

Prophecy and the Pandemic: The Vindication of Decolonial Legal Critical Scholarship

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Abstract

The ongoing COVID-19 global pandemic offers the legal academy a special opportunity to reflect on various conceptual, ideational, and ideological questions that cleavage the academy and society. In this exposition, I embrace an exegetical-cum-legalist enunciation to analyse the material conditions that define the lives of the historically and presently colonised peoples of South Africa. In the main, this treatise advances two arguments: (1) that the present socio-economic conditions illustrate the decisive thrust of decolonial legal critical scholarship and its ability to predict the future; and (2) that critical approaches to the law constitute a legitimate intellectual prophetic engagement. I conclude by insisting that decolonial legal critical scholarship should be the cornerstone and a focal point of emphasis in the calls to shift [and decolonise] all facets of the law and its curriculum.

Keywords: Prophecy; critical legal scholarship; decolonial theory; decolonisation; global pandemic; legal education; LLB Curriculum

Introduction*

Since the dawn of South Africa's [so-called] democracy, there has been considerable debate about the future of legal scholarship. The debate has been nuanced and features varying voices. In the main, this debate has been divided into two schools of thought—the first is the liberal-constitutionalist school, and the second is the critical-leftist school.¹

In this commentary, I recount some of the arguments, conceptualisations and predictions that have been made by the critical-leftist school and argue that these constitute an intellectual prophecy. In the context and theme of this special journal issue—it is apt to assert that prophecy means that decolonial critical legal scholars predicted the coming of the material and socio-political conditions that define the ongoing global pandemic. I assume an exegetical enunciation in 'prophecy' to deliberately illustrate the decisive thrust of decolonial legal critical scholarship and its ability to predict the future. The prophetic metaphor is extremely crucial, especially as regards the reality that decolonial legal critical scholarship has been treated with disdain, contempt, and suspicion in certain quarters of the legal academy.

My argument will be propounded in four segments. Following this introduction, the second section qualifies decolonial legal critical scholarship as a 'prophecy'. This section demonstrates the metaphor in exegetical approaches and argues that the pandemic has proven that the scholarly interventions of South African legal critical scholars constitute an intellectual prophetic engagement. This section briefly discusses the impact that the pandemic has had on the colonised people of South Africa—the discussion is done in light of and with the background of the 'prophecy'. The third section puts forth some rebuttals against decolonial legal critical scholarship in South Africa and shows why this pushback is disingenuous and how the manifestation of the prophecy has proven them wrong. The fourth and final section concludes this commentary.

The Prophecy and the Pandemic

The image 'prophecy' is not a new marker in suppositions such as the one to be made in this commentary. For example, Prince Dibeela, Puleng Lenka-Bula and Vuyani Vellem edited a volume of essays titled *A Prophet from the South*² in honour of one of South Africa's foremost academics, Prof. Allan Aubrey Boesak. In *A Prophet from the South*, different contributors write critical essays reflecting on a lifetime of Prof. Boesak's scholarly work—all of them agree that Boesak's critical scholarship is

* A minor change was made to the reference list post-publication in 'Latest Articles' on 29 June 2022.

1 Joel Modiri, 'The Jurisprudence of Steve Biko: A Study in Race, Law and Power in the "Afterlife" of Colonial Apartheid' (PhD thesis, University of Pretoria, 2017) 42.

2 Prince Dibeela, Puleng Lenka-Bula and Vuyani Vellem, *A Prophet from the South* (SUN MeDIA 2014) 1–281.

prophetic for four reasons: (1) it rebukes the vulgarity of prevailing social systems and hierarchies—this is also known as the act of ‘resisting Lordless power’;³ (2) it cogently studies the material conditions of the day, whilst proffering alternative means to re-order society;⁴ (3) it allows history to lend perspective, and thus offer predictive options for the future⁵ and; (4) it speaks of the need for the church to rescue Jesus from whiteness, Eurocentrism, racism, patriarchy, homophobia, transphobia, capitalism and other known forms of oppression.⁶

Cannon presents an incisive metaphorical function of ‘prophecy’ outside of strict Christian-centric epistemologies. She argues that prophetic engagement includes epistemic intellectual interlocutory aimed at resisting all forms of oppression. This also includes keeping alive the memory of the entangled web of systems that continue to oppress and colonise people long after the official demise of colonialism and slavery:

We therefore highlight the resistant strategies of people living under slavery, colonialism and apartheid, in order to re-educate ourselves about worthwhile, identity-forming convictions and concrete courses of action that sustained our fore-parents in their fight against insidiously corrupt, horrendous assaults. This [means that the] re-education of the mis-educated is a search for our true humanity...⁷

Cannon’s definitional supposition allows for a comprehension of prophecy as one that could be correctly understood as the intellectual task and the scholarship of activism that searches for the re-humanization of dehumanized peoples of the world.

Using ‘prophecy’ as an intellectual expression is not limited to theological circles, but is a mainstay in disciplines such as philosophy, political sciences, sociology and even in theorising done in the ‘hard sciences’. In the context of environmental systems, statistics, hydrology and biological sciences, Keith Beven frames ‘prophecy’ as follows:

The situation relevant to hydrological prophecy may be illustrated by the tale of Delphic Monkeys, first told in a discussion session at the NATO Advanced Institute on Recent Advances in the Modelling of Hydrological Systems organised by David Bowles and Enda O’Connell in Sintra, Portugal ... It is a model based on infiltration excess overland flow runoff generation and kinematic routing on hillslope elements and within the

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- 3 Nico Koopman, ‘Jesus Christ is Lord: An Indispensable Parameter for Theology in Public Life?’ in Dibeela and others (n 2) 44–45, see also Dirkie Smit, ‘Resisting “Lordless Powers?”: Boesak on Power’ in Dibeela and others (n 2) 11.
 - 4 Alex Bhiman, ‘A Personal Reflection: Questioning the Present from the Lenses of the Theological and Political Influence of Allan Boesak’ in Dibeela and others (n 2) 51.
 - 5 Orfelia Ortega, ‘Nevertheless, God: The Theology of the Absurd’ in Dibeela and others (n 2) 109.
 - 6 James Cone, ‘Strange Fruit: The Cross and the Lynching Tree’ in Dibeela and others (n 2) 210. Take note that James Cone first presented this in his 2006 Ingersoll Lecture at the Harvard Divinity School. It was published as ‘Strange Fruit: The Cross and the Lynching Tree’ *Harvard Divinity Bulletin* (Winter 2007) 46–57.
 - 7 Katie G Cannon, ‘Lessons of Liberation in the Struggle for Freedom’ in Dibeela and others (n 2) 175.

channel network...Application to prophecy changed the response to after development requires a specification of a new set of parameters.⁸

To be sure, decolonial critical legal scholarship is posited in this commentary as prophecy because it resonates with ‘prophecy’ as understood in *A Prophet from the South*:

It is ironic that Amos comes from the southern kingdom of Judah, to which the monarchy wants him to return. He is too much of a disturbance and a thorn in the flesh for the elite of the time – they would rather he return to “his own people”. The South has rich ideological symbolism for us regarding the struggles of the majority of the earth’s peoples. Boesak is an exponent of the suffering, struggles and the freedoms of the people of the South. Not only is he a prophet from the South but – like Amos – he, too, has been at loggerheads with the empires of our time.⁹

Whilst there are quite a few decolonial and legal critical scholars in the South African legal academy, I limit myself to the scholarly treatises of Tshepo Madlingozi and Joel Modiri.¹⁰

Madlingozi presents a PhD thesis titled ‘Mayibuye iAfrika?: Disjunctive Inclusions and Black Strivings for Constitution and Belonging in “South Africa”’¹¹ where he sharply criticises South Africa’s constitutional polity, arguing that it is founded on elitist pacts that do not reflect the material and spiritual aspirations of the people on whose behalf it claims its genesis. The central thesis of his argument is two-fold: (1) that the perennial protest by marginalised communities is impelled by the fact that the constitution¹² does not rise to the demand of decolonisation; and (2) that the constitution’s failure to live

8 Keith Beven, ‘Prophecy, Reality and Uncertainty in Distributed Hydrological Modelling’ (1993) 16(1) *Advances in Water Resources* 46.

9 Dibeela and others (n 2) 1.

10 Some of South Africa’s notable decolonial and critical legal scholars include Ndumiso Dladla, Henk Botha, Danie Brand, Babatunde Fagbayibo, Khanya Motshabi, Karin van Marle, Emile Zitzke, Sanele Sibanda, Andre Mbatha Mangu, Isolde de Villiers, Elmien du Plessis, Lethabo Mailula, Illana le Roux, Ntombizozuko Dyani-Mhango, Reshard Kolabhai, Sameera Mahomed, Gudani Tshikota, Charmika Samaradiwakera-Wijesundara, Ntando Sindane and others.

11 Tshepo Madlingozi, ‘Mayibuye iAfrika?: Disjunctive Inclusions and Black Strivings for Constitution and Belonging in “South Africa”’ (PhD thesis, Birbeck University of London, 2018).

12 Note that for purposes of this commentary, ‘constitution’ will be intentionally written with a small letter ‘c’ instead of caps. This is in line with commentary’s approach that hedges a decolonial critique against the deification of the constitution of the Republic of South Africa. Decolonial legal critical scholarship appreciates that one of the weaknesses of South Africa’s intellectual traditions is that it unduly places the constitution at the zenith of epistemic suppositions, falsely claiming that this is so merely because of its supremacy. Because of the reality of coloniality, and the need for South Africa to still undergo substantive decolonisation, it is prudent to revisit all institutions of power and control, and this includes the constitution. This approach/reasoning is drawn from a similar practice in Mogobe Ramose, ‘Towards a Post-conquest South Africa: Beyond the Constitution of 1996’ (2018) 34(1) *SAJHR* 326–341, specifically footnote 1. See also Ntando Sindane, ‘Why Decolonisation and not Transformative Constitutionalism’ (2021) 15(1) *Pretoria Student LRJ* 237.

up to decolonial demands can be understood by studying the ambivalent racial melancholia and the double-consciousness of South Africa's political elite.¹³

Madlingozi's PhD thesis appears to be a culmination of a lifetime of decolonial critical legal scholarship—for example, in an earlier article, Madlingozi argues that the constitutional moment presents itself as one that seeks to undo colonial conquests, yet it actually serves to deepen and entrench imperial gains.¹⁴ This assertion stems from Madlingozi's observation that in the period between 1992 and 1998, the government of the ANC leaned greatly towards a neo-liberal policy framework—he found this to be somewhat surprising, considering that the ANC was anti-liberalisation pre-1994.¹⁵ This 'neoliberal turn', according to Madlingozi, has had the effect of maximizing the black political elite's stranglehold on power and paved way for the unfettered accumulation of wealth by the white bourgeoisie (the historical/present oppressors), whilst deepening the political, social, economic and spiritual disenfranchisement and dismemberment of the colonised people of South Africa.¹⁶

In a subsequent intervention, Madlingozi argues that the post-1994 reality should be understood as a subtler form of apartheid. He accordingly labels this as 'neo-apartheid constitutionalism'.¹⁷ Madlingozi posits:

Neo-apartheid constitutionalism is the name I propose to call this political and legal system that reiterates the constitutive ontological Manichaeism at the heart of the founding of South Africa in 1910. I borrow and expand upon the concept of "neo-apartheid" from Leonard Gentle who defines it as a socioeconomic system where "capitalist accumulation has been filtered through and sustained by social relations inherited from colonialism ...". I expand on this concept and propose to introduce it into the lexicon of constitutional discourse to call attention to the fact that post-1994 constitutional re-arrangements are transforming society in ways that do not instantiate a fundamental rupture with the inherited, sedimented and bifurcated social configuration.¹⁸

The image of 'bifurcated social configuration' speaks to the very lived South African reality of a socio-economic gap that continues to widen between rich people and poor

13 Madlingozi accordingly labels these ANC (cohort of leaders between 1984 and 1996) political elites as 'exceptional natives' and 'amakholwa'. This labelling is a testament, and with reference, to their mostly Western-educated and Christiancentric conditioning. The constitution that is agreed upon between colonisers, and their collaborating black elites is thus not a product of a people coming together, but rather a pact between colonisers and native elites who assimilated and were co-opted into whiteness and the white-dominated world.

14 Tshepo Madlingozi, 'Post-Apartheid Social Movements and the Quest for the Elusive "New" South Africa' (2007) 34(1) *Journal of Law and Society* 79.

15 *ibid.*

16 *ibid.*

17 Tshepo Madlingozi, 'Social Justice in a Time of Neo-apartheid Constitutionalism: Critiquing the Anti-black Economy of Recognition, Incorporation and Distribution' (2017) 1 *Stellenbosch LR* 125.

18 *ibid.*

people. The meanings of rich and poor still carry the same race/class divide that they did prior to the democratic breakthrough and indeed the promulgation of the constitution. A careful reading of Madlingozi suggests that present sufferings that are exacerbated by the ongoing global pandemic are a direct consequence of a constitutional arrangement that did not bring about a fundamental rupture. The absence of a fundamental rupture means that the constitution does very little to constitute a new polity; instead, it reconstitutes the old political society, but now with a newer post-1994 language of optimism and rainbow nation, whilst maintaining the racist colonial patterns of power and control.¹⁹

Modiri authors a PhD thesis titled, ‘The Jurisprudence of Steve Biko: A Study in Race, Law and Power in the “Afterlife” of Colonial Apartheid’ where he draws from Africana Existential philosophy to make a multipronged critique of South Africa’s post-1994 situation. In this thesis, Modiri critically analyses the epistemic, spiritual, political, and social conditions that define South Africa’s reality after the proverbial 1994 democratic breakthrough. Modiri’s approach is one that sums up the prevailing situation as that of anti-black racism as being definitive of all facets of South Africa’s lived reality.

Modiri’s criticism is in light of white South Africans, who are only 8.9 per cent of the population according to the 2011 census, yet own more than seventy per cent of the country’s land and are at the helm of more than seventy per cent of its top management positions in corporate. Modiri specifically chooses Steve Biko’s philosophy of Black Consciousness as a lens through which to observe South African reality and to develop an alternative approach to law and jurisprudence as a response to race and racism that continues to bedevil this country post-1994. To be sure, Modiri’s PhD thesis is an important intervention because its reliance on Black Consciousness philosophy prophetically illustrates that the post-1994 problem is anti-black racism, and that the constitutional moment has done very little to quell and resolve this.

In a subsequent intervention, Modiri argues, that instead of resolving the crisis of institutionalised anti-black racism, the Constitution breeds and perpetuates anti-black norms and tropes.²⁰ He accordingly argues:

South Africa’s constitutional democracy has over the years been rendered empty by the absence of concrete historical justice and the non-realisation of an emancipatory experience of freedom and dignity in the lives of the Black majority in South Africa. While a set of external global economic forces and the chronic levels of corruption and maladministration by the ruling ANC government partly accounts for these problems, it is the *longue duree* (long duration) historical unfoldment of European colonial conquest

19 *ibid.*

20 Joel Modiri, ‘Conquest and Constitutionalism: First Thoughts on an Alternative Jurisprudence’ (2018) 34(3) SAJHR 303.

and white supremacy in conjunction with the terms of the constitutional transition and negotiated settlement that will be marked out for critical examination in this article.²¹

The thrust of Modiri's prophetic intellectual engagement is evidenced in his long-standing insistence that the legal academy should turn towards critical legal theory as a ploy to aid the course to transform, and indeed decolonise, the law and its curriculum.²²

What do we know about the impact that the pandemic has had in South Africa and Africa? [Black] Africa has undergone what some social commentators refer to as 'vaccine apartheid'. This is a reality of a pandemic wherein Western and European countries continue to deem it fit to hoard vaccines and not share them with developing and third-world countries. Indeed, it is true that it is the class, colonial and racial lines that divide the colony and the West, and it is this reality that is drawn by the prophetic scholarly interventions of the likes of Modiri and Madlingozi, among others.

In South Africa, in the first few weeks of the lockdown in 2020, there were reports of skirmishes between law enforcement agencies and people due to mass evictions—both in urban dwellings and as well as in informal settlements. In the wake of government-announced level 5 lockdown restrictions, many people lost their jobs, and as a result, were unable to pay rent. Street dwellers too, found themselves languishing between a rock and a hard place, because, on the one hand, the streets are their place of dwelling, whereas on the other hand, lockdown regulations banished all persons into their homes and insisted that nobody should be on the street.

On both material and spiritual plains, what is 'a home' or 'shelter' to covid-retrenched black working-class people who find themselves evicted owing to rent non-payment? What and where is home to the already homeless street dwellers who are told that they are no longer allowed to occupy the streets because of COVID-19 restrictions? These questions are posited considering the very glaring race and class colonial divide that defines our collective reality—the mainstay of post-1994 South Africa, and indeed, the liberal constitutional dispensation. Quite appropriately, these prevailing conditions allow us to appreciate that decolonial critical legal scholarship prophetically castigated the foundation of a constitutional framework precisely because it does not rigidly insist on social justice, substantive redress, and reparations for the oppressed.

In the winter of 2021, South Africa witnessed sporadic protests that culminated in the looting of retail shops and related vandalism. Although the genesis of these protests came in the aftermath of the imprisonment of one popular politician, analysts and commentators agree that these protests are a product of endemic hunger, poverty, hopelessness, unemployment, and all other social ills that continue to throttle black

21 *ibid.*

22 Joel Modiri, 'The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-) Apartheid South Africa' (2012) 28(3) SAJHR 406.

people even after the official demise of colonial apartheid.²³ These are all manifestations of the prophetic critique of South Africa's constitutional polity, as posited by decolonial critical scholars.

The prophetic thrust of Madlingozi's and Modiri's scholarly works is evidenced in their ability, not to predict the coming of a deadly virus, but in being able to hedge a critique of society that uncovers the colonial and racial societal ordering that has been exacerbated by the on-going global pandemic.

Pushback and Resistance to Decolonial Critical Legal Scholarship

It is important to illustrate the resistance that decolonial legal critical scholarship has been subjected to. Dennis Davis accordingly demonstrates the two dominant forces in the debate about South Africa's constitutional polity.²⁴ Davis argues that on the one side, there are constitutional promoters, and on the other side there are constitutional denigrators—he accordingly labels this tension as ‘a binary approach to the constitution.’²⁵ Interestingly, Davis makes use of Joel Modiri's scholarly writings to illustrate and demonstrate the type of constitutional denigrator that he bases his article on.

The promoter/denigrator tension among legal scholars as regards the legacy of the constitution takes shape in the same set of demarcation set about by Joel Modiri between the liberal-constitutionalist school and the critical-leftist school. Decolonial scholarship falls within the critical-leftist school, whereas the pushback against it falls into the former school. Davis explains:

[t]he binary approach to the Constitution that dominates present South African legal discourse, namely ‘the best constitution in the world’ to which we all must pay obeisance versus ‘the Constitution is part of a perpetuation of a colonial project’, is neither inevitable nor should its diametrically opposing claims be immune from vigorous political contestation in favour of a different political project. If, as Haslanger contends, racial oppression is linked inextricably to the consequences of social forces and hence the power imbalances in society, it will be argued that the Constitution can contribute

23 This is demonstrated by Nombulelo Shange and Ntando Sindane who collectively argue that whereas the July 2021 uprisings were framed as organised in solidarity with former President Jacob Zuma, following his arrest, the looting and related violence stemmed from the fact that black people are hungry, unemployed and feel largely excluded by South Africa's economy whose patterns of control and ownership still reflect apartheid colonial demographics. See, Nombulelo Shange and Ntando Sindane, ‘If Poverty not Eradicated, Looting will Happen Again’ (*News24* 28 July 2021) <<https://www.news24.com/news24/columnists/guestcolumn/opinion-violent-events-will-continue-to-take-place-if-poverty-is-not-eradicated-as-a-matter-of-urgency-20210728>> accessed 12 February 2022.

24 Dennis Davis, ‘Is the South African Constitution an Obstacle to a Democratic Post-colonial State?’ (2018) 34(3) SAJHR 361.

25 *ibid.*

to the change of the social-economic conditions from which these power imbalances are sourced.²⁶

An insightful observation can be learned from Davis’ analysis—whereas he draws our attention to the binary approach to constitutionalism, he resists the urge to be a *draadsitter*;²⁷ instead, he expressly aligns himself with the grouping of liberal constitutionalists who believe that the Constitution is the solution towards transforming South Africa’s neo-apartheid reality.²⁸ What is also mightily commendable about Davis is that he does not commit a mistake that some South African law academics commit—he does not conflate liberal constitutional insights with critical approaches to the law.²⁹ Davis’ level of epistemic honesty enables a clearer differentiation in the type of scholarly pushback that decolonial critical legal studies have been subjected to.

I note two types of pushback. The first is one that completely dismisses decolonial critical legal approaches and insists that they should not be taken with any seriousness. The second type of pushback is one that critiques decolonial critical approaches in search of nuanced articulations, whilst not dismissing them completely.

Willem Gravett is an example of the first type of pushback, when he decisively argues that critical approaches to teaching the law are an agenda to completely do away with the legal academy and have it become a humanities subject.³⁰ Gravett further argues that decolonial critical legal scholarship is laden with undue ‘Marxist/Anarchist’ undertones and is bound to fail.³¹

26 *ibid.*

27 This is a South African colloquial term to make reference to a person who is either neutral or undecided when given an option to choose between two things. It is from the Afrikaans language, eg, ‘Hy is ’n draadsitter’, loosely translated: ‘he is a fence sitter because he does not want to make his choice known.’

28 Davis (n 24) 367: ‘Without contending that an alternative approach to the Constitution is the only one or that it can trump the difficulties of a significant interpretive contest, it is possible to present a different understanding of the Constitution: one that more fully embraces a complete break from a racist, sexist and colonial past and certainly one that, contrary to Sachs’ eschewing of any form of economic model or Modiri’s silence thereon, sustains an economic vision that is congruent with dignity, equality and freedom.’

29 The act of conflating liberal constitutional insights with critical legalist reasoning is studied quite extensively by Ntando Sindane in his criticism of an earlier article co-authored by Sibabalo Mtonga and Paul Mudau (see Paul Mudau and Sibabalo Mtonga, ‘Extrapolating the Role of Transformative Constitutionalism in the Decolonisation and Africanisation of Legal Education in South Africa’ (2020) 14(1) Pretoria Student LRJ 44–57) where the duo incorrectly argue that decolonisation and transformative constitutionalism can be used in interchangeable terms because they mean the same thing, and stem from the same school of thought. Sindane makes the opinion that the habit to conflate these concepts robs the legal academy the opportunity to attain definitional clarity on these matters. See generally Ntando Sindane, (n 12) 236–254.

30 Willem Gravett, ‘Of “Deconstruction” and “Destruction” – Why Critical Legal Theory cannot be the Cornerstone of the LLB Curriculum’ (2018) 135(2) SALJ 289.

31 *ibid.*

It is apt to assume that Gravett perceives the prophecy proffered by critical approaches to law as something that amounts to intellectual adventurism, and that should be dismissed with contempt. An important aspect of Gravett's pushback is that it maps out the traditions of critical approaches to the law beyond South Africa, and indeed beyond the "Fees Must Fall" moment. Gravett recounts raging debates that took place in American law schools (mostly Harvard Law School) between critical legal scholars and their opponents in the mid-1970s. For the purpose of this commentary, it is crucial to demonstrate that the approach embraced by local decolonial critical scholars constitutes the continuation of long-standing networks of resistance and alternative methods of thinking, knowing, and doing.

The second type of pushback is evidenced in Jackie Dugard's critique of decolonial critical legal scholarship, when she argues that decolonial suppositions are unjustly laden with an overly race-centering analysis that ignores other aspects such as gender and class.³² Interestingly, Dugard's pushback is in the make of a scholarly published response to Tshepo Madlingozi's insights on decolonisation—this is testament to the fact that decolonial critical legal scholarship is always subject to a specific level of pushback in the South African legal academy. However, although it is pushback, what sets Dugard apart from Gravett is that she does not argue that critical approaches are bound to fail; instead, she argues that they could have a more decisive thrust when articulated through an intersectional lens:

Our aim is to highlight that apartheid's deeply racialised model of capital accumulation and enduring legacy of socio-economic exclusion should not be examined merely from the single-ground hierarchisation of race but rather as the conglomerate of intersecting axes of disadvantage that perpetuate, contour and deepen poverty and inequality. Consequently, in response to the critique of the constitutional order and rights as functional both to the renewal and maintenance of racial exclusion in an anti-black society, and to contribute towards the completeness of an account of contemporary oppression, we submit that a substantive account of injustice needs to be formulated on the grounds of multi-faceted and intersectional oppression. This, we argue, is because there is no single abstract and absolute experience of oppression and its resultant disadvantages. Rather, oppression and disadvantage comprise multiple situated singularities that coalesce differentially according to individual identity and positionality in the socioeconomic terrain. Therefore, to be fully subversive and transformative, any analysis of the constitutional order and the power dynamics must challenge the tendency to privilege an abstract and unitary voice of the oppressed as merely black. The pitfall of relying on race (or any other singular axis of discrimination) – what may be called race essentialism – is that it results in fragmenting complex subjects and their corresponding realities in critical ways.³³

32 Jackie Dugard, 'Bringing Gender and Class into the Frame: An Intersectional Analysis of Decoloniality-as-race Critique of the Use of Law for Social Change' (2021) 32(1) Stellenbosch LR 29.

33 *ibid.*

Dugard's argument is essentially a caution against a single-lens articulation of a people's oppression—she insists that the urge to overly rely on race analysis when seeking to decolonise the law and its curriculum will lead to wayward outcomes because this neglects the intricacies and nuances that define oppression in South Africa. Dugard's approach is somewhat similar to that of Dennis Davis, in that it recognizes the epistemic validity of critical approaches to the law and does not reject them. Instead, it prefers to embrace an intersectional approach whose method of analysis is multi-layered, instead of having race at its zenith.

Regardless of the pushback to decolonial critical legal scholarship, there are legal scholarly reflections about the impact that the global pandemic has had on South Africa. One such legal analysis is made by Christa Rautenbach: she observes that the pandemic has exposed the deep-seated inadequacies/inequalities that define South Africa.³⁴ Although Rautenbach does not hedge her critique from the lens of decolonial theory, she vindicates the prophetic interventions of decolonial critical scholarship by demonstrating that the post-colonial society continues to mirror the bifurcated reality, where historically colonised people remain on the underside. Implicit in liberal constitutionalist surmise about the global pandemic is a sentiment that absolves longstanding decolonial legal critical analysis.

In the Final Analysis

I bestowed prophet status not on individuals, but on decolonial critical scholarship in its totality. I argued that critical legal scholarship should be understood as prophetic because of its ability to proffer a critique of the prevailing constitutional polity and predict the material conditions that continue to define the lives of colonised people of South Africa. These predictions, and their accompanying critique, are evidenced in the social, economic, spiritual, and physical carnage during the COVID-19 pandemic. I illustrated that the prophetic thrust has been subjected to scholarly pushback, and that the prevailing conditions of the ongoing pandemic have disproved the naysayers, thus vindicating decolonial critical scholarship. In summation, it is appropriate to insist that, moving forward, the legal academy should take seriously critical scholarship's prophetic interventions and that critical legal scholarship should be central and at the operative-zenith of the calls to shift [and decolonise] all facets of the law and its curriculum.

34 Christa Rautenbach, 'The Many Colors of Covid-19 in South Africa: A Legal Perspective' in Werner Gephart and Jule Leko (eds), *In the Realm of Corona Normativities II: The Permanence of the Exception* (Vittorio Klostermann 2022) 199.

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