] File:///C:/Documents%20and%20Settings/new/Desktop/Guantanamo Bay.htm 17-Feb-09 10:29
[365] File:///C:/Documents%20and%20Settings/new/Desktop/Human Rights Watch.htm 17-Feb-09 18:15

3.1.6 **The Significance and Impact of Western "Human Rights" outside the West**

While European Modern philosophers and scientists are worthy of praise for their contribution towards the recognition and protection of equal human dignity and human rights, seemingly their contribution was limited in scope to within the peoples of Western civilization. The modernists' contribution towards the value of the equality of human dignity was not able to deter the European urge to engage in the trans-Atlantic slave trade and the colonization of Africa. Locke's theory of the law of nature did not help to dissuade the European colonial conquerors of the 17th century from expropriating the indigenous African peoples of their property (territorial) and political sovereignty rights.[366] Rather it helped to nurture the European reason for the slave trade and colonization of Africa founded on the supposed unreason and barbarism of the indigenous African peoples. To the European modernists' authors of natural (human) rights the enslaved and colonized were at best sub-human but certainly not human.[367] The modernists were committed to negative discrimination against "the other" (the African, Amerindian and Australasian) whom they commissioned to be subjected to political-economic bondage, denial of freedom and equality, denial of ownership and property rights.[368]

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[366] Terreblanche, S., op. cit., pp. 154-155.
[367] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 12.
[368] Ogbunwezeh, E.F.O., op. cit., pp.160-167.

By identifying white complexion with superiority and black with inferiority, David Hume (1711-1776) for one, promoted racism, slavery and colonial conquest of the indigenous African peoples by the people of European origin.[369] The liberal ferment of the 17th and 18th centuries modernist philosophers and scientists affected the Western world of the late 18th and early 19th centuries with philosophic racism and racial discrimination. For example when on July 4, 1776 Thomas Jefferson proclaimed the independence of the 13 American Colonies, he did not set free his own slaves before making the following statement: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."[370] Jefferson was himself a slaveholder who did not free his own slaves in his lifetime. Racial discrimination lasted long after President Jefferson in the United States of America. It was not until 1946 that the American Supreme Court banned segregation on interstate bus travel.[371] It was not until 1953 that the American Supreme Court ruled that restaurants in Washington DC could not refuse to serve blacks. In South Africa the democratic political changes of 1994 only granted political liberation to black South Africans still in economic chains since the extended colonization stretching from

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[369] Hume quoted in Bracken, H.M., In: Ramose, M.B., African Philosophy Through Ubuntu, op. cit., pp. 13-14.
[370] Weston, B.H., op. cit., p. 260.
[371] File:///C:/Documents%20and%20Settings/new/Desktop/Chronology of Civil rights struggle.htm 18-Oct-08 00:08

1652.[372] The 17th and 18th centuries European modernist philosophers and scientists deserve credit for their contribution towards the postulation of the equality of human dignity.

3.2 **The Individualist Liberalism of Human Rights**

When in 1948 the United Nations General Assembly, dominated by the Western world, adopted the Universal Declaration of Human Rights, Africa south of the Sahara was still under colonial domination. By the time of political independence, African countries were subjected to the individualist liberalism paraphernalia of the Western rights and constitutional law denied them while colonized.[373] "Human rights" together with "democratization" were imposed upon the indigenous conquered African peoples without first seeking to enquire whether the African has a philosophy of human rights. Independence was granted to African countries without reversion to unencumbered and unmodified sovereignty rights lost at conquest.[374] The question may arise as to whether without such reversion the African can legitimately be expected to embrace the Universal Declaration of Human Rights?[375]

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[372] Terreblanche, S., op. cit., p. 3.
[373] Cobbah, J.A.M., op. cit., pp. 315-316.
[374] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.
[375] Cobbah, J.A.M., op. cit., p. 309.

The adoption of the Universal Declaration of Human Rights by the new African states tends to promote Western liberalism against African political thought. For instance, African societies are largely communitarian. That is, they operate within a broader arena of the extended family fostering a sense of cooperation, interdependence and collective responsibility. On the other hand, the Western practice of human rights conducts family life within the nuclear family, individual rights, competition and independence. Given the bias of the Western practice of human rights in international fora, there is a tendency to disregard and derecognize the African Character of Human and Peoples Rights. This exclusivist approach to international human rights instruments must be thoroughly questioned. It is not in the best interest of international peace that the instruments of human rights are conducted only in Western currency. [376]

Another example of a Western biased practice of human rights is observed in the European colonial masters' conduct of decolonization of Africa. Following the unjust wars of European colonization in Africa, the indigenous conquered African peoples lost property (territorial) and political sovereignty rights. In their quest for historical justice, the Africans demanded decolonization in the concrete form of state succession.

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[376] Ibid. p. 309.

The distinct necessities of historical justice demanded by state succession would be restitution, reparation, restoration and compensation to the indigenous conquered African peoples. Contrary to the African demand for state succession, the European colonial masters insisted on the "right of conquest" and decolonization according to the technique of government succession. "By adopting the technique of government instead of state succession, decolonization was a device to protect and perpetuate the privileges acquired through conquest in the unjust wars of colonization."[377]

With due respect for human rights based on the equality of human dignity, the European decolonialists should have allowed for the African demand for state succession. The European decolonizaiton of Africa, conducted without borrowing from the African customs and traditions of conciliation and consensus, is identified with the adversarial and adjudicative procedures common to Western legal systems.[378] Until and unless due restoration, restitution, reparation and compensation is made for the titles to property (territorial) and political sovereignty lost at conquest, the independence of African countries will remain ever limping.[379]

[377] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 462.
[378] Weston, B.H., op. cit., p. 279.
[379] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 490-491.

3.3 **Classification and Hierarchization of "Human Rights"**

Introduction

It is generally acknowledged that following the horrors and sufferings experienced in World War II, the general conviction has led to the creation of an institutionalized system of the international protection of human rights. The consensus in the necessity for the protection of human rights has manifested itself in the consideration and adoption of the International Covenants on Human Rights as a general framework. Within this framework some classifications in the catalogue of human rights have been introduced. In line with the framework a classification of two International Covenants has been adopted by the United Nations General Assembly. However, the adoption of the new approach to the catalogue of human rights was not without its opponents. Many of those who adopted the two International Covenants on Human Rights are of the opinion that their provisions and the ensuring of the rights enunciated in them should form the basis of the relevant state policy.[380]

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[380] Bokor-Szego, H, op. cit., pp. 123-125.

3.3.1 **Classification of "Human Rights"**

The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. The Covenant entered into force on the 3rd January 1976 in accordance with Article 27.[381] Otherwise known as the 2nd Generation of Human Rights, the Covenant has a preamble and 31 Articles classified into five parts. The characteristic feature about the 2nd Generation of Human Rights is that it admits of the enforcement of social, economic and cultural rights through positive state measures. As opposed to the 1st Generation, the 2nd Generation of Human rights lays more stress on demands rather than freedoms.[382] The Covenant affirms and asserts the right of all peoples to self-determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

In regard to Non-Self-Governing and Trust Territories Part I Article 1 (3) acknowledges that states parties to the Covenant have to ensure economic, social and cultural rights to peoples in their Non-Self-Governing and Trust Territories. Concerning the right to self-determination, the responsibility to promote the right to

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[381]Human Rights: A Compilation of International Instruments Vol. I. (First Part) Universal Instruments, New York: United Nations, 2002. p. 7.
[382] Bokor-Szego, H, op. cit., p. 125.

self-determination of the Non-Self-Governing and Trust Territories is left to their colonial administrators. But for the Covenant to leave the responsibility to promote the right of self-determination of the Non-Self-Governing Territories to their colonial administrators compromised the same right. For example, in the case of Belgium and Portugal which regarded their colonial territories in Africa as nothing more than "valuable piece of estate that just required good management,"[383] Part I Article 1 (3) could as well be considered for showing tolerance to the "right of conquest" over the right of peoples to self-determination. Thus when the anti-colonial wars were waged in Angola and the Congo the Covenant could be interpreted as favoring the cause of colonization against the will of the peoples of colonial territories engaged in the struggle for self-determination.

The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) on the 19 December 1966. The Covenant came into force on the 23 March 1976, in accordance with Article 49. Otherwise known as the First Generation of Human Rights, the Covenant has a preamble and 53 Articles divided into 6 Parts. There are also two Optional Protocols attached to this Covenant: that in accordance with Article

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[383] Meredith, M., op. cit., p. 12.

9, entered into force on 23 March 1976; and the other adopted and proclaimed by General Assembly Resolution 44/128 of 15 December 1989.[384]   Pursuant to the Covenant, each state party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.   Among the rights listed in the Universal Declaration of Human Rights, the Covenant does not include the right to property and the right to asylum.   The Covenant also designates a number of rights that are not listed in the Universal Declaration of Human Rights, among them the right of all peoples to self-determination and the right of ethnic, religious, or linguistic minorities to enjoy their own language.[385] The inspiration behind the Covenant is considered to be the spirit of individualism developed as a result of bourgeois revolutions in the West.[386]

Substantially the Covenant recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.   In accordance with the Universal Declaration of

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[384] Human Rights: A Compilation of International Instruments Vol. I. op. cit., pp. 35-38.
[385] Weston, B.H., op. cit., p. 274.
[386] Bokor-Szego, H, op. cit., p. 125.

Human Rights, the Covenant recognizes that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if state parties create conditions whereby everyone may enjoy his/her civil and political rights, as well as his/her economic, social and cultural rights.[387] But the problem with this Covenant is that: not all state parties to the Covenant are equally affording in their creation of the necessary conditions whereby every human being in a state party to the Covenant may enjoy his/her civil and political as well as the economic, social, and cultural rights. It is on account of the economic and social disparities existing among some state parties to the Covenant that they are categorized as developed, developing and underdeveloped countries. In fact, majority of underdeveloped state parties to the Covenant are unable to meet the necessary conditions for all individuals within their territories and subject to their jurisdiction to enjoy the economic, social and cultural rights.

Some erstwhile colonial masters have made the unjustifiable claims to "right of conquest" at decolonization. They deprived their former colonial territories - the newly independent state parties to the Covenant of their property (territorial) and

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[387] Human Rights: A Compilation of International Instruments Vol. I. (First Part), op. cit., p. 17.

political sovereignty rights.[388] Another reason why the majority of the underdeveloped state parties to the Covenant (especially, the former African colonial territories) are unable to afford the necessary conditions for all individuals within their territories and subject to their jurisdiction, is the neo-dependency and neo-colonial condition the post-colonial countries find themselves in.

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[388] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 462.

CHAPTER FOUR

THE AFRICAN CONDITION

Introduction

The discussion on the African condition is focused on the political and economic condition in post-colonial Africa in general. Thus the discussion is a general overview which is not country specific. We seek to question both the colonial masters' claim to the "right of conquest" and the adoption of the decolonization mode of government instead of state succession.[389] We consider the colonial conquerors' claim to the "right of conquest" unacceptable and contrary to the African legal philosophical point of view. We are of the opinion that the conquerors' claim has unjustly violated the African demand for decolonization and independence in accordance with the African legal philosophical principle that disturbed equilibrium regardless of the time when the disturbance occurred demands restoration (Molato ha o bole).[390] We are of the opinion that whereas the majority of post-colonial African countries may claim to be sovereign states, their sovereignty is being crippled by the property (territorial) and political rights lost through the colonizers' claim to the "right of conquest".[391] We consider the

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[389] Ibid., p. 462.
[390] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 95.
[391] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 462.

decolonization of Africa in accordance with the mode of government succession conducive to the condition of neo-dependency and neo-colonialism in post-colonial African countries.[392] We argue for correction of the subtly imposed political and economic condition in post-colonial Africa. Accordingly we favor restitution, restoration, reparation and compensation for post-colonial African countries. We seek to argue the point that the post-colonial African condition is a clear manifestation that the end of colonial rule in Africa is not synonymous with wholesome independence, and that democratization has managed to further capital imperialists' interests of manipulation in Africa.[393]

Our investigation of the African condition is an attempt to raise awareness about the issues of natural and historical justice. We question the African predicament whereby politically the loss of sovereignty meant that the rulers or groups of rulers were reduced to mere shadows of their former selves, and stooges of different colonial masters.[394] Our enquiry into the African condition takes into consideration the historical fact that the indigenous conquered African peoples' demand for decolonization and independence took centuries and many decades on end, amid stiff resistance from the colonizers. We acknowledge the fact that anti-colonial activism

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[392] Mazrui, A., Neo-dependency and Africa's Fragmentation, In: Coetzee, P.H., & Roux, A.J.P. (eds.) op. cit., p. 528.
[393] Ibid.
[394] Oguejiofor, J.O., op. cit., p. 25.

was assisted by communist and socialist ideology, and the military support that came with the Russian Revolution of 1917.[395] We admit of general relaxation of colonialist grip on African countries during the Cold War struggle for world domination between the Soviet Union and the United States of America (USA).[396] We take notice of the long period of indifference by the colonial masters and the established Western democracies to problems of human rights and democracy in Africa.[397] While we value the anti-colonial activism, we question the militarization of Africa that took place during the Cold War era.[398]

We consider it is never too late for the erstwhile colonial masters to compensate the indigenous African peoples for colonization damages. We highly appreciate the fact that Italy finally obliged in 2008 to compensate Libya for its colonial rule from 1911 to 1943.[399] We hold that economic aid grants made to the majority of African countries by some erstwhile colonial masters are not an excuse for refusing to make

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[395] Young, R.J.C., Postcolonialsim, Oxford: Blackwell Publishers, 2001. pp. 27-89.
[396] Neil, MacGarry, Hohl, op. cit., pp. 1224-1227.
[397] Diamond, L., Developing Democracy: Toward Consolidation, Baltimore: The Johns Hopkins University Press, 1999. pp. 55-56.
[398] Seleti, Y.N., Angola: The Battlefields and Beyond Security and Development Prospects for the 1990s, Roma: ISAS, 1994. pp. 55-101.
[399] *URL:http://www.alertnet.org/thenews/newsdesk/L31511057.htm 06-09-2008* 17.48

compensation for the colonization of Africa. The erstwhile colonial masters continue to carry the responsibility for failing to satisfy the demands of historical justice.[400]

4.1 African Philosophical Identity and the Restoration of Post-colonial African Condition

4.1.1 The African Philosophy

Whereas at decolonization the indigenous conquered African peoples received limping sovereignty, the demands of historical justice weigh heavily upon these peoples in the post-colonial Africa. The unenviable African condition imposes the necessity upon the indigenous conquered African peoples to correct the situation of neo-dependency and neo-colonialism. The circumstances were developed by more than three hundred years of the trans-Atlantic slave trade and colonialism. Coupled with the decolonization without the exigency of restitution, the circumstances in Africa constitute the weight from under which the African has to arise.[401] The call for the restoration of the sovereignty lost in the unjust wars of colonization depends first and foremost on the restoration of African philosophical identity.[402] Indeed philosophy is the measure of the humanity of the human as such. Unless and until African philosophy is restored to

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[400] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., pp. 94-96.
[401] Oguejiofor, J.O., op. cit., p. 25.
[402] Ramose, M.B., Discourses on Africa, In: Coetzee, P.H., & Roux, A.J.P., (eds.) op. cit., pp. 4-7.

its original and rightful place of honor in Africa by the decolonized Africans, no other restoration is possible.[403]

We subscribe to the understanding that, on establishing his/her rightful place as an equal member of the human family, the decolonized African is challenged to give his/her rational interpretation of the circumstances in which he/she finds himself/herself. By the ability to engage in philosophic activity the African proves to be a rationally competent human being - an equal member of the human family. As a specific human and contextual activity, philosophy can be defined as a cultural universal to be found in one form or the other, where there are human beings. A philosophic activity is determined by the context in which it seeks to interpret its contextual perplexities, propose solutions to problems and answers to questions. Thus from within the decolonized African context, on seeking to propose solutions to problems, the philosopher concerned must propose African answers to decolonized African questions in order to be philosophically and contextually applied. On seeking to affirm and assert himself/herself as a member of the human family the decolonized African is challenged to demonstrate his/her rationality in terms of an African philosophy. To deny African philosophy is to deny the measure of the African

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[403] Oguejiofor, J.O., op. cit., p. 27.

humanity and its rightful place within the membership of the human family.[404] Therefore, any attempt to deny the questions and solutions proposed by decolonized African philosophy to the prevailing circumstances is unjustifiable. We are ill at ease with all pretensions of any monolithic and universal philosophy valid for the entire human race and for all epochs.

In accordance with African legal philosophical principle that disturbed equilibrium regardless of the time when the disturbance occurred demands restoration (Molato ha o bole), we include injustices of the trans-Atlantic slave trade and the European colonization of Africa, including the independence granted without the exigency of restitution.[405] The loss of political sovereignty and economic exploitation have devastated the structure of African existence and denigrated the African to inferiority complex in front of his oppressors.[406] In the denigrated structural existence the African despises himself/herself and is in the predicament of taking as superior the standards and ways of his/her oppressor.[407] As it were, the oppressor of the Africans is always at pains, through the inclusive and frightening character of his authority, to impose on the African new ways of seeing, and in particular a pejorative judgment with respect to the

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[404] Ibid., pp. 22-23.
[405] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 95.
[406] Oguejiofor, J.O., op. cit., p. 26.
[407] Ibid.

original forms of existing.[408] The denigrated African existence calls for restoration to its original and rightful position. For the restoration to take place, the decolonized Africans themselves must assume their African philosophical identity in order that this may be contextually applied to their circumstances.[409]

4.1.2 **Constitutionalization and the Claims of "Right of Conquest"**

In their demand for independence the indigenous conquered African peoples had in mind the total emancipation of their respective countries from colonization in all its forms.[410] The indigenous conquered Africans were struck by the fact that when they demanded independence, the colonial masters insisted on the writing of the independence constitution. During the writing of the constitution colonial masters entrenched, among others, their own parliamentary democratic systems and the principle of extinctive prescription as conditions of accession to independence. Thus colonial masters were preventing the total and final liquidation of the colonial system.[411]

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[408] Fanon, F., op. cit., p. 38.
[409] Oguejiofor, J.O., op. cit., p. 27.
[410] Nkrumah, K., Africa Must Unite, op. cit., p. xi.
[411] Ibid., pp. 57-59.

Contrary to the colonial masters' position, and in accordance with their African legal philosophy, the indigenous African peoples demanded restoration of the disturbed equilibrium regardless of the time when colonial conquest occurred.[412] The Africans demanded restoration of their title to territory and sovereignty over it as at conquest. Considered from the African legal philosophy point of view there is no way the indigenous African peoples could vote for the dissolution of their sovereignty over their territory.[413]

In the transition from European colonization to independence the indigenous conquered African peoples were deprived of their historical titles to property (territorial) and political sovereignty rights from time immemorial. Instead of renouncing their claims to the "right of conquest" and restoring the title to territory and sovereignty over it to its rightful heirs, in accordance with decolonization paradigm, colonial powers instituted constitutionalization and democratization.[414] For example, when in 1955 the people of Gold Coast (Ghana) demanded independence from Britain, Britain laid down two conditions as the prerequisite for the grant of independence: that a substantial majority of the people should show their desire for independence in the

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[412] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 95.
[413] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.
[414] Ibid., pp. 486-487.

very near future and that they should agree upon a constitution that would meet their needs and be workable.[415] The British Government was adamant and made it unequivocally clear that unless Ghanaians entered into constitutional negotiations the British would take no further steps towards the grant of independence. In order to discourage constitutional changes, the entrenchment of the constitutional clauses was conducted such that, should the occasion arise that constitutional changes be made, they should be as difficult as possible, indeed almost impossible. To that effect, clause 32 of the Ghanaian constitution allowed as follows:

> No Bill for the amendment, modification, repeal or re-enactment of the constitutional provisions of Ghana…. shall be presented for Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes in favor thereof at the third meeting of the Assembly amounted to not less than two-thirds of the whole number of Members of Parliament.[416]

The determination that no changes to the Ghanaian constitution could be effected contrary to clause 32 added complications to the exercise of parliamentary democracy in Ghana. Clause 32 expressed the wish on the part of the colonial master's resistance to the introduction of changes to some aspects of the colonial set-up in Ghana. The British argument for entrenching the clause was that

> they held in sacred trust the rights of all the people in the Gold Coast and it was incumbent upon Britain to safeguard the position of a section of the population,

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[415] Nkrumah, K., Africa Must Unite, op. cit., p. 58.
[416] Ibid., pp. 60-61.

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albeit the minority which might be opposed to duly elected government in the Gold Coast.[417]

The British Government insistence on the imposition of some constitutional provisions was pursued against a clear stand of the Ghanaians. The constitutionalization process was conducted such that Britain retained its "right of conquest" in accordance with the colonial conqueror principle of extinctive prescription.[418] On the other hand, Nkrumah was convinced that "independence involved the right of the local populations alone to determine the nature of the laws, regulations and procedures of their state through parliamentary institutions."[419]

Independence imposed on the indigenous conquered African peoples entailed, among others, that both the successors in title to the "right of conquest" and the indigenous conquered African peoples be granted formal equal constitutional status.[420] The constitution entrenched the doctrine of the "right of conquest" and thus dissolved the sovereignty of the indigenous African peoples over their territory.[421] By dissolving the property (territorial) and political sovereignty rights of the indigenous peoples, as it

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[417] Ibid., p. 59.
[418] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 486.
[419] Nkrumah, K., Africa Must Unite, op. cit., p. 59.
[420] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.
[421] Ibid..

were, the constitution sentenced the indigenous conquered African peoples to permanent exclusion from their rightful claims to historic titles in their own mother land.[422]

Independent African countries have received a defective and limping sovereignty that operates on the structural and systematic impoverishment of Africa. While the independence grants formal equal constitutional status to both the successors in title to the "right of conquest" and the conquered indigenous African peoples, it renders the indigenous African peoples poor and enriches the successors in title to the right of conquest.[423] While the successors in title to the right of "conquest" are being advanced to start from plus one, the indigenous African peoples are constitutionally condemned to start from point zero.[424] Thus, the indigenous African peoples have been technically reduced to the status of neo-dependency and subjected to indirect political and economic manipulation designed to perpetuate external control in Africa in subtle ways.[425] The introduction of independence devoid of restoration has brought Africa within the Western scope of economics and its dividing lines such as the First and the Third World, the North and South countries, rich and poor countries, as white and

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[422] Ibid., p. 462.
[423] Ibid., p. 490.
[424] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 3.
[425] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., 528-529.

black people.[426] Thus Rodney has correctly observed that the growing technological and economic gap between Western Europe and Africa is not accidental, rather part of the trend within capitalism to concentrate or polarize wealth and poverty at two opposite extremes.[427]

4.1.3 **Neo-dependency**

The political and economic relations that obtained between African Countries and the erstwhile colonial masters at independence were such that African countries depended in a manner that was unfavorable and insured that Africa would remain dependent on the big capitalist countries.[428] It was everywhere obvious that Africa's economies were largely owned or controlled by foreign corporations. These included modern manufacturing, banking, import – export trade, shipping, mining, plantations and timber enterprises.[429] As for political systems that operated at the granting of independence, they were too recent transplants that depended on the erstwhile colonial masters' support.[430] The colonial masters had left their former colonies the legacy of

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[426] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 470.
[427] Rodney, W., How Europe Underdeveloped Africa, Washington: Howard University Press, 1982. p. 136.
[428] Ibid., p. 25.
[429] Meredith, M., op. cit., p. 153.
[430] Ibid.

brand-new constitutions to ensure continued existence of democracy in the best of Western traditions.[431]

Taken at face value, the legacy of brand-new constitutions could be mistaken for a step in the right direction towards the indigenous conquered African peoples' demand for decolonization and self-determination. But when examined closely and carefully in the light of the African view that there is no prescription in law and that time can not change the truth,[432]the legacy of brand-new constitutions proved to be the perpetuation of the "right of conquest". With the end of the Cold War the legacy fitted hand and glove in the Western democratization mission to consolidate the hegemony of Western values all over the world.[433]

Whereas a country in the state of neo-dependency has all the outward trappings of international sovereignty, it remains subject to the actual activity of manipulation by an external power.[434] The reality of a neo-dependent state is such that its economic system and political policies are directed from outside.[435] The country that exercises neo-

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[431] Khaketla, B.M., Lesotho 1970: African Coup under the Microscope, Maseru: Khaketla, N.M., 2000. p. 213.

[432] Ramose, M.B., African Philosophy Through Ubuntu, op. cit., p. 95.

[433] Diamond, L., & Plattner, M.F., The Global Resurgence of Democracy, Baltimore: The Johns Hopkins University Press, 1993. p. 71.

[434] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 528.

[435] Nkrumah, K., Neo-Colonialism: The Last Stage of Imperialism, op. cit., p. ix.

colonial control is often the one which formerly ruled the territory in question, although this is not necessarily so.[436] The difference between neo-colonialism and neo-dependency is that while the former refers to the manipulation an external power might carry out or attempt to carry out; the latter, neo-dependency refers to the status of the country which is being so manipulated.[437]

4.1.3.1 **The Case of Lesotho's Neo-dependency**

An example of neo-dependency is here considered in the case of Lesotho following the annulled 1970 general elections. Prime Minster Leabua Jonathan had annulled the general elections, suspended the constitution, and published Order No. 1 (an arrangement that suspended The Constitution of Lesotho) when faced with an imminent win of the Basutoland Congress Party (BCP) in the 1970 general elections.[438] Leabua had committed all these acts without reckoning with Britain – the former colonial master of Lesotho.[439] Prime Minister Leabua had not expected that the British Harold Wilson's Government would be sympathetic to his actions, but he had hoped that Britain could not go to the extent of cutting diplomatic relations and withdrawing aid to Lesotho. Lesotho had been receiving aid from Britain since she

[436] Ibid., p. x.
[437] Mazrui, A., Neo-dependency and Africa's fragmentation, op. cit., p. 528.
[438] Sixishe, D. T., "But Give Him an Army Too", Maseru: Mokorotlo Publications, 1984. p. 70.
[439] Khaketla, B.M., op. cit., p. 221.

became independent. Lesotho remains totally encompassed by South Africa. Lesotho could not survive without a budgetary supplement from Britain. Thus Britain had granted some form of independence to Lesotho that allowed for British external control over Lesotho through political and economic manipulation.

Chief Leabua accused Britain of using aid as a lever with which to interfere in the internal affairs of Lesotho.[440] He was looking forward to government change in Britain - for a Conservative Party victory to change the situation. But in the meantime, the British Labour Government asked the Leabua regime to satisfy three basic conditions before British aid could be restored to Lesotho: that the new Leabua regime was in effective control; that there were no signs of an uprising in the country, and that the safety of the opposition leaders was assured.[441] The British government conditions marked British indifference to democracy in Lesotho. Whereas in 1970 the Leabua regime had suspended the democratic constitution of Lesotho and annulled the results of 1970 general elections, there was no demand made by the British for the restoration of Lesotho's democratic constitution. There was no British challenge to the annulment of the 1970 general elections results. The opposition parties hoping that Britain would

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[440] Sixishe, D.T., op. cit., p. 70.
[441] Ibid.

intervene in the name of Lesotho's constitutional democracy were shocked and dismayed by the British indifference to democracy.[442]

With a full swing to the Conservative Party in the British general elections of June 18th 1970, the Leabua regime was getting confident that aid to Lesotho would soon be restored. Without any attempt on the part of Leabua regime to restore constitutional democracy in Lesotho, on August 10th Britain announced full scale resumption of British aid to Lesotho plus extra money to the tune of two million rand was on the way. Following the British announcements, aid from different Western governments and other sources came to Lesotho. Britain soon restored full diplomatic relations with Lesotho turning a blind eye to the plight of democracy in Lesotho.[443]

4.1.4 Neo-colonialism

Already in 1961 the All African People's Conference held in Cairo gave collective recognition to a relatively new concept in African nationalistic thought to which they gave the name 'neo-colonialism'. The Conference had viewed neo-colonialism in terms of the phenomenon of indirect political and economic manipulation designed by colonial powers to perpetuate external control in Africa in more subtle ways. The All

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[442] Khaketla, B.M., op. cit., pp. 222-225.
[443] Sixishe, D.T., op. cit., pp. 75-76.

African People's Conference defined neo-colonialism as the actual activity of manipulation which an external power might carry out or attempt to carry out.[444]

The resistance by the colonial powers to restore their colonial territories to the pre-colonial state served the purpose of rendering them non-viable in the post-colonial era. Neo-colonialism like colonialism operates on the principle of breaking up the conquered peoples into a number of small non-viable states which are incapable of independent development, and as a result are easy to manipulate by external power.[445] According to Nkrumah, the neo-colonial manipulation of the majority of "independent" African countries by erstwhile colonial masters and other powers could be explained in terms of "a logical development of the discredited theory of indirect rule."[446] In accordance with Lugard's theory of "indirect rule" it was desirable to retain traditional African authority as part of colonial rule structure. Neo-colonialism on the other hand works through the constitutional and democratic structures of government. While in accordance with "indirect rule" the African chief appeared in control, he was

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[444] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 528.

[445] Nkrumah, K., Neo-colonialism: The Last Stage of Imperialism, op. cit., p. xiii.

[446] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P. H., & A.P. J., Roux, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 529. In accordance with Frederick Lugard's theory of "indirect rule", the British colonial policy, and indeed the French, and Belgian colonial policies, in the majority of African territories retained traditional African authority as part of colonial administrative structure. Britain particularly favored a system of "indirect rule" which used African authorities to keep order, collect tax and supply labour. The model of "indirect rule" was devised by Lugard in Northern Nigeria where the Fulani emirs had governed in accordance with Islamic traditions of law and discipline. Lugard posited British residents at their courts but allowed the emirs to continue to police, tax, and administer justice on their behalf much as before. While some chiefs were members of old royal families carefully selected for their willingness to collaborate, others had no traditional legitimacy at all. See, Meredith, M., op. cit., p. 5.

actually being "manipulated from behind the scene by the colonial power."[447] With neo-colonialism, it is the executive government of an African country that plays the role of "African chief".

The exploiter-exploited relationship between the former colonial master and the African country is never diminished but is well maintained in various ways. In those former colonial territories that still have some natural resources which the former colonial countries are in great need of, the legitimization of their interests is constitutionally provided for. In fact like Fanon pointed out: "In the negotiations on independence, the first matters at issue were the economic interests: banks, monetary area, research permits, commercial concessions, inviolability of properties stolen from the peasants at the time of conquest."[448] For those African countries that have little else to auction, an attractive foreign policy is essential for soliciting foreign investment on the basis of cheap labor to attract manufacturing industry.

Thus it is a common phenomenon in Africa in those countries that have little else to offer in terms of natural resources such as Lesotho, to operate big factory industries

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[447] Ibid..
[448] Fanon, F., op. cit., p. 121.

running solely on the exploitation of "cheap Basotho labour".[449] Lesotho is engaged in African Growth and Opportunity Act (AGOA) which is a United States Trade Act aimed at enhancing U.S.A. market access for Sub-Saharan Africa. Over 53, 000 workers were employed up to July 2004, while following retrenchment only 45, 650 were employed on March 2008. By 2008 AGOA exporting companies had increased their export produce to U.S.A from R198.9 million in 2000, to R1, 329 million.[450]

With independence, the nature of the strings of manipulation changes from those of the "right of conquest" to "the rights of he who pays the piper".[451] The neo-colonial control can be exercised either by the former colonial power (as in the case of Britain in Lesotho in 1970), or by another power,[452] or even a consortium of financial interests which are not specifically identifiable with any particular state. In the case of neo-colonialism control exercised by another power, the result of neo-colonialism is that foreign capital is used for the exploitation rather than for the development of the less

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[449] The majority of the factory workers under the AGOA scheme are not able to support their households due to little wages they are paid. The majority of the factor companies earn less than $100 per month. It is often reported that some company management disappear for good without paying their workers a couple of months' wages.

[450] File:///C:/Documents%20and%20Settings/new/Desktop/Lesotho News.htm 26-Nov-08 23:40.

[451] Mazrui, A., Neo-dependency and Africa's fragmentation, op. cit., p. 529.

[452] File:///C:/Documents%20and20Settings/new_Desktop/AGOA info.htm 26-Nov-08 23:34. This kind of relationship obtains between U.S.A and Lesotho, and a good number of Sub-Saharan African countries, especially through The African Growth and Opportunity Act (AGOA) - a United States Trade Act available only under the Generalized System of Preferences offering duty free access to the U.S. market. There is also the Millennium Challenge Corporation – promoting U.S. interests in Africa in areas such as good governance and accountability. Lesotho and U.S.A have signed a $362 million five year compact between them on the 23, July 2007. Lesotho has to keep to good governance qualifications by U.S.A and be able to spend the money on agreed projects within the five year plan.

developed parts of the world.[453] In both "indirect rule" and neo-colonialism it is the case of nominal appearance of formal autonomy, and even proclaiming to the world the Africans are free, whereas in practice Africa's rulers remain Europe's subjects. Recently external control comes in the nature of the promotion of the values of "good governance" in African countries by U.S.A. For example, country eligibility into Millennium Challenge Account includes scoring above the median on "ruling justly", "investing in people", and "economic freedom" indicators. All the indicators are designed by U.S.A. Government.

4.2 Cold War Militarization of Africa

Introduction

The post-colonial African condition has to some extent been shaped by the Cold War period when world states aligned themselves with either the Unites States of America (U.S.A) or the Union of Soviet Socialist Republics (U.S.S.R.) in their struggle for global mastery.[454] The African condition can be explained from the point of view of

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[453] Nkrumah, K., Neo-colonialism, op. cit., p. x.

[454] Neil, McGarry, Hohl, op. cit., pp. 186-1190. The nature of ideological antagonism between Soviet Communism and Western capitalist countries was so strong that the leaders of both sides felt that continued coexistence of the two was impossible. The suspicion of the Western countries about the Communist bloc was that Communism demanded the eventual destruction of "capitalistic" social and political institutions. The Soviet Union's suspicions were aroused by the knowledge that the majority of the British and American peoples had hoped that she and Germany would claw each other to death in the World War II that would not involve the West. While the Cold War was waged between the United States and the U.S.S.R. Britain sided with the United States as did France, although the latter was reserved and sharply opposed to the resurgence of Germany, while Britain, due to the growing strength of the Soviet Union (Russia) wanted Germany reasonably intact. Following World War II, Communism was on the march everywhere. East Germany, Poland,

the world-historical changes initiated by the Russian revolution - Bolshevik revolution of 1917 that emerged from the deprivation and destruction of the World War I. The Bolshevik revolution changed not only the European class politics, but also the imperial and colonial relations. For the first time, government of a powerful state was explicitly opposed to Western colonialism and imperialism in principle and practice. Already in 1920 Comintern (otherwise known as the Third International) offered the first systematic programme for global decolonization in its Theses on the National and Colonial Questions. The colonized peoples in various colonial territories already engaged in an anti-colonial struggle were organized to come together and unite in a common cause of freedom movements against their colonial oppressors.[455]

For example, in 1948, with the Communist seizure of power in Czechoslovakia, Western governments became worried that Communists were embarking upon a campaign of world mastery in which African colonies were the prime targets. When riots erupted in the Gold Coast, hitherto regarded as Britain's model colony, a few days after the Communist take-over in Prague, the colonial governor was quick to

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Rumania, Bulgaria, Albania, Yugoslavia and Czechoslovakia were communized as part of the Soviet Union policy. Churchill called for Anglo-American co-operation for the establishment of firm policies. United States initiated the policy of "containment" in an attempt to check the expansion of the U.S.S.R. In March 1947 England and France signed the Treaty of Dunkirk, a military alliance to which Benelux countries of Belgium, the Netherlands, and Luxembourg were added by the treaty of Brussels in March 1948. On 4th April, in consideration of American aid to Europe the North Atlantic Treaty Organization (NATO) was formed. The Cold War grew global in nature and as a contest was waged in Asia, Africa, and even in Latin America.

[455] Young, R.J.C., op. cit., pp. 28-29.

detect what he believed was a Communist conspiracy. By 1949, after Kwame Nkrumah had launched the Convention People's Party, Britain dispatched a new Ambassador to Gold Coast warning that the country was on the edge of revolution. The British colonial authorities' official reports referred to Nkrumah as 'a thorough-going Communist'.[456] The Ambassador was instructed to implement a new constitution giving Africans not only increased legislative responsibility but executive power, in order to avert the alleged revolution. By the 6th March 1957 Gold Coast was granted independence by Britain, with Nkrumah as its Prime Minister.[457]

4.2.1 The Superpowers' Confrontation and the African Condition

The Cold War struggle for global domination between the United States and the Union of Soviet Socialist Republics (the Soviet Union) drew the two Superpowers into a perilous confrontation of war by proxy in Africa. Generally, the Superpowers' confrontation proved to be disruptive and frustrating to national and regional efforts to bring peace and security in Africa.[458] For example, in the case of Angola, African regional efforts by the then Organization of African Unity (OAU) to bring the warring nationalist parties to agree and form an interim coalition government were frustrated by the Superpowers' interests in the global balance of power. Each one of the

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[456] Meredith, M., op. cit., p. 17.
[457] Ibid., p. 13.
[458] Seleti, Y.N., op. cit., p. 77.

Superpowers engaged in the war by proxy in Angola was keen to win the war and to enhance its prestige both at the regional and international levels.[459]

African countries frustrated by the Superpower domination at the national and regional levels sought for a measure of freedom and peace in the Non-Aligned Movement. By joining the Non-Aligned Movement, African countries reduced the Superpowers' levels of domination and enjoyed the company of countries sharing a colonial past and rejection of East/West bi-polar world.[460] While the Superpowers were not all impressed by the Non-Aligned Movement and the African countries that joined the Movement, they learned to accept the reality. As members of the Non-Aligned Movement, some African countries discarded models of government they had imported from the Eastern and Western blocs and started to experiment with new ones.[461] The Tanzanian President Julius Nyerere became famous for his own model of government which became popularly known as Ujamaa.[462]

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[459] Ibid., pp. 143, 187. While during the Cold War Africa excited the attention of the world's rival powers whereby newly independent African countries were pressurized to adopt relations with the Western capitalist countries' bloc (the West) led by USA or the Eastern Communist countries' bloc (the East) led by the USSR and China, 31 African countries founded and established OAU in Addis Ababa Ethiopia in 1963. Among other reasons, OAU was launched in order to provide Africa with a powerful independent voice in the world affairs, to be aloof from the quarrels and divisions of the Cold War, and to liberate Southern Africa from white minority rule. Kwame Nkrumah campaigned for OAU and the "United States of Africa".

[460] Heywood, A., Political Ideologies, London: Macmillan Press LTD, 1998. P. 178.

[461] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., p. 530.

[462] Meredith, M., op. cit., pp. 253-256.

4.2.2 **The African Condition following the Collapse of the Soviet Union and the Eastern Bloc**

The Cold War has officially come to an end following the collapse of the Soviet Union and the Eastern bloc. However, the post Cold War African condition is not without its consequences. The present African condition is among others, the result of the abandonment of African countries to the US and Western domination.[463] While during the Cold War, the Superpowers were engaged in a competition to buy allies among African countries,[464] African countries have to contend with the sudden hegemony of one Superpower and Western values for their autonomy, real independence and self-determination.[465] From the US and its Western allies, African countries have to contend with democratization, "good governance" and human rights.[466] Considering the importance given to democratization, "good governance" and "human rights" by the US and Western allies in their relations with African countries, we have opted to pursue the discussion on them in the next chapter (Chapter Five). Our discussion for now focuses on some of the consequences suffered by African countries following the collapse of the Soviet Union and the Eastern bloc.

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[463] Ake, C., Rethinking African Democracy, In: Diamond, L., and Plattner, M.F., (eds.) The Global Resurgence of Democracy, London: The John Hopkins University Press, 1993. p. 71.
[464] Mazrui, A., Neo-dependency and Africa's fragmentation, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., p. 530.
[465] Young, R.J., op. cit., p. 59.
[466] Ake, C., op. cit., pp. 71-72.

While during the Cold War African countries could choose between two blocs or the Non-Alignment Movement, this option was closed with the collapse of the Soviet Union and the Eastern bloc. Following the collapse of the Soviet Union and the Eastern bloc the only choice left to African countries is the hegemony of the US and Western values. The Non-Alignment Movement has become almost redundant if not irrelevant, while the hegemony of USA continues unabated. African countries no more benefit from past opportunity to play one bloc against the other. For example, Zimbabwe is a case study of an African country attempting to be in defiance of Western hegemony and thereby suffering badly economically from the Western countries' British led economic sanctions and embargo. Because of these stringent Western countries' economic sanctions, Zimbabwe tumbled down from the position of the "bread basket" of the region to economic and financial collapse.[467]

By contrast, in the case of the fall out between France and Rwanda over the role France played in the 1994 Rwandan genocide, French pressure to influence the International Finance Institutions against Rwanda, Rwanda continues to enjoy economic support even among the major Western countries. As a snub to France, Rwanda (a French speaking African country) broke away diplomatic relations with

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[467] File:///C:/Documents%20and%20Settings/new/Desktop/The Zimbabwe Situation.htm12-Dec-08 17:47

France in 2006, and went on to break from its French-speaking (Franco-phone) past and changed its national language to English in replacement of French. Rwanda went further to obtain membership of the Commonwealth. The fact that Rwanda could snub France and still enjoy Western economic and financial support is a very rare political achievement by an African country today. Rwanda's ability to break away from its French-speaking past and to join the Commonwealth amounts to a play off comparable to the Cold War era when African countries could choose between joining either the Eastern or the Western bloc. On his visit to Rwanda in February 2010, the French President Sarkozy admitted that his country had made "grave errors" of judgment in the 1994 Rwandan genocide.[468]

Another feature about the present African condition is that there is nothing in the form of an alternative economic system to Western capitalism. The former Eastern bloc countries like Russia and China which used to offer socialism as an alternative economic system to Western capitalism, now make no mention of it. In fact they find socialism no longer fashionable. The two countries are now on a capitalist route. Already in 2007 China was considered to be Africa's third biggest trading partner. The trade between China and Africa in 2007 is said to have soared by more than 30

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[468] File://C:\Documents and Settings\new\Desktop\On Visit to Rwanda.mht 06-Mar-10

percent to US$58.7 billion.[469] China has made loans to African countries valued at nearly US$13 billion in infrastructure projects. China has written off US$ 1billion in African debt and still more write-offs are expected. China is climbing the economic ladder of capitalism at an amazing rate. Africa is becoming China's important market for both the finished goods and raw materials. Africa is faced with ruthless capitalism that goes unchallenged at the expense of marginal African states.[470]

It is apparent then that the post Cold War African condition continues to pose old and new challenges for the liberation of Africa from neo-dependency and neo-colonialism. In this situation the liberation of Africa must be anchored upon the concurrent pursuit of two aims, namely, the attainment of intellectual wealth through conceptual decolonization and the realization of economic independence.

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[469] File://C:\Documents and Settings\new\Desktop\IRIN Africa.mht 11-Mar-10
[470] File://C:\Documents and Settings\new\Desktop\China's Grab for Influence and Oil.mht 28-Feb-10

DEMOCRATIZATION AND "HUMAN RIGHTS" IN AFRICA

Introduction

Since the early 1990s the world's interest in Africa has increasingly been dominated by issues of democratization and "human rights". The world's interest in Africa happened to follow a legacy of indifference to the fate of democracy and "human rights" by the settled and established democracies of the world.[471] The changed attitude towards Africa was closely connected to the decline of Africa's strategic significance to the West due to the end of the Cold War.[472] Abandoned to the U.S. and Western domination, the post-colonial African countries had to contend with the Western unsolicited export of "good governance" for their autonomy, real independence and self-determination.[473]

In fact, since the early 1990s, the West had already started to use economic pressure in the realm of bilateral relations with African countries. The pressure was aimed at inducing political change (democratization and "human rights") in accordance with the

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[471] Ake, C., Rethinking African Democracy, In: Diamond, L., & Plattner, M.F., (eds.) The Global Resurgence of Democracy, Baltimore: The Johns Hopkins University Press, 1993. p. 70.
[472] Ibid., p. 71.
[473] Young, R.J., op. cit., p. 59.

policy of political conditionality. In line with political conditionality, on 8 May 1990, Unites States' Ambassador to Kenya was quoted making the statement that: "There is a strong tide flowing in our Congress, which controls the purse strings, to concentrate our economic assistance on those of the world's nations that nourish democratic institutions, defend "human rights", and practice multiparty politics."[474] In June 1990, Britain and France also insisted on the policy of political conditionality - using economic assistance to bring about conversion to multi-party democracy, public accountability, and respect for the rule of law, "human rights" and market principles.

On the other hand, the Organization of African Unity (OAU) in Addis Ababa, 9-11 July 1990, acknowledged that a political environment guaranteeing "human rights" and the rule of law would be more conducive to governmental accountability, probity and the popular-based political process. OAU acknowledged "human rights" as a principle for "good governance" in Africa.[475] However, the Africans were vocal about the African philosophy of "human rights" and how it differs from the Western one. For the majority of African countries, the complaint about the interpretation of "human rights" was that it is founded on the Western currency of "human rights". Against the trend of interpreting "human rights" in accordance with the Western currency, the

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[474] Ake, C., Rethinking African Democracy, op. cit., p. 77.
[475] Ibid., p. 74.

African position was as follows: "It is not necessary to turn all peoples into Westerners just for the sake of correcting injustices within different cultural systems of the world."[476]

The marginalization of Africa has given the West more latitude to selectively conduct relations with Africa in a manner that imposes Western principles of democratization and "human rights" upon Africa.[477] As Ramose points out:

> The constitution is a trans-social and transcendent symbol with which every individual in society identifies. The symbolic character of the constitution means that in a democracy governmental office or power is an empty space. This empty space may therefore be occupied by anyone provided that such occupation shall be according to the rules. The trans-social and transcendent character of the constitution means that the constitution is higher and above every individual. It is, as it were, like a "God". In this sense the constitution is the god of the political domain. For this reason everyone must respect and obey the constitution as there cannot be anyone standing above the god of the political domain.[478]

It is within the competence of each sovereign state to make a deliberate choice between constitutional and parliamentary supremacy. In some cases the urge to change from the supremacy of the law-making power vested in parliament to constitutional supremacy is carried out as a ploy to frustrate due process of historical justice. In such cases, the parliamentary supremacy is replaced by constitutional supremacy in order to forestall possible changes concerning the claims of the "right of

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[476] Cobbah, J.A.M., op. cit., p. 328.
[477] Ake, C., Rethinking African Democracy, op. cit., p. 71.
[478] Ramose, M.B., Good Governance: Another Export to Africa, In: Oguejiofor, J.O., op.cit., pp. 53-54.

conquest". The essence of the argument for constitutional supremacy in this case is that "the constitution as the basic and supreme law of the country shall be above the law-making power vested in parliament".[479] In order to realize the objective of burdening the conquered peoples with the claims of the "right of conquest", the constitution is designed such that "the laws enacted by parliament shall, in principle, always be subject to the conformity and consistency with the constitution."[480]The constitution as supreme law of the country, should not be employed to frustrate historical justice but to facilitate the cause of justice. In order to correct the injustice of the "right of conquest" the constitution should seek to protect the historical titles to property (territorial) and political sovereignty rights of the conquered peoples by remedial and sustainable policies.

5.1 The Colonial Conqueror's Recipe for "Good Governance" in Africa

Every people that conducts its governance in accordance with its own cultural traditions and political philosophy is proud of its achievement and seeks to improve on its structures of governance. In like manner, the indigenous conquered African peoples did not wish to depart by coercion from African social and political tradition.

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[479] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P. H., & A.P. J., Roux, (eds.) op. cit., p. 488.
[480] Ibid.

At the conference held at Thaba-Bosiu from the 11th – 21st February, 1862, Moshoeshoe is recorded to have said:

> I wish to govern my own people by native law, by our own laws, but if the Queen wishes after this to introduce other laws into my country, I would be willing, but I should wish such laws to be submitted to the council, of the Basotho, and when they are accepted by my council, I will send to the Queen and inform her that they have become law.[481]

That Moshoeshoe expressed to the British his wish to continue the governance of his own people by their own laws, succinctly indicates that Basotho, and indeed the indigenous African peoples, already before colonization had the rule of law and a working concept of proper governance which they intended to perpetuate. It was on the basis of this that I suppose Moshoeshoe was able to point out that the introduction of other laws into his country needed first the approval by his legislative and administrative Council in order to become law. According to Moshoeshoe, it is clear therefore that, there was no need for the British export of laws to administer "good governance" in Lesotho in replacement of the operational indigenous one. In view of the British demand to introduce other laws into Lesotho, the question that arises is: what other laws, in the name of "good governance" could Britain introduce in spite of the fact that Basotho already had the rule of law and a well-established working theory of governance. In the attempt to answer this question I shall attempt give what I

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[481] Theal, Basutoland Records, Vol.IIIA, op. cit., p. 144.

consider as a definition of "good governance" and thereafter an African alternative to it.

In the first place, I agree with those who admit that traditional Africa experienced social and political institutions prior to colonization. It is important to note that it was the West that unilaterally prescribed "good governance" as its export to Africa.[482] This was an unsolicited offer to Africa. The indigenous African peoples did not make any request for "good governance". It was imposed on them in the same way as the "right of conquest". Like all the unsolicited export from the West to Africa, the concept of "good governance" is stamped "strictly Western". I agree with Ramose that "good governance" as a norm cannot make sense unless it is predicated on the presupposition that the experience and knowledge of bad governance is possible and real."[483] In as far as Africa is concerned, the export concept of "good governance" happens to question and undermine the African capacity to conduct proper governance, and for that matter it is inherently problematic for it fails to admit and actually prejudices the fact that traditional Africa experienced social and political institutions prior to colonization. "Africa is entitled, like the East or the West, to choose what imports it wants for itself."[484] The import of Africa should be done by way of building upon the indigenous

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[482] Ramose, M.B., Good Governance: Another Export to Africa, op. cit., p. 37.
[483] Ibid., pp. 36-37.
[484] Ibid., p. 38.

African peoples' foundations - already established before colonization and not to derecognize and undermine them.

The African alternative to the export concept of "good governance" by nature recognizes that the political is necessarily and inherently ethical. Thus in the case of Moshoeshoe and the British mentioned above, Moshoeshoe displayed some qualities proper to the African alternative to "good governance. Unlike the export concept of governance which the British intended to impose on Basotho, the African alternative does not admit of "other" laws being imposed without the given consent and approval it is supposed to govern. It admits of the will of the governed to approve the laws that govern them through their own legal structures. Thus the African alternative does not admit of the colonizer and colonized relationship inherent to the export concept of "good governance". The example of an African alternative to "good governance" that is based on the African philosophy of Ubuntu takes into consideration the needs and aspirations of Africa.[485] According to the African philosophy of Ubuntu, proper governance admits of the

> epistemologico-ethical maxim that *motho ke motho ka batho* – the human being affirms being human by recognizing, respecting and protecting the humanness of the other. In the political domain this maxim is extended and modified to mean

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[485] Ibid.

> that the king acquires the status and power of kingship through the recognition, respect, and the protection that the people accord to him.[486]

In disregard of Basotho's demand for their own system of governance, the colonial structure of governance was imposed upon them. The imposition of an unsolicited export of democratization and "human rights" as the recipe for "good governance" in Africa remains problematic and questionable.[487]

The issue raised against the West imposing "good governance" in Africa is precisely in relation to the West's failure to recognize and abide by the insight that the political is ethical. The understanding here is that, by making claims of the "right of conquest" and extinctive prescription and by replacing Africa's own social and political institutions with the Western structure of governance - democratization and "human rights", the West has opted for the thesis that politics without morality is ethical.[488]

5.2 Pioneers of African Constitutionalism

In his objection to African subservience to the independence constitution designed by the colonial master, Nkrumah had pointed out that the independence constitution for

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[486] Ibid., p. 56.
[487] Ibid., p. 38
[488] Ibid.

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Ghana was not of African making.[489] According to Nkrumah, the reason that the Ghanaian independence constitution was not of African making was sufficient to seek constitutional change once the independence was secured.[490] But seemingly Nkrumah had underestimated his own observations about the colonial conqueror's determination to keep the constitution within its Western parameters. Nkrumah was toppled in a coup d'etat in 1966 and later died in exile in 1972.[491]

Objecting to the superfluity of Western constitutionalization and democratization in Africa, President Julius Nyerere of Tanzania was quick to point out that it initiates unacceptable political party divisions amongst the Africans for the sake of conforming to foreign expression of democracy. Julius Nyerere asserted as follows:

> The nationalist movement which fights for and achieves independence inevitably forms the government of the new state. It would surely be ridiculous to expect that a country should voluntarily divide itself for the sake of conforming to a particular expression of democracy, and to do so during a struggle which calls for the complete unity of its people. No one should jump to the conclusion that such a country is not democratic or does not intend to be democratic.[492]

On affirming Africa's right to decolonizaiton and independence from both communism and capitalism Nyerere pointed out that: "We in Africa,….a leading proponent of African socialism, have no more need of being "converted" to socialism than we have

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[489] Nkrumah, K., Africa Must Unite, op. cit., p. 79.
[490] Ibid., p. 77.
[491] Meredith, M., op. cit., pp. 260-262.
[492] Nyerere, J., In: Nkrumah, K., Africa Must Unite, op. cit., p. 70.

of being "taught" democracy. Both are rooted in our past, in the traditional society which produced us."[493]In fact, Nyerere was correct in pointing out that Africa is not in short supply of political theories for "good governance". Africa is not in need of the proselytism from either the communism or capitalism. The most serious problem that Africa is grappling with at present is the meaninglessness of decolonization and independence granted without historical justice - denial of restoration and restitution for the property (territorial) and political sovereignty rights that are the basis for democratization and "human rights".[494]

5.3 **The General Failure and Collapse of the Colonial Structure of Governance in Africa**

Whereas at independence democratization and "human rights" were embraced as panacea for political stability and economic development, the contrary soon proved to be true.[495] The multi-party democratic constitutional rule in the new states of Africa proved to be ill-disposed to secure the needed political unity threatened by the violently destructive opposition and the ethnic power struggles among the

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[493] Nyerere, J., Socialism and Rural Development, In: Meredith, M., op. cit., p. 145.
[494] Ramose, M.B., Justice and Restitution in African Political Thought, In: Coetzee, P.H., & Roux, A.P.J., (eds.) op. cit., pp. 486-487.
[495] Nkrumah, K., Africa Must Unite, op. cit., pp. 76-78

impoverished multitudes of the indigenous African peoples.[496] The failure of the promise of economic development and political stability made at the grant of independence translated into the degeneration of Africa: the unemployment capital of the world, the poverty continent, and misery zone.[497] The high level of political instability in post-colonial Africa sufficiently refutes the acceptance that the colonial structure of governance is ideal for all including the indigenous African peoples.[498] Political instability in post-colonial African countries is much more than a problem of "new democracy" whereby with time, one may expect that African countries will gradually develop into established democracy as is the case with Western democratic countries.

From West Africa to the Horn of Africa countries such as Mauritania, Liberia, Sierra Leone, Ivory Coast, Nigeria, Sudan, Ethiopia, Eritrea and Somalia have experienced either coup d'etat or civil war or military rule or some form of one party-state. In Libya, an army coup brought Colonel Maummar Gaddafi to power at 27 years old in 1969. Unsatisfied with constitutional democracy received at independence, Gaddafi soon introduced Arab socialism, and revised the Western legal code to conform to

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[496] Ibid., pp. 66-71.
[497] Okere, T., Crisis of Governance in Africa: The Root of the Problem, In: Oguejiofor, J.O., Philosophy, Democracy and Responsible Governance in Africa, Munster: LIT VERLAG Munster, 2003. pp. 3-5.
[498] Oguejiofor, J.O., op. cit., p. 29.

Sharia Law. He banned alcohol, prostitution, nightclubs and Christian Churches while seeking for an alternative to capitalism and atheistic communism. In Algeria democracy was cut short in 1992 when President Chaldi was forced to resign in an army coup that installed a five-man collective presidency. The coup was among other things targeted at avoiding second round national assembly elections set to be won by Front Islamique du Salut (FIS). In Rwanda the ethnic cleansing and genocide of 1993-1994 comes second only to the Jewish holocaust by Nazi-Germany in Europe from 1939-1945. In central Africa, the three year war in DRC from 1998 to 2001 attracted Uganda, Rwanda, Angola, Namibia, Chad and Zimbabwe thus engaging countries from various African regions.[499] In 1998, the disputed general elections in Lesotho had caused such a party-political uproar that the military intervention by SADC (South African and Botswana armed forces) was called in to stabilize Lesotho Congress for Democracy (LCD) government chased out of office by the opposition parties.[500] On December 27, 2007 Kenya held the general elections for presidential, parliamentary and civic positions. In the presidential race Mwai Kibaki defeated Raila Odinga by a 2% margin. Odinga's party Orange Democratic Movement (ODM) had won a majority of the parliamentary seats. Kibaki's declaration of presidential victory led to widespread rioting, and prompted an immediate ballot recount. The results were

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[499] Meredith, M., op. cit., pp. 539-543.
[500] SADC and Preventive Diplomacy, SAPEM, October/November, 1998.

overturned by a power-sharing agreement struck between Kibaki and Odinga on February 28, 2008.[501] In Zimbabwe, the presidential and parliamentary elections were respectively held on March 29 and June 27, 2008.   The elections were contested by the incumbent President Robert Mugabe of Zimbabwe African National Union – Patriotic Front (ZANU-PF), Morgan Tsvangirai of the Movement for Democratic Change (MDC), and Simba Makoni, an independent candidate.   The elections were held in the midst of Western economic sanctions, unprecedented inflation of the Zimbabwean dollar and poverty that caused many Zimbabweans to leave their country. Whereas MDC won the parliamentary elections, no candidate received an outright majority in the presidential election in the first round, a second round was held on the June 27, 2008 between Tsvangirai (with 47% of the first vote), and Mugabe (43.2%). Tsvangirai withdrew from the second round a week before it was scheduled to take place, citing violence against his party's supporters.   Second round went ahead and was won by Mugabe.   Finally Mugabe, Tsvangirai and Makoni formed a government of national unity with Mugabe as President, Tsvangirai prime-minister and Makoni vice prime minister.[502] The latest casualty of constitutional democracy in the Southern African Development Community (SADC) Region is Madagascar.   After two months of violent demonstrations orchestrated by the opposition leader Andry Rajoelina

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[501] File:///C:/Documents% 20and%20settings/new/Desktop/Kenya Elections 2007.htm 27/02/2009 11.52.
[502] File:///C:/Documents%20and%20settomgs/new/Desktop/Elections in Zimbabwe.htm 27/02/2009 22.17

supported by the Army, the duly elected President Ravalomanana in his second term of office from 2006, handed over the reigns of power to the military. The national army supported by the judiciary handed the powers of head of state to the 34 years old Andry Rajoelina, who was sworn in as transitional head of state on March 21, 2009.[503] Thus the violently destructive opposition action supported by the military and the judiciary, unconstitutional as it might have been, was as equally effective as two-thirds parliamentary majority necessary for unseating a duly elected head of state or government. While the list of collapses of democratization in Africa is still long, the examples given so far suffice to affirm our point.

On the other hand, in the midst of so many failures of democratization in Africa, there are good examples too although they are few. The Republic of Botswana is one such good example of stable democratic rule acknowledged over all Africa.[504] After gaining independence from Britain in 1966, Botswana has maintained 43 years of uninterrupted democratization and stable economic development.[505] Since gaining independence from South Africa in 1990, Namibia has also proceeded smoothly as a stable constitutional democracy. When in 1994, a democratically elected government came to power in South Africa, it inherited a contradictory legacy of being the most

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[503] File:///C:/Documents%20and%Setings/new/Desktop/Andry Rajoelina.htm 01-Jul-09 17.26
[504] The Cost of Peace, ESAUP, January 1994. p. 4.
[505] Ramose, M.B., Good Governance: Another Export to Africa, op. cit., p. 52.

developed economy in Africa on the one hand, and a major socio-economic problem on the other.[506] However, South Africa has continued to operate a stable constitutional democracy in the midst of great challenges to restore the human dignity of the poor and destitute due to colonialism, segregation and Apartheid.[507]

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[506] Terreblanche, S., op. cit., p. 25.
[507] Ibid., pp. 371-415.

CONCLUSION

The main question investigated in this research is: What is the significance of decolonization in the light of the concession to independence for Africa on the basis of government succession? What are the chances of success for the imposition of democratization, "human rights" and "good governance" upon Africa at a time when the freedom of the continent and, Southern Africa in particular, is still the prisoner of material and intellectual hunger? The response to the question is based on the hypothesis that: the democratization, "human rights" and "good governance" were imposed on the majority of African countries in accordance the Western constitutionalism and the independence granting formal equal constitutional status to both the successors in title of the "right of conquest" and the indigenous conquered African peoples. The independence firmly entrenched the colonial masters' claim to the "right of conquest" in the post-colonial Africa. Both the colonization and decolonization according to government succession have robbed the indigenous conquered African peoples of their rightful claim to pre-colonial titles to property (territorial) and political sovereignty. Our conclusion, made on the basis of the above, is that the Western constitutionalism, democratization, "human rights" and "good governance" imposed upon the colonized-decolonized indigenous African peoples has

189

limited chance of success. The incessant political and economic problems that the majority of the post colonial African countries still encounter, years after the gaining of independence, persistently question the genuiness and legitimacy of the Western democratization and "human rights" in Africa.

We have shown that the present African condition of political and economic instability is clear for all to see including the erstwhile colonial masters and the Western countries. The majority of the erstwhile colonial countries refuse to associate the miserable plight of the African condition with the consequences of the claim to "right of conquest". We have pointed out that the keenness among the erstwhile colonial masters to make different kinds of loans to African countries has so far helped towards burdening the post-colonial African countries. We have indicated that some among the erstwhile colonial countries, to wit Italy in the case of Libya, acknowledged and ratified the relation of the present African condition with European colonization and decolonization.

We have proposed for the correction and reversal of the prevailing deleterious effect of the "right of conquest" in Africa an urgent need to divest Western constitutionalization, democratization, "human rights" and "good governance" of all

titles and benefits of the claim to the "right of conquest". While it may sound like we are raising long forgotten issues and problems of colonization, decolonization and independence which to many may appear to have no bearing on the present African condition, we submit that to the indigenous African peoples the contrary is the case. The demand for restoration is in accordance with the indigenous African legal philosophical principle that "Molato ha o bole".

BIBLIOGRAPHY

Books

Albrecht-Carrie, R.A., "A Diplomatic History of Europe since the Congress of Vienna", New York: Harper & Brothers, 1958.

Aristotle, (Trans. by Ackrill, J.L.) "Metaphysics", Book IX, Princeton: Princeton University Press, 1963.

Aristotle, (Trans. by Irwin, T.) "Nicomachian Ethics", Book I, Indianapolis: Hackett Publishing Company, 1985.

Aristotle, (Trans. by Sinclair, T.A.) "Politics", Book VII, New York: Penguin Books Ltd., 1962.

Baur, J., "2000 Years of Christianity in Africa: An African Church History", Nairobi: Paulines Publications Africa, 1998.

Bokor-Szego, H., (ed.) "Questions of International Law", Hungarian Perspectives, Vol. 5. Budapest: Akademiai Kiado, 1991.

Botsford, G.W., & Charles Alexander Robinson, (ed.) "Hellenic History", New York: The Macmillan Company, 1956.

Cesaire, A., (trans. by Pinkham, J.) "Discourse on Colonialism", New York: Presence Africaine, 1972.

Coetzee, P.H., and A.P.J., Roux, (ed.) "Philosophy from Africa", Cape Town: Oxford University Press Southern Africa, 2002.

Collinson, D., "Fifty Major Philosophers", New York: Routlledge, 987.

Copleston, F., "A History of Philosophy" Vol. I Part II, New York: Image Books, 1962.

Copleston, F., "A History of Philosophy" Vol. 3 part II, New York, Image Books, 1963.

Copleston, F., "A History of Philosophy" Vol.5 Part I, New York: Image Books, 1957.

Cornwell, R.D., "World History in the Twentieth Century", Essex: Longman, 1980.

De Finance, "An Ethical Enquiry", Roma: Editrice Pontificia Universita Gregoriana, 1991.

Delbruck, J., Fielder, W., Kewenig, Wilhelm, A., Wolfrum, R., (eds.) Jahn, I., (Assist. Ed.) "German Yearbook of International Law", Vol.25, Berlin: Duncker & Humblot, 1982.

Diamond, L., & Plattner, M.F., "The Global Resurgence of Democracy", Baltimore: The Johns Hopkins University Press, 1993.

Diop, C.A., (Trans. by Salemson, H.) " Black Africa", Chicago: Lawrence Hill Books, 1987.

Diop, C.A., (Trans. by Cook, M.) "The African Origin of Civilization", Chicago: Lawrence Hill Books, 1974.

Ellenburger, D.F., "History of Basotho", Morija: Morija Museum & Archives, 1997.

Espence, J.E., "Lesotho: The Politics of Dependence", London: Oxford University Press, 1968.

Fanon, F., "Toward the African Revolution", (Trans. by Haakon Chevalier) New York: Grove Press, 1961.

Gavshon, A., "Crisis in Africa", Harmondsworth: Penguin Books, 1981.

Germond, R.C., (Trans. by Germond) "Chronicles of Basutoland", Morija: Morija Sesuto Book Depot, 1967.

Gonsalves, M.A., (ed.) "Fagothey's Right and Reason", London: Merrill Publishing Company, 1989.

Harris, D.J., "Cases and Materials on International Law", London: Sweet & Maxwell, 1991.

Heywood, A., "Political Ideologies", London: Macmillan Press LTD, 1998.

Jancar, B., "Monarch Notes: The Philosophy of Aristotle", New York: Monarch Press, 1966.

Khaketla, B.M., "Lesotho 1970", Maseru: Khaketla, N.M., 2000.

Lelimo, M.M., "The Question of Lesotho's Conquered Territory", Morija: Morija Museums & Archives, 1998.

Long, A.A., "Hellenistic Philosophy", London: Gerald Duckworth & Co. Ltd, 1974.

Loomis (ed.,) "Aristotle", New York: Walter J. Black, INC., 1943.

Machobane, L.B.B.J., "Government and Change in Lesotho, 1800 – 1966", London: The Macmillan Press Ltd., 1990.

Makgoba, M.W., (ed.) "African Renaissance", Cape Town: Mafube Publishing (Proprietary) Limited, 1999.

Mbiti, S.J., "African Religions and Philosophy", London: Heinemann, 1969.

Meredith, M., "The State of Africa", London: The Free State, 2005.

Needham, Mashingaidze, Bhebe, (eds.) "From Iron Age to Independence", Singapore: Longman Group Singapore Publishing (Pty Ltd), 1989.

Neil, McGarry, Hohl, "A History of Western Civilization", Milwaukee: The Bruce Publishing Company, 1962.

Nkrumah, K., Nkrumah, K., "Africa Must Unite", London: Panaf Books, 1963.

Nkrumah, K., "Consciencism", New York: PANAF Books Limited, 2001.

Nkrumah, K., "I Speak of Freedom", London: PANAF Books Limited, 1973.

Nkrumah, K., "Neo-Colonialism", International Publishers Co., 1984.

Oguejiofor, J.O., (ed.) "Philosophy, Democracy and Responsible Governance in Africa", Munster: LIT VERLAG Munster, 2003.

Oguejiofor, J.O., & Onah, G.I., (eds.) "African Philosophy and the Hermeneutics of Culture", Munster: LIT VERLAG Munster, 2005.

O Hinz, M., (ed.) "The Shade of New Leaves", Munster: LIT VERLAG Berlin, 2006.

Okere, O.T., & Njoku, C., (eds.) "The Scramble for Africa", Owerri: Whelan Research Academy, 2004.

Omoregbe, J., "Philosophy of Law", Lagos: Joja Educational Research and Publishers Limited, 1994.

Osuagwu, I.M., "A Contemporary History of African Philosophy", Owerri: Amamihe Publications, 1999.

Padelford, N.J., & Emerson, (eds.) "Africa and the World Order", New York: Frederick A. Praeger, 1963.

Pakenham, T., (ed.) "The Scramble for Africa", Cape Town: Jonathan Ball Publishers, (Pty) Ltd., 2004

Parsons, N.A., "A New History of Southern Africa", (ed.) London: Macmillan, 1993.

Pilger, J., "Freedom Next Time", London: Bantam Press, 2006.

Plato, (Trans. by Benjamin Jowett) "The Republic", Princeton: Princeton University Press, 1961.

Poulter, S., "Legal Dualism in Lesotho", Morija: Morija Sesuto Book Depot, 1979.

Ramose, M.B., "African Philosophy Through Ubuntu", Harare: Mond Books Publishers, 2002.

Rodney, W., "How Europe Underdeveloped Africa", Washington: Howard University Press, 1982.

Shillington, K., "History of Southern Africa", Essex: Longman Limited, 1996.

Sixishe, D. T., "But Give Him an Army Too", Maseru: Mokorotlo Publications, 1984.

Smith, S., "U.S. Neocolonialism in Africa", New York: International Publishers, 1974.

Soyinka, W., "Myth, Literature and the African World", Cambridge: Cambridge University Press, 1976.

Stevens, R.P., "Lesotho, Botswana and Swaziland", London: Pall Mall Press Ltd., 1967.

St. Thomas Aquinas, (Trans. by Gilby, T.) "Summa Theologiae", 2a2ae.50, 2, London: Blackfriars, 1974.

Strauss, Leo & Cropsey, J., (eds.) "History of Political Philosophy", Chicago: The University of Chicago Press, 1986.

Stumpf, S.E., "Philosophy", (ed.) New York: McGraw-Hill, Inc., 1994.

Sumner, L.W., "The Moral Foundation of Rights", Oxford: Clarendon Press, 1987.

Terreblanche, S., "A History of Inequality in South Africa, 1652-2002", Sandton: KMM Review Publishing Company Pty Ltd., 2002.

Theal, "Basotuland Records" Vol. II, Cape Town: C. Struik, 1964.

Theal, "Basutoland Records" Vol. IIIA, Cape Town: C. Struik, 1964.

Thompson, L., "Survival in Two Worlds", London: Oxford University Press, 1975.

Townley, R., "The United Nations", New York: Charles Scribner's Sons, 1968.

Wilson, F., "Migrant Labor in South Africa", Johannesburg: The South African Council of Churches, 1972.

Young, R.J.C., "Postcolonialsim", Oxford: Blackwell Publishers, 2001.

Zahar, R., (trans. by Feuser, W.) "Frantz Fanon", New York: Monthly Review Press, 1974.

Articles

1. Ramose, M.B., But Genocide is not Pesticide, Unpublished Paper.

2. Ramose, M.B., Justice is Human, Injustice UnAfrican: An African

3. Philosophical Reflection, Unpublished paper.

4. Ramose, M.B., Justice: The Missing link in the South African Reconciliation Process, Unpublished Paper, 2005.

5. Ramose, M.B., "Politics is a Dirty Game": A Curse to Political Holiness, Unpublished Paper, 2005.

6. Ramose, M.B., The Philosophy of the Anglo-Boer War, In: A Century is a Short Time: New Perspectives on the Anglo-Boer War, Pretoria: Afriscot, 2005.

7. Ramose, M.B., Toward Black Theology Without God, Theologia Viatorum, Vol. 29:1, 2005.

Journal Articles

1. Alexandrowicz, C.H., New and Original States. International Affairs, Vol. No.45.

2. Cobbah, J.A.M., African Values and the Human Rights Debate: An African Perspective, Human Rights Quarterly, Vol.9, No.3, 1987.

3. Makoa, F., Lesotho's Political Crisis Since Independence: The Role of South Africa ISAS, 1994.

4. Matlosa, K., South Africa's Regional Economic Strategy 1970-1990, Roma: ISAS, 1994.

5. Sefali, M.M., (ed.) Southern Africa Research for Development, Roma: ISAS, 1981.

6. Seleti, Y.N., Angola: The Battlefields and Beyond Security and Development Prospects for the 1990s, Roma: ISAS, 1994.

7. Weston, B.H., Human rights. Human Rights Quarterly, 1984, Vol. 6.

Report Documents

1. Report of the Basutoland Constitutional Commission, 1963.

2. Report and Evidence of Commission of Native Laws and Customs of the Basutos, 1873.

3. Lesotho Government Report, Kingdom of Lesotho: Post Conflict Assessment, November 6, 1998.

Documents

1. Human Rights Defenders NewsAI Index: AFR 51/006/2003.

2. Human Rights: A Compilation of International Instruments Vol. I. (First Part) Universal Instruments, New York: United Nations, 2002.

3. SADC and Preventive Diplomacy, SAPEM, October/November, 1998.

4. Southern African Development Community, Declaration and Treaty of SADC, 1992.

5. The Cost of Peace, ESAUP, January 1994.

Government Gazette

1. Supplement to Gazette No.4, The Lesotho Independence Order 1966 No.1172.

2. The Constitution of Lesotho, 1993.

File Documents

1. File:///C:/Documents%20and%20Settings/new/Settings/new/My%Documents/Italy.htm

2. File:///C:/Document%20and%20settings/new/Desktop/"Galileo Case".htm

3. File:///C:/Documents%20and%20Settings/new/Desktop/Chronology of Civil rights struggle.htm

4. File:///C:/Documents%20and%20Settings/new/Desktop/Amnesty International.htm

5. File:///C:/Documents%20and%20Settings/new/Desktop/Guantanamo Bay.htm

6. File:///C:/Documents%20and%20Settings/new/Desktop/Human Rights Watch.htm

7. File:///C:/Documents%20and%20Settings/new/Desktop/United Nations.htm

8. File:///C:/Documents%20and%20Settings/new/Desktop/Lesotho News.htm

9. File:///C:/Documents%20and20Settings/new Desktop/AGOA info.htm

10. File:///C:/Documents%20and%20Settings/new/Desktop/The Zimbabwe Situation.htm

11. File://C:\Documents and Settings\new\Desktop\On Visit to Rwanda.mht

12. File://C:\Documents and Settings\new\Desktop\IRIN Africa.mht

13. file://C:\Documents and Settings\new\Desktop\China's Grab for Influence and Oil.mht

14. File:///C:/Documents%20and%20settings/new/Desktop/KenyaElections 2007.htm

15. File:///C:/Documents%20and%20settomgs/new/Desktop/Election   in Zimbabwe.htm

16. File:///C:/Documents%20and%Setings/new/Desktop/Andry Rajoelina.htm

17. URL:http://www.alertnet.org/thenews/newsdesk/L31511057.htm

18. File://C:\Documents and Settings\new\Desktop\President Obama meets BP Chairman, who says Company is helping the 'small people' – Carole Lee and Glen Thrush and Kendra Marr – POLITICO _com.mht

19. File://C:\Documents and Settings\new\Desktop\POLITICO ForumsEnergy and Environmental Obama, 'will will make BP pay' - POLITICO _com.mht

Bible

The Jerusalem Bible, London: Darton, Longman & Todd Ltd., 1966.