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# South Africa's constitutional democracy and thirty years without Izwe Lethu

By Masilo Lepuru



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Jan Van Riebeck once stated in the late 1600s that the Dutch settlers who dispossessed the Indigenous people of their land through “defensive warfare” intend to retain the land. Van Riebeck was affirming without shame “the right of conquest” and laying the foundation of South Africa and white settler constitutionalism which are based on land dispossession since 1652. Jan Smuts who was the

“founding father” of South Africa believed that white settlers in South Africa should trust in their “intellectual and administrative superiority” to continue to rule over the natives. Smuts was expressing his white supremacist arrogance in relation to the racist fantasy called “the native question”.

This year marks thirty years of the so-called democratic South Africa which was inaugurated in 1994 under the ANC. The commemoration of these thirty years is based on several historical fantasies which must be exposed. The first one is that there was never a democracy before 1994 and the second one is that the ANC is a liberation movement. White democracy which of course excluded the Indigenous people due to the fear of their numerical power existed way before 1994. It is this “*herrenvolk* democracy” which maintained white supremacy and white settler colonialism. White settlers have always exercised their democratic right to reinforce their right of conquest. So far, the Indigenous people have not succeeded in exercising their democratic right to eliminate this right of conquest. The ANC which agreed to assimilate the African majority into a white settler colony and the current nature of the final constitution of 1996 are to a certain extent to blame for this. By ceding intellectual and ideological leadership to white settlers as communists and liberals (“friends of the natives”) and suppressing any manifestation of African nationalism (*ala* the Youth

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League group of Sobukwe and the Makiwane brothers), the ANC has proven that it is a Civil Rights movement.

Since white settler constitutionalism and the ANC can be blamed for the lack of the restoration of land in conquered Azania, it makes sense to briefly outline their role in the maintenance of white supremacy. White settlers “expropriated land without compensation” in wars of colonisation since 1652 before creating their several constitutions. The first constitution which reinforced land dispossession and the right of conquest was created in 1853 in the Cape colony. This constitution was based on parliamentary supremacy of white settlers and it suppressed the numerical power of the Indigenous people by requiring them to be “civilized natives” to vote. The Boer republics which were created after the so-called great trek of the Dutch settlers excluded all the Indigenous people. The second constitution was introduced in 1909 in the name of the Union Act of 1909. This constitution was also based on parliamentary supremacy of white settlers who reconciled after the Anglo-Boer war to collectively rule over the natives. It reinforced the right of conquest by consolidating two British colonies and two Boer republics to form South Africa as a Union and suppressed the numerical power of the natives by excluding them from South Africa. “*Amazentiti*” or “civilized natives” such as John Dube and Sol Plaatje resented their exclusion from South Africa. As “*amakholwa*” and loyal British subjects they petitioned the British empire to be included into South Africa to no avail. In doing this they abandoned the uncompromising rejection of white supremacy and white settler colonialism as pioneered by “*amaqaba*”(Africans who rejected white culture and rule).

In 1961 Dutch settlers created a republican constitution which suppressed the numerical power of the African majority in the name of “*swart gevaar*”/black peril and reinforced the right of conquest by regarding the land of the natives as their “god-given land”. As the legal foundation of the Apartheid regime, this 1961 constitution was also based on the parliamentary supremacy of the Dutch settlers. The same Dutch settlers who comfortable with conquest since 1652 called themselves the “Afrikaners” created the 1983 tricameral constitution. Premised on the parliamentary supremacy which was used without apology by the descendants of Van Riebeeck to retain the land, they continued their “defensive war” with “total strategy” even beyond the borders of South Africa. They continued the suppression of the numerical power of the African majority by excluding them from this tricameral arrangement. The ANC in the name of “we shall overcome” managed to realise its assimilationist dream since its formation in 1912 through the 1993 and the 1996 constitutions.

But white settlers fearing “the great replacement” in parliament by the African majority heeded the advice of Jan Smuts above. They used their “intellectual and administrative superiority” with the help of the “civilized natives” of the ANC to eliminate parliamentary supremacy they have been enjoying for centuries. They did this by introducing constitutional supremacy, judicial review, and the constitutional court. Constitutional supremacy and judicial review which replaced parliamentary supremacy were aimed fundamentally at ensuring that the Indigenous people do not restore land thus, a post-conquest Azania. All these opportunistic changes are reflected in the final constitution of 1996. But this constitution is just an “ideal document” which should not stand in the way of the realisation of the restoration of land. Fixation on the “words” of this constitution will only confirm Van Riebeeck’s intention and the advice of Smuts above. Since white settlers obtained the land outside their constitution of 1853, the Indigenous people can do the same outside the

constitution of 1996. The problem is not the final constitution, but whether or not Africans are willing to confront Van Riebeeck's "defensive warfare" which "won" land for the current white settlers who are clearly "intending to retain it".



**Masilo Lepuru, © 2024**

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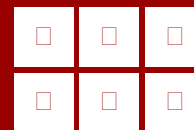
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