Rape Law Reform through a Decolonial Feminist Lens: South Africa, Africa and Beyond

by

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Abstract: Rape law reform is hardly a new topic in South Africa, with South Africa's anti-rape movements and scholarship preceding the country's 1994 transition to democracy. However, a history of colonial and apartheid political, cultural and economic marginalisation has meant that women of colour have rarely been the authors at the forefront of rape law reform discourses. In investigating the different ways that South African women of colour are excluded from post-apartheid rape law reform processes, I employed a decolonial feminist theoretical framework that problematised exclusion from the viewpoints of South African women of colour. It is a framework that also illuminated some of the realities that women of colour across the world had in common, as created by the global enterprise of European colonialism. In this article, I give an account of what a decolonial feminist framework entails. I expand on the concept of the coloniality of gender as the central concept within the decolonial feminist framework, encompassing within it the coloniality of being, power and knowledge as the three main pillars of decolonial thought.

Introduction

Rape law reform is a political phenomenon entailing the changing of substantive and procedural laws about rape in a given national or municipal jurisdiction. It is just one type of response to rape as a pervasive and ever-evolving social problem that is present in many countries and societies worldwide. Rape law reform is often tied to what may be called anti-rape or rape law reform socio-political movements aimed at getting the government and relevant lawmakers to change the aforementioned laws. Historically, these movements have been initiated by feminist or women's rights activists targeting gender-based violence and discrimination. While rape and other gender-based violence can be perpetrated by or targeted against persons of any sex-gender configuration, the feminist use of the

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term was intended to attract political attention to the types of gender-based violence perpetrated mainly against women (Carpenter 2004). Feminist anti-rape theorising is aimed at exposing the social beliefs enabling rape to occur so as to reduce or eliminate this manifestation of interpersonal violence, based on definitions of rape that more closely reflect victims' experiences of violence and violation. This theorising is critical, given that rape and other sexual violence have been variously not recognised, trivialised or rendered invisible by laws and societies.

The first world-renowned and influential theoretical perspectives on rape law reform emerged in the context of the feminist second wave in the United States of America (USA) and other White-majority democracies of the West, between the 1960s and the1980s (Bridger 2024; Morrell and Clowes 2016). The leading cluster of these feminist theoretical perspectives was radical feminism, which revolved around expositions of the pervasiveness of coercion and unequal gender power relations in arguably universal heteronormative, patriarchal societies (Bumiller 1987; Finley 1989; MacKinnon 1983). Following closely behind radical feminism in terms of influence was liberal feminism (rooted in the feminist first wave), with its preponderance on consent as the basis of individual freedoms, bodily autonomy and procedural equality between the sexes (Estrich 1989). American women of colour's theoretical insights on the silencing and erasure of women of colour's race-specific experiences of the shortcomings of the law are also relatively well known internationally (Crenshaw 1991; Davis 1978). What is not as well established are the theoretical insights into African and other Global South women of colour's relationships with rape law reform, particularly those that articulate these relationships from the viewpoints of these non-Western women of colour.

In this article, I elaborate on what a decolonial feminist framework entails and explain my use of its conceptual tools in my PhD study to investigate South African women of colour's exclusions from post-apartheid rape law reform (Motlafi 2021a). I give a brief background of my PhD research and discuss the relative strengths of a decolonial feminist framework when compared with other feminist frameworks on women's relationships with the law. I expand on the concept of the coloniality of gender as coined by Argentine decolonial feminist philosopher María Lugones. In brief, the coloniality of gender is the conjoined colonial construction of race and gender to subjugate peoples of colour and to hierarchise them in relation to each other and to White peoples of European descent (Lugones 2008; Motlafi 2021a). More specifically, it refers to the enduring impact of the colonial conjoining of race and gender on societal organisation and relations even after the end of colonial rule. I argue that the concept encompasses being, knowledge and power aspects. These aspects are the basis for my conceptualisation of the ontological-cultural, epistemic-educational and economic-spatial dimensions of women of colour's exclusion from rape law reform (Motlafi 2021a; Motlafi 2021b). At the core of my endeavour is the continued development of a shared decolonial feminist vocabulary for articulating women of colour's exclusion from rape law reform, as well as their exclusion from conceptualisations of what it means to be human beings, citizens and producers or holders of knowledge. Also at stake is a deeper understanding of how colonial constructions

of race and gender are as much a factor in the tensions and violence within and across communities of colour as they are in the tensions and violence between White peoples and peoples of colour.

Rape Law Reform in South Africa: the Local, Regional and Global Context

Rape law reform in African and some other Global South countries has been of interest to feminist scholars in Peace and Conflict Studies (PACS), because of its part in these countries' efforts to respond to past injustices and to establish legitimate rule of law in the aftermath of colonialism, civil war and/or regime change (Medie 2019; Motlafi 2018; Mageza-Barthel 2012; Naylor 2008). As such, South African rape law reform has been investigated to assess the country's post-apartheid institutional development and progress (or lack thereof) in making human rights accessible to all (see Greenbaum 2008; Motsei 2007; Naylor 2008; Singleton 2012). This is especially pertinent in view of post-apartheid South Africa being cited by some as one of the rape capitals of the world (Bridger 2024). In many African states, rape law reform became the focus of significant political and scholarly attention some years or decades after the people-of-colour majority nations gained independence from White European colonial rule. In contrast, rape law reform activism in South Africa – historically one of the few significant White settler colonies in Africa – was underway during White-minority apartheid rule, as early as as the late 1970s, during the era of independent White-minority rule. Ostensibly beginning with White South African women "who often propounded explicit feminist, often radical feminist, agendas" (Meintjes 2003, p. 145), it coincided with and was partly inspired by White-dominated second-wave feminist anti-rape activism and scholarship (Bridger 2024; Morrell and Clowes 2016). The anti-rape campaigns of South African Women of colour became visible a little later, in the 1980s (Posel 2005; Meintjes 2003). Largely racially classified as either native/Bantu/Black (Black Africans), Coloured or Indian/Asian under apartheid, these women sometimes found themselves in unintended conflict with their communities. Communities of colour saw the attention to violence against women as a distraction from their communities' broader emancipatory and liberatory struggles and as supporting the generalised criminalisation of men of colour (Bridger 2024; Posel 2005).

In principle, the end of apartheid signalled the beginning of a shared political space in which White and people of colour activists could form alliances against rape and other gender-based violence. In reality, persistent socio-economic and cultural inequalities, racism and distrust have made these alliances tenuous. Rape continues to be a racially charged issue, particularly as a basis for the implicit or explicit pathologisation and criminalisation of men of colour and people of colour in general. In a context of real or perceived antagonism against men and communities of colour and the cultural, educational and other socio-economic disadvantages borne by these communities, it remains difficult for women of colour to raise their voices to participate in law reform processes. When I started my PhD investigation of the exclusion of women of colour from rape law reform, I found that the existing literature mentioned some of the historical disadvantages

that served as barriers to women of colour's participation – as ordinary women and as members of organised civil society – in lawmaking, implementation and knowledge building or sharing processes in the era of Black-majority governments (Artz and Smythe 2007; Motsei 2007; Greenbaum 2008; Meintjes 2003). However, there seemed to be no systematic study wherein women of colour were directly asked about their understanding and experiences of exclusion from rape law reform. I also found no study that looked into the documented State-initiated consultations and deliberations to investigate how women of colour were excluded in the determination of rape law reform imperatives. I understood exclusion as being multidimensional (as earlier mentioned) and multilayered, encompassing the literal leaving out, marginalisation or disengagement of women of colour from rape law reform processes. Furthermore, I used the term "Black" in my PhD study as a collective reference to women historically classified as Black, Coloured and Indian in South Africa. I did this in acknowledgement of the reclassification of these different groups as Black under South Africa's Black economic empowerment law, and the appropriation of the term within the Black Consciousness movement as a unifying identity resisting White supremacy and negation. I also had to acknowledge my own positionality as a Black African, middle class, heterosexual woman (of multi-ethnic descent) aware of the contested nature of the label "Black". I still intended to explore the hierarchies and tensions between South Africa's communities of colour. Within the current article, I use the terms "people of colour" and "women of colour" as a general reference to the non-White peoples of South Africa, in order to be able to reflect on the shared realities of South African women of colour and women of colour in the rest of the historically colonised world. I use the terms "Black African", "Coloured" and "Indian" when referring to people of colour historically designated as such in South Africa[1].

The Choice of a Decolonial Feminist Framework

When it comes to the problem of the deficiencies of the law, particularly in relation to rape, one finds that decolonial feminist perspectives share and expand on some of the insights contributed by both the White-dominated mainstream feminisms and women of colour feminisms. Like radical feminism, decolonial feminism centres on questions of humanity and the naturalisation of certain kinds of violence against certain groups of people. Who counts as human? Who speaks for the human? However, radical feminism is less suitable for analysing the plight of women of colour as it carries a unidimensional focus on misogynistic patriarchal gender-based societal organisation. This means that radical feminism tends to

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[1] As a racial classification, "Coloured" should not be confused with the term "people/s of colour", the latter being a collective reference to non-White people/s. The term Coloured refers to people who were not classified as White or native/Black, generally considered to be of multiracial ancestry. It also included indigenous Khoi and San peoples. Under apartheid law, Indians/Asians were initially classified as a subcategory of Coloured before being classified as a racially distinct category. Other Asians who were not descended from the peoples of the Indian subcontinent were classified either as White (for example, the Japanese) or Coloured (for example, the Chinese from mainland China).

underplay race and gender as combined bases of women of colour's dehumanisation and their subjection to the convergence of different forms of violence and discrimination not adequately taken account of in law reform. Decolonial feminism draws on the concept of intersectionality that was developed in Black feminist thought and critical race theory, which explains how women of colour's racial-ethnic, sex-gender and class identities intersect in ways that result in the convergence or (less frequently) mitigation of different forms of violence and discrimination against them (Davis 1978; Crenshaw 1991. See also Morrell and Clowes 2016). Decolonial feminism offers a more comprehensive account of the colonial creation or manipulation of the intersecting identities, institutions and structures creating or enabling this violence.

African feminist and other indigenous women of colour feminist perspectives have raised important questions for decolonial feminists to take up about the Eurocentrism (or Western-centrism) of colonially-inherited legal systems and the subordination of communities of colour's worldviews, indigenous justice systems, knowledge systems, cultures and spiritual frames of reference (Motsei 2007; Deer 2009). African feminists, indigenous women of colour feminists and decolonial feminists have a shared commitment to decolonizing knowledge by challenging the primacy of Western scientific or legal-technical approaches and foregrounding indigenous or local people of colour's epistemologies and methodologies (Chilisa and Ntseane 2010; Musila 2011; Smith 1999). African and indigenous women of colour feminisms can be seen as locally-oriented sources of decolonial thought. Nevertheless, Afro-centred and other scholars have criticised what they argue is decolonial thought's centring of the Americas, historically and experientially (see for example Mkhize 2020. See also Bhambra 2014). Secondly, decolonial thought's overarching conceptual and theoretical framework can be seen as repeating the Western fallacy of universalisation that African and other indigenous women of colour feminisms have resisted (Blay 2008). Thirdly, the concept of the coloniality of gender can be used in ways that overemphasise gender and unequal gender relations as colonial constructs. Interestingly, this decolonial feminist position draws on the work of African feminist Oyèrónkẹ́ Oyěwùmí (1997, cited in Lugones 2008; 2010). Other African feminists and others have stressed the need for awareness of both the internal and external origins of gender inequalities and oppression in indigenous communities of colour (Blay 2008; Bakare-Yusuf 2004; Medie 2019; Narayan 2004; Nnaemeka 1998). This third criticism can actually be used to adjust and strengthen the concept of the coloniality of gender and, as such, I have included an inward-looking reflection in my elaboration of the concept. My position on the first and second criticisms is that the decolonial overarching framework provides a foundation for grasping Western European colonisation and later Western imperialism as a global phenomenon that has given rise to shared or comparable realities for historically colonised peoples. The overarching decolonial framework is subject to further development and adjustment by activists and scholars in all parts of the historically colonised world. Furthermore, the overarching decolonial framework is intended to be used alongside local and regional epistemic frameworks, so that local and regional particularities are understood in the broader context of transcontinental patterns.

Lastly, a postcolonial feminist framework is another viable option for analysing women of colour's exclusion from rape law reform. Similarly to the African, indigenous women of colour and decolonial feminist perspectives, postcolonial feminism emphasises the importance of indigenous or local knowledges from the women in the Global South (Kapur 2002; Mohanty 1988; Musila 2011). Postcolonial feminists also bring to decolonial thought an awareness of the fact that Western discursive constructions of Black women have been used to either justify their subjection to violence or to justify interventions to save them from their supposedly oppressive cultures (Kapur 2002). The critical advantage of decolonial feminism over postcolonial feminism is decolonial thought's emphasis that although colonialism is over, the relations of power established between White people and historically colonised peoples of colour have largely remained. Decolonial perspectives emphasise the supremacy of colonially-introduced legal systems in historically colonised territories as one of many colonial continuities. Postcolonial perspectives emphasise these institutions as colonial legacies or residues (Mamdani 2001; McFadden 2011).

The decolonial argument is that we live in a world sustained through coloniality. In view of the Western European global colonialism that shaped the modern world as we know it, coloniality is the continuing White political, cultural, economic and epistemic dominance over formerly/historically colonised peoples – mainly peoples of colour – long after the dismantling of colonial administrations (Grosfoguel 2007; Maldonado-Torres 2007; Quijano 2000). I define coloniality in this way, acknowledging that Western European colonialism was not the only or the first or the last manifestation of colonial rule but was the one with the most far-reaching and enduring consequences. In the case of South Africa, coloniality includes the continuation of White dominance long after the dismantling of "post-colonial" White-minority rule (Grosfoguel, 2007; Quijano, 2000).

Decolonial feminism goes beyond other feminisms by urging women of colour, White women and their communities to recognise the "colonial difference" as the common starting point of a constructive and equitable dialogue between them (Lugones 2010, p. 753). Walter Mignolo (2002, pp. 61-62) explained colonial difference as "the changing faces of colonial differences throughout the history of the modern/colonial world system". This refers to the construction of differences between the colonisers and the colonised throughout the complex evolution of Western European colonialism and the shifting balances of power between European colonising nations. Lugones (2010, p. 753) stated that moving towards decolonial feminism entails learning "about each other as resisters to the coloniality of gender at the colonial difference, without necessarily being an insider to the worlds of meaning from which resistance to the coloniality arises". This quotation means that women (and men) from formerly colonised and colonising societies have been affected differently by Western European colonial constructions of gender. The task of decolonial feminism is to resist the epistemological (and activist) tendency of erasing or ignoring the colonial difference.

Women of Colour and the Coloniality of Gender

In explaining the concept of the coloniality of gender, Lugones (2008) contended that we need to consider both race-ethnicity (since race and ethnicity tend to coincide) and gender as colonial constructs. These are constructs that Western European colonisers used to divide and conquer the world's people. These primary hierarchies served as the foundation for class, culture and other hierarchies. It is a concept that shows the inadequacy of second-wave feminist distinctions of sex and gender, since the colonial design was always to maintain protected "spaces" for White women (subject to ethno-national and class distinctions) vis-à-vis women of colour. Women of colour were themselves hierarchised based on race, gender and class, subject to differing vulnerabilities and/or privileges. The concept of the coloniality of gender also seeks to correct Quijano's (2000) earlier concept of coloniality, which problematised race but accepted sex and gender as natural and biological.

A combined reading of Lugones (2008) and different African feminists suggests that while some precolonial societies of colour did not use gender/sex as a central organising principle, others did (Amadiume, 1987; Bakare-Yusuf, 2004; Blay, 2008; Motsei, 2007; Oyěwùmí, 1997). Some made room for a fluidity of gender identities and roles (Amadiume 1987). Western European colonisers created a racist, heteronormative world in which people were legally classified according to specific racial groups. In addition, they were classified within a strictly binary sex system where people had to be coded as either male or female – heralding the supremacy of the White male over the White female, male of colour and female of colour (later subject to class and other considerations). The persons we would today call transgender or intersex, or homosexual/lesbian/gay were classified as medical or psychiatric oddities. Such persons were subjected to corrective therapies and treated as freak-show deviants in the service of science and perversity (Cock, 2003; Kaplan, 2001). Without medical interventions, persons not conforming to the heteronormative arrangement were rendered legally non-existent, deviant or invisible in society. Colonisers created binary gender systems that distinguished between European men and women, on the basis of biological sex (being male or female). European men and women were further coded on the basis of gender as either masculine and the feminine. Colonised people were considered sexed, but non-gendered, subhuman or non-human (non-beings) vis-à-vis European humanity, in those contexts where they had direct and ongoing interactions with Whites (Lugones 2010). Simultaneously, Western European colonists were heavily invested in the social restructuring and engineering of colonised societies. Men of colour became beneficiaries of a colonially-introduced, absolute male supremacy over women of colour (Lugones 2008). Western European colonial gender constructions exacerbated or distorted pre-existing gender inequalities or desires for relative sex-gender power gains in the same way that colonialism distorted other pre-existing intracommunal or intercommunal divisions and hierarchies. Precolonial institutions intended to maintain some semblance of gender equity and accountability were reduced or removed (Lugones 2008). Colonial constructions of sex and gender have had far-reaching consequences in terms of the ways women of

colour have experienced dehumanisation (being). This has in turn shaped women of colour's subordinations across different hierarchies (power), and diminished the role of women of colour in knowledge production at the local, national and global levels (knowledge).

Women of Colour, Being and the Coloniality of Gender

Within decolonial thought, the coloniality of being is a central concept for understanding historically colonised peoples' experiences of direct and indirect oppression. Maldonado-Torres (2007) described the coloniality of being as referring primarily to the lived experience of colonised people, arising from a colonially-introduced scepticism about their humanity (2007). The coloniality of being is best conceived of as an inversion of European philosophical considerations of being, which entailed reflections on what it means to exist or have a significant presence in the "real" world.

Looking at the being aspect of the coloniality of gender requires us to investigate the similar and differing challenges that women of colour face as part of various racialised gender groups, in their attempts to articulate their demands for human dignity and freedom from violence. Crenshaw (1991, p. 1280) contended that in the courtroom, "Black women [and other women of colour] continue to be judged by who they are, not what they do". Women of colour's intersecting racial and gender identities are used as indicators of expected negative behaviour and moral characteristics. Part of the purpose of my PhD study was to explore the muting and erasure of women of colour's histories and experiences in the drafting of the Criminal Amendment (Sexual Offences and Related Matters) Law No. 32 of 2007, as the first major post-apartheid legislation concentrating on rape and other sexual offences. This muting is a product of the post-apartheid governmental privileging of radical and liberal feminist theories on the law's deficiencies and a non-racialist reconciliation agenda that avoided a more extensive historical reckoning with the racism and sexism explicitly and implicit targeted against people of colour by the legal system, White people and by people of colour themselves (Motlafi 2021a). Some of the erasure of women of colour's historical experiences has begun to be addressed in the National Strategic Plan on Gender-based Violence and Femicide (2020), which explicitly mentions the role of intersectionality in the violence experienced by Black women (women of colour) in particular. This follows conversations within more recent national protests against gender-based violence, recalling the confluence of racial, gender and class privileges or disadvantages in activism and service delivery (Ndashe, Mpulo, and Call-to-Action CSO Collective 2020).

Western European conceptualisations of being have some of their origins in their colonial conquests, whereby Europeans began to define themselves based on their ability to conquer. Dussel (1996,133, cited in Maldonado-Torres 2007, pp. 244-245) expressed this as *ego conquiro/conquistus*, *ergo sum* (I conquer; therefore, I am). The colonisers suspended their intra-societal ethics to justify the rape, violence and exploitation that they unleashed on non-White people. They did so based on a gradually evolving racist (or "Manichean") misanthropic scepticism

of those conquered, which entailed a European misconception of the colonised people as lacking in some fundamental elements that would complete their humanity (Maldonado-Torres 2007; Wynter 2003). Racist misanthropic scepticism would eventually be internalised by colonised people of colour, negatively shaping the way they saw themselves and each other. Initially, it was argued that the colonised had no souls; then it was argued that their souls were a blank template on which Christianity had to be inscribed. Conquest financed scientific and economic progression in Western Europe, thereby laying the foundations for the modern world (Grosfoguel, 2007). It is not coincidental that *ego conquiro* preceded Descartes' *ego cogito, ergo sum* (I think, therefore I am) and scientific racism. In justifying further conquest and imperial interventions, the Europeans (and White North Americans) would progressively argue that the colonised or enslaved could not think, lacked development, and (later) lacked democracy and human rights (Grosfoguel 2007, p. 213).

Ego cogito would eventually progress from the idea a thinking Man to the idea of a thinking, feeling and believing Man, embedded in his society's worldviews, histories, cultures and values (Heidegger [1927]1962; Gadamer, [1960]1989). It is the latter man that Heidegger conceptualised as the *Dasein*, "the being who is there" (Maldonado-Torres 2007, p. 250). The *Dasein* yearned for personal self-actualisation as well as the self-actualisation of his community or nation, which required a strong leader to bring the group together to realise collective goals. Heidegger's concept of the *Dasein* did not consider the political, psychological, cultural, spiritual, epistemic and economic barriers that colonialism had put in place that hindered the self-actualisation of the colonised people.

Throughout its evolution, racist colonial misanthropic scepticism provided the justification for the colonised's lives and bodies being rendered expendable and for denying them entitlement to the Rights of Man. As elsewhere in the colonised world, the rape of women of colour in what became South Africa was normalised and institutionalised as part of the wars of colonial conquest, land dispossession, slavery, indentured labour and apartheid police terror (Gqola 2015; Maldonado-Torres 2007; Motsei 2007). Laws differentially trivialised or failed to recognise the rape of women of colour from different racial and class groups, also dependent on the race and class of the alleged perpetrators (Kolsky 2010; Medie 2019; Scully 1995; Stoler 1989). Colonial territories without significant permanent White settler communities (and, therefore, less White women) seem to have had rape laws that were not as well defined, less frequently used (by both the coloniser and indigenous communities) and not as widely researched as those in colonial territories with significant White settler communities (Burnet 2012; Human Rights Watch 2004; Medie 2019; Motlafi 2018).

Land dispossession and the displacement of indigenous belief, knowledge and economic systems may have led to violence and dysfunction in indigenous communities. Furthermore, colonialism and apartheid reduced most men and women of colour to cogs in the capitalist system, where they had to make the "choiceless decisions" (Aretxaga 1997, as cited in Burnet 2012, p.107) of becoming migrant labourers and domestic servants mainly in the homes of Whites (Wells 1984). For the women of colour domestic servants who were compelled to

live on their employers' properties, this meant having the anxiety of being separated from their children and families. Women of colour working and living away from home were far removed from Western idealised gender notions of "present" motherhood that liberal and radical feminists would later identify as being oppressive. It meant living with the risk of one's children being abused in one's absence, or not being in a position to protect one's children even in one's presence. Sometimes, it resulted in alienation, desensitisation and abandonment. It entailed working in the "private" sphere of the home, where sexual and other abuse could be hidden from the public gaze (Motsei, Mmatshilo 1990)[2].

Women of colour occupying the ranks of the petty bourgeoisie (as teachers, nurses, social workers and the wives of prominent men of colour) tended to enjoy better social protections and a better quality of life (Wells 1984). Nevertheless, a person of colour was required to show deference to a White person, regardless of the person of colour's status. Furthermore, being a person of colour was to be assumed to be guilty of any real or imagined wrongdoing, until proven innocent. It meant little or no freedom of movement. Black Africans had to carry an identification document called a "pass" to be in White-designated cities and urban areas and would be arrested for failure to produce it. Imprisonment and death were an ever-present possibility. For women of colour, sexual assault in police custody was also an ever-present possibility (Wells 1984). As mothers, wives, sisters and daughters of men of colour, women of colour have also suffered the collective historical anxiety of the demonisation of men of colour (especially Black African and Coloured men) as sexual predators threatening White women's supposed racial sexual and reproductive purity. Any suspicion of wrongdoing by a man of colour – or just being in the "wrong" place – could be enough to justify mob lynching and arbitrary arrests.

Women of colour have also been the principal targets of rape, murder and other interpersonal violence from men of colour. One might argue that such violence is men of colour's displaced rage over their loss of power or perceived emasculation relative to White men. For Biko ([1978] 2004, 82, 121-122), such violence was the symptom of the "absence of abundant life" in the over-crowded and under-resourced townships, which were the spatial manifestations of the "hellish zones of non-being" referred to by Fanon ([1952]2008, xii). Herein, desperate circumstances led to predominantly poorer communities of colour turning on each other in a perpetual struggle to survive. Men of colour used the same colonial narratives about women of colour's (especially Black African and Coloured women's) supposed promiscuity to justify their attacks against them. The rape and other violence that mainly Black African lesbians have faced may be understood as the "weeding out" or "disciplining" of Black African women who do not conform to colonially-promoted cultural-religious heteronorms, and who are thus perceived to threaten the patriarchal order of society.

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[2] *The best kept secret: Violence against domestic workers. Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 5, July 25* [Online]. Accessed April 5, 2025. https://www.csvr.org.za/wp-content/uploads/1990/07/The-Best-Kept-Secret.pdf).

The misanthropic-sceptical colonial gaze has come across the generations to rest on the heads of women of colour in the post-apartheid era, with an apparent laxness regarding the worth of women of colour's voices and lives. Anti-rape legislation and policy frameworks are explicitly tied to the Bill of Rights within the South African Constitution and international human rights agreements to which South Africa is a signatory. Within such legislation, there are statements regarding South African residents' rights to be free of all forms of violence. One also recalls that the anti-apartheid struggle led by the ANC and its allies articulated a struggle for basic human rights. The problem is that White people have been the standard of humanity since the advent of colonialism (Fanon [1952] 2008; Gordon, 2007). The burden of proof has fallen on people of colour to show that they are just as human as White people.

Statements linking anti-rape legislation to human rights statements belie the profound and persistent structural challenges making rights inaccessible for most women of colour, many of whom are unaware of legislation and human rights discourses. While there are some improvements that post-apartheid governments have achieved in residential areas historically designated for different people of colour racial groups, the situation has not changed dramatically. Aside from the claims of widespread corruption and mismanagement reported in the media, some have suggested that this is because the Black elite in government are far removed from the squalid conditions that most peoples of colour continue to endure (Manzi 2011; Sesanti 2009). It is also taken for granted that people of colour do not mind these conditions that much because they are used to enduring or finding ways (legal or extra-legal) around them. In contrast with the government, civil society organisations work closely with communities at the grassroots level. For women of colour who work with such communities or who are the recipients of civil society programmes in their communities, the coloniality of being entails walking the tightrope between fulfilling the donors' objectives and dealing with severe structural challenges in communities of colour. It means contending with the fact that donors may have their own conceptualisations and solutions to rape and other gender-based violence that women of colour activists may be compelled to apply and negotiate the inevitable clashes with local meanings and solutions. Being women of colour means having access to insider knowledge about their own communities of colour, on the basis of lived and intergenerational experience, or being able to look like members of the community. Being a South African woman of colour also means lacking the implicit authority or gravitas that may sometimes automatically come with having a white skin. Part of the experience of women of colour as researchers and civil society workers is being expected to conform to certain subordinate behaviours expected of women of colour within a given community. This is part of managing the different paternalisms/parentalisms (from White men, men of colour, White women, older women of colour, people of colour positioned higher in racial and class hierarchies and various institutions) that they are subjected to.

The most striking challenge to women of colour's participation or other contribution to rape law reform are the various discriminatory attitudes against women of colour across class and ethnic lines. The scourge of rape runs parallel to

the tragedy of the HIV/AIDs, since the disease is understood to be transmitted predominantly through sexual contact. Black Africans have become the face of the HIV/AIDS epidemic, not simply because of demographics, but because of longstanding stereotypes about Black Africans' promiscuity. Negative stereotypes presupposing women of colour's complicity in their own victimisation (because they support supposedly misogynistic cultures) provide insights into the discriminatory attitudes that women of colour must overcome when seeking help after rape. Simultaneously, discursive constructions of women as helpless victims are used to justify various White Western or other White interventions. There are also the perceptions of incompetence that women of colour may have to overcome as scholars and other professionals. They face the extraordinary challenge of proving their exceptional excellence and that they are not simply affirmative action beneficiaries (Civil Society Lawyers 2018; Fanon [1952] 2008). They may have to deal with other people's automatic assumptions that they are lower-level functionaries in institutions of higher learning and research. They may also have to deal with those who actively subjugate women of colour through deliberately condescending or demeaning behaviour, as well as through threats or acts of rape and other sexual harassment.

Women of Colour, Power and the Coloniality of Gender

The coloniality of power refers to the interrelation of colonially-created power structures (political, economic, cultural, epistemic and others), as well as unequal interpersonal and intergroup relationships that perpetuate the intergenerational dominance over historically/formerly colonised peoples (Quijano 2000; Maldonado-Torres 2007). I reframe the coloniality of power as the power aspect of the coloniality of gender, recognising that power can be socio-political, socio-economic, socio-cultural and epistemic. By looking at the power aspect of the coloniality of gender, we are able to better appreciate that colonialism's deliberate convergence of race and gender hierarchies pushed women of colour to the bottom of political, economic, cultural and epistemic hierarchies. The power aspect of the coloniality of gender brings to the fore a collaborative idea of power, and reinforces the adversarial idea of power that Robert Dahl (1957, pp. 202-203) introduced into the study of politics ("A" getting "B" to do what "B" would otherwise not do). Western European colonising states competed with each other for colonies, but also collaborated through mutual agreements to manage their competing interests. The power aspect of the coloniality of gender underscores the fact that women of colour tend not to be positioned to make decisions that would be in their best interests, because women of colour tend to be disproportionately economically disadvantaged and culturally subordinated. Although women of colour may occupy positions of authority, the power that should come with authority is hollowed out by male-dominated narratives of racial oppression and emphases on male leadership in peoples of colour's liberation struggles (Mama 1997; Motsei, 2007). Some scholars have suggested that women of colour in government appear not to have much of a voice therein, as though they are merely there to vet the interests of the predominantly male leadership in government and

the ruling party, and to give the illusion of women empowerment (Adeogun and Muthuki 2018; Maathai 2009; Mohanty 1988). As earlier mentioned, critics of such governments may deride women of colour office holders as mere puppets or the unqualified beneficiaries of cadre deployment or affirmative action. However, such critics and others seeking to preserve White power may also use window-dressing tactics, wherein they place women of colour in positions of authority that are actually empty of any real decision-making power.

Women of Colour, Knowledge and the Coloniality of Gender

Laws and legal systems are founded on social values and knowledge systems. The dominance of European legal traditions and systems in African contexts is a reflection of the triumph of Western/European knowledge over African and other knowledges. Simultaneously, there are knowledge production enterprises focused on studying modern or European law, African customary law, Islamic law and on understanding the relationship between European law and the other two types of law. The concept of the coloniality of knowledge equips us to interrogate the politics of who is involved in these knowledge production enterprises, where and how this knowledge is produced as well as who ultimately benefits (Mignolo 2009, 2). As such, the coloniality of knowledge refers to "the impact of colonization on the different areas of knowledge production" (Maldonado-Torres 2007, p. 242). It is a concept that speaks to the prevailing situation in which Eurocentric standards continue to dictate what does or does not count as "valid" knowledge (Alcoff 2010; Mignolo 2009). Reframing the coloniality of knowledge as the knowledge aspect of the coloniality of gender facilitates an investigation of how knowledge production and conveyance are both raced and gendered. Women of colour in South Africa are at the margins of knowledge enterprises, locally, regionally and globally (Motlafi 2021a). Where Western/European knowledge systems began as attempts to understand and advance their own societies, they became instruments of domination upon being utilised on the colonised people and their territories. The colonisers created a relationship whereby the mastery over colonised people supported the Western European study of these people and their lands. With the rise of *ego cogito* came the approach to studying people and places that we now most strongly associate with the positivist epistemological tradition. The positivist idea is that rational thought is separate from emotions or the body, and that reliable scientific knowledge should be produced from a detached, neutral point where the scholar "sees" all within his (or her) chosen research parameters (Grosfoguel 2007, pp. 213-214). It is what Colombian philosopher Santiago Castro-Gómez (2007) called "the hubris of zero point" (quoted in Mignolo 2009, p. 2) and what Puerto Rican philosopher Ramòn Grosfoguel (2007, p. 214) and others called the "god's eye view". It is a clinical detachment that, in years past, rendered banal the inhuman treatment of colonised people as objects of study (Smith 1999). Colonial conquest facilitated the division of the world into zones of being and non-being. Likewise, the world's people were divided into thinking beings or the *humanitas* and non-beings or the *anthropos* (Nishitani 2006, pp. 262-265). Located in the Global North (specifically, Western Europe and North America) and in White

enclaves in the Global South, the zones of being came to be established as the only centres where "true knowledge" could be produced (Santos 2007, p. 43). The *humanitas* were both the rational enunciators or producers of knowledge and the rational subjects of research. The *anthropos* could only be objects of research, since they were considered to be bodies without complex thought. Their knowledge was demoted to the status of myth, superstition and raw material to be processed by the *humanitas* (Quijano 2000). The elimination, subordination or trivialisation of the knowledge-producing mechanisms of indigenous people has led to a state of affairs that has rendered scholars and students of colour perpetual foreigners within research or educational institutions, both within their home countries and abroad. They must assimilate to the dominant Western epistemological and pedagogical paradigms in order to advance in their scholarly or academic careers (Adésìnà 2008; Motsei 2007).

Communities of colour are often alienated by the dominant Western-modelled national justice systems that are at odds with the communities' belief systems, values and ways of living (Motsei, 2007). Apartheid created a racially segregated and tiered education system to limit the majority of people of colour to unskilled and semi-skilled labour in "White" South Africa, which ultimately also disadvantaged South African people of colour in relation to people of colour in the rest of Africa and worldwide. Black African's education was further designed to promote parochial and ghettoised "pure" ethnic identities (Mkhize 2016; Sedibe 2006; Thobejane 2013). Even though the apartheid system provided for the maintenance of small, educated middle class groups to occupy certain leadership positions and roles in communities of colour, the South African situation of coloniality was one in which peoples of colour were groomed to be primarily consumers of the dominant Eurocentric or Western-centric knowledge paradigms (to whatever limited extent) and to be practitioners of African cultures as partially reimagined by the White rulers (Ndlovu-Gatsheni 2018). Even the rendering of African languages into written form was a process that White scholars led.

It is well known that there have been a number of European traditions that have challenged positivism's "neutral" approach to studying human beings and have emphasised the importance of values in shaping research. Among these is Heidegger's earlier-mentioned work on hermeneutics and existential phenomenology. One also recalls that it was the normative nature of the feminist second wave that enabled sexual violence to be catapulted into a politically relevant issue. Furthermore, a recognition of the importance of values has led to some interesting reflections on objectivity. Some (mainly postmodernists) have posited that objectivity is unobtainable, while others have argued that adopting a value-centred approach does not entail sacrificing objectivity (Ratner 2002; Santos 2007). In the latter instance, objectivity is taken to entail an ability to consider a variety of evidence, and a willingness to engage with different or competing positions. However, the awareness of implicit and explicit values in research has not necessarily entailed a receptiveness to women of colour's viewpoints and a willingness to listen to criticisms coming from women of colour as scholars or students, about the implicit assumptions of Western-centrism and White supremacy in academia and the law.

The Three Dimensions of Women of Colour's Exclusion

I have proposed that there are at least three overlapping and interdependent dimensions of women of colour's exclusion from rape law reform, namely the ontological-cultural, epistemic-pedagogical and economic-spatial dimensions. Each dimension draws on a combination of the being, power and knowledge aspects of the coloniality of gender.

The ontological-cultural dimension draws on the being and power aspects of the coloniality of gender (Lugones 2008; Maldonado-Torres, 2007). The ontological dimension of exclusion considers rape law reform as a political phenomenon. It considers the formal and informal political, socio-cultural and religious factors that influence rape law reform in ways that dehumanise and endanger women of colour, or make them feel as though they do not matter. There are issues of citizenship and human rights, as set out within the post-apartheid democratic dispensation. These rights remain elusive for women of colour, who cannot simply overcome histories and entrenched cultures of political and patriarchal violence. These are cultures that were instigated, or otherwise encouraged by, the apartheid and pre-apartheid colonial states. I interrogate the historical and continued presence of misanthropic scepticism and Western-centricity in the criminal justice system and in society, particularly its real or possible implications for women of colour's activism and their realisation of victim-centred justice.

The epistemic-pedagogical dimension draws on the knowledge, power and being aspects of the coloniality of gender (Lugones, 2008; Mignolo, 2002; 2009a). It investigates hierarchies of scientific, disciplinary knowledge in shaping rape law reform. It also investigates the non-recognition or trivialisation of other indigenous or local, experiential and other non-disciplinary knowledges. I propose that hierarchisation of disciplinary knowledge and the non-recognition or trivialisation of non-disciplinary knowledge limits or eliminates women of colour's epistemic contributions to rape law reform. Knowledge hierarchies also mean that women of colour have different statuses in relation to each other and their real or perceived positionings in knowledge production.

Drawing on the power and being aspects of the coloniality of gender, the economic-spatial dimension of exclusion looks at women of colour's colonially-created but post-colonially sustained economic-spatial disadvantages. Most South African women of colour, like communities of colour in other countries grounded in White settler colonialism, either still live in or have historical/familial ties within urban ghettoes/townships and rural areas or reserves historically designated for different communities of colour. These areas typically have fewer resources, less infrastructure, facilities and governmental service delivery than historically White residential areas. South African women of colour are also coming from a context where they and their forebears were deliberately and indirectly restricted from accessing quality education. Such structural realities have a bearing on how women of colour are seen and feel about themselves as members of disadvantaged communities. Participating in rape law reform, particularly for extended periods of time, is costly. This means that there are resource and time constraints to how

deeply women of colour are able to be involved in rape law reform, which tends to occur over years rather than over months and days. There are also possible resource constraints when it comes to accessing possible social benefits that rape law reform may mandate.

Conclusion

Rape law and other law reform is but one means of addressing and remedying past precolonial, colonial and postcolonial injustces. Rape law reform is itself hindered by persistent racial-ethnic or ethno-racial, gender and class prejudices and related barriers, which make it difficult or impossible for a diversity of people to participate in and benefit from law reform even in democratic countries. The purpose of this article is to present the decolonial feminist framework that I used in my exploratory PhD investigation of the exclusion of women of colour ("Black" women) from rape law reform processes in post-apartheid South Africa. This decolonial framework provides a map to trace the challenges that South African women of colour have faced in relation to rape law reform, both those that are unique to the South African context and those that they have shared with other women of colour in Africa and beyond. The framework proposes that there are ontological-cultural, epistemic-educational and economic-spatial dimensions of exclusion, based on considerations of the being, knowledge and power aspects of the coloniality of gender. The discussion that I have embarked on herein points to tensions and inequalities in the relations between White people and people of colour, as well as between and within communities of colour. These point to a need for more honest and more concerted efforts at reconciliation and peacebuilding across ethno-racial, sex-gender and class lines.

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