Reproducing the Conqueror's "South Africa": An Azanian Critique of the Constitutionalist Endorsement of Assisted Reproductive and Reprogenetic Technologies

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Abstract

Discussions on the use, regulation, and development of assisted reproductive and reprogenetic technologies are dominated by a rights discourse, primarily paying attention to how these technologies can give effect to or violate individual or group rights within the current liberal human rights framework. "South Africa" has played a prominent role as Africa's representative in this global discussion pertaining to the ethics of genetic and reproductive technologies; undoubtedly attributable to it having what is described by many as "one of the most progressive constitutions in the world." One popular perspective presupposing the legitimacy of the 1996 constitution and prevailing human rights norms, argues for the relaxation of restrictions on these technologies to allow for the effective exercise and realisation of constitutionally protected rights. This article explores the use of these technologies from a constitutional abolitionist perspective espoused by the Azanian Philosophical Tradition. By understanding the 1996 constitution as the constitutionalisation of conquest, I contemplate the ways in which these technologies function in service of (global) White supremacy and settler domination in conqueror "South Africa." The article argues that in a world ordered by biologic, these technologies effectively (re)produce the society envisioned by the conqueror; begging the question as to whether these technologies can indeed be used in service of a post-conquest "South Africa."

Keywords: assisted reproductive technologies; constitutionalism; White supremacy; Azanian Philosophical Tradition; conquest, non-racialism; racism

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Introduction

> Men have dreamed of liberating machines. But there are no machines of freedom, by definition. (Foucault 1982)

This article's purpose is to visibilise how ostensibly humanising technologies function as instruments of, and for, ideology. It is premised on the understanding that technologies are historical and cultural entities. They are products of context and experience; circumstantial creations of, to quote Lewontin (1991, 3), "social beings immersed in a family, a state, a productive structure." Material conditions and purpose, therefore, precede the making of a tool, and the values and ethics of its maker will determine the creative lens through which that tool is brought into being. Moreover, with finite resources available, to pursue one avenue of research and innovation is to abandon another.[1]

The trajectory of technological development is, therefore, an ideological and value-laden affair. Those with the power to influence and control the course of technology design a world in their own image, but more importantly, a world that serves their own interests.[2] Or, as Jasanoff puts it (2002, 258–259):

> Technologies, as many historians and social scientists have observed, are never developed in morally neutral spaces but are conceived and deployed within previous

1 This point is crisply captured by Steven Rose and Hilary Rose in their contribution to a conference hosted by the British Society for Social Responsibility in Science, 1970, which was subsequently published as a collection of papers edited by Watson Fuller, titled *The Social Impact of Modern Biology*. In their paper, titled "The Myth of the Neutrality of Science," Rose and Rose (1971, 218) assert the following: "One way of illustrating the non-neutral nature of science is to examine the constraints which operate in science within the present time. Thus, if we recognize that Big Science is state-financed, and that there is always more possible science than actual science, more ideas about what to do than men or money to do them, the debate is, in a sense, short-circuited. Science policy means making choices about what science is to do. It is not a question simply that science is inevitable and cannot be stopped, science is always being stopped and started—by withdrawal or injection of funds. Whoever makes these choices about what to finance, by definition they cannot be ideology- or value-free; they imply an acceptance of certain directions for science, and not others; opening certain routes means closing others. Putting a man on the moon means not doing other sorts of things. Such choices are inherent in any system. And as they are clearly not neutral choices, the science they generate cannot be neutral." Although Rose and Rose discuss the problematics of science, and not technology per se, I would argue that these sentiments manifest even more explicitly in technology, if technology is understood as both the maiden soil and eventual fruit of scientific enquiry, and the tools through which control and dominance are materially exercised. I will elaborate on this idea in the next section.

2 See for example Headrick, D. R. 1981. *The Tools of Empire: Technology and European Imperialism in the Nineteenth Century.* OUP; Adas, M. 2015. *Machines as the Measure of Men: Science, Technology, and Ideologies of Western Dominance*. Cornell University Press; Roberts, D. 2011. *Fatal Invention: How Science, Politics, and Big Business Re-Create Race in The Twenty-First Century*. The New Press; Gould S. J. 1996. *The Mismeasure of Man*; and Colley, L. 2021. *The Gun, the Ship, and the Pen: Warfare, Constitutions, and the Making of The Modern World*. Liveright Publishing.

> configurations of wealth and authority. Existing hierarchies reinscribe themselves with the aid of new instruments, except in those rare cases in which the lower echelons actually summon up the resources to resist or rebel.

Jasanoff's words are worth repeating—technologies are never neutral or value-free. They make the world and are made by the world; both a product and producer of culture and ideology.[3] Arising from this understanding, the following questions may be broadly posed: What do we make of technologies endorsed by the dominant social group in an unjust society? Is it not ethically suspect when oppressors mould their laws to accommodate, facilitate and legitimise the use of supposedly humanising and liberating technologies without upsetting the *status quo*? How do new technologies and rights-talk reinvent, obfuscate and perpetuate old structures of domination and subjugation? What world do constitutionally endorsed technologies (re)produce if a constitution upholds and naturalises the fact of conquest and the doctrine of White supremacy?

In this article, I initiate and explore a response to these questions with a focus on the use of assisted reproductive technologies and reprogenetic technologies (what I will refer to collectively as ARRTs) in a society characterised by conquest, White supremacy, racial capitalism and settler domination. To do so, I draw on Black radical thought, and more specifically, Azanian social and political philosophy,[4] to problematise the constitutionalist treatment of ARRTs in the territory currently known to the Azanian Philosophical Tradition as the "conqueror's South Africa." Accordingly, I read the constitutionalist endorsement of certain reproductive technologies as contributions to what Yancy (2008, xvi) terms "White world-making." I purport to show how proponents of ARRTs employ a vocabulary of liberal "non-racialism" and rights-talk to resist restrictions or constraints to the use of ARRTs. These technologies and practices, they argue, give effect to constitutionally entrenched human rights—an outcome they accept as "ethical" and "good" in and of itself. More to the point, constitutionalist endorsers of ARRTs adopt a neoliberal posture by arguing that not only ought the State not interfere with people's use of ARRTs, but it ought to also provide the infrastructural and legal support necessary to facilitate easier use.

The central thesis I wish to defend in this article is that reproductive technologies are ethically suspect when supported by a constitution that is not only founded on the questionable "right of conquest" (Ramose 2003) but also sustains White supremacy

3 See also Sabelo Mhlambi's (2020) challenge to claims of technological neutrality in Artificial Intelligence.

4 As a member, historically, of the conqueror group, I do not take lightly Bantu Steve Biko's insistence against Whites inserting themselves into Black political struggles. I agree with Biko when he asserts that White conquerors have no business telling the Black conquered group how to respond to a system in which Whites are the main beneficiaries and perpetrators. Instead, Biko asserts that we, as Whites, are to concern ourselves with and direct our attention towards the depravity of White society. As such, in this article I rely on the truisms of Black radical and Africanist thought to speak to the concealed technological tactics of White supremacy in conqueror "South Africa" and the Western(ised) world in general.

(Dladla 2017a). I aim to show *how* these technologies perform an ideological function by reinforcing White supremacy in biological terms and reproducing the conqueror's South Africa, thereby undermining the Azanian struggle for authentic liberation. I argue that the technologies and reproductive practices in question will continue to give "expression to the will and imagination of the conqueror and his successors in title" (Dladla 2018, 421) and facilitate White world-making for as long as justice due to the indigenous people conquered in the unjust wars of colonisation[5] remains outstanding, and White supremacy undefeated.[6]

The article is divided into four parts. Part one defines a few relevant concepts and terminology. Part two provides a general overview of selected arguments in support of the liberal use of ARRTs in "South Africa" and lists what I believe to be the main features of the constitutionalist endorsement of ARRTs. I mainly focus on Donrich

5 Throughout the article, I use the marker "indigenous conquered peoples." Within this group, Mogobe Ramose draws a historical distinction between the indigenous owners of the land to whom sovereign title to territory since time immemorial belong (that is, the African or Bantu-speaking people, as well as their descendants born from interracial relations who ascribe to an Africanist worldview), and the Coloured and Indian communities in conqueror "South Africa" who, Ramose argues, "were on the whole subjected, to different degrees, to the same oppression and exploitation as the indigenous conquered peoples. In this sense they belong to the group of the conquered peoples of "South Africa" —a group which must, for reasons of history, be distinguished from the indigenous conquered peoples of 'South Africa'" (Ramose 2007, 320). Elsewhere, Ramose (2001, 12) writes: "We here acknowledge the fact that together with the indigenous conquered peoples, [the Coloured and Indian] population groups suffered a common oppression under the same colonizer. Accordingly, they are included in our use of the term indigenous conquered peoples even though it cannot be said, historically, that they lost their title to territory and sovereignty over it." The political marker "Black" stems from the Black Consciousness Movement, and refers collectively to the African, Coloured, Indian, and Asian groups who stand united in their struggle against White supremacist racial domination.

6 I anticipate two potential responses to this article: one from the conservative right-wing camp, and the other from the liberal left. From the conservative right, I expect to be charged with supporting the corporeal elimination of Whites in "South Africa" (an old conspiracy theory that in more recent times culminated in the myth of an ongoing "White Genocide"). A proper reading of the text (especially the section on the role of reproduction in conquest) ought to shine some light on the *Swart gevaar* rhetoric and pre-1994 nostalgia that fuel such allegations. As for the liberal left, I foresee the charge of making light of or trivialising the individual's experience of childlessness, or even worse, participating in ableist vitriol aimed at people who experience infertility. This is to be expected from a tradition in which (i) the individual is emphasised as the centre and apex of moral action; (ii) community denotes, to quote the words of Ifeanyi Menkiti, "nothing more than a mere collection of self-interested persons, each with his private set of preferences, but all of whom get together nonetheless because they realize, each to each, that in association they can accomplish things which they are not able to accomplish otherwise" (Menkiti 1984, 179); and (iii) the individual's private interests are placed prior to the broader interests of the community. However, a wholistic reading of the text ought to make clear that I do not concern myself with the individual's personal motivations or emotional reasons for wanting to participate in the biological phenomenon of human reproduction. Rather, the very point of a systemic critique such as the one offered here, that the individualist liberal ethos that informs rights-based endorsements of ARRTs, distracts us—as a society—from the unethical and unjust cumulative effects of seemingly ethical individual choices and actions, thereby preserving the White supremacist order in conqueror South Africa.

Thaldar's efforts to fit ARRTs and gene-editing technologies into the existing constitutional and legislative framework. Part three disputes the idea of the 1996 constitution as a liberatory document and presents the key features and core emancipatory objectives of the Azanian Philosophical Tradition as an ethical and political project. This part also offers a few notes on liberal non-racialism, as well as the connection between conquest, sovereignty, and reproduction. It is from the constitutional abolitionist perspective espoused by the Azanian tradition that part four, with the benefit of Tessa Moll and Amrita Pande's scholarship, formulates ARRTs as contemporary tools for conquest and White supremacist ideology.

Technical Clarification of Subject Matter and Relevant Terminology

> Technology is power. It is the power wielded over the natural world, the defense against the hostile elements, the means of using the forces of nature to do one's bidding and improve one's condition. … But technology is also power over people. (Headrick 1981, 83)

The purpose of this section is to focus the discussion that follows by clarifying and defining a few key concepts and terminology. At the broadest level, this article presents a theoretical liberationist critique of the false dogma that Western science is the only "proper" or "true" science, as well as the insidious link between technology and domination. The ultimate aim is to problematise the hidden ethico-political function of certain modern scientific technologies within a society engendered by conquest and White domination.

It is important to note that the definition and meaning of "science" and "technology" have acquired many nuances that continue to stir philosophical debate.[7] Although an extensive account of the strains and complexities of these debates exceeds the bounds of the present critique, the plurality of views on the subject necessitates an agreed-upon starting point so as to avoid potential misunderstandings and appropriately situate and concentrate the subsequent argument. Therefore, this section proffers a compact explanation of my use of "science," "technology," "biotechnology," "assisted reproductive technologies," and "reprogenetic technologies."

In this article, I understand "science" (or "knowledge") in the most general sense to mean what Okere (2005, 22) describes as "a special activity or mode of being of man by which man relates to reality from the perspective of the truth, the truth here meaning somehow getting at reality as it is." Science, as "knowledge in general," is then an activity in which all human beings participate, as the natural "desire to know" (Okere

7 To mention only a very few examples, see Okere, T. 2005. "Is There One Science, Western Science?" *Africa Development* 30 (3): 20–34; Adas, M. 2015. *Machines as the Measure of Men: Science, Technology, and Ideologies of Western Dominance*. Cornell University Press; Kranzberg, M. 1967. "The Unity of Science-Technology" *American Scientist* 55 (1): 48–66; Kuhn, T. S. 1962. *The Structure of Scientific Revolutions*. The University of Chicago Press.

2005, 25) and the "possession of knowledge" is inherent to all (Okere, Njoku, and Devisch 2005, 4). It is also recognised as a deeply historical-cultural enterprise. An epistemology or knowledge tradition is necessarily shaped by a people's worldview. What is known, what knowledge is pursued, the objectives and methods of knowing, the limitations to what can be known, and the response to knowledge are all historically rooted in people's perception of the universe, as well as their place and role in it (Mudimbe 1988; Okere 2005, 25). As such, "science," as the search for truth(s), is manifestly "context-bound" and "local"[8] (Okere et al. 2005, 1, 3).

However, Okere goes on to explain that the West has forcefully imposed an additional, "more specialized meaning of science" onto the conquered peoples of the world—a science that emerged from its own historical-cultural base (see also Ramose 1999). According to Okere, "modern science, science in its most restricted sense" concerns itself with "only inanimate matter, bodies or anything with mathematical properties" (Okere 2005, 23). "What characterises it," writes Okere (2005, 27), "is its narrow focus, a restrictive definition of both its object and its method, restricting itself essentially to a fraction of the vast subject matter of knowledge as well as to a fraction of the many ways of human knowing." This Western conception of modern science with its materialist orientation and "technological hyper-activity" (see Botha 2003, 167) has contributed greatly to the conquest, domination, and degradation of the conquered peoples, and as Okere (2005, 28) points out:

> [This] marginalisation of other people and the inferiorization and devaluation of their dignity and humanity has gone hand in hand with the disqualification of their knowledge systems and are in turn cited as proof of the supremacy of Western science and as guarantee of Western domination. It was with the disqualification of other knowledge systems that the ground was cleared for the claims of the West being the sole possessors of the solely valid knowledge of all time, for all men of all cultures.

Thus, "modern science" is the institutionalisation of the conqueror's specific experience. As such, it is characterised by what Nunn (borrowing from the work of Ani) describes as "certain cultural determinates, which shape and direct all social productions within the culture" and "manifest themselves mainly in the areas of thought structuring and processing and include epistemological values and logic" (Nunn 1997, 333). Ani

8 "Local," in the sense that it is used here, is not confined to geographic boundaries or exotic idiosyncrasies. Following Okere et al. (2005), "local knowledge" here describes: "any given culture's unique genius, and distinctive creativity which put a most characteristic stamp on what its members in their singular context and history meaningfully develop as knowledge, epistemology, metaphysics, worldview. … [It is] a given people's particular, self-organising, transgenerational cultural weave. The particular local indeed indicates the active creative originality of vital contexts and networks, the originary well-springs of that given people's endogenous ability to shape and manage their world, generation after generation, in lines with their own genius … The local is not a passive substratum, but indeed an endogenous force or active set of principles and forces both moulded by and inspiring a given people's unique trajectories and aspirations to knowledge, sovereignty and dignity, as well as their unique mode of inhabiting their life-world" (Okere et al. 2005, 3).

identifies the cultural attributes of Western thought, and by extension, modern science, as dichotomisation; oppositional, confrontational, antagonistic relationships; hierarchical segmentation; analytic, nonsynthetic thought; objectification; absolutist-abstractification; rationalism and scientism; authoritative literate mode; and desacralisation (see Ani 1994, 105–107; Nunn 1997, 333–338). Simply put, modern science is styled by a proclivity for fragmentation (see Bohm 1985). The "materialistic paradigm" of modern science fragments Okere's broad and general understanding of science or knowledge into categories of knowing, categories of objects, and categories of methods (Okere 2005, 22–23); discriminates between hard science (natural and, therefore, objective, rational, and real) and soft science (social and, therefore, subjective, irrational, and mystical); and in the end, splits man from nature (Adas 2015, 136). It is this restrictive meaning ascribed to "modern science" and its fragmentary tendencies and effects—a worldview and way of being that is particular to a people yet claims to be a science that is universally true for all of humanity—that inspires present critique.

If science is, in its most general sense, knowledge- and truth-seeking, then "technology" is, also in its most general sense, "the way people do things" (see White 1940, 141). But even this distinction or separation between science and technology—whether these concepts are distinct or separatable, and if so, where the one ends and the other begins—is a cultural invention. However, my criticism is focused on a more narrow understanding of "technology" as tools with which humans manipulate, control, dominate, and exploit their natural, physical environment in order to respond to and satisfy their material needs (or desires). More specifically, I concern myself with "modern technologies," as the extension or application of modern science.

"Biotechnology" then denotes a specialised branch of modern science and technology within the Western epistemological tradition that permits the Western(ised) "scientific man" to matter-of-factly "manipulate the [biological] world around 'him'" (Ani 1994, 245). But even scientific men have found it difficult to agree on the meaning and precise nature of this rapidly expanding sphere of modern technology (Bud 1991). However, seeing as this article is concerned with the socio-ethical and political implications of a very particular merger of human biology and modern scientific technology, I opt for the compellingly simple description of Clark: "[b]iotechnology is the art of manipulating living forms as though they were machines" (Clark 1994, 13).

Specifically, I am interested in the application of two biotechnologies: assisted reproductive technologies (ART) and reprogenetic technologies. The 2009 revised International Committee for Monitoring Assisted Reproductive Technology (ICMART) and the World Health Organisation (WHO) glossary of ART terminology describes ARTs as follows (Zegers-Hochschild et al. 2009, 1521):

> … all treatments or procedures that include the in vitro handling of both human oocytes and sperm or of embryos for the purpose of establishing a pregnancy. This includes, but

> is not limited to, *in vitro* fertilization [IVF] and embryo transfer, gamete intrafallopian transfer, zygote intrafallopian transfer, tubal embryo transfer, gamete and embryo cryopreservation, oocyte and embryo donation, and gestational surrogacy. ART does not include assisted insemination (artificial insemination) using sperm from either a woman's partner or a sperm donor.

At the most basic level, ARTs are methods aimed at medically overcoming biological obstacles that result in human infertility and allow prospective parent(s) to establish a noncoital pregnancy with a "genetic tie" to at least one parent (Roberts 1997, 264–268). This includes surrogacy, as well as the practice of third-party IVF, which is when an egg, sperm or embryo is procured from a desirable third-party donor.

"Reprogenetic technologies" go even further by not only satisfying the desire for a genetically related child, but a child with a *favourable* genetic profile. Reprogenetic technologies, therefore, describe the merger of IVF and preimplantation genetic testing. These technologies allow prospective parents to select and implant only genetically desirable embryos for the purposes of establishing a pregnancy (Roberts 2011, 212). These technologies, therefore, increase the likelihood of having children without heritable or fatalistic genetic diseases/disorders, children without genotypically "abnormal" constitutions, or even children with a particular sex. In this article, I discuss ARTs and reprogenetic technologies together under the label ARRTs.

The Constitutionalist Endorsement of ARRTs in Post-1994 "South Africa"

> A civilization that proves incapable of solving the problems it creates is a decadent civilization. A civilization that chooses to close its eyes to its most crucial problems is a stricken civilization. A civilization that uses its principles for trickery and deceit is a dying civilization. (Cesaire 2000, 31)

Mutua remarks that "[t]he post-World War II period has been characterized as the Age of Rights, an era during which the human rights movement has come of age" (Mutua 1997, 63). Elsewhere, he argues that this human rights project is an assimilative imposition in which the conquered peoples of the Earth are incorporated into the Western world order (Mutua 2008, 24). It was only once the historically colonised and "uncivilised" peoples of the world agreed to the terms and "standards of civilisation" of European powers that the conquered peoples would become bearers and beneficiaries of the Eurocentric conception of human rights, and members of the (White) "international community" (Anghie 2007; Gevers 2021; Grovogui 1996; Madlingozi 2017). Thus, at its core, the dominant human rights regime is an ideological apparatus that prescribes a set of normative ideals to which all societies—if they were to be recognised as members of the "civilised" international community—ought to agree and obey.

Scientific knowledge and technological achievement are intimately tied to this Western conception of "civilisation." In *Machines as the Measure of Men*, Michael Adas provides us with a rich catalogue, stretching from the 15th to 20th century, of how Europeans used science and technology to compare and inferiorise societies different to their own; effectuate and justify imperial domination and colonial conquest; and acculturate and civilise the peoples of Africa and Asia. Adas argues that the Western world weaponised its technologies against the peoples they encountered on their voyages, and instilled its own technology, race, religion, and culture as *the only* correct criteria against which the humanness of Others was to be measured. It should then come as no surprise that mainstream scholarship in defence of modern technologies, also claims to worship the decree of Western human rights.

Generally speaking, the human rights discourse on technology is principally concerned with whether a technology (and its application to the domain of human relations) is compatible with the United Nations' version of so-called universal human rights. Accordingly, rights-based investigations of reproductive technologies primarily focus on whether the technology in question either directly or indirectly protects or violates individual or group rights within this human rights paradigm. Whether a technology is deemed "beneficial" and therefore "good" or "harmful" and thus "bad" depends on its impact on contending human rights ideals. Then again, the outcome of such a determination—whether the use of the technology is good or bad—is also contextually specific: what promotes human rights in one instance might violate them in another; and what is judged to be good/bad at one moment in time, might not be in another.[9] The point is, however, that the dominant human rights framework is the litmus test for this calculation, and in the international sphere, the players with the greatest economic and political power have the final say.

Domestically, in the country known to the international community as "South Africa"[10] this human rights corpus is incorporated into the country's supreme law—the

9 Melvin Kranzberg makes this point, in what has been dubbed "Kranzberg's First Law": "Technology is neither good nor bad; nor is it neutral" (Kranzberg 1986, 545–548). I extend my gratitude to the reviewer for bringing the consideration of Kranzberg to my attention.

10 The name "South Africa" is placed in inverted commas to dispute the claim that this territory is a liberated polity or "an independent and sovereign State." Pheko (1992, xii) captures the sentiment underpinning this gesture in the introduction to his book, *South Africa: Betrayal of a Colonised People* as follows: "South Africa as the colonialists named this African country on 20 September 1909 is in fact a colony that was never decolonized." The use of inverted commas serves not only to reject a name bequeathed to the territory by a conqueror who had no authority or right to baptise the land but to also renounce the ethical and political problem this name represents. Accordingly, the use of inverted commas follows that of Modiri (2021) in his paper titled "Azanian Political Thought and the Undoing of 'South African' Knowledges." Modiri's placement of the name in inverted commas is to insist that it "is an unjust and unethical political formation and axiomatically racist polity, predicated upon colonial conquest, slavery, and racial subjugation. The basic problem and fundamental injustice of 'South Africa' is … its very founding as a European-created and European-dominated racial polity …" (Modiri 2021, 56).

constitution of 1996.[11] This constitution, the preamble of which expressly declares a devotion to fundamental human rights,[12] has been described as the "first deliberate and calculated effort in history to craft a human rights State" (Mutua 1997, 65) and is often regarded as one of the best constitutions in the world. Within this framework, the regulation and application of ARRTs must be consistent with constitutional values and affected rights and human rights norms if it is to receive legal and political support and sanction.

On this score, Van Niekerk (2017, 2) notes that ARTs (and I would add reprogenetic technologies) have altered the traditional understanding of reproductive rights and the "right to reproduce." Whereas before, the discourse on reproductive rights was predominantly concerned with the right to prevent procreation with a strong focus on voluntary abortions, contraceptives, and sterilisation, the emergence and proliferation of ARRTs has "shifted" the conversation on reproductive rights to the "noncoital" facilitation of childbirth (Van Niekerk 2017, 20; cf. Robinson 1988, 179). New reproductive technologies, specifically donor selections, prenatal testing and reprogenetic technologies have, however, added another dimension to this right by enabling prospective parents to exercise more control over the *quality* of their future offspring (Van Niekerk 2017, 10).

The increased availability and normalisation of ARRTs within a society such as "South Africa," in which justice is defined by and limited to the parameters of the supreme constitution of 1996, has produced a growing body of scholarship fighting to fit these technologies into the post-1994 constitutional project. The work of Thaldar and his colleagues stands out as examples of such a constitutionalist endorsement of ARRTs and human gene editing technologies.[13]

11 Constitutional supremacy is affirmed in Section 2 of the "South African" constitution of 1996, stating that "[t]his Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

12 Other than an explicit commitment to human rights expressed in the preamble of the 1996 constitution, sections 184–186 provides for the establishment of the "South African" Human Rights Commission (SAHRC). According to s 184(1)a-c, the SAHRC must "(a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights; and (c) monitor and assess the observance of human rights in the Republic."

13 Although Thaldar's more recent publications are primarily concerned with the use and regulation of human gene editing technologies and Artificial Intelligence, for present purposes I concentrate on the work on ARRTs. To be sure, his constitutional arguments in favour of ARRTs and practices set the foundation for his growing body of work in which he and his colleagues and students support therapeutic and nontherapeutic human genome editing with the aid of the constitution. Thus, I maintain that the criticisms pertaining to his work on ARRTs discussed here could be extended to their constitutional and human rights promotion of human gene editing. The ideological function of human gene editing tools is the primary concern of a much larger, ongoing project of mine.

A Broad Overview of Donrich Thaldar's Constitutionalist Endorsement of ARRTs

I wish to clarify that it is not the intention to level a comprehensive and detailed response to each of Thaldar's arguments made in his body of work.[14] The scope and objective of this article do not only preclude such a long-winded exercise, but also to engage in such an exchange would lend ethical legitimacy to the Western epistemological framework on which Thaldar bases his support for ARRTs in "South Africa." Instead, the aim is to highlight the ethical and political implications of the constitutionalist endorsement[15] of ARRTs in post-1994 "South Africa," of which I consider Thaldar's work to be representative.

Thaldar's work champions the liberal, almost absolute use of ARRTs and demonstrates an unshakable commitment to the 1996 constitution and international human rights projects. I would even go so far as to say that there is hardly a biotechnology that Thaldar has yet to throw his full weight behind, and he has managed to interpret and wield the 1996 constitution in every which way to support the all-but laissez-faire use of assisted reproductive, reprogenetic, cloning, and human gene editing technologies. (One wonders whether Thaldar's neoliberal passion for a biotechnological "revolution" can best be explained by his history as a "serial entrepreneur with interests in technology companies" and his former status as co-founder and managing director of a biotechnology company).[16] I, therefore, limit my discussion of Thaldar's work to a broad overview of his rights-based treatment of ARRTs and consider his work an exemplar of the genre of legal scholarship under investigation, that is, the constitutionalist endorsement of biotechnological reproduction.

As mentioned, Thaldar advocates for the almost non-restrictive use of ARRTs. He has systematically argued against various legal and ethical obstacles that threaten to, or actually impede the individual's use of these technologies. With the 1996 Bill of Rights in one hand (an instrument Thaldar likens to "a giant safety net that automatically provides a minimum level of legal protection to all natural subjects" [Thaldar 2020b, 6]), and the Universal Declaration of Human Rights in the other, he has criticised court decisions (Thaldar 2018, 2019a, 2019b, 2022a, 2023a, 2023b) and policy (Jordaan 2007; 2017; Thaldar 2020a, 2022b) for burdening or preventing prospective parents from using ARRTs as they see fit, and has suggested a number of changes that he argues will give proper effect to constitutional rights (Shozi and Thaldar 2022).

14 Some of Thaldar's earlier work is published under his former surname Jordaan.

15 I understand "constitutionalist endorsement" as an attitude in which support for purposive action is expressed through the prism of "constitutionalism," as formulated by Loughlin (2022). The "ideology of constitutionalism" and its "contemporary cult" (121), argues Loughling, "signifies the realization of an ambition to establish the constitution not only as the authoritative instrument of government but also the symbol of a regime's collective political identity. The constitution is raised to the status of civil religion" (122).

16 See Jordaan and Jordaan (2010); Jordaan (2012).

Given that there is no explicit or direct right entrenched in the 1996 constitution to make use of ARRTs, Thaldar and colleagues argue that this lacuna can be filled by a more generous interpretation of existing constitutional rights. In the main, he advocates for the deregulation of ARRTs based on the values that underpin the 1996 constitution (s 1), the right to equality, and not to be discriminated against on the grounds that infertility is classified as a disability (s 9), the right to human dignity (s 10), the right to reproductive freedom and autonomy (s 12), the right to privacy (s 14), and the right to access reproductive health care (s 27). To interfere with a prospective parent's ability to use these technologies, he argues, would undermine these listed constitutional rights—especially the right to reproductive freedom. He also submits that ARRTs give effect to the individual's freedom to form a family and the "right to family life" (Thaldar 2022a). Thaldar (2022a, 85) captures what I read as the crux of this argument as follows:

> The right to family life is protected under the auspices of the right to privacy and the right to dignity. Importantly, families do not just arise out of nothing—they are established through the will and action of intended parents. Accordingly, for the right to family life to have any meaning, it must include the right to *establish* a family [italics in the original].

Other, more general themes that emerge in his scholarship on ARRTs include but are not limited to: the best interest of the child criterion (Jordaan 2003; Thaldar 2019a; 2022a), procreative freedom and autonomy (Jordaan 2002; 2003; Thaldar 2019b; 2022a; 2023b), the primacy of the individual (Jordaan 2003; Thaldar 2019a), and respect for diversity (Jordaan 2003; Thaldar 2019a).

Although Thaldar has been highly critical of the Constitutional Court (CC) for restricting certain noncoital reproductive practices, he does not criticise the 1996 constitution itself. In fact, in a 2019 publication, Thaldar takes it upon himself to protect the constitution from the CC's "prejudice" and "betrayals" in a matter where the applicant (AB) was prevented from using ARTs to bring a genetically unrelated child into the world with the aid of a surrogate and donor gametes.[17] Thaldar went to great lengths to condemn the CC for interpreting the relevant law through what he refers to as a "traditional black South African cultural" lens. The upshot of Thaldar's argument is that the CC ought to allow those persons who wish to assimilate into a modern world shaped by ARRTs, or who do not subscribe to "traditional black South African cultural precepts" to use these technologies freely. This is because, according to Thaldar, "[c]ultural norms may be deep-seated in society (or a section thereof), but not necessarily aligned with the values that the Constitution aspires to" (2019a, 361). I

17 *AB v Minister of Social Development* [2015] ZAGPPHC 580, 2016 (2) SA 27 (GP) (AB HC); [2016] ZACC 43, 2017 (3) SA 570 (CC) (AB CC). To summarise: AB sought to initiate a pregnancy with the aid of a commissioned surrogate using both male and female anonymous donor gametes. If permitted and successful, the child would have no genetic relation to AB. The CC concluded that it would not be in the best interest of the child to not know their genetic origins and that the constitutional attack on the legislative obstacles that prevented AB from using ARTs to bring a genetically unrelated child into the world via surrogacy could not succeed.

cannot help but understand Thaldar's criticism of the CC's decision as a reprimand for being stuck in the past; for clinging to the "traditional" when deciding on modern matters. His criticism makes use of analytical manoeuvrers, typical of the Western scientific tradition described earlier, in order to pick apart and discredit the CC's "traditional" arguments against the application of ARTs in question.

Without going into too much detail, I pause to call attention to two significant features of Thaldar's criticism: First is his juxtaposition of the "contemporary" with the "traditional," and his unmistakeable admiration for the former and obvious animosity towards the latter. By pitting the desirable (that is, the technologically advanced, modern, contemporary, progressive) against the undesirable (the superficial, superstitious, primitive, anti-scientific, traditional, regressive) as he does, Thaldar projects racialised evolutionist tropes in which the desirable is a signifier for the White-civilised, and undesirable for the Black-uncivilised (Adas 2015; Anghie 2005; Gevers 2020; Mehta 1999; Murove 2005; Mudimbe 1988; Ramose 2003; Wynter 2006). He devotes much energy to showing why he is not convinced by the CC's "tradition-based argument" and why it is flawed (i.e., irrational) when tested against proper (i.e., rational) Western modes of reason.[18] For Thaldar, the beliefs he ascribes to traditional Black "South Africans" seem to have no place in the modern post-1994 society envisioned by the 1996 constitution.[19] This is in keeping with his earlier work in which he was more explicit about his disdain for the "values of … primitivism" as he sang the praises of the "stunning successes of [modern] science and medicine" (Jordaan 2007, 618), and repeatedly referenced the superiority of modern scientific and Western rationality (Jordaan 2003; 2005; 2006; 2007; 2017; see also Thaldar 2022a).

Secondly, Thaldar intimates that the 1996 constitution is an instrument devoid of culture and that his liberalism—a political ideology he undoubtedly reveres—is culture-free. Yet, in a co-authored 2023 publication on heritable human gene editing, Thaldar (Shozi and Thaldar 2023, 47) appears to have a different view, claiming that:

> Although there is no explicit reference to *Ubuntu in the Constitution, Ubuntu is widely accepted as an underlying influence on the Constitution. As a worldview and value system, Ubuntu is part of the cultural heritage of the majority of South Africans* [my own emphasis].

18 See Ramose's (2001) article titled "An African Perspective on Justice and Race" in which he posits "Aristotle's definition of 'man' as a rational animal [as] constitut[ing] the philosophical basis for racism in the West." See also Ramose 2003.

19 In a way, Thaldar is not *completely* mistaken when he claims that the "cultural norms" of the so-called "traditional black South African" is "not necessarily aligned with the values that the Constitution aspires to." For ethical and political reasons (other than Thaldar's racially charged uncritical contrasting of the modern with the traditional) that will become clear below, the worldview and ethic of the indigenous conquered peoples are indeed irreconcilable with the values of the conqueror's constitution.

The tensions between the two publications are puzzling: do the traditional precepts mentioned in the 2019 article not form part of this cultural heritage? How do the authors reconcile the statement "[c]ultural norms may be deep-seated in society (or a section thereof), but not necessarily aligned with the values that the Constitution aspires to" (2019a) with the statement that "ubuntu is widely accepted as an underlying influence on the Constitution. As a worldview and value system, ubuntu is part of the cultural heritage of the majority of South Africans" (Shozi and Thaldar 2023)? Curiously, Thaldar and Shozi rely on Ramose's writings on ubuntu to support the above line of thought but seem to ignore Ramose's assertion that the omission of ubuntu in the final 1996 constitution was not by mistake and that the philosophy of "*ubu-ntu*" Ramose espouses is philosophically incompatible with the conqueror's post-1994 "South Africa" and its constitution (Dladla 2017b; Ramose 2012). For Ramose, the post-1994 integration of "ubuntus" into the conqueror's legal framework should, therefore, be understood as a political ploy to "negate justice."[20] More on this below.

Key Features of the Constitutionalist Endorsement of ARRTS

Based on a broad reading of Thaldar's scholarship, I take there to be at least seven features that characterise what I will refer to as "constitutionalist endorsements" of ARRTs in "South Africa." This list is non-exhaustive and could be summarised as follows:

1. The "idealisation and worship of the South African constitution" (Modiri 2018, 6) and the failure or refusal to question or challenge its legitimacy. Constitutionalists portray the constitution of 1996 to be free of ideology and mark what Modiri describes as "a transcendence or overcoming of earlier historical periods of oppression and injustice" (Modiri 2018, 15; see also Loughlin 2022, 192).
2. An emphasis on the primacy of individual liberties, privacy, and autonomy in moral decision-making, qualified by classical Western philosophical thought, rationality, and abstract analytical reasoning.

20 Drawing on the philosophy espoused by Ramose, Dladla captures the fundamental distinction between "ubuntu" and *ubu-ntu*, with the latter referring to the philosophy of the indigenous people conquered in the unjust wars of colonisation, and the former being a fetishised ubuntu appropriated and conjured by "the posterity of their conquerors." On this score, Dladla writes: "Whereas [*ubu-ntu*] has served as a basis of [the indigenous conquered people's] struggle for liberation against the historical injustice of conquest, dispossession and domination and continues the cry for the return of title to territory to abantu and the restoration of an unencumbered sovereignty over it. [Ubuntu] attempts to obfuscate historical injustice and defend their conquest and continued domination in the very name of their philosophy" (Dladla 2017b, 63). In a more recent publication, Ramose also gives a detailed analysis of the difference between the "meaning of *ubu-ntu* against [ubuntu]": "The former is a philosophical concept and the latter is the everyday language usage presupposing but not explicitly manifesting awareness of its reliance upon *ubu-ntu*" (Ramose 2022, 1). See also Nyamnjoh and Ewuoso (2023) for another criticism of Thaldar and Shozi's use of ubuntu in which Nyamnjoh and Ewuoso respond to the authors' understanding of the philosophy.

3. Related to point two is a powerful allegiance to modern scientism. Ani (1994, xxvi) defines scientism as "the ideological use of 'science,' defined Eurocentrically, as an activity which sanctions all thought and behaviour; that is, science becomes sacred, the highest standard of morality." This is accompanied by the perception that technologies are *ethical* instruments with which the material world can and ought to be fragmented, manipulated, and exploited. The fact that a few bad apples use technology to unethical or questionable ends, should not overshadow the potential benefits of technology.
4. The unspoken commitment to the constitutional value of liberal "non-racialism" (see Dladla 2017a). Even though the work of constitutionalist endorsers concerns *bio*-technologies, they completely avoid any discussions on the persisting influence of biologism in racial politics in present-day "South Africa" and so discount the "extent to which the body is implicated in the construction of socio-political categories" (Oyéwúmi 1997, 7). The technological selection of (historically racialised) biological traits is shrugged off as (non-racial) personal/individual "preference" or "prejudice."
5. Connected to the previous point is the paradoxical celebration of the "value of diversity" (Jordaan 2003, 599) and, by extension, multi-culturalism. Constitutionalist endorsers applaud ARRTs for their potential to increase societal diversity.
6. They claim that structural inequality would *eventually* be ameliorated through distributive justice, but in the meantime, those with the means to procure these technologies should not be hindered from doing so. Accordingly, the constitutionalist endorsers in question do not problematise the causes for and reproduction of structural injustice and leave the institutions that generate injustice intact and undisturbed.[21] This is premised on the exact same logic espoused by trickle-down economists.
7. The hollowed and uncritical incorporation of ubuntu into the existing constitutional framework to justify the liberal application of biotechnologies to humans, and the failure to follow the philosophy of *ubu-ntu* through to its logical conclusion, which would necessarily lead to the collapse of the entire post-1994 enterprise. To explain: as mentioned earlier, *ubu-ntu*, as the philosophy espoused by the indigenous conquered people, is irreconcilable with the conqueror's constitution. This is because, as Ramose (1999) argues, *ubu-ntu* philosophy is a philosophy of liberation rooted in the experience and worldview of the indigenous people conquered in the unjust wars of colonisation (see also Dladla 2020). Yet, the conqueror's constitution of 1996 constitutionalised and preserved the injustices of conquest (Ramose 2012). Dladla (2017b, 44) describes this forced union between *ubu-ntu* and the 1996 constitution as "tantamount to using the philosophy of the indigenous conquered

21 This perspective was expressed in a publication dealing with human gene editing technologies, which inspires an even more controversial debate (Thaldar et al. 2020). Since arguments in favour of the liberal use of ARRTs lay the foundation for these authors' endorsements for human genome editing, it can be assumed that this logic applies equally to ARRTs. Thaldar communicates similar sentiments in relation to non-therapeutic sex selection practices (Thaldar 2019b).

> people of South Africa in the legitimation and justification of 'the right of conquest'." Thus, constitutionalist endorsers use ubuntu to Africanise ARRTs, and so conceal the true Western character of their philosophies, epistemologies, and instruments (see Dladla 2021a, 130). The purpose of this gambit by the constitutionalist endorser is to pacify objections to the ethics of ARRTs with the superficial promise of recognition.

I now move on to challenge the very foundations of the constitution on which endorsers pin their support for the unabated use of ARRTs.

Notes on Azania, Abolitionism, Liberal Non-racialism, and the Connection between Conquest, Sovereignty and Reproduction

> … the injustice of conquest ungoverned by law, morality, and humanity was constitutionalized. This constitutionalization of injustice places the final Constitution on a precarious footing because of its failure to respond to the exigencies of natural and fundamental justice due to the indigenous conquered people. But the constitutionalization of an injustice carries within itself the demand for justice. Accordingly, the reversion of title to territory and the restoration of sovereignty over it did not die at the birth of the new Constitution for South Africa. (Ramose 2003, 572)

In her seminal work, *The Gun, the Ship, and the Pen: Warfare, Constitutions and the Making of the Modern Word,* Colley (2021) follows the origins and unfolding of written constitutions. Colley (2021, 12) writes, "[a] constitution, after all, like a novel, invents and tells the story of a place and a people." With these words in mind, questions arise—what story does the constitution of "South Africa" invent and tell? Whose story is being told, and what are the ethical and political implications of this narrative?

For constitutionalist endorsers, such as Thaldar, this seems to be a story in which the present represents "a radical break with an unjust 'past" (Loughlin 2022, 192; Modiri 2018, 13), a story of reconciliation, unification, transformation, and progress. At this point, it is apposite to ask, as Dladla (2017a, 124) does:

> … "progressive for whom?" and along with that question, "progressive for what?" The answer to these questions surely cannot be "progressive for the indigenous people conquered in the unjust wars of colonisation." This is because amongst other things we know that the posterity of those conquered in the unjust wars of colonisation continue to experience the highest vulnerability to death and the poorest quality of life in South Africa by and large. The indigenous conquered people are yet to attain their liberation and regain the title to territory over their lands.

A Note on Azania

Dladla's provocation encapsulates the emancipatory project of the Azanian Philosophical Tradition. The name "Azania," first adopted by the Pan Africanist Congress of Azania (PAC), is the true and preferred name and substitute for the yet-to-

be-decolonised territory that came to be known as "South Africa" since the 1910 unification of the Boers and British (Dladla 2018, 417; Modiri 2021, 43). It is a historical, philosophical, ethical and political *refusal* to accept "South Africa" as a legitimate polity, as well as a *demand* for the "authentic liberation"[22] of the indigenous people conquered in the unjust wars of colonisation (Ramose 1999, 330). Whereas Azania denotes an ethical commitment toward historical justice, "South Africa" signifies what Modiri (2021, 43) describes as:

> … the racial contract between the two European conquering powers that had subjugated the indigenous African population and other oppressed groups and racialised them as "Blacks" in the process of inventing the political category of Whiteness.

As such, Azanians make no ethical distinction between the "South Africa" of 1910 and any subsequent iteration—post-1994 "South Africa" included. The main features of the Azanian Philosophical Tradition are articulated by Dladla (2021b, 3–4) as follows:

1. The demand by Azanians that the objective of the liberation struggle was, and still is, the recovery of unencumbered sovereign title to territory complemented by the attainment of civil and political rights. To some, the current constitution of conqueror 'South Africa' answers to the demand for civil and political rights. For the Azanians, however, the answer is incomplete because it is given without corresponding economic emancipation, thus intensifying the bondage of ethically unjustifiable debt on the indigenous peoples conquered in the unjust wars of colonisation. Epistemic freedom is a necessary complement to this.

2. The insistence that the title to territory itself belongs exclusively to the indigenous peoples conquered in the unjust wars of colonisation.

3. The rejection of multi-racialism. This includes incredulity to the tenability of what we discuss elsewhere as 'non-racialism as a means' and upholding it only as an end achievable only once the title to territory had been restored to the indigenous conquered peoples.

4. The recognition of 'South Africa' as a polity and idea inextricably bound to the imagination, will, and interests of the conqueror, that is, conqueror South Africa, an ethically untenable reality, demanding state succession by a liberated polity.

5. This yet-to-be-born Azanian polity would then become an equal and full member of the community of African states. This is against the background of

22 Ramose has formulated "authentic liberation" as an uncompromising two-fold exigency: (1) emancipation from epistemic, political and cultural enslavement under the paradigm of the Western conqueror, and (2) restoration of sovereign title to territory to the indigenous people conquered in the unjust wars of colonisation, and economic freedom in the form of restitution and reparations (Ramose 1999, 33).

> the political history of 'South Africa' having constructed its identity as distinctly European and bearing no cultural resemblance and relationship with 'the rest of the continent'.
>
> 6. Vigilant awareness that the quest for Azania shall have consequences for world politics.

In the remainder of this section, I briefly discuss the constitutional abolitionist posture assumed by the Azanian tradition, its critique of liberal non-racialism, as well as the political nature of reproduction and its connection to conquest and sovereignty.

A Note on Constitutional Abolitionism

Point one listed above speaks to the illegitimacy of the 1996 constitution and what Ramose asserts as "the necessary demands for historic justice" (Ramose 2003, 566), being "the restoration of title to territory and the reversion of unencumbered and unmodified sovereignty to the same quantum and degree as at conquest" (Ramose 2003, 575). The refusal to recognise "South Africa" and its most recent constitution as just or valid has earned proponents of the Azanian school of thought the appellation constitutional abolitionists. Modiri offers an elaboration on the character of the Azanian's abolitionist orientation. He writes that from the Azanian's perspective, "abolition" is synonymous with "emancipatory rupture" (Modiri 2021, 61) and calls for the abolition of "the colonial state," conqueror "South Africa," "(the myth of) race" as well as the doctrine of White supremacy. And since all these institutions are preserved in the constitution of 1996, the abolitionist call extends to this constitution as well (Modiri 2021, 73). Modiri goes on to outline a three-fold Azanian challenge to the defenders and worshippers of the 1996 constitution (i.e., constitutionalists), in which it is submitted that this constitution (Modiri 2021, 75):

> (1) is an evolutionary legal, political, and epistemic rearrangement of 'white South Africa' – an adjustment or 'makeover' (democratisation) rather than a fundamental rupture (decolonisation); (2) sustains colonial logics of state formation, political economy and racialisation and upholds the erasure of African cosmologies, legalities, and epistemologies; and (3) ultimately naturalises and normalises the settler-created world (or the conqueror's South Africa) as the only possible world … .

Azanians have accepted the denomination of "constitutional abolitionists" (see Dladla 2018, 416; Modiri 2021) but object to the idea that they are opposed to "constitution-ness" (Dladla 2018, 416) or "constitution-making" (see Ramose 2018, 14). Dladla explains that the Azanian Philosophical Tradition does not propose a blanket ban on *any and all* constitutions, but rather, the abolition of the *conqueror's* constitution and resultant constitutionalism, and ultimately, the conqueror's South Africa. The emancipatory aim of the constitutional abolitionists is, therefore, to abolish what is conceived of as the constitutionalisation of injustice borne from the ethically questionable right of conquest (Ramose 2018). Seeing as the Azanian school of thought is not anti-constitution-making, it does not necessarily follow that the people of an

Azania-to-come will be constitutionless. However, if an Azania-to-come *is* to have a constitution, it will be, unlike the prevailing constitution and its predecessors, one founded on the basis of historical justice. That is, a post-conquest constitution (Ramose 2018, 15) for a "post-White-Supremacist or post-conquest" society (Dladla 2020, 136–137).

A Note on Liberal Non-Racialism

Point three above makes mention of the Azanian's rejection of non-racialism—one of the founding values of the conqueror's constitution of 1996. In his paper titled "Contested Memory: Retrieving the Africanist (Liberatory) Conception of Non-Racialism," Dladla (2017a) makes an ethical and political distinction between what he refers to as "liberal non-racialism" and "liberatory non-racialism." The former, Dladla argues elsewhere, describes a dubious political tactic of the conqueror to secure and stabilise a White supremacist socio-political order and, therefore, operates as a *means to an unjust end* (Dladla 2020, 138). On the other hand, the latter describes an ideal that will only be realised once White supremacy has been defeated and sovereign title to the territory has been restored to the indigenous conquered people and, therefore, operates as *an end in itself* (Dladla 2020, 138).

According to Dladla (2017a, 104), the liberal non-racialism preached by the defenders and beneficiaries of the 1996 constitution must be understood as:

> … no more than a name change; it is purely nominal since it is not at once the existential de-categorisation of the racialised subjects. The somewhat idealised falling away of the categories of race does not subtract from the unjustly gained privilege and power of the beneficiaries of racism who acquired that power and privilege on the basis of the discourse and politics of race. Nor does it restore land, freedom, justice, dignity and equality to the victims of racism who were dispossessed and conquered on the basis of appeals to race. The effect of this approach is ultimately to leave the effects of an unjust history undisturbed and to do so in the name of a suspect racial justice.

Modiri (2021, 52) also captures the perverse logic that underpins this style of non-racialism, writing that:

> The main idea behind this liberal racial thinking is to construct a moral equivalence between all uses of race and then to argue that less race-thinking, race-talk, and race-consciousness will in turn lessen racism. This involves "replacing the race *problem* with the '*race*' problem"; that is, to redefine the problem not as historically entrenched structural racism as racialised groups assert but rather to depict anti-racist discourses and movements as the real problem.

In other words, liberal non-racialism purports to conceal the fact that White supremacy is alive and thriving. It is an empty and calculated linguistic manoeuvre of evasion, employed by the conqueror group to neutralise resistance to "the totality of White power" (Biko 2015, 66). It safeguards the ill-gotten gains accumulated through the

racialised conquest, dispossession, enslavement and exploitation of the indigenous conquered people. As such, liberal non-racialism ought to be read as a strain of White supremacy that admits a selected few from the conquered group into the conqueror's power structures, and then calls it social justice (Dladla 2017a, 116).

Morrison writes on the subject of race evasion, here conceptualised as "liberal non-racialism," that "the habit of ignoring race is understood to be a graceful, even generous, liberal gesture. To notice it is to recognise an already discredited difference. To enforce its invisibility through silence is to allow the Black body a shadowless participation in the dominant [White] cultural body" (Morrison 1992, 9–10). This tendency precludes any productive dialogue in which racism is understood as a structural evil and not merely personal prejudice (Dladla 2020, 133).

Whereas before, White liberals in conqueror South Africa already perceived themselves to be *un*-raced, with White as the invisible or unspoken "original type" and all other "deviations from the original type," as raced[23] (Oyéwúmi 1997, 1; see also Willoughby-Herard 2015, 89–92), liberal non-racialism requires that Whites now publicly un-race all historically raced persons as well. However, as Mills (1999, 76) argues, it is only those who actually benefit from racism "who can find it psychologically possible to deny the centrality of race." And since "South Africa" does not become non-racial merely because the conqueror declares it to be so, the constitutional enforcement of non-racialism in post-1994 "South Africa" is "itself a racial act" (see Morrison 1992, 46). Contrary to what the liberals might claim, liberal non-racialism does not upset White supremacy—which is a possibility condition for the liberated, post-conquest non-racial society envisioned by Azanians (Dladla 2017a, 120).

A Note on the Connection Between Conquest, Sovereignty and Reproduction

It was mentioned that sovereign title to territory is the foundational issue with which the Azanian liberationist struggle is concerned. In this regard, Ramose (2018, 7) poses the pertinent question: "By what right did the conqueror annexe and alienate the land from the original inhabitants, thereby acquiring sovereign title to it and the conquered?" He answers as follows: "[a]ccording to the legal philosophy of the conqueror, the basis for the acquisition is the so-called right of conquest." Ramose (2003) then proceeds to prove the ethical untenability and unsustainability of this so-called "right" authorised by the conqueror's "doctrine of Discovery." It is the historico-ethical problem of conquest legitimised by this "right of conquest" that Azanians regard as "[t]he foundational violence … sutured over and tucked away" (Webster 2021, 112) by the constitution of 1996. That is to say, the Azanian tradition conceives of grand apartheid as *an* episode in the longstanding tradition of White supremacy and conquest that persists to this day.

23 Making a similar point, Mills (1999, 76) writes: "The fish does not see the water, and Whites do not see the racial nature of a White polity because it is natural to them, the element in which they move."

Korman (1996, 8) defines this right of conquest as "the right of the victor, in virtue of military victory or conquest, to sovereignty over the conquered territory and its inhabitants." From this, it can be deduced that a successful conqueror asserts a "right" to sovereignty over (1) the land and all its resources; and (2) the conquered population. As an indispensable element of sovereignty, the so-called "land-question" has rightly garnered much attention and will remain central to the Azanian struggle for authentic liberation until its resolution. For Ramose (2003, 541), this is owed to the "intricate and indissoluble connection between land and life." However, it is the second component of this right of conquest as defined by Korman, that is, the inhabitants over which sovereignty is exercised, which is the principal concern of the present article as I think through the ideological instrumentality of new reproductive technologies in conquest.

From the outset, the conqueror was acutely aware that the makeup of the population inhabiting the conquered territory was no trivial matter. The conquering power was to either eliminate or assimilate the inhabitants of the territory for it to effectively establish itself as the new sovereign power (Korman 1996, 29). Upon its arrival in what later came to be known as "South Africa," the conqueror was met with harsh environmental conditions, vast resources and rich lands, as well as the indigenous custodians of the land. It was because of the conqueror's greed, urge to conquer, assumed sense of superiority, and the first two mentioned realities with which he was confronted, that he decided against the corporal elimination of the indigenous people. Instead, the conqueror institutionalised a systematic and systemic programme to dispossess, dominate, subjugate, alienate, and exploit the indigenous conquered people for his and her own benefit (see Terreblanche 2002). The conqueror devised a "gamut of instruments"—statutory and non-statutory, "both explicit and subtle"—to control and contain the indigenous conquered peoples (see Nkrumah 1970, 61–62). The physiological difference in appearance between the conqueror and the conquered, as well as differences in the cultural heritage between these groups (Ramose 2003), provided the conqueror with the necessary material to invent the political fiction of "race" (Dladla 2023). Dressed as a biological fact, the "myth of race"[24] and consequent doctrine of White supremacy formed the basis on which the conqueror established its parasitic social order.

24 In his opening address for the 1959 Inaugural Convention of the PAC, Mangaliso Sobukwe speaks to "the race question" in which he formulates "race" as a political fallacy with real material consequences for both the conqueror and the conquered: "The Africanists take the view that there is only one race to which we all belong, and that is the human race. In our vocabulary, therefore, the word 'race' as applied to man, has no plural form. We do, however, admit the existence of observable physical differences between various groups of people, but these differences are the result of a number of factors, chief among which has been geographical isolation. *In Afrika the myth of race has been propounded and propagated by the imperialists and colonialists from Europe, in order to facilitate and justify their inhuman exploitation of the indigenous people of the land. It is from this myth of race with its attendant claims of cultural superiority that the doctrine of White supremacy stems* [My own emphasis]."

To be sure, the history of the legal entrenchment of White power ideology and segregation in conqueror "South Africa" extends over centuries. To name but one example that preceded even the notorious Natives Land Act of 1913, Swanson (1977) shows in his article, "The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900–1909," how racist colonial policies at the end of the 19th and start of the 20th century laid the groundwork for subsequent urban segregation policies and township spatial planning.[25] Colonial administrators used policies ostensibly designed for the promotion and protection of (White) public health and safety, as well as the regulation of indigenous labour, to justify the displacement of the indigenous conquered people (especially Africans) to the "locations."

Similarly, "South Africa" already had an established institutionalised "reproductive calculus" (see Hartman 2016, 169) prior to 1948 aimed at reproducing a continuous supply of fungible indigenous labour to meet the material demands and lifestyle of the conquering population (Moultrie 2005, 221). Although the demographical composition of the population as a political concern certainly preceded apartheid (Moultrie 2005, 218–221), the White supremacist strategy for and investment in the reproductive practices of the population intensified and expanded after 1948.[26]

Heightened anxieties about the numerical discrepancy between the White-conqueror numerical minority and Black-conquered numerical majority culminated in the invention of the "swamping" metaphor (Moultrie 2005, 220) and the *Swart gevaar*. Writing on the role of reproduction in the politics of population control in "South Africa," Brown (1987, 262) explains that "[t]he 'black peril' (*swart gevaar* in Afrikaans) [was] a central part of white political rhetoric, reminding whites of the common threat they face[d] from blacks and of the need for unity." Moultrie's (2005) examination of how racism and reproduction factored into population control initiatives from the years 1900–1974 shows that for the apartheid regime, population control was unequivocally a numbers game. If the conqueror was to effectively dominate the indigenous conquered peoples, it had to (i) curb the growth of the conquered group subjected to dehumanising conditions but maintain a stable labouring population and simultaneously (ii) invigorate the population size of the conqueror.

In the realm of reproduction, the apartheid regime approached the numbers issue from two seemingly contradictory angles. On the one hand, the 1970s saw the implementation of a ban on abortions, permitting legal abortions only under very limited circumstances. On the other, there was the deployment of an extensive and costly contraceptive campaign (Hodes 2013, 531). Brown (1987, 266) notes that these initiatives did not formally discriminate between racial groups in order to maintain a veneer of legitimacy. The reality was, however, that the abortion ban was intended to stimulate the growth of

25 I am immensely grateful to the reviewer for sharing Swanson's work.

26 For example, the government of 1910 introduced the Immorality Act 5 of 1927 to criminalise sexual relations between the conqueror and the conquered, which the apartheid regime later amended on more than one occasion to perfect White domination.

the conqueror population, while the contraceptive campaign was to stifle the swell of the indigenous conquered people. In practice, other factors compensated for whatever conflicting results each avenue produced. While the prohibition on abortions applied to the conqueror and conquered alike, Hodes (2013, 531) observes that:

> This did not mean that the state took measures to prevent black women from procuring abortions illegally. Although the rate of illegal abortion reached epidemic proportions in this population during the 1970s, it was largely ignored by the regulatory authorities. Illegal abortions for white women, on the other hand, became the focus of continuous, strict surveillance by various subdivisions of the state, including the courts and the police.

According to Hodes (2013, 534), only moneyed White women were able to travel to Britain or the Netherlands to procure safe, legal abortions, while Klausen (2010, 57) observes that:

> … it was black teenagers and women who suffered the greatest harm by the passage of the law. One study estimated that in 1994 44,686 women presented with incomplete abortions at public health facilities, of which 1 percent were White, and 425 of the women died, all of who[m] were black.

At the same time, a prolific contraceptive campaign in which tens of thousands of birth control clinics were opened (almost exclusively targeted at Black women), promoted long-acting (Cooper et al. 2004, 71) and harmful contraceptive injections (Brown 1987, 271; Roberts 1997, 145). The contraceptive campaign, the dangerous ban on safe abortions, as well as poor social conditions and inadequate or non-existent healthcare services available to the indigenous conquered people all had adverse effects on their general health, including their fertility.

Jackson (2015) reminds us that, in addition to the public distribution of contraceptives specifically directed towards curbing Black women from reproducing, the head of the apartheid regime's biological and chemical weapons programme, Dr Wouter Basson, also initiated a secret anti-fertility research project towards the same end. The Truth and Reconciliation Commission (TRC) testimonies of two scientists involved in the operation around the mid-1980s revealed that they were instructed by higher-ups to create a vaccine of sorts that would secretly interfere with the reproduction of the Black population, confirming that scientists were not too long ago actively working on products to sterilise Black men and women (Jackson 2015, 937).

Since the contraceptive campaign was formally indiscriminate, the apartheid government resorted to external measures to offset the use of (safe, and mostly short-acting oral) contraceptives by poor and moneyed Whites alike, with Brown (1987, 267) noting that the:

> White population growth [was] stimulated in other ways. The government promote[d] white immigration, and the economy provide[d] whites with a high living standard and low mortality rates. With specific regard to family planning, the government has encouraged white women to have large families; 1960 was declared the "year of the family."

Additionally, the state extended tax benefits to larger White families, and White women were encouraged by state officials to celebrate the birth of the Republic by having a baby (Brown 1987, 267).

Thus, the conqueror's successors in title understood too well the importance of the womb in the maintenance of conquest. For the conqueror, the womb was a source of White security, as well as the threat of Blackness. It was an understanding that was passed on through generations and tweaked to the circumstances. The ideology of White supremacy has developed and deployed new technologies to control the womb. And when the socio-political climate of the day rendered a technology necessary or obsolete, it adjusted to the times by reinventing its methods or replacing it with something more suitable to the environment. Ideologies do not just disappear by way of negotiated settlements. They adapt as a matter of self-preservation (Terreblanche 2002).

Reproducing Conqueror South Africa

> The material condition of a privileged person/usurper is identical for the one who inherits it at birth and the one who enjoys it from the time he lands. (Memmi 1974, 90)

Constitutionalist endorsers of the liberal use of ARRTs end their discussion at the moment at which a constitutional right or human rights ideal is realised, and they take the ethics of the paradigm to which they attach themselves for granted. They fail to meaningfully engage with the type of world these technologies create. Put another way: there is no critical summation of what lies beyond an isolated instance of exercising a right or the event of using a technology. From the point of view of the liberal constitutionalist endorser, justice is achieved once the desire to use an ARRT is satisfied. However, as I attempt to show in the discussion to follow, this failure is not accidental, but by design.

In this final section, I respond to the constitutionalist endorser's position that these technologies are ethical because they give effect to the right or freedom to form a family. This I so by thinking through the following questions: What *type* of families do these technologies form in conqueror "South Africa?" *Who* do these technologies assist with reproducing, and what are the socio-ethical and political implications thereof? And what does it mean that the conqueror's constitution is instrumental in constructing legal support for ARRTs? And, most importantly, what are the implications of these technologies for the Azanian struggle for authentic liberation? In other words, I attempt to make visible the theoretical and ethico-political connection between ARRTs, White supremacy, and the continuity of conquest in post-1994 "South Africa."

Ultimately, ARRTs do not just allow people to have babies—they also allow *particular people* to have *particular babies* deemed desirable or advantageous within a particular social context. Put another way: these technologies and practices permit people with social capital to reproduce genetically related children; something that would have otherwise been impossible or highly unlikely if it were not for the intervention of ARRTs. Users of these technologies are part of a small elite with the financial means to access ARRTs, who consider directed reproduction a desirable solution to infertility, and are willing to outsource this activity to biotechnologies.

In a Western(ised) context, the portion of the people willing and able to use ARRTs are themselves likely to be typed as desirables in "South Africa" based on their social standing and ease with biotechnologies. Included in this group will be persons who require an egg, sperm, or embryo from a third-party donor to establish a pregnancy. In "South Africa," third-party donors may be known to the recipient, but if a gamete bank is used, the donor must remain anonymous to the recipient or the resultant child.[27] In the case of anonymous donor gametes, prospective parents pay a fee to enlist the services of a fertility clinic or donor agency. The clinic or agency will then source gametes to the client's specifications. Prospective parent(s) are able to select their ideal donor's physical, social and historical characteristics, after which the clinic or agency will "match" prospective parent(s) with a suitable donor from their database (Moll 2019). Those few who can afford to perform a genetic screening of the embryo prior to implantation can exercise even more control over the biological kind and quality of their prospective child.

As mentioned above, specifically under the main features of the constitutionalist endorsement of ARRTs listed 2–5, constitutionalists exhibit their support in abstract, liberal non-racialist, and multicultural terms. ARRT users are generally portrayed as raceless individuals exercising their constitutionally protected rights and freedoms. Moreover, the constitutionalist endorser's claim that ARRTs celebrate the "value of diversity" seems to also suggest that all "South Africans" benefit equally from ARRTs. The crux of this argument lies in the assumption that ARRTs enhance social diversity because, technically, people of all shapes, sizes, and shades *can* make use of ARRTs. For the constitutionalist, it then follows that since ARRTs do not discriminate between individuals and even promote multiculturalism, these technologies must be free of ideology. However, an examination of Moll and Pande's scholarship on donor selection practices will expose the speciousness of this argument.

27 It is only under very particular circumstances and in accordance with established regulatory guidelines that the identity of an anonymous donor may be disclosed. See The National Health Act 61 of 2003, Regulations Relating to Artificial Fertilisation of Persons; The Children's Act 38 of 2005, section 41.

Selected Observations by Tessa Moll and Amrita Pande: Gamete Selection Practices in Conqueror "South Africa" and Non-racial White World-Making

Moll et al. (2022, 282) point out that despite constituting about 8% of the population, 40-57% of "South African" egg donors are White. Thaldar's (2020a, 5) study on egg donor experiences corroborates this observation: the "modal respondent" for his study was White, with Whites accounting for 52.7% of survey participants. It is crucial to mention that the overrepresentation of Whites in the infertility industry cannot be explained by a higher degree of infertility amongst the conqueror group. In fact, infertility, like most health conditions, can be traced back to structural injustice and heightened social vulnerability, which disproportionately affects the indigenous conquered people (see Roberts, 1997, 252). Yet, the fertility industry is flooded with Whites who can afford technological solutions to biological problems with wealth generated through White power structures (see Inhorn and Birenbaum-Carmeli 2008, 179). Whites are also the group who can trust (more than any other group that historically experienced the evils of medical and scientific White supremacy) that medical biotechnologies have their best interests at heart (see Roberts 1997, 259–260; Roberts 2011).

Moll (2019, 4) observes that fertility databases are first and foremost organised according to racial categories reminiscent of the apartheid racial hierarchy. Thaldar's egg-donor study is but one example in which these racial categories are taken for granted. These apartheid-manufactured racial phenotypes also differ in economic and symbolic value (Moll et al. 2022, 286), with White genes regarded as most valuable. When clinics or agencies match donors with suitable recipients, race is the deciding factor, with everything else (such as eye and hair colour, hair texture, medical history, education, social status, physical ability—all racialised characteristics) as secondary considerations. On this score, Moll reports that most fertility clinics only accept applications from donors with a matric certificate, which, in effect, ensures the disqualification of most of the Black population from donating eggs (Moll 2019, 5). If Black donors *do* have a certificate, they can be rejected as donors for not speaking "proper" English, or for residing in a township (Moll 2019, 4). Race, therefore, becomes "coded" into ostensibly non-racial exclusions in the "South African" fertility industry (see Pande and Moll 2018, 28).

ARRT donor matching practices then reinforce race in "bio-logical" (Oyěwùmí 1997, 5) terms with the so-called preferential selection of racialised physical bodies and perpetuates the racist fallacy that socially produced traits and conditions such as intelligence (see Gould 1996), politics, personal recreational or professional interests, musical talent, or social status are reducible to biogenetic heritability (Lewontin 1991, 22–23). The selection of gametes from donors with similar interests, social class, political affiliation, hair texture and so forth, allows prospective parents to buy into the idea that people who look and act alike do so *because* of their DNA (Lewontin 1991, 96–97).

However, the centrality of race in the "South African" ARRT industry and its White world-making abilities can only be fully appreciated in its global context. Conqueror "South Africa" has gained an international reputation as a "reproductive travel" destination, or what Moll and colleagues term a "reprohub" (Moll et al. 2022, 271)—a country whereto prospective parents travel to acquire, or from where they can export, affordable "quality" donor eggs (Moll 2019, 6). Almost all its fertility clinics and donor agencies are privatised, and although financially inaccessible to the greater (Black) majority in "South Africa," services are remarkably cheap for clients from the Global North (Pande 2021a, 338).

What then makes White eggs from conqueror South Africa so popular in the global fertility market? Moll and Pande both accredit this demand to the neutrality of "South African" Whiteness (Moll 2019, 6; Pande 2021a, 340). Pande (2021a, 339) explains that owed to our colonial roots, settlers from conqueror South Africa seem to not have a *particular* look, and can, therefore, easily pass as Euro-American or Australian, thus making White eggs from here especially attractive to buyers from these destinations. Similar to other settler colonies, "South African" Whiteness is a prototype for conventional Whiteness—a Whiteness seemingly uncorrupted by space and time, and eggs from "South Africa," the next best thing for foreign buyers looking for a good deal on White genes (Moll 2019, 6). This "placeless-ness" (Moll 2019, 6) of "South African" Whiteness then also explains the country's extremely White "travelling egg provider"[28] industry, chiefly marketed towards Western clients (Pande and Moll 2018).

"South Africa's" racial plurality attracts members from the historically conquered group as well (Moll 2019, 5; Moll et al. 2022, 283). However, the fact that there are conquered people who make use of ARRTs should not distract us from the underlying ideological intent. The incorporation of conquered people into the White power structures of the conqueror is integral to the liberal non-racial agenda (see Dladla 2017a). Thus, it can be argued that the participation of middle and upper-middle-class members of the conquered group—both domestically and internationally—in the ARRT industry can be explained by their admittance into the earlier mentioned Western economic and epistemic structures founded on bio-logic, individualism, and scientism.

However, the logic of liberal non-racialism in the ARRT industry in "South Africa" reveals itself in much less subtle ways. Studies by both Moll and Pande report that Whites, especially, employ non-racial descriptors to disguise their racial desires when selecting White donors. Instead of using the word "White" to communicate their sought-after donor phenotype, clients picked more elusive attributes such as hair texture, eye colour, and skin tone, as well as euphemisms such as "resemblance," "ancestral likeness," and "kinship" to justify and disguise their desire for Whiteness (Pande, 2021a; Moll 2019). This tendency, Pande (2021a) argues, rejuvenates and reinforces

28 Pande and Moll (2018, 24) define "travelling egg providers" as "young women crossing borders to provide their eggs for use in in vitro fertilization (IVF) and commercial surrogacy."

racial hierarchies in an ostensibly "non-racial" fashion by framing it as a matter of supply and demand—what the constitutionalist endorser would call "personal preference."

Affective non-racial language conceals the manner in which ARRTs individualise and privatise "liberal eugenic" ideology (Pande 2021a, 344) and what constitutionalist endorsers like Thaldar accept approvingly as "voluntary eugenics" (Jordaan 2003, 592). Pande (2021b, 238) argues that the neoliberal valorisation of individual choice in a free market economic system masks the *re*-production of the existing White supremacist social order. Whereas eugenic policies sanctioned by the state are considered morally taboo in the existing human rights tradition, the individual's decision to effect eugenic practices in a free market as atomistic freedoms seems to garner constitutional support. Ultimately, ARRTs allow socio-politically raced individuals to "non-racially" solidify or improve their status in the existing racial hierarchy and by no means undermine White supremacy.

This liberal, non-racial purchasing of White power with ARRTs is further validated by the fact that these technologies are only accessible through respectable members of the scientific and medical community. Not only is the fertility industry disproportionately saturated with White donors and patients, but it is predominantly managed by White professionals (see Moll 2020, 41). Pande (2021a) argues that egg-donor matchers[29] naturalise and reproduce notions of White desirability when they collude with (1) White heterosexual couples to preserve the racial purity of their future child, and (2) single parents or same-sex couples who are *not* trying to find a donor to resemble a partner and do *not* identify as White, to mix their genes with White genes to produce "improved," "cosmopolitan," "Whitened" babies. Pande (2021a, 343) argues that this "desire for mixed-race whiteness" (or what she refers to as "strategic hybridization") observed in local fertility clinics operating transnationally, upholds the existing White world order. Prospective parents seem to believe that it is only possible for them to successfully bond with their future child if they are racial equals, or if the child is a racial enhancement.

Moll (2019, 8) also demonstrates the influence of matchers in the ARRT industry with two examples from her fieldwork. Two women of colour who did not fit neatly into the established racial category system (one described as British-Indian, the other as Ethiopian) sought to purchase eggs to match their own phenotypes but were eventually encouraged by matchers to use White donors. In the case of the Ethiopian client, the matcher qualified this decision on the grounds that the clinic did not have any Coloured donors available to meet the client's racial requirements, and "South African" Blackness would have been unbefitting for someone of the client's calibre, that is to say, she was

29 Moll (2019, 2) writes: "The term 'matchers' describes the professionals who curate information between recipients and donors for the purposes of assembling suitability. Matching is not a job description; in different clinics a range of personnel such as psychologists, doctors, nursing sisters, embryologists, and donor egg agency staff worked with recipients, their desires, sorting technologies, and donor information to assemble a 'good fit'."

"'too good' for South African blackness" (Moll 2019, 9). Moll believes that matchers regarded these women as worthy candidates for White genes based on their "light-skinned appearance, social standing, mobility, and relationship with white partners" (Moll 2019, 9).

However, these attempts at "de"-racialisation (i.e., Whitening) in the ARRT industry by both patients and professionals do not happen in a vacuum. Implicated in this process are representations of racial differences inscribed into everyday images, language, signs, ideas and practices (see Hall 2003). White world-making with ARRTs is then best understood as an expression of the broader culture of White superiority and Black inferiority. ARRTs then not only reproduce this racialised worldview, but it is a product of it as well. As Willoughby-Herard puts it (2015, 96):

> Racist biology has been complicit in making white bodies perfect, beautiful, and adored bodies, and non-white bodies degraded and subhuman bodies. The reduction of the black body to "flesh" can occur only if there is a similar misapprehension of the white body, a sculpting, categorizing, cataloguing, and dissection that objectifies and exoticizes white people's bodies. White people did not become white solely through popular interpretations of segregation laws; white people became white through monitoring and manipulation of their bodies.

The constitutionalist endorser's constricted focus on the patient-matcher relationship merely obscures the broader context in which these technologies and decisions are made. Fixated on the individual's rights and technological novelty, the constitutionalist participates in this project of White world-making by imparting it with legal support.

ARRTs as Progressive Tools for an Old Order

In a recent publication, Thaldar examines three monumental court decisions for ARRTs in "South Africa." He applauds the courts for broadening "our" understanding of procreative freedom, and so establishes "a robust groundwork for a progressive reproductive law in South Africa" (2023b, 43). Yet, I return to Dladla's (2017a, 124) words: "'progressive for whom?' and along with that question 'progressive for what?' The answer to these questions surely cannot be 'progressive for the indigenous people conquered in the unjust wars of colonisation'." This much I believe to be confirmed by Moll and Pande's fieldwork and analysis.

I believe the ideology of ARRTs is revealed by first theorising post-1994 "South Africa" as the conqueror's South Africa and then placing ARRTs in the much longer history of this country's anti-Black and White supremacist reproductive calculus. In this way, ARRTs as tools for White world-making and conquest become completely reconcilable with the conqueror's "non-racial" constitution. Just like its predecessors, the purpose of the 1996 constitution is to sustain and perfect the conquest of the indigenous, conquered people. The methods through which this objective is achieved may adapt to the times

and circumstances, but the core logic of White supremacy and conquest remains the same.

In the liberal Age of Rights, the conservation of conquest requires a measure of creativity. ARRTs—technologies originally invented to solve the problem of *White* infertility—in an intensely individualistic and fundamentally White supremacist society, I argue, now perform the same ideological function as immorality laws, abortion bans, and tax benefits did before. The progressiveness of ARRTs, then, I believe, rests not on their ability to form a family or manipulate biology, but on their ability to more effectively obscure and individualise the workings of White supremacy and conquest.

Hidden behind a veil of constitutionalism, the conqueror feels vindicated by the value of non-racialism. The non-racial language of relatedness and personal preference allows the liberal individual to actively participate, without feelings of shame or guilt, in the reproduction and maintenance of the *status quo* (see Willoughby-Herard 2015, 85). The individual beneficiary of conquest is never asked to reckon with the ideology and culture that informs their use of ARRTs, that is, their desires for genetic ties and Whiteness, nor the broader socio-ethical and political implications of their personal choices (Roberts 1997, 294–308). Aided by the constitutionalist endorser, the conqueror and Western-minded conquered are free to make decisions that promote the best interest of *their* prospective child in an anti-Black and White supremacist society. As such, the technological reproduction of the conqueror and the purchasing of Whiteness is formulated as a right and entitlement, while the "unnatural and premature death" of the indigenous conquered people is not only treated as normal, but is structurally orchestrated (see Dladla 2023).

However, as the transnational fertility industry proves, ARRTs can only be comprehensively engaged as a product and producer of White supremacy if approached with a global perspective. Accordingly, I take seriously Willoughby-Herard's (2015, 3) insistence that:

> … addressing racial politics as if it can be confined to national borders is a point of departure at best … racial politics and its border-crossing features help create and sustain mythic national borders. Thus, global whiteness and the mechanisms and processes by which it is sustained and mobilized can be better understood as the geographic contiguity that results from shared and enduring commitments to white nationalism as well as attempts to deny those commitments.

A careful assessment of conqueror South Africa as merely one site in a dynamic network of "White world supremacy" (Stoddard 1921) will show that despite the occasional intra-racial family feud, White world solidarity persists—as the transnational fertility industry so clearly illustrates.

It was in 1920 that the American historian, political scientist and influential eugenicist, Lothrop Stoddard, published his call for the reunification of global White solidarity in the wake of the so-called "Great War" of 1914. In *The Rising Tide of Color Against White World-Supremacy*, Stoddard certainly grasped the significance of reproduction and its ramifications for White domination.[30] On the nature of White world solidarity, Stoddard (1921, 169–170) writes:

> As a matter of fact, white solidarity has been one of the great constants of history. For ages the white peoples have possessed a true "symbiosis" or common life, ceaselessly mingling their bloods and exchanging their ideas. Accordingly, the various white nations which are the race's political expression may be regarded as so many planets gravitating about the sun of a common civilization. No such sustained and intimate race-solidarity has ever before been recorded in human annals. … white solidarity is so pervasive that we live in it, and thus ordinarily do not perceive it any more than we do the air we breathe. Should white men ever really lose their instinct of race-solidarity, they would asphyxiate racially as swiftly and surely as they would asphyxiate physically if the atmospheric oxygen should suddenly be withdrawn.

Stoddard's words may be over a century old, but his sentiments find an outlet in the contemporary myths of "The Great Replacement" and "White Genocide" (see Goetz 2021). Yet, it would be a mistake to impute such thinking only to conservative types in the conqueror's South Africa and the Western world more broadly. As Modiri (2018, 19) notes: "From a black radical perspective, liberalism is viewed as a less vulgar but nonetheless potent variety of white supremacy that naturalises European definitions of humanity and perpetuates white privilege through its moderate and non-threatening political posture." Indeed, the liberal ethos espoused by constitutionalists does not stray from Stoddard's White supremacist and White solidarity sensibilities. Consider the following words of Hall, quoted approvingly by Stoddard in the same mentioned text: "The moral seems to be this: Eugenics among *individuals* is encouraging the propagation of the fit, and limiting or preventing the multiplication of the unfit. World eugenics is doing precisely the same thing as to races considered as wholes" [my own emphasis] (Stoddard 259). In other words, whereas the contemporary fictions of "The Great Replacement" and "White Genocide" concern themselves with "[w]orld-eugenics," the liberal concerns itself with "[e]ugenics among individuals." And as I have attempted to argue here, this individualisation of racial domination and conquest finds its perfect expression in the rights-based constitutionalist endorsement of ARRTs.

Conclusion

In her fieldwork on donor matching practices and the privatisation of racial power, Moll (2019, 5) reflects on an interview with one White fertility specialist. In the interview,

30 It should then perhaps not surprise anyone to know that he also served on the Board of Directors for the American Birth Control League, that later came to be known as the Planned Parenthood Federation of America.

the doctor shared his thoughts on why "South African" donor eggs attract so much global attention.[31] In her dissection of the doctor's explanation, Moll makes a number of important observations. One of these being that: "[the doctor] equates the white population with the national identity of 'South African,' which he distinguishes from 'African' (i.e., black) people within the country" (Moll 2019, 5). The doctor corroborates (I presume unintentionally?) the Azanian thesis that the indigenous people conquered in the unjust wars of colonisation still hold the status of second-class citizens or "foreigners" in a state not of their own making (Modiri, 2022); that the transition to democracy conceded "defective and limping sovereignty" to the indigenous conquered people of "South Africa" (Ramose 1999, 7).

"South Africa" is indeed the conqueror's polity, and the Azanian Philosophical Tradition demands its end (Dladla 2018). In this article, I have attempted to show how ARRTs undermine the emancipatory objective of Azania. This I do by situating ARRTs in the appropriate historical context of conquest and White domination in "South Africa." The ideological and political value of reproduction did not escape the conqueror when he and she first dispossessed, killed and enslaved the indigenous conquered people, and it does not escape the conqueror now. The conqueror devised numerous strategies to control and manipulate the demographic structure of the conquered territories. These strategies have taken on many forms and the issue of reproduction has been approached from various angles, but all roads ultimately lead toward the same end—the perfection of conquest through the systemised devaluation and dehumanisation of the conquered people. I believe the constitutional endorsement of ARRTs to be only the most recent, and perhaps most refined, iteration of this ideology in conqueror "South Africa" and the White supremacist world more broadly.

In this article, I have problematised the role of ARRTs in the post-1994 reproductive calculus of "South Africa." I have argued that the constitutionalist endorser's narrow focus on the individual's rights and freedoms, so as to justify the "progressive" use of ARRTs, is firmly situated in the Western philosophical tradition. From an Azanian point of view, the individualistic, rights-based, non-racial treatment of ARRTs by the constitutionalist endorser is absolutely compatible with the doctrine of White supremacy and the prevailing relations of conquest.

In no way does the constitutionalist endorser critically reflect on the social context in which ARRTs are created, or the world created by it. Stated differently, the present critique of the constitutionalist endorsement of ARRTs is pitched at an ideological level. ARRTs may have been invented to solve the problem of *White* infertility (Roberts

31 The exact response of the specialist was: "*Because of the diverse white, what is the South African population. Apart from that we have a huge African population*, which we can supply the whole of Africa. [Donors] that come out of the Ciskei and Transkei and so forth. And then you've got the [white] South African makeup, where do they come from? They're Dutch, they're German, they're Italian, they're French. In other words, you've got this wonderful genetic makeup" [my own emphasis] (Moll 2019, 5).

1997), but their true ideological value lies in the continuous ontological devaluation of Black life (see Dladla 2023; Robert 1997). Studies by Moll and Pande on regional and transnational egg donations illustrate that ARRTs reify and devalue race in biological terms in accordance with White supremacist racial hierarchies; they legitimise desires for and the purchasing of racial purity and Whitening in liberal non-racial terms; reinforce and normalise the idea that social phenomenon, cultural traits and racist stereotypes are biologically inherited; individualise the project of anti-Black and White supremacist social engineering within the Western framework of human rights; and facilitate the reproduction of White supremacy and solidarity at a global level. These outcomes are in direct contradiction to the liberatory non-racialist and anti-White supremacist posture of the Azanian Philosophical Tradition, and thus, undermine the Azanian struggle for a post-conquest Azania. A liberationist reading of ARRTs, I believe, demands an ethical confrontation and rethinking of how we—as successors in title to conquest—have come to understand reproductive freedom as the freedom to subjugate and dominate through reproduction.

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