

**African Philosophical Values and
Constitutionalism: A Feminist Perspective on
Ubuntu as a Constitutional Value**

by

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DEDICATION

*I dedicate this study to my father,
Dr Clyde Matthew Keevy,
the most magnificent bull elephant in all Africa.
-“for allowing me to be your equal”-*

Before one appoints oneself as judge of any race of man on earth, one must have a thorough knowledge of the religions and beliefs of that particular race.

Mutwa (1998: 552)

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DECLARATION

I hereby declare that *African Philosophical Values and Constitutionalism: A Feminist Perspective on Ubuntu as a Constitutional Value* handed in for the qualification LLD at the University of the Free State is my own independent work and that I have not previously submitted the same work for a qualification at/in another university/faculty. I also concede copyright of my work to the University of the Free State.

TABLE OF CONTENTS

DEDICATION.....	2
ACKNOWLEDGEMENTS	3
DECLARATION.....	4
TABLE OF CONTENTS	5
DEFINITIONS	10
ABBREVIATIONS	15
CHAPTER ONE.....	16
INTRODUCTION	16
1.1 INTRODUCTION.....	16
1.2 PROBLEM STATEMENT.....	20
1.3 MAIN AND SUPPORTING GOALS OF THE RESEARCH.....	22
1.4 RESEARCH METHODOLOGY	24
1.5 CHAPTER OUTLINE	25
1.6 KEY CONCEPTS.....	27
CHAPTER TWO DECONSTRUCTING WESTERN PHILOSOPHY'S RELATIONSHIP WITH THE AFRICAN OTHER	33
2.1 INTRODUCTION.....	33
2.2 BACKGROUND.....	38
2.3 CLASSICAL GREEK PHILOSOPHY: A PHILOSOPHY OF PREJUDICE	42
2.4 WESTERN PHILOSOPHY: A PHILOSOPHY OF PREJUDICE	48
2.4.1 Western Philosophy: a Definition	48
2.4.2 Western Philosophy and the Other	51
2.4.3 The Synonyms: White Women and Africans	55
2.4.4 Opposing Worldviews	60

2.5	WESTERN PHILOSOPHY: A PHILOSOPHY CONDONING RACIAL PREJUDICE.....	62
2.5.1	Background	63
2.5.2	Racial Prejudice and Slavery	65
2.5.2.1	Chattel Slaves from Africa	66
2.5.2.2	African Slave Traders	69
2.5.2.3	Slavery and Justice	70
2.5.2.4	Western Philosophers Condone Slavery	71
2.5.3	Racial Prejudice and the Enlightenment	74
2.5.3.1	Background	74
2.5.3.2	The philosophies of Hume, Kant, Hegel, Voltaire, Montesquieu and Rousseau	76
2.5.3.2.1	Hume	76
2.5.3.2.2	Kant	77
2.5.3.2.3	Hegel	79
2.5.3.2.4	Voltaire	81
2.5.3.2.5	Montesquieu	82
2.5.3.2.6	Rousseau	83
2.5.3.3	The Contradictions of the Enlightenment	84
2.5.4	Racial Prejudice and Colonialism	89
2.5.4.1	Background	90
2.5.4.2	British Colonial Rule	95
2.5.4.3	Portuguese and Belgian Colonial Rule	99
2.5.4.4	French Colonial Rule	103
2.5.4.5	German Colonial Rule	104
2.5.4.6	Racial Prejudice and the Christian Civilising Mission	108
2.5.4.6.1	Background	108
2.5.4.6.2	Missionaries, African Culture and Values	110
2.6	AFRICAN LAW VERSUS CUSTOMARY LAW	118
2.6.1	African Law	118
2.6.2	Customary Law	122
2.6.3	Colonial Laws and Justice	126
2.7	APARTHEID	128
2.7.1	Perpetuating Colonial Philosophy	129
2.7.2	Justifying Unjust Laws	132
2.8	THE LINGERING INFERIORITY COMPLEX.....	135
2.9	SUPERIOR VERSUS SUBHUMAN.....	139
2.9.1	Background	140
2.9.2	Different Worldviews	141
2.10	CONCLUSION.....	148
 CHAPTER THREE AFRICAN PHILOSOPHY: MYTH OR REALITY?.....		152
3.1	INTRODUCTION.....	152
3.2	THE DEBATE ON AFRICAN PHILOSOPHY.....	155
3.2.1	Does Africa Have a History of Philosophy?	159
3.2.1.1	Background	159
3.2.1.2	The Oral Tradition	160
3.2.1.3	The Written Tradition	162
3.2.1.4	Africa's Ancient Origins of Philosophy	166

3.2.2	Do Africans Possess the Ability to Philosophise?	167
3.2.2.1	I Think therefore I Am	168
3.2.2.2	I Feel Therefore I Am	170
3.2.2.3	Emotion versus Reason	174
3.2.2.4	Opposing views	179
3.2.3.1	The universalist view	182
3.2.3.2	The traditional or particularist view	184
3.2.3.3	African philosopher: a definition	186
3.2.3.3.1	Critique of the definition	188
3.2.3.4	African philosophy: a definition	191
3.3	ORUKA'S SIX TRENDS IN AFRICAN PHILOSOPHY	193
3.3.1	Ethnophilosophy	195
3.3.1.1	Tempels' Bantu philosophy	196
3.3.1.2	The Trend Ethnophilosophy	198
3.3.1.3	The Critique of Professional Philosophers	203
3.3.1.4	The Critique of African Feminists	208
3.3.1.5	Optimism about Ethnophilosophy	211
3.3.2	Philosophical Sagacity (Sage Philosophy)	214
3.3.2.1	Background	215
3.3.2.2	Sage Philosophy and Sages: Definitions	216
3.3.2.3	Types of Sages	218
3.3.2.3.1	Folk sages	218
3.3.2.3.2	Philosophical Sages	219
3.3.2.4	Critique of Sage Philosophy	220
3.3.2.5	Optimism about Sage Philosophy	223
3.3.3	Nationalist-Ideological Philosophy (Political Philosophy)	224
3.3.3.1	Background	224
3.3.3.2	Oruka and Nationalist-Ideological Philosophy	225
3.3.4	Negritude and Nationalist-Ideological Philosophy	228
3.3.4.1	Background	228
3.3.4.2	The Negritude Trend	229
3.3.4.3	The Critique of Negritude	230
3.3.5	Professional Philosophy	233
3.3.5.1	Background	233
3.3.5.2	Professional Philosophers versus Traditionalists	234
3.3.5.3	Critique of Professional Philosophy	236
3.3.6	The Hermeneutical Trend	241
3.3.7	The Literary Trend	244
3.3.8	Alternative Trends in African Philosophy	245
3.3.9	A Feminist Perspective	247
3.4	IS PHILOSOPHY A UNIVERSAL ENTERPRISE?	248
3.4.1	Academic Reality	250
3.4.2	The Universal Truth	253
3.4.3	Is there an African philosophy?	256
3.5	CONCLUSION	258
CHAPTER FOUR UBUNTU: THE ROOT OF AFRICAN PHILOSOPHY		265
4.1	INTRODUCTION.....	265
4.2	BACKGROUND.....	271

4.3	THE SOUTH AFRICAN CONSTITUTION AND UBUNTU.....	272
4.4	SOUTH AFRICAN CASE LAW AND UBUNTU	275
4.4.1	The Constitutional Court and <i>Ubuntu</i>	276
4.4.1.1	S v Makwanyane and Another	276
4.4.1.2	Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others	287
4.4.1.3	Hoffman v SA Airways	289
4.4.1.4	Port Elizabeth Municipality v Various Occupiers	290
4.4.1.5	Dikoko v Mokhatla	292
4.4.1.6	BHE v Magistrate Khayelitsha and Others; Shibi v Sithole; South African Human Rights Commission and Another v President of the Republic of the Republic of South Africa and Another	297
4.4.2	The Supreme Court of Appeal and <i>Ubuntu</i>	303
4.4.2.1	Baloro and Others v University of Bophutatswana and Others	303
4.4.2.2	Pharmaceutical Society of South Africa and Others v Tsabalala-Msimang and Another; New Clicks South Africa (PTY) LTD v Minister of Health and Another	304
4.4.2.3	Wormald NO and Others V Kambule	305
4.4.3	The High Courts and <i>Ubuntu</i>	307
4.4.3.1	Stagnation of <i>Ubuntu</i> values	307
4.4.3.2	Pharmaceutical Society of South Africa and Others v Tsabalala-Msimang and Another; New Clicks South Africa (PTY) LTD v Minister of Health and Another	308
4.4.3.3	City of Johannesburg v Rand Properties (PTY) LTD & Others	309
4.4.4	<i>Ubuntu</i> as Constitutional Value	311
4.5	UBUNTU: A DEFINITION	317
4.6	UBUNTU: AFRICA'S PHILOSOPHY OF LIFE	319
4.6.1	<i>Ubuntu</i> : a Shared Value and Belief System	322
4.7	UBUNTU AS AFRICAN COMMUNITARIANISM	326
4.7.1	<i>Ubuntu</i> as African Communalism	327
4.7.2	<i>Ubuntu</i> as Extended Family	330
4.7.3	<i>Ubuntu</i> as Solidarity	334
4.7.4	<i>Ubuntu</i> and the Individual	335
4.8	UBUNTU AS AFRICAN RELIGION	342
4.8.1	African Religion	346
4.8.1.1	God	349
4.8.1.2	The Spirit World	351
4.9	UBUNTU VALUES.....	359
4.9.1	<i>Ubuntu</i> Values: Universal or Unique?	367
4.10	UBUNTU AS JUSTICE	374
4.10.1	<i>Ubuntu</i> Justice and Maat	375
4.10.2	Justice and the Elders	379
4.10.3	<i>Ubuntu</i> Justice versus Western Justice	382
4.11	UBUNTU AS LAW	387
4.11.1	<i>Ubuntu</i> as Africa's Constitution	388
4.11.2	<i>Ubuntu</i> , Status and Hierarchy	392
4.11.3	<i>Ubuntu</i> and the Other	397
4.11.4	Law and Community	399

4.11.5	<i>Ubuntu</i> and the Constitution	402
4.11.6	Religious Philosophies and the Constitution	406
4.12	THE VOICES OF THE FEMALE OTHER	410
4.12.1	African Women call for Human Rights	422
4.13	WHERE IS UBUNTU?	426
4.14	CONCLUSION	432
CHAPTER FIVE.....		438
CONCLUSION.....		438
BIBLIOGRAPHY		468
ABSTRACT		502
OPSOMMING		505
KEY WORDS.....		508

DEFINITIONS

Alien: An alien is someone who has no right of entry to a state because such person is not a national of the particular state (Dugard, 2005: 295).

Amende honorable: In terms of Roman Dutch law the *amende honorable* takes two forms: whereas in the case of *palinodia, recantation or retraction* the defamer has to withdraw the defamatory statement as being untrue, in the case of *deprecatio* the defamer has to deliver a public apology that he has wronged another.

Closed society: According to Popper (cited by Broodryk, 1997: 88), a closed society is characterised by its belief in magical taboos and superstition whilst an open society gives preference to reason and reflects critically on taboos and superstition.

Dichotomy: A dichotomy is a “division into two parts or classifications, especially when they are sharply distinguished or opposed” (Collins, 2004: 438).

Ethnocentrism: When one sees one’s own culture as the norm and judges other cultures as sub-standard. In reaction to the superior attitude of Eurocentrism towards Africa, Africa developed its own kind of ethnocentric thinking called Afrocentrism.

Genocide: Genocide involves the intentional mass destruction of entire groups or members of a group and is, according to the Rome Statute of the International Court, Act 27 of 2002, the most serious crime against humanity¹ (Dugard, 2005: 180 -181).

¹ Crimes against humanity are prohibited under art. 7 of the Rome Statute of the International Criminal Court. 1998.

Kaross: Collins (2004: 865) defines a *kaross* as a garment [or blanket] of skins worn by indigenous peoples in Southern Africa.

Legitimacy crisis: The law should reflect the shared values of the majority of the society. If laws do not reflect the values of the majority of the society, the society may lose its belief and confidence in the legal system.

Lekgotla: The *lekgotla* serves as a traditional parliament where communal solutions are sought and laws are made (Ramose, 2002{b}: 113).

Ius taliones: This is a concept from Roman law which advocated retribution: an eye for an eye and a tooth for a tooth. If you lost an eye, however, you could only take an eye, not an eye and a tooth.

Manichaeism: Manichaeism was as a system of religious doctrines taught by the Persian prophet Mani about the 3rd century AD. It was based on a supposed primordial conflict between light and darkness, or goodness and evil (Collins, 2004: 981).

Morals: According to Collins, morals are principles of behaviour in accordance with standards of right and wrong (2004: 2051).

Other: The philosophical category “Other” includes all the “different” or voiceless ones in the Western theory of ideas. Ramose (2002{b}: 1) states the voiceless ones or Other in Western rationality are Africans, African Americans and the indigenous people of Australasia. Western feminists, viz. de Beauvoir, Chodorow, Cornell and others include women in the category “Other”.

Patriarchy: It is the rule of society by men. It usually means that women are regarded as a secondary, subordinate and inferior to men.

Philosophy: The word philosophy is derived from the Greek words *philean* (love) and *sophia* (wisdom): *philosophia* (love of wisdom). Literally translated, philosophy means the love of wisdom. “The term philosophy is often popularly used to indicate a set of basic values and attitudes towards life, nature, and society - thus the phrase ‘philosophy of life’ because the lines of distinction between the various areas of knowledge are flexible and subject to change, the definition of the term ‘philosophy’ remains a subject of controversy” (Internet {a}: 2007).

Physionomics: This is the “basic and most destructive premise that physical variations in color and appearance not only result in ‘intellectual and moral differences’ among people groups, but that such differences account for or cause intellectual and moral differences” (Foutz, 1999: 9).

Polygyny: Synonymn for Polygamy.

Postmodernism: This is a modern philosophical trend and consists of deconstructing post-Enlightenment Western liberal thinking.

Preamble (of a constitution): “A preamble is a solemn declaration which states the basic purpose of the Constitution. Its provisions are not binding, but may serve as a guide to the interpretation of the constitution” (Kleyn & Viljoen, 2006: 226).

Racial discrimination: The International Convention on the Elimination of All Forms of Racial Discrimination 1969, art 1(1) defines racial discrimination² as ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of

² The crime of apartheid has the status of a warcrime in terms of Additional Protocol 1 to the Geneva Conventions of 1949. The International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 declared apartheid a crime against humanity.

human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. Art 4 obliges states to criminalise “all dissemination of ideas based on racial superiority” and “incitement to racial discrimination”.

Racism: Collins (2004: 1335) defines racism as a belief that races have distinctive cultural characteristics determined by hereditary factors and that this endows some races with an intrinsic superiority.

Reincarnation: This belief represents the following: (1) that on the death of the body the soul transmigrates to or is born again in another body. (2) The incarnation or embodiment of a soul in a new body after it has left the old one at physical death, the embodiment again in a new form, as of a principle or idea (Collins, 2004: 1368).

Sage: A sage is “a man revered for his profound wisdom” (Collins, 2004: 1432). Oruka distinguishes between different sages in traditional Africa, viz. ordinary sages and philosophical sages.

Syllogism: Collins (2004: 1649) defines a syllogism as follows: “a deductive inference consisting of two premises and a conclusion. The subject of the conclusion is the minor term and its predicate the major term, the middle term occurs in both premises but not the conclusion ... *some temples are in ruins; all ruins are fascinating; so some temples are fascinating* is valid”.

Theology: This concept embodies the following: (1) The systematic study of the existence and nature of the divine and its relationship to other beings. (2) The systematic study of Christian revelation concerning God’s nature and purpose. (3) A specific system, form, or branch of this study (Collins, 2004: 1693).

Values: According to Collins (2004: 2795), values are the moral principles or accepted standards of a person or group.

Worldview: A person's worldview or philosophy is based on the person's belief and values. According to Broodryk (1997: 3), a worldview is a person's comprehensive reality and gives orientation or direction to one's life.

Xenophobia: This phobia typifies a fear of strangers or outsiders. Collins (2004: 1892) defines xenophobia as a fear or hatred of strangers or foreigners or of their culture or politics.

ABBREVIATIONS

AJ -	Acting judge
AJA -	Acting judge of appeal
CEDAW -	Convention for the Elimination of Discrimination Against Women
CJ -	Chief Justice (head of the Constitutional Court)
DJP -	Deputy Judge President
DP -	Deputy President of the Constitutional Court
FGM -	Female genital mutilation, or clitoridectomy, represents the removal of part or all the external female genitalia
HIV/AIDS -	Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
J -	Judge
JA -	Judge of the appeal
JJ -	Justices
JP -	Judge President
NGO -	Non-governmental Organisation
P -	President of the Supreme Court of Appeal
PIE -	Prevention of Illegal Eviction from an Unlawful Occupation of Land, Act 19 of 1998
PLWAs -	People living with AIDS
S -	Section
SAA -	South African Airways
SADC -	Southern African Development Community.
Sec.-	Section
STI -	Sexually Transmitted Infection
SWAPO -	South West Africa People's Organisation
UN -	United Nations
UNICEF -	United Nations Emergency Fund for Children
VOC -	Dutch East India Company

CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

“In Africa, however, what we have to contend with are ... multiple oppressions. In appropriating or critiquing culture, coping devices are discouraged as they only play into the patriarchal scheme. What we [women] seek are strategies for transforming attitudes, beliefs and practices” (Oduyoye, 2001: 12).

In 1994, the Constitutional Court embarked, in classic Dworkinian style, on writing the first chapter of constitutional theory according to Dworkin’s metaphor of the chain novel. As prescribed in Dworkin’s *Law’s Empire*, each chapter, though written by different novelists or judges, should fit into the next in such a manner that it seems like the work of a single author. In Chapter One of the chain novel, the Constitutional Court embarked on entertaining “African law and legal thinking”³, as part of the Constitutional Court’s new democratic approach to jurisprudence.⁴ This was an essential step towards legitimising the Constitution for the new rainbow nation. In *S v Makwanyane*, the African concept of *ubuntu* was introduced in an effort “for courts to develop the entrenched fundamental rights in terms of a cohesive set of values, ideal to an open and democratic set of values”.⁵ Not only did the Court perceive *ubuntu* as “a notion with particular resonance in the building of democracy” but also that it formed “part of our

³ *S v Makwanyane* 1995(3) SA 391 (CC) par. 365 per Sachs J. Davis accuses Sachs J. of rejecting “a transformative legal enterprise that facilitates the scope of societal transformation and enhances the democratic character of politics and informs participation in all forms of social life”. See Davis, D. 2001. Deconstructing and reconstructing the argument for a bill of rights within the context of South African nationalism. In Andrews & Ellmann (eds) *The post-Apartheid constitutions*. 205.

⁴ In *S v Makwanyane* it was argued that “recognition should be given also to African law and legal thinking as part of the source of values which sec. 35 of the 1993 Constitution required Courts to promote”.

⁵ *Ibid* par. 302 per Mokgoro J.

rainbow heritage”.⁶ In *S v Makwanyane*, the Constitutional Court made a paradigm shift; it would no longer entertain only Western thought and jurisprudence but also African thought and legal thinking. Western philosophy and Western jurisprudence were fused with African philosophy and African jurisprudence into what Cockrell (1996: 1) terms, “rainbow jurisprudence”.⁷

In deconstructing the first chapter of the Constitutional Court’s chain novel it becomes evident that “*ubuntu* is a prized value” of traditional African societies (Mokgoro, 1998{a}: 21). Madala⁸ J and Mokgoro, (1998{a}: 22) maintain that African values of *ubuntu* are “in consonance with the values of the Constitution in general and those of the Bill of Rights in particular” and argues that “[s]ince the values of the Constitution and at least the key values of *ubuntu* seem to converge, indigenous law⁹ need to be aligned with these converging values” (1998{a}: 21). Although Chaskalson P indicated that “[c]omparative bill of rights jurisprudence will no doubt be of importance, particularly in the early stages of the transition when there is no developed indigenous jurisprudence in this branch of the law on which to draw”¹⁰, there is little evidence of such jurisprudential comparisons. Judges in subsequent chapters of the chain novel have been consistent in citing, not deliberating, *S v Makwanyane*’s passages concerning *ubuntu*. Whilst “[t]he object of each novelist [or judge of the chain novel] will be to produce a seamless text, one appearing to have been written by one author” (Van Blerk, 2004: 92), other legal sources, viz. Imbo (1998), Oduyoye (2001), Aidoo (1991) and others suggest the “seamless text” of the chain novel disguises the truth: *ubuntu* is clearly not in line with “the Constitution in general and the Bill of Rights in particular”.

⁶ *Ibid* par. 308 per Mokgoro J.

⁷ See Cockrell’s definition of “rainbow jurisprudence” in 1.6. Key Concepts: values.

⁸ See *S v Makwanyane* *ibid* par 237.

⁹ Sachs J (*ibid* par. 383) emphasises that many aspects and values of traditional African law will have to be discarded or developed in order to ensure compatibility with the principles of the new constitutional order.

¹⁰ *Ibid* par. 37.

Section 35(1) of the 1993 Interim Constitution and sec. 39(1) of the 1996 Final Constitution require that when interpreting the Bill of Rights, courts must promote the values that underlie an open and democratic society based on human dignity, equality and freedom. Since *S v Makwanyane*, the Constitutional Court has embarked on the novel mission of fusing Western thought and jurisprudence with African thought and jurisprudence as part of the source of values of South Africa's new democracy. Thanks to the Court's newly found "rainbow jurisprudence", or "silent diplomacy", African philosophical values have not been deliberated in depth in Court. In his critique of the lack of jurisprudential rigour in *S v Makwanyane*, J.W.G. van der Walt (2005{b}: 253) argues that,

a rigorous jurisprudence must remain dissatisfied with the feel-good flavour of a jurisprudence that has done little more than add a local, indigenous and communitarian touch to the Christian, Kantian or Millsian respect for the individual that informs Western jurisprudence. A rigorous jurisprudence would ask more probing questions regarding *ubuntu*.

In order for the Constitutional Court to establish a South African jurisprudence, critical scholarship is essential. If the Court is adamant about protecting South Africa's fundamental human rights and freedoms, and about deepening its democracy, it must engage in rigorous jurisprudential discourse which reflects not only the domineering male voices of Africa but also the oppressed female voices of South Africa. Rigorous jurisprudence is what is needed to transform the Constitutional Court's "seamless text" of meaningless explanations on the concept of *ubuntu* into a best seller. But in the absence of such rigorous jurisprudence one is left with the caveat of Mbiti (1991: 15), Turaki (1997: 61) and Akatsa-Bukachi (2005: 11), who maintain that individual critique¹¹ is not tolerated by the traditional African worldview, known as *ubuntu*.

¹¹ Turaki (1997: 1) cites the following warning which was given by an African to a Christian missionary: "Do nothing to arouse the anger of the Tribal Gods. For if you did, they would destroy both you and the entire humanity".

In *African Philosophical Values and Constitutionalism: A Feminist Perspective on Ubuntu as a Constitutional Value*, the researcher attempts to deconstruct *ubuntu* reality in terms of the relevance of the concept of *ubuntu* to the South African Constitution. In an effort to reveal the bigger picture which underlies the Constitutional Court's miraculous fusion of Western and African thought and jurisprudence into its new rainbow jurisprudence, African philosophical values will be deconstructed in terms of its interconnectedness with Western philosophy. This study contributes to much needed critical scholarship on the concept of *ubuntu* as the feminist perspective is very important and relevant to eventually bring about a South African jurisprudence which will include also traditional African women as equal citizens in our new democracy.

The Constitutional Court contends that it is imperative to give recognition to African thought and legal thinking in South Africa's new democracy. In doing so the Court gives "long overdue recognition to African law and legal thinking as a source of legal ideas, values, and practices" (Sachs cited in Cornell, 2004: 671). This statement reveals that Western and African thought and jurisprudence oppose and differ from each other; yet the Court also claims that *ubuntu* subscribes to the values of the Constitution in general and the Bill of Rights in particular. Can opposing philosophies be so different and yet so similar? Whilst Judges Sachs and Mokgoro firmly state that "ubuntu is a constitutionally acknowledged principle" (Cornell, 2004: 671), the main contribution of this study lies in the fact that it questions the Constitutional Court's justification of *ubuntu* as a constitutional value. Whilst the Constitutional Court must be lauded for bringing African jurisprudence in line with the democratic ideals of South Africa's Constitution¹², it is equally important that it does the same with the ancient patriarchal philosophy of *ubuntu*. International and regional human rights and gender mechanisms demand that *ubuntu* be brought in line with "the Constitution in general and the Bill of Rights in particular".

¹²See the *BHE* case in 4.4.1.6 where the Constitutional Court addressed African jurisprudence's "benevolent paternalism" (Shutte cited in Cornell, 2004: 671) in the rule of male primogeniture by bringing it in line with the Bill of Rights.

The reason for the choice of topic is tightly interwoven with the researcher's postmodernist worldview as a legal feminist. Volumes of texts by African feminists concur that traditional African women are oppressed by the African continent's oppressive, collective patriarchal worldview. Their evidence stand in stark contrast to our highest Court's judgment that *ubuntu* subscribes to South Africa's Western Constitution and Bill of Rights. This inconsistency compels the researcher to investigate the truth about *ubuntu*, which appears not to be keenly deliberated in Court. Legal feminists, however, demand that injustices brought about by inequalities should be addressed. The topic of this study, *African Philosophical Values and Constitutionalism: A Feminist Perspective on Ubuntu as a Constitutional value* deconstructs and investigates oppositions, hierarchies and injustices brought about by oppressive patriarchal worldviews. And as we shall see, patriarchies do not embrace equality. There is a possibility that neither the struggle against apartheid nor South Africa's post-apartheid democracy have been able to bring about justice, equal rights and human dignity to traditional African women and others who live under the oppressive patriarchal reality of *ubuntu*. Was the struggle not, as Fanon (1990) would have said, about the battle for freedom for all?¹³

1.2 PROBLEM STATEMENT

Since *S v Makwanyane*, the Constitutional Court and ordinary courts¹⁴ have produced a "seamless text" of rainbow jurisprudence. The concept of *ubuntu* was upheld as "humanness"; the "moral philosophy" of traditional African societies which was, according to Mokgoro (1989{b}), Tutu (1999) and Bhengu (2006), difficult to explain in a European language. Apart from the fact that the Court represented *ubuntu* as a communitarian worldview which favours group rights

¹³ Ncobo (cited in Stewart, 2005: 172) states as follows: "I wonder if it will prove to have been easier to fight the oppression of apartheid than it will ever be to set women free in our societies ... Male domination does not burn down".

¹⁴ See footnote 396.

and duties above individual rights¹⁵ and liberties, the Court also conceded that “*ubuntu* is in consonance with the values of the Constitution generally and those of the Bill of Rights in particular” (Mokgoro, 1998{a}: 22). This statement does not reflect the view of African feminists throughout sub-Saharan Africa who categorically state that *ubuntu* oppresses African females and violates their human rights and human dignity. African feminists, viz. Rankota (2004), Oduyoye (2001), Muholi (2004) and many others, expose *ubuntu* as a hierarchical, patriarchal worldview which is in line with neither international nor regional human rights mechanisms, viz. the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa. Cornell (2004) and Bohler-Muller (2005: 278) reiterate the concerns of Western and African feminists who question the “humanitarian ideals of *ubuntu*”.

Whilst the Constitutional Court acknowledges *ubuntu* as a philosophy which represents the traditional African worldview, the existence of African philosophy is highly contested in the Western philosophical tradition, to the extent that *ubuntu*, as ethnophilosophy, has been denied the status of philosophy by Western and professional African philosophers. Houtondji (1996; 2002), Wiredu (1996), Oruka (2002{a}) and others deny the existence of a unique collective “African philosophy”. In the light of all the anomalies which underlie the “seamless text” of South Africa’s “rainbow jurisprudence”, it is imperative to deconstruct the intricate and opposing anomalies which are concealed by the seemingly “seamless text” of Dworkin’s imaginary chain novel. As a patriarchal philosophy, *Ubuntu* experiences opposition from Western philosophers, African professional philosophers¹⁶, African feminists, modern Africans and African theologians.¹⁷ Whilst the Court omitted to define what it meant by “African thought and legal thinking”, African professional philosophers, modern Africans, African theologians and African feminists make it clear that they oppose the outmoded worldview represented in traditional African thought.

¹⁵ See *S v Makwanyane* par. 224.

¹⁶ See the critique of *ubuntu* by professional African philosophers and African feminists in Chapter Three.

¹⁷ See the critique of *ubuntu* by African feminists and African theologians in Chapter Four.

The following topics beg to be deconstructed within the “seamless text” of the Constitution’s chain novel:

- Firstly, the Constitutional Court’s miraculous fusion of Western and African philosophies and jurisprudence by since 1995. Beneath the Court’s “rainbow jurisprudence” lies a volatile philosophical relationship which has resulted in the erosion of African values, African jurisprudence and innumerable injustices against the African Other;
- secondly, the volatile oppositions within African philosophy where professional African philosophers and African feminists oppose the traditional African reality or unique philosophy of *ubuntu*;
- thirdly, damning critique against *ubuntu* from African feminists, African theologians and modern Africans;
- fourthly, that despite sec. 15(1) of the Bill of Rights, the Constitutional Court favours *ubuntu*, a religious philosophy, over other religious philosophies in its deliberations; and
- fifthly, the fact that *ubuntu*, a truly unique collective African philosophy, exists in the face of adversity

1.3 MAIN AND SUPPORTING GOALS OF THE RESEARCH

As very little research has been done on *ubuntu*, the **main goals** of *African Philosophical Values and Constitutionalism: A Feminist Perspective on Ubuntu as a Constitutional value* are to ascertain the following: Does the philosophy of *ubuntu* exist?; does *ubuntu* promote values that underlie an open and democratic society based on human dignity, equality and freedom?¹⁸ (Does *ubuntu* comply with “the Constitution in general and the Bill of Rights in particular”?).

¹⁸ See section 39(1) of the 1996 Constitution of South Africa.

The **supporting goals** of the research include the following:

- Firstly, *Deconstructing Western Philosophy's Relationship With The African Other*¹⁹ deconstructs African philosophical values in terms of the volatile philosophical relationship between two opposing patriarchal philosophies: Western philosophy and jurisprudence versus traditional African thought and jurisprudence. The supporting goal in this chapter is to ascertain whether Western philosophy and Christianity eroded traditional African values.
- Secondly, *African Philosophy: Myth or Reality*²⁰ deconstructs African philosophical values in terms of African philosophy. The supporting goals in this chapter are firstly, to deconstruct African philosophical values in terms of the debate on African philosophy; secondly, to deconstruct African philosophical values in terms of Oruka's trends in African philosophy; and thirdly, to illustrate that Western philosophers, professional African philosophers and African feminists oppose ethnophilosophy or *ubuntu*.
- Thirdly, *Ubuntu: The Root of African Philosophy*²¹ deconstructs African philosophical values in terms of *ubuntu* philosophy. The supporting goals of this chapter are firstly, to indicate that *ubuntu* is the ancient collective worldview of traditional African societies in sub-Saharan Africa; secondly, that professional African philosophers, African feminists, African theologians and African modernists oppose the collective worldview of *ubuntu*; and thirdly, that *ubuntu* does not represent a moral philosophy but a religious philosophy of life.

¹⁹ See Chapter Two.

²⁰ See Chapter Three.

²¹ See Chapter Four.

1.4 RESEARCH METHODOLOGY

A qualitative approach is followed with the research methodology being that of a literature study. Sources comprise of books, journals, case law, South African statutes, international and regional legal mechanisms, the internet and a video. The researcher focuses on primary sources throughout the study. As *ubuntu* reflects the collective worldview of traditional African societies in sub-Saharan Africa, authoritative African primary sources from this region are sought to present the bigger picture in *ubuntu* reality.

The study reflects a holistic view of *ubuntu* reality and includes views across the African philosophical spectrum. Whilst Chapter Two utilises both Western and African sources, Chapters Three and Four use mainly African primary sources to convey the views of authors on matters of African philosophy. Although few primary sources are available on the philosophy of *ubuntu* in South Africa, authoritative primary sources, viz. Ramose, Broodryk, Mbigi and Bhengu are invaluable in assisting the process of deconstruction. These South African sources represent the male perspective and idolises the patriarchal philosophy of *ubuntu* as an idyllic philosophy. Authentic works by Mutwa, Somé and Mbigi represent the unique collective African worldview from respectively a sangoma's, African shaman's and African rainmaker's perspective and provide immeasurable insight and crucial information on this ancient African worldview. The views of African feminists, professional African philosophers, African traditionalists, African theologians and African modernists are utilised in this study to reveal the bigger picture in *ubuntu* reality.

Ubuntu is a philosophical concept. This study, therefore, takes a philosophical approach to *ubuntu* and embraces Otherness from a postmodern perspective. In contrast with Western philosophy, postmodernism does not speak for Others but allow them to speak for themselves. This study attempts to deconstruct Western history from a decidedly different consciousness, viz. the consciousness of the

Other. It also attempts to deconstruct the patriarchal philosophy of *ubuntu*, concealed in the midst of Others.

Electronic sources are used in Chapter One to deconstruct the injustices of Western philosophy versus the African Other. These include Montesquieu's justification of African slavery and the section on King Leopold's Belgian colonial rule.

Relevant case law of the Constitutional Court and Higher Courts²² are scrutinised in order to understand the Courts' approach to the concept of *ubuntu*.

This study makes use of the Harvard referencing technique.

1.5 CHAPTER OUTLINE

Chapter One: Introduction

This chapter contains the problem statement; main and supporting goals of the research; research methodology; key concepts; and outline of the study.

Chapter Two: Deconstructing Western Philosophy's Relationship with the African Other

In an attempt to ascertain what African philosophical values embody, the researcher deconstructs the concept in terms of its interconnectedness with Western philosophy. Chapter Two deconstructs African philosophical values in terms of Western philosophy and reveals Western philosophy as a patriarchal and biased philosophy which has not only eroded Africa philosophical values, but also African jurisprudence. Deconstruction of world history reveals African

²² See 4.4.2 and 4.4.3.

philosophical values as the antithesis of Western philosophical values. This antithesis branded Africans as subhuman and aided the justification of scientific racism and apartheid. This chapter reveals the devastating psychological effect the superior philosophy had over the inferior: it opposes Western thought and legal thinking with traditional African thought and legal thinking.

Chapter Three: African Philosophy: Myth or Reality?

In Chapter Three approaches African philosophical values are deconstructed in terms of African philosophy. Deconstruction of Orya's famous trends in African philosophy reveals that *ubuntu* is represented by the trend of ethnophilosophy. Aspects of Negritude philosophy, political philosophy and the narrative trend confirm the reality of traditional African values in African philosophy. Ethnophilosophy is critiqued by the Western philosophical tradition, professional African philosophers and African feminists.

Chapter Four: Ubuntu: the Root of African Philosophy

This chapter consults relevant case law and other legal sources, as well as extra-legal sources, to deconstruct the concept of *ubuntu*. *Ubuntu*, the ancient African worldview, is deconstructed as a philosophy which represents African communitarianism, African Religion, traditional African values, African justice and African law. African feminists, African theologians and modern Africans expose *ubuntu* as a patriarchal philosophy which is not in line with fundamental human rights. This chapter also deals with the popular question whether *ubuntu* exists or not.

Chapter Five: Conclusion

1.6 KEY CONCEPTS

Key concepts of the study are postmodernism, Western feminism, deconstruction, values and the Other.

Postmodernism: Postmodernism is an attack on modernism, the Enlightenment and modern thought; a negation of universal truths and the accommodation of Otherness. Whilst modernism “incorporates the belief in the objectivity, rationality, universality and liberating potential of the knowledge produced in the Western world” (Roederer & Moellendorf, 2004: 356), postmodernism is understood as a philosophical critique of Western liberalism. Postmodernism rejects the pompous, philosophical style of the Western tradition²³ and represents thoughts of Derrida, Lyotard, Rorty, Foucault, de Beauvoir and others. Postmodernist thought resorts to “disrupting the hold of the dominant liberal discourse of the colonial powers and thus to restore marginalised forms of knowledge as an important step in the political reconstruction of post-colonial societies” (Roederer et al., 2004: 380). Twenty-first century postmodernism does not speak for the Other but allow them to speak for themselves. Postmodernism strives towards philosophical justice, annihilating philosophical hierarchies and reclaiming the status of the Other as rational animals. Postmodernists demand philosophical equality for all lovers of wisdom; they demand that wisdom of the Other should also be inviolable.

The study approaches *ubuntu* from a postmodernist perspective. In an attempt to deconstruct the bigger picture in *ubuntu* reality not only popular views but also unpopular truths will be entertained.

²³ Soloman & Higgs (1996: 301) state that postmodernism “rejects the argumentative mode, with its insistence on proof and dogmatic obsession with certainty, and so postmodernism does not argue or prove ... The argument often lacks a final conclusion, but that, a persistent postmodernist may contend, is just the point ... However, it is the interaction between postmodernist criticism and the historical tradition that gives postmodernism its meaning and significance”. According to Soloman et al. (1996: 303), postmodernism is unmistakably Western, but it is not a philosophy.

Western feminism: Despite equal rights, Western philosophy continues to regulate the Other in “philosophical pass law categories”. The category ‘Other’ represents everyone but the European male. Western females who attempt to rationalise by criticising or responding to liberalism or sympathising with the Other are classified and branded as feminist and discarded into the “postmodernist shredder”. Legal feminism is a category of Western feminism and engages in law. Legal feminists are concerned with power relationships within law, gender equality and fundamental human rights. They assess the “flexibility and deep-rootedness of the norms on which legal reform rests ... and articulate an incentive to pursue (again, still, forever (?)) a process of internal renewal that critically re-evaluates our priorities, strategies and legacy” (Lawrence, 2004: 601). Although law does not always embody justice, legal feminism strives towards just laws, just jurisprudence and just legal systems.

Deconstruction: Outlaw (2002: 138)²⁴ argues deconstruction is another strategy to read texts with a decidedly different consciousness.²⁵ By deconstructing we “keep open the threshold to a different destiny” (Cornell, 1999: 202).

Deconstruction can only be conceptualised and theorised in the concept of postmodernism. It takes two forms, viz. trashing and delegitimation. This study uses trashing as deconstructive technique. “The point of trashing is to tell the truth – to expose the contradictory sham of traditional notions of justice in order to see all the alternatives available in the search for a substantive notion of

²⁴ “One of the objectives of deconstruction is to critique and displace the absolutist metaphysics and epistemology which are thought to identify and provide knowledge of a rational order of axioms, first principles, and postulates that are the foundation of all that is, and of knowing what is. The point of deconstruction is to show that all philosophical systemizing is a matter of *strategy* which pretends to be based on a complete system of self-evident or transcendental axioms. Having their bases in philosophical strategies, such concepts are thus *constructions*, a product of numerous histories, institutions, and processes of inscription which cannot be transcended by being conceived as absolute, self-evident and axiomatic. To deconstruct these concepts is to displace them into the fabric of historicity out of which they have been shaped and in which we too, have our being; it is to be involved in the ‘unmaking of a construct’” (Outlaw, 2002: 138).

²⁵ Foucault (1982: 136) said: “I cannot be satisfied until I have cut myself off from ‘the history of ideas’, until I have shown in what way archaeological analysis differs from the descriptions of the ‘history of ideas’”.

justice” (Van Blerk, 2004: 157). Deconstruction signifies a break with ontology, exposes philosophical presuppositions²⁶, and involves the identification of hierarchical oppositions. It is a postmodernist intervention in philosophy which does not reconstruct or render answers, results or recommendations. Deconstruction is a diagnostic process which explores and exposes a disease or malignancy; it diagnoses without offering treatment or giving a prognosis.

In law, deconstruction attempts to expose hierarchies, inequalities, patriarchies, the collapse in rigorous jurisprudential deliberation and the biases to which legal discourse is prone.²⁷ Derrida (1999: 280) defines deconstruction²⁸ as “a way of intervening ... not simply a doctrine, not a system, not even a method, but something that is tied to the event”.²⁹ According to Derrida (1999: 281), “deconstruction is on the side of justice, not on the other side ... It is in the name of justice that we do what we do when we deconstruct”. Balkin (1987: 744) maintains that deconstructive techniques in law are utilised for the following reasons: firstly, to provide a method for criticising existing legal doctrines; secondly, to show how doctrinal arguments are informed by and disguise ideological thinking; and thirdly, to offer critique of conventional interpretations of legal texts”.

Western philosophy is not sympathetic towards feminist deconstruction. Feminism and deconstruction do not go down well in the ivory towers of the academic fraternity. Feminism and deconstruction challenge “the line between

²⁶ Deconstruction is “a means of intellectual discovery, which operates by wrenching us from our accustomed modes of thought. In fact, Derrida was led to this practice of deconstruction by his dissatisfaction with Western philosophical practice from Plato’s time to our own” (Balkin, 1987: 747).

²⁷ “Deconstruction can open the way to new understandings and accordingly social change, it cannot help to guide the direction of change or to judge whether the change will be better or not” (Radin & Michelman cited in Roederer et al., 2004: 366).

²⁸ Elam (1994, 92) posits that deconstruction is not taken seriously because “it fails to conform to proper scholarly research. Thus it is not really philosophy; it’s not really literary criticism; it’s not really political science; it’s not even properly interdisciplinary ... deconstruction fails to conform sufficiently to the standards of any pre-existing [Western] disciplinary practices and hence is not considered academic”.

²⁹ Derrida (1999: 280) explains deconstruction as “[n]ot simply the theoretical analyses of concepts, the speculative dissemination of a conceptual tradition of semantics. It is something that does something, which tries to do something, to intervene and to welcome what happens, to be attentive to the event, the singularity of the event”.

the ivory tower and the world” and are considered dangerous because they are “neither solely in the ivory tower nor in the world, but on the line between them ... the two different ways of dismissing academic importance are really two sides of the same coin; the current coin of the established institutional realm” (Elam, 1994: 92). Legal feminists that deconstruct are perceived as a “potentially disruptive force within the academy”; not only because they deconstruct philosophy as a patriarchal plot but also because they rethink law and take position (Elam, 1994: 101).

Values: The 1993 Interim and 1996 Final South African Constitutions imposed a duty on South African courts to promote values that underlie an open and democratic society based on freedom, equality and human dignity.³⁰ In the Western theory of ideas it is generally accepted that Western philosophy and its accompanying value system represent universal values.³¹ Whilst the Constitutional Court maintains that *ubuntu* values are universal, Broodryk (2007: 40) argues that even though *ubuntu* values seem universal, they are unique. According to Broodryk, *ubuntu*’s uniqueness “lies in the intensity and level of living these values; in Africa, these values are practised on a much deeper level”.

Postmodernism maintains that communitarian societies reject universal Western values because the communitarian community is its own source of values.³² Whether *ubuntu*’s unique values promote universal values of freedom, equality and human dignity which underlie open and democratic societies, has not been contested in Court. “[I]t is the role played by ‘values’ in constitutional adjudication which has been seen to set [it] apart from other types of adjudication which involve the mechanical application of ‘rules’” (Cockrell, 1996: 3). When it comes to constitutional values, Cockrell (1996: 11; 12) laments the “absence of *rigorous*

³⁰ *S v Makwanyane* fused South Africa’s Constitution, based on Western philosophy and Western jurisprudence, with African thought and legal thinking, better known as African philosophy and African jurisprudence.

³¹ *Ibid* par. 58 per Chaskalson P.

³² Walzer (cited in van Blerk, 2004: 200) posits that “the normative values of any distinct community come from within, from common values, and not as liberalism claims, from an overarching system of universal values”.

jurisprudence of substantive reasoning³³, for what we have been given is a quasi-theory so lacking in substance that I propose to call it 'rainbow jurisprudence' ... the necessity to make hard choices such as this is fudged by rainbow jurisprudence which states baldly that *all* competing values can, mysteriously, be accommodated within the embrace of a warm, fuzzy consensus". One can only concur with Cockrell (1996: 12) when he says: "Since 'logic and precedent' are of limited assistance, can the Court articulate a theory of substantive reasoning which can guide it in 'difficult value judgments'?"

Other: The term Other³⁴ signifies and asserts a difference; a distance between the same and the Other; a hostility towards every Other human consciousness. It poses an ambiguous relationship between the subject and the Other. "From the outset he [the subject] himself has instructively created a gap between himself and the Other (the colonised), as between the master and slave, as the pragmatic subject of absolute difference" (Houtondji, 2002: 125). Derrida describes the Other as "one whose voice has been extinguished by death, a radical absence" (Sallis, 1988: 153). The Other is perceived as the voiceless ones in the Western theory of ideas.

Ramose maintains the category Other includes Africans, African-Americans, Maoris and Aboriginees of Australasia. Western feminists include women in the category Other. According to Mudimbe³⁵ (1988: 86-87), "the basic premise of the ideology of otherness" state that history is a myth. To celebrate African Otherness African political thought started celebrating "the black personality", the "obtaining of certain socio-political rights" and African independence. Sarte's *Black Orpheus* is generally perceived as Africa's first celebration of Otherness. In 1948, *Black Orpheus*, Sarte's introduction to Senghor's *Anthology of New*

³³ Whilst "substantive reason is a moral, economic, political, institutional or other social consideration ... formal reason, in contrast, is a legally authoritative reason on which judges are required to base a decision and which overrides any countervailing substantive reasoning arising at the point of application" (Cockrell, 1996: 5).

³⁴ See Definitions and 2.4.2.

³⁵ Mudimbe (1988) maintains Rousseau was the first philosopher who celebrated Otherness with his notions of the noble savage.

Negro and Malagasy Poetry, “transformed negritude into a major political event and a philosophical criticism of colonialism” (Mudimbe, 1988: 85). Césaire, Damas and Senghor utilised Negritude poetry to celebrate African Otherness.

CHAPTER TWO

DECONSTRUCTING WESTERN PHILOSOPHY'S RELATIONSHIP WITH THE AFRICAN OTHER

2.1 INTRODUCTION

In an attempt to give recognition to African law and legal thinking, which is part of the source of values of South Africa's new democracy, the Constitutional Court introduced the concept of *ubuntu* in *S v Makwanyane*³⁶ in 1995. By acknowledging *ubuntu* as part of South Africa's jurisprudence, the Court fused African philosophy and African jurisprudence with Western philosophy and Western jurisprudence. The Court contends that *ubuntu* and Western philosophy promote human dignity, equality and freedom³⁷ as prescribed by the Constitution. It is common knowledge that Western philosophy and Western jurisprudence embody fundamental human rights. But what does *ubuntu* or African philosophy and African jurisprudence embody? Notwithstanding the fact that the Court found *ubuntu* difficult to define in a European language³⁸, Mokgoro J translated the concept of *ubuntu* as "humanness".³⁹

As South African courts have hitherto failed to develop the concept of *ubuntu* as a constitutional value, it seems as if "*ubuntu* is only used by some of the Constitutional Court judges as a 'catch-phrase' in an attempt to 'strengthen' a certain judgment" (Bekker, 2006: 337). According to Broodryk (2007), Ramose (2002), Bhengu (2006), Tutu (2002) and many others, the concept of *ubuntu* is inextricably linked to African philosophy. African philosophy has been intertwined with Western philosophy for centuries. In an attempt to ascertain what African philosophical values embody, Chapter Two deconstructs this relationship.

³⁶ *S v Makwanyane* 1995 3 SA 391 (CC).

³⁷ See sec. 39 (1) of the Constitution, Act 108 of 1996.

³⁸ See Mokgoro (1998{b}: 49) and Tutu (1999: 34).

³⁹ *Ibid* par. 308.

Deconstruction of Western philosophy's hegemonic relationship with the African Other is no fairytale and reveals unpopular truths.

For centuries the Western tradition of philosophy denied African thought the status of philosophy. According to Oruka (2002{a}: 120), African philosophy is the postcolonial, philosophical attempt by Africans to affirm their humanity, values, religion, history, politics, culture and traditions. African philosophy can therefore be seen as Africa's postcolonial response to the Western belief of Africa's inferiority. African philosophy brings a postmodern critique of the 'universal' norms and values of Western philosophy. It negates Western philosophy's dominant ideology of liberalism which eroded African values and justified innumerable injustices against the African Other.

From the fifteenth to the twentieth century, African history stands testimony to the prejudice, racism, discrimination, genocides and other human rights violations suffered by Africans at the hands of Europeans. Whilst Western philosophy justified slavery, colonisation and neo-colonialism in Africa as a civilising, Christian mission, millions of Africans suffered uncountable injustices over a period of more than five hundred years. In spite of the fact that the European Enlightenment proclaimed rationalist thinking, human equality and individual liberty in the eighteenth century, Western philosophy continued stereotyping Africans as subhuman for more than two centuries. Western philosophy's modernist belief of a 'universal' philosophy, based on rational thinking and liberal values, was supposed to ensure justice for all, but has dismally failed the African Other. Not only has Western philosophy resulted in the Western denial of 'pagan' African humanity, but Western jurisprudence justified human rights violations in the name of Christianity. As Wa Thiong'o (cited by Theroux, 2004: 94) said: "Christianity and Western civilization – what countless crimes have been committed in thy name!"

Chapter Two deconstructs Western philosophy in an attempt to bring an understanding of the interconnected nature of Western philosophy and African philosophy. In deconstructing Western philosophy the researcher attempts to expose the biases and fault lines of Western philosophical discourse towards Otherness and to get a glimpse at what African philosophical values convey. As there is little reverence for history in postmodernism, and even less in deconstruction, this chapter strives to give a glimpse of the bigger picture: the philosophical struggle of African communitarianism versus the dominant philosophy of Western liberalism. No study can ever do justice to the full scope of injustices that Africans have suffered as a result of the hegemony of Western liberalism. This chapter reveals the true nature of Western liberalism as the 'superior' philosophy: a philosophy condoning discrimination, human rights violations and crimes against humanity against the African Other. It reveals, in brief, the prejudiced nature of Western philosophy: a prejudice that began with classical Greek philosophy and which ultimately culminated in Western philosophical prejudice or racism.⁴⁰ The following aspects will be discussed in Chapter Two:

- Background.
- Classical Greek philosophy: a philosophy of prejudice.
- Western philosophy: a philosophy of prejudice.
- Western philosophy: a philosophy condoning racial prejudice.
- African law versus customary law.
- Apartheid.
- The lingering inferiority complex.
- Superior versus subhuman.

⁴⁰ The International Convention on the Elimination of All Forms of Racial Discrimination 1969, art 1(1) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Art 4 obliges states to criminalise 'all dissemination of ideas based on racial superiority' and 'incitement to racial discrimination'".

- Conclusion.

Chapter Two introduces classical Greek philosophy as the origin of philosophical thought in the West. It establishes classical Greek philosophy as an individual philosophy which applies reason, or acquired critical thinking skills, to deduct conclusions from inexplicable phenomena (Law, 2007: 17). Although Greek philosophy was not noted for racial prejudice it did entertain a master-slave culture with strict class divisions (Rattanzi, 2007: 14). Despite the fact that Aristotle proclaimed philosophy a universal enterprise, slaves, women, and 'barbarians' were excluded from partaking in classical Greek philosophy.⁴¹ Classical Greek philosophy laid a firm foundation for prejudice which was to be followed through by Western philosophy.

A definition of Western philosophy reveals that this discipline retained the definition of classical Greek philosophy as a method of individual, critical, reflective and logical enquiry (Oruka, 2002: 120). It seems as if B.J. van der Walt (2003: 203) and Blackburn (2004: xii) concur in their definitions of Western philosophy which state that philosophy in the Western tradition is an academic discipline, as in the days of Plato's Academy. It becomes evident that Western philosophy is not a universal philosophy but a philosophy tainted by prejudice. De Bouvier (1997), Imbo (1999), Ramose (2002) and others find the exclusion of the Other from Western philosophy to be rooted in the Western male's perception of the Other as being too emotional and not rational enough to partake in its rational epistemology. Because both Western feminists and Africans are perceived as irrational, emotional and intuitive beings in the Western theory of ideas, they embrace similar postmodern aims and methodologies in their struggle against

⁴¹ Nkrumah (1998: 44) argues that although Aristotle believed all men were capable of rational thought, he "did not believe that each man was able to contribute to the truth. In this he was reflecting in his thinking what was a social fact in Greece. To say that each man was able to contribute to the truth would require at the social level that each man should have political rights. The facts of Greek society were not in accord with this. The democracy of the Greeks was a democracy which was supported in the main by slave labour. Aristotle criticised neither the inequality of the sexes nor the exploitation of slave labour. He even thought that slavery was right provided the slave was naturally inferior to his master. He enjoined his fellow countrymen not to enslave Greeks but only an inferior race with less spirit".

their deliberate marginalising (Hegeman cited in Imbo, 1999: 1350). Imbo (1999), Wittgenstein (cited by Bell, 2002), Davidson (cited by Sogolo, 2002) and others find the inability of Western philosophy to embrace worldviews foreign to its own, the reason for its philosophical exclusivity.

African history stands testimony to the racial prejudice of Western philosophy. Although no ideology of instrumentalist racism existed up until the droves of African chattel slaves arrived in the West, the African reality entrenched Western philosophy in racial prejudice (Davidson, 1994: 319). The eras of slavery, the Enlightenment, European imperialism and its accompanying Christian civilising mission of the African continent, released the full horror of the onslaught of its superior philosophy on Africa's 'uncivilised barbarians'. Codified European laws legitimised the subordination of and discrimination against the African Other and resulted in numerous injustices against Africans. Not only were pre-colonial African laws eroded in favour of European laws but African laws were demoted to the inferior status of customary law, applicable only to rural African societies (Bhengu, 1997: 1). The end of the Second World War resulted in the independence of most African states. Western colonial hegemony was something of the past. For a few states in Southern Africa however, the tyranny of Western colonialism was to be perpetuated. In South Africa more than forty years of "full-fledged indirect rule" lay ahead (Mamdani, 1996). Another dose of Western liberalism's prejudice towards Africans unleashed the brutality of apartheid on South Africa's indigenous peoples.

After 500 years of African suffering from slavery, colonialism, racism, discrimination, violations of human rights, and genocides, Lamb (1987), Fanon, (1990), Appiah (1992), Wa Thiong'o (2006) and Muendane (2006) maintain that postcolonial Africans suffer from a lingering inferiority complex. Ramose (2002) and Appiah (1992) argue that Africans continue to see themselves through the lenses conferred on them by their European heritage. Although liberation did not restore African humanity in the eyes of either postcolonial Africans or the

Western world, Mazrui (2002) argues that it birthed an African solidarity and Afrocentrism amongst African peoples. In an effort to rid Africa of its lingering inferiority complex, African leaders such as Mbeki (1999) advocate the deliberate recovery of African pride throughout the African continent. This is also one of the goals of the African Renaissance.

Western civilisation seems to have been conditioned by principles of discrimination which propound that not all persons are on the same intellectual, cultural, historical, philosophical or scientific par. Throughout the mass enslavement of Africans, the Enlightenment, colonialism up to post-colonialism, Western philosophy has stereotyped Africans as subhuman beings. Ramose (2002) claims that the deepest roots of racism in Africa are traceable to Western philosophy. Turaki (1991), Mazrui (2002) and B.J. Van der Walt (2002) ascribe the bias of Western philosophy towards the traditional African reality to the profound differences between the two opposing worldviews. Unspeakable injustices, suffering, humiliation, degradation and denial of African humanity resulted because one worldview perceived itself superior to the other. According to Neugebauer (1991), this situation will prevail unless philosophers destroy the theoretical base of racism.

2.2 BACKGROUND

“Terrified and encouraged, praised and abused, defended and condemned, relegated to the category of ‘primitivism’ and lauded as the seat of civilisation, Africa finds herself in the galvanizing shock of favour and hate, confused. Nobody understands her. Nobody lets her alone. Nobody cares for her. Nobody spares her”.⁴²

The time has long gone where Europe can pride itself that humanity’s philosophical and cultural development began, after an Egyptian prelude, with

⁴² Nigerian author, Orizu, A.A.N. in *Without Bitterness: Western Nations in Post-war Africa*, 1944.

the civilisations of ancient Greece and Rome. Africans contend Europeans have deliberately robbed Africa of its history and philosophy; therefore, they are looking at the history of ancient Egypt and the rest of Africa with new eyes. Africans contend the African continent is the seat of civilisation (Diop, 1974).

It is generally accepted by the Western philosophical tradition that the foundation of European civilisation and philosophy was derived from classical Greece. Classical Greece acknowledged that it had derived its knowledge of religion, philosophy and mathematics from the ancient civilisations in Africa, especially from Egypt (Davidson, 2003: xvi). By applying the rhetoric of the Greek Sophists the following syllogism can be deduced: European philosophy is derived from classical Greece; classical Greece derived its knowledge of philosophy from especially Egypt; therefore European philosophy is derived from especially Egypt. “To those ‘founding fathers’ in classical Greece, any notion that Africans were inferior, morally or intellectually, would have seemed silly” as it was patently obvious where classical Greece derived its wisdom from (Davidson, 2003: xvii).

Whether Western philosophy can be derived directly from Egypt is a contentious issue amongst scholars of Western history and philosophy. Whilst Diop (1987), Bernal (1991), Onyewuenyi (1993), Ben-Jochanan (1994) and Obenga (1992; 2004) argue that Egypt, and not Greece, was the cradle of Western and African philosophical origins,⁴³ Lefkowitz (1996), Houtondji (1996) and other scholars of the Western philosophical tradition argue to the contrary. The fact is, many Greek philosophers, viz. Thales, Solon, Hecataeus Democritus, Herodotus, Plato, Socrates, Aristotle, Hippocrates⁴⁴, Pythagoras⁴⁵, Eudoxus and others, attested to having received their philosophical enlightenment from Egypt (Onyewuenyi,

⁴³ See Chapter Three par. 3.2.1.2.

⁴⁴ Hippocrates, the father of Western medicine, studied medicine under “the founder of medicine”, Imhotep of Egypt (Onyewuenyi, 1993: 40). Imhotep is regarded as the first physician in history and made the first analysis of the human anatomy in 2980 BC. Not only did Imhotep excel at science, medicine, architecture, philosophy, priesthood and mathematics, he was also the author of the Hippocratic Oath (Muendane, 2006: 128).

⁴⁵ Both Herodotus and Diogenus Laertius confirmed that Pythagoras studied in Egypt (Onyewuenyi, 1993: 47). Pythagoras spent 22 years in Egypt studying astronomy, geometry, medicine, philosophy and religion.

1993; Law, 2007). Not only did Herodotus describe Egypt as the “Father of History” but Homer states in his *Odyssey*: “In medical knowledge, Egypt leaves the rest of the world behind” (cited in Muendane, 2006: 129).

As the Greek philosopher Thales of Miletus (585 BC) is generally considered to have been the first philosopher in the West, the ancient Egyptian definition of the word ‘philosopher’ found in Egypt, dating from 1991-1782 B.C., could in itself be proof of the existence of ancient Egyptian philosophers predating Thales. This ancient Egyptian definition of the word ‘philosopher’ was found in the *Inscription of Antef* in the 12th Dynasty, 1991-1782 B.C. The *Inscription of Antef* states that a philosopher is a person “whose heart is informed about these things which would be otherwise ignored, the one who is clear-sighted when he is deep into a problem, the one who is moderate in his actions, who penetrates ancient writings, whose advice is sought to unravel complications, who is really wise, who instructed his own heart, who stays awake at night as he looks for the right paths, who surpasses what he accomplished yesterday, who is wiser than a sage, who brought himself to wisdom, who asks for advice and sees to it that he is asked advice” (cited in Obenga, 2004: 35).

What is clear from this definition of the word ‘philosopher’ is that to have been acknowledged as a philosopher in Egypt, the person had to be exceptionally wise. Not only was such a philosopher wiser than a sage, but he was also able to penetrate ancient writings. Although the definition does not categorically state literacy as a prerequisite for philosophers it can be deduced that certain Egyptian philosophers in 1991-1782 B.C. were literate and therefore able to interpret ancient texts which they shared with others. Clearly, early Egyptian philosophy was not earmarked for ordinary man, rather for the selective few found to be wiser than ordinary sages or wise men.

In the real world, not all philosophers were or are literate. As philosophy has been embedded in the oral cultures of different tribes and cultures of the nations

of the world the greatest sages known to mankind, viz. Jesus, Socrates, Buddha and Confucius, all partook in the oral tradition of philosophy. The ancient wisdom of sages was rarely written down as writing was not a prerequisite for philosophy. Outlaw (2002: 142), however, contends that “Western philosophy after Socrates continues to be mediated through written texts, principally”. Houtondji (1996) argues that philosophy must be a written praxis⁴⁶ and that the oral wisdom of Africa does not elevate illiterate sages to philosophers.

When the Greek philosopher Aristotle declared all men rational animals with his famous definition of man (Ramose, 2002{b}: 9), it was assumed that all humanity held philosophical beliefs and that philosophy was a universal enterprise. Tracking the history of Western philosophy, one stands in awe of the philosophical wisdom produced by classical Greek philosophers such as Pythagoras, Plato, Aristotle, Socrates and many others. In studying the philosophies of these Greek men a burning question arises: What has become of philosophy? The Greek ideal of a universal philosophy has made way for a pernicious “philosophical apartheid” in the West. Philosophy’s right of way belongs to the epitome of full humanity – the European male. The Other – European females, Africans, American Indians⁴⁷ and Aborigines and Maoris of Australasia⁴⁸ – are perpetually regulated by Western philosophy’s “Group Areas Act”. The Other has been branded into “pass law categories”, vehemently reasserting their not being rational or human enough to partake in the ‘universal’ enterprise called philosophy. Notwithstanding philosophy’s claims of universality, its so-called scientific methods reserved its exclusivity for the European male

⁴⁶ Theron (1995: 62) is of the opinion that “the transmission of knowledge secure enough to be called scientific, requires a material base such as a written sign, in accordance with the twofold nature of man. The spoken sign is not an alternative on all fours with this, since the written signs are essentially *signs of* the spoken sign, at a further remove effected for greater system and permanence. They are essentially *extensions* of the spoken word, corresponding to an extension of human knowledge which is at the time a qualitative transformation according to the scientific and hence philosophical ideal”.

⁴⁷ Nowadays called First Nations.

⁴⁸ “The belief that ‘man is a rational animal’ was not spoken of the African, the Amerindian and the Australasians: all indigenous peoples of their respective countries since time immemorial linger on in the complex structure of conemporary international relations” (Ramose, 2002{b}: 1).

only. Philosophy is, and has always been, the exclusive playground for the European male which renders its claims of universality invalid.

Neither the Renaissance, the Age of Enlightenment nor the Universal Declaration of Human Rights, 1948, brought the Other either philosophical freedom or philosophical equality. Art 1 of the Universal Declaration of Human Rights 1948, states that “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of ‘brotherhood’”. Philosophical equality has, however, not yet been granted to the Other. Western philosophy has placed a gatekeeper between the Other and full humanity: so-called rationality.

The root of Western philosophy, classical Greek philosophy, and its prejudice towards the Other will now be discussed. Classical Greek philosophy laid a firm foundation for prejudice which was to be perpetuated throughout Western philosophy, ultimately culminating in racial prejudice towards the Other.

2.3 CLASSICAL GREEK PHILOSOPHY: A PHILOSOPHY OF PREJUDICE

Like African philosophy, Greek philosophy originated from a fusion of religious mysticism and mythology (Law, 2007). Greek philosophers of the sixth century B.C. were tired of being at the mercy of their gods. They demanded order and applied *logos* (reason and logic) to their life and surroundings to make sense and bring order to their lives. The first recorded Western philosopher was undoubtedly Thales, who lived in the Greek colony of Miletus in Asia Minor. Characteristic of Thales’ philosophy was his application of reason whilst searching for answers to inexplicable phenomena. Thales, Western philosophy’s alleged first philosopher and founder of Western science, was well travelled and owed much of his enlightenment to Egypt (Law, 2007: 24) where he studied geometry.

Pythagoras (570-495 B.C.)⁴⁹, the Greek father of relativism, and inventor of the deductive method in mathematics, was the first of the great philosophers who called himself a 'philosopher' (Soloman & Higgens, 1996: 28). When asked whether he was a wise man⁵⁰, Pythagoras replied: "no. I am only a lover of wisdom". Being a lover of wisdom did not imply that Pythagoras was wise but rather that he loved the activity of thought and that he did not merely accept popular opinions or beliefs of the day but practised self-reflection and actively searched for wisdom (Soloman et al., 1996: 28). As philosophers, both Thales and Pythagoras viewed philosophy as an activity of thought, a process whereby answers to fundamental questions could be obtained by applying reason.

Parmenides (515-445 B.C.) added another dimension to Greek philosophy in his epic poem *On Nature*: "presented in three parts, it produces rational arguments for his metaphysical conclusion concerning the true nature of reality, contrasting this with the way the world appears to the senses of ordinary mortals" (Law, 2007: 239). Parmenides is considered to have produced the first rigorous philosophical arguments and is therefore considered by many as the first true philosopher. Reason and logic became a distinctive trait of Greek philosophy. Plato influenced Western philosophy for over two thousand years. Such is Plato's intellectual importance that Whitehead (1997: 376) described all subsequent developments within history and therefore Western philosophy, as footnotes to Plato's work. In his *Republic*, Plato (427-347 B.C.) shares the view that 'wondering' is the beginning of an individual's quest to philosophise. Like his forebears, Plato emphasises that philosophy is an individual, critical inquiry of the mind. The idea of a whole group philosophising is an open denial of Plato's maxim that "the multitude cannot be philosophic" (Oruka, 2002: 121).

⁴⁹ Many of the ancient Greek philosophers acquired their superior knowledge of mathematics, science and cosmology in Egypt. On advice of Thales, Pythagoras too left Greece for a visit to Egypt to study mathematics.

⁵⁰ "According to legend, when someone asked the Delphic Oracle who the wisest man was, it answered: Socrates. When Socrates learned of this, he went around asking people what they knew. He found that they all claimed to know things that, in fact, they didn't know. So Socrates concluded that he really was the wisest man, since he knew he knew nothing while everyone else mistakenly thought they knew something" (Stevenson, 2002: 45).

Plato founded the first Academy⁵¹ in 387 B.C. where students were schooled in critical thinking skills. “Based on the principle that students must learn to criticize and think for themselves rather than simply accept the views of their teachers, it is generally viewed as the first university” (Law, 2007: 245). According to Law, the finest intellectuals in the classical world, viz. Aristotle, were students at Plato’s Academy. With the founding of the Academy, philosophy was no longer a mere ‘love of wisdom’, as Pythagoras suggested. Plato transformed classical Greek philosophy into a rigorous intellectual enterprise. Students at the Academy were groomed in the academic skills of philosophising: they were taught how to apply rational thinking, criticise and think for themselves. From 387 B.C., Greek male philosophers were given the intellectual edge above all other mortals attempting to partake in the activity called philosophy.

Like Plato, Aristotle (384-322 B.C.) insisted that philosophy begins with and continues as a “sense of wonder”. Aristotle’s “sense of wonder” reiterates that philosophy is in essence one’s willingness to question fundamentals. Aristotle was the first Hellenic philosopher to indicate that philosophy was a universal exercise when he defined man as an *animal rationale*. With these words he declared all men rational animals. Aristotle’s notion of philosophy being a universal exercise was later confirmed by the French philosopher Descartes. Descartes’ (1596-1650) adage ‘I think therefore I am’ confirmed the notion that reason⁵² was man’s only proper avenue by which to establish knowledge (Law, 2007: 38). Although Aristotle declared all men equal in rationality, all men were

⁵¹ Law (2007: 24) states the finest intellectuals in the classical world, including Aristotle, were all schooled at Plato’s Academy. At Plato’s death the Academy was passed on to Plato’s nephew where it continued to function as a centre of higher education and research until it was closed down by the Christian emperor Justinian in AD 529, nine hundred years after its founding. “As part of his program of violent enforcement of Christian orthodoxy, Justinian issued an edict declaring; ‘Henceforth never again shall anyone lecture on philosophy or explain the laws in Athens’,” (Moor, 2007: 25-26).

⁵² Augustine maintained that all Greek philosophy prior to Christianity contained the fundamental error of extolling the power of reason as the highest power of man. Augustine argues that when one becomes enlightened with a special divine revelation reason itself is one of the most questionable and ambiguous things in the world. Augustine, like Aquinas his disciple, was convinced that reason would lead to man’s peril and temptation unless he was guided and illuminated by the grace of God.

not equal in status.⁵³ Whilst Plato asserted "the intrinsic inequality of men and supported a strict class system, Aristotle⁵⁴ followed suit with a merit based theory of justice" (Van Blerk, 2006: 2). According to Van Blerk (2006: 8), justice for Plato and Aristotle was awarded each person according to his status. "[D]espite their immense philosophical and scientific enlightenment, they [Plato and Aristotle] had the consciousness of the master-slave culture"⁵⁵ (Oruka, 2002: 61).

The most influential theory regarding the nature of and social position of races, known as the Great Chain of Being⁵⁶, is generally believed to have originated in Aristotle's theory that some men are destined for subjugation (Foutz, 1999: 7). According to Aristotle (cited by Foutz, 1999: 7), "the universe resembles a large and well-regulated family, in which all the officers and servants, and even the domestic animals, are subservient to each other in a proper subordination; each enjoys the privileges and prerequisites peculiar to his place, and at the same time contributes, by that just subordination, to the magnificence and happiness of the whole". Foutz argues that Aristotle was in fact the great architect of physiognomics when he attempted to illustrate that physical variation in human appearance results in intellectual and moral differences. Aristotle's theory maintains that: "[w]hen men have large foreheads, they are slow to move; when they have small ones, they are fickle; when they have broad ones, they are apt to be distraught; when they have foreheads rounded or bulging out, they are quick tempered"⁵⁷ (Foutz, 1999: 9). According to Foutz, Aristotle's notion "is clearly racism as understood in modern parlance".

⁵³ This Greek notion of inequality reverberates also in *ubuntu* philosophy. See 4.11.3.

⁵⁴ In *Politics*, Aristotle's doctrine '*Nature does nothing in vain*', is applied "most notoriously to the moral justification of slavery (some men differ from others as much as the body from the soul or as an animal from a man), but another clear instance of natural dominance and subordination, in Aristotle's view, is the relation of men to women – a union of the naturally ruling element with the naturally ruled, for the preservation of both" (Lovibond, 2000: 13).

⁵⁵ The legal status of a person was determined by the person's merit in society.

⁵⁶ "The Chain of Being by definition denied any great rift among species as so was often interpreted as denying the category of species altogether. For example, John Locke, in book III of *Essay Concerning Human Understanding* refuted the idea of systematic divisions since such were merely man-made categories" (Foutz, 1999: 8).

⁵⁷ Aristotle's traits in anthropology were derived from differences in racial features.

The status consciousness of Plato is evident in his prayers to God when he thanks God for the blessings He bestows on him. In his prayers, Plato firstly thanked God that He created him free, not a slave; secondly he thanked God for creating him a man and not a woman⁵⁸ (de Beauvoir, 1997: 22). Like Plato, Aristotle is the epitome of a status-conscious, prejudiced and sexist philosopher. In his *Politics*, Aristotle argues that certain classes of people are by nature ordained to rule over others and that men are to rule over women as masters are to rule over their slaves. Aristotle's theory of women as deformed or infertile males⁵⁹ reveals his sexist bias towards women.⁶⁰

In his work *On the Generation of Animals* Aristotle posits that the superior one should be separate from the inferior one and envisages the female's "most perfect functioning involves creating conditions for the male element to prevail" and that women are merely "matter set in motion by and for the soul of the unified male, for the ends of the male species" (Lange, 1983: 11-12). Aristotle maintains that in sexual reproduction the baby's body comes from the female and soul from the male, therefore "the real parent is clearly the male, since it is he who contributes the human soul" (Lange, 1983: 11). Aristotle (cited in Lovibond, 2000: 13) maintains that "slaves are entirely without the faculty of deliberation"; females possess reason but in a form which is inconclusive; and children possess reason in an immature form. Aristotle argues that women are most probably without a soul: however, should they have a soul, it would *not* be a rational soul (Spelman, 1983; Lange, 1983).

Female individuals who did practise philosophy in classical Greece's patriarchal society did so through their "male kin or sexual protectors" (Lovibond, 2000: 10). It is evident that Aristotle had no intention of including either slaves or women in

⁵⁸ Socrates (469-399 BC) makes the point that women's role in the rational political order is to perform the function only of producing children (Lovibond, 2000: 14-15).

⁵⁹ Females are often depicted as deformed males. Nietzsche defines feminism as "the operation through which a woman desires to be like a man" and Derrida describes feminism as "merely a form of phallogocentrism," (cited by Elam, 1994: 15; 16). Whilst Western males continue to speak for Others, the truth is, females do not all suffer from penis envy. What would we do with a penis anyway?

⁶⁰ This notion reverberated through Western philosophy.

his category of rational animals.⁶¹ Greek philosophy was clearly earmarked only for free, Greek-speaking male animals⁶². Aristotle's sexual and social stereotyping of women and prejudice towards slaves has been reverberating through Western society ever since.

Although Greek philosophy distinguished between Greeks, barbarians, free men and slaves it has never been noted for racial prejudice.⁶³ The Greeks classified barbarians⁶⁴ as people who could not speak Greek, only "barbar" (Rattanzi, 2007: 14). Barbarians represented people who did not accept the Greek ideal of the *Politicos* but preferred to live under authoritarian rule. Whilst classical Greek philosophy was not noted for racial prejudice it was characterised by definite class divisions. These hierarchical class divisions resulted in discrimination against certain individuals and classes of people, viz. barbarians, women and slaves who were barred from the activity of philosophy. From a postmodern perspective "we know that class divisions explain racial antagonism, it is not the other way round ... and that in order to eliminate modern day racism, we must eliminate class division" (McGary, 2002: 589). Greek philosophy's alienation of certain classes of peoples, viz. women, slaves and barbarians accentuated

⁶¹ The Greeks probably also borrowed their entrenched sexism from Egypt. Hypatia is generally noted as the most famous intellectual female Egyptian philosopher of antiquity. Not only was she an astronomer, mathematician and philosopher, but also very outspoken on sexual bias. Apart from her rational, radical view on Neo-Platonism, Hypatia is famous for her blatant and gruesome assassination by Egyptian monks in 415 (Dzielska, 1995). She too had to practise philosophy under the name of her male counterpart. *Hypatia* is also a philosophical journal on social philosophy and gender issues.

⁶² Only certain restricted groups of individuals, viz. the free Greek males in Aristotle's *Politics*, could engage in philosophical praxis (Outlaw, 2002: 141).

⁶³ An example thereof is the African philosopher Augustine (354-430) of Hippo in North Africa, who produced many philosophical works in the Greek tradition of philosophy. It must be stated that the Greeks took pride in their cultural superiority over other cultures. Isocrates states in *Panegyricus* (380 B.C.): "Our city (sc. Athens) has left the rest of mankind behind in thought and expression, that those who are her pupils have become the teachers of others. She has made the name of Greek no longer count as that of stock, but as that of a type of mind: she has made it designate those who share with us in our culture, rather than those who share in a common physical type" (cited in Theron, 1995: 46). Draper (2008: 39) states that the ancient world was devoid of racial prejudice.

⁶⁴ According to Rattanzi (2007: 14), "Aristotle thought it possible that cold climates produced populations 'full of spirit but deficient in skill and intelligence', and therefore incapable of ruling others, while Asians displayed skill and intelligence but no spirit, and this explained their predisposition to live in subjection and slavery".

inequality. Classical Greece laid the foundation for philosophical prejudice which would reverberate throughout Western philosophy.

Even though Aristotle maintained that all men were rational animals, Greek philosophy was not the playing field for *all* rational animals. As barbarians, slaves and women were marginalised in Greek philosophy, the love of wisdom was reserved for free, Greek-speaking, male intellectuals only. By excluding women, slaves and barbarians from the activity of philosophy, Greek philosophy set the trend as an exclusive prejudiced philosophy.

2.4 WESTERN PHILOSOPHY: A PHILOSOPHY OF PREJUDICE

Deconstruction of history reveals that Western philosophy has always been an exclusive academic philosophy unable to accommodate worldviews foreign to its own (B.J. van der Walt, 2003: 203). By denying the Other their worldviews, however, the very idea of philosophy was defeated. Postmodernism reveals the bigger picture in philosophy and argues that there is no universal philosophy or single truth. Truth is something construed by a specific worldview and expressed in its vocabulary. There are however many Other realities than merely the regulated praxis of Western philosophy. This section highlights the following:

- Western philosophy: a definition.
- Western philosophy and the Other.
- The synonyms: white women and Africans; and
- Opposing worldviews.

2.4.1 Western Philosophy: a Definition

Encarta (Internet {a}: 2007) defines Western philosophy as a “rational and critical enquiry into basic principles”. It divides Western philosophy into four main branches, viz. metaphysics, epistemology, ethics and aesthetics: “metaphysics,

the investigation of ultimate reality; epistemology, the study of origins, validity and limits of knowledge; ethics, the study of morality and good; and aesthetics, the study of the nature of beauty and art". According to Encarta, the two distinctively philosophical types of inquiry have been described as analytic and synthetic philosophy: "analytic philosophy, the logical study of concepts, and synthetic philosophy, the arrangement of concepts into a unified system".

Oruka (2002: 120) defines Western philosophy as "a method of critical, reflective and logical enquiry". He argues that Western or European philosophy is known to manifest critical and rigorous analysis and logical explanation and synthesis. Oruka (2002: 120) sees philosophical thought lacking in these characteristics to be "basically intuitive, mystical and counter or extra rationalistic". Western philosophy is clearly defined in terms of its rigorous, analytical and critical *method*. Despite Aristotle's efforts to declare all men capable of rational thought, Oruka and other African professional philosophers classify the collective philosophy of traditional African societies as "emotive, mythical and unlogical". According to them, traditional African philosophy does not represent philosophy in the strict sense (Oruka, 2002{a}: 120).

Shutte (1993: 8) defines Western philosophy as "a rigorous, self-critical intellectual discipline". Shutte (1993: 7) posits that the Anglo-American analytic style of philosophy is now "the most influential philosophical school in the world and has developed hand in glove with science". According to him, this style of philosophy has abandoned "the two most important parts of traditional philosophy, metaphysics (our overall view of the world or reality) and ethics (our fundamental system of values) ... Contemporary Anglo-American analytic philosophy does in fact inculcate a general view of the world of values; it is materialist, liberal-capitalist, utilitarian and atheist" (Shutte, 1993: 8). Western philosophy embodies liberalism, capitalism and individualism. Although the Anglo-American style of analytic philosophy has abandoned metaphysics and views philosophy a universal enterprise, this does not mean that the philosophies

of Others are barred from metaphysics or that they view philosophy a universal enterprise.

Despite academic definitions of Western philosophy, philosophical reality suggests there is an institutional definition to Western philosophy. B.J van der Walt (2002: 203) defines Western philosophy as “an academic discipline which reflects on a specific worldview in a scientific way”. Van der Walt’s definition of Western philosophy as an academic discipline which reflects on “a specific worldview in a specific way” sidelines not only illiterate and non-academic philosophers but *all* philosophers entertaining worldviews other than the Western theory of ideas. Western philosophy certainly does not view all worldviews equally significant. Blackburn (2004: xii) defines Western philosophy as “whatever is produced by those who are paid as philosophers in university faculties ... Philosophy lies in the eye of the beholder”. The views of Blackburn and Van der Walt seem to agree that Western philosophy has evolved into a very privileged, academic activity of thought.⁶⁵

By deconstructing history, history reveals that Western philosophy has always been “a very privileged activity of thought”. The Egyptian definition in the *Inscription of Antef* indicates that Egyptian philosophers had to be “wiser than sages”, disqualifying a great many thinkers from philosophical activity. Since Plato’s Academy was founded, Greek philosophers “received teaching on how to criticise and think for themselves”. The Western philosophical tradition followed suit, as Van der Walt and Blackburn suggest with their definitions of philosophy. By defining Western philosophy as “whatever is produced by Western academics”, Blackburn sounds the alarm to the Others, exposing Western philosophy’s discriminating nature. Others with worldviews alternative to those of Western academic males are perceived pre-scientific, irrational, emotional and mythological. Van der Walt’s definition of philosophy as an “academic discipline” which reflects on “a specific worldview in a specific way” seems to *ipsi facto*

⁶⁵ As Plato said: “The wisest have the most authority” (Law, 2007: 7).

exclude thinkers who do not match the Western male's view on life. Bell's (2002: 1) appeal to grant the status of 'philosopher' also to thinkers with alternative worldviews to those of the West falls on deaf ears. In the Western philosophical tradition, different has always meant inferior.

Aristotle's ideal of philosophy has made way for a pernicious, academic and technical version of philosophy; philosophy is no more accessible to 'the lover of wisdom'. The Greek ideal of philosophy as a male quest for wisdom is history. Philosophy has become a professional skill. Western philosophy is an exclusive enterprise, closed to all but a handful of like-minded professional academics. It is not difficult to concur with Mannion (2002: 207) when he states "You may have come to the conclusion that philosophy is strictly the purview of that misunderstood and unfairly maligned minority known as dead white men".⁶⁶ For Others doing philosophy, Blackburn's perception of this Western academic discipline is a soothing balm when he states: "the words of even those who stand on the highest pinnacles of the profession have never proved acceptable to more than a tiny minority who understand them ... we have to believe in the value of the process rather than the durability of the product, for the product melts as we watch it" (2004: xiv-xv). And postmodernism provides the heat for the meltdown. The prejudiced nature of Western philosophy is evident in its treatment of the Other.

2.4.2 Western Philosophy and the Other

Western philosophy's historical treatment of the Other⁶⁷ is symptomatic of the tradition's prejudiced and exclusive nature. Whilst claiming to be a universal⁶⁸

⁶⁶ This expression could be seen as a postmodernist expression. Postmodernists have according to Soloman et al. (1996: 300), a decided preference for "playfulness, for stylistic experiment" and for "an utter lack of seriousness". Postmodernism rejects the Western philosophical tradition. Oyewumi (2002: 406) maintains that "it is next to impossible to create an African theoretical space when the ground of [philosophical] discourse has been crowded by DWEMs – dead, white, European males".

⁶⁷ Western feminism contends that philosophy's historical treatment of women as the Other, is itself a symptom of the tradition's intrinsic bias and limitations. Feminism is a philosophy that exposes and resists the systematic exclusion of women from patriarchal society and male modes of thinking. It advocates equal rights for women and men.

and all-inclusive philosophy, Western philosophy has refuted the philosophies of the Other as emotional, intuitive, illogical and pre-scientific.

If truth be told, the three-thousand-year tradition of Western philosophy has not been able to accommodate worldviews foreign to its own. Not only European women but Africans, African Americans, American Indians, Aborigines and Maoris of Australasia have been denied their philosophical heritage in the West. Viewing philosophy, there are few women in evidence in this tradition. Western philosophy's patriarchal tradition is the creation of European men and not women. Women, like all Other, were found to be less suited for philosophy; too emotional, too intuitive and less rational than European men. As in classical Greek philosophy, "in the Western theory of ideas rationality and reason have been presented as an exclusive masculine trait, excluding women from language, religion, [law] and social and political functions" (Soloman et al., 1996: 228). The outcome of Western philosophy's relentless denial to recognise the philosophies of the Other⁶⁹ resulted in "women, Africans, African American and other groups at the margins ... to be seen as deficient in reason and rationality and thus could not partake fully in humanity" (Imbo, 1998: 137).

Denying the Other their worldviews is to reject the very idea of philosophy. Masolo (1995: 158) argues that "philosophy makes part of the definition of man. It is proper to man and forms part of his essence. It is the manifestation of rationality. Through his or her claims for a possession of a philosophy therefore, the African only expresses his or her claims for an entry to this humanity".

⁶⁸ "Dominant theories and categories were wrong not simply in universalizing beyond their scope, i.e. that they were partial in the sense of being limited, not universally applicable, but that they were also partial in the sense of being ideological, interested and distorted; in short to a greater or lesser degree false" (Fricker, 2000: 149).

⁶⁹ Rattansi (2007: 17) confirms that during the Middle Ages Otherness was associated with "Blackness, wildness and the monstrous" and that this association with darkness and evil was perpetuated in Christianity.

Western philosophy and the Other are synonymous with the self and the Other; a dualism⁷⁰ or dichotomy as archaic as consciousness itself. Otherness is a fundamental category of thought⁷¹ which is to be found in most of the ancient mythologies and primitive societies. Human consciousness has an intrinsic hostility towards every Other consciousness. According to de Beauvoir⁷² (1997: 111), the idea of the Other rises at the moment when man asserts himself as “subject and a free being over its object”, the Other. “From that day on, the relation with the Other is dramatic: the existence of the Other is a threat, a danger. Ancient Greek philosophy showed that alterity, Otherness, is the same as negation, therefore evil. Therefore to pose the Other is to pose a Manichaeism”⁷³ (de Beauvoir, 1997: 111). Posing oneself in opposition to the Other, be it sex or race, positions the Other as inferior. According to de Beauvoir, the Other are therefore inseparable from their defect; their inferiority puts ‘right’ on the side of their oppressor, their master.

As a result of Western philosophy’s monopoly on freedom of thought, its jurisprudence and legal systems also accentuated Otherness. Historically males have always kept in their hands all concrete powers. Women as Others, were kept in a “state of dependence, their codes of law⁷⁴ set against her” (de Beauvoir,

⁷⁰ This duality was not originally attached to the division of the sexes. De Beauvoir however finds that the basic trait of being a woman poses her as the Other. In *The Second Sex* she indicates how women have always been defined by male society as ‘the Other’ and how women have accepted this secondary position against their own best interest. A woman is to a man “the Other in a totality of which the two components are necessary to one another” (1997: 20).

⁷¹ Horton narrates the reaction of the Kalahari people of the Niger Delta when they first saw a white man, not an albino by nature, in 1500. Their immediate reaction was to apply to their oracles for comfort and enlightenment. “[T]he first white man, it is said, was seen by a fisherman who had gone down to the mouth of the estuary in his canoe. Panic-stricken, he raced home and told his people what he had seen; whereupon he and the rest of the town set out to purify themselves- that is to say, to rid themselves of the influence of the strange and monstrous thing that had intruded into their world” (cited in Davidson 1994: 12).

⁷² Simone de Beauvoir (1997) claims that women are not born to be inferior but socialised to assume the role of the ‘Other’.

⁷³ Law (2007: 256) states that the philosopher Augustine was a member of the Manichaens, a sect found by the prophet Mani who was crucified in 277. According to Law, Manichaeism “characterizes the universe from the outset in terms of the struggle between good and evil”.

⁷⁴ Until the nineteenth century European, English, and American law allowed for husbands to complain to a magistrate if his wife nagged or scolded him. If found guilty of nagging, the wife was sentenced to the ‘ducking stool’. The wife “would be strapped into a seat which hung from the end of a moving arm, and then dunked into the nearest river or lake for a predetermined length of time”. The number of times she was

1997: 173). Western legislators, politicians, philosophers, priests and scientists have striven to show that the subordinate position of the Other is willed in heaven and is to man's benefit on earth. Men believe European male supremacy to be based on the eternal laws of God and made the fact of their supremacy a right by setting their laws and principles against the Other to affirm their inequality to man⁷⁵ (de Beauvoir, 1997: 22).

Two examples in this regard are firstly, the America political doctrine of 'separate but equal'⁷⁶ which provided constitutional protection for fifty years against the Other and secondly, South Africa's apartheid legislation of 'separate development' for forty years.⁷⁷ This kind of segregation of the Other justified the most extreme racial discrimination in the name of legal positivism. Throughout history, fear of the Other has resulted in "malignant dogma, masquerading as a message from God, to unleash the most horrific violence and oppression in the repertoire of hell. Moreover, this deadly form of exclusivist group passion can be virtually invulnerable to reason" (Gore, 2007: 48). The concept 'Other' is confirmed in texts of postmodernism, Western feminism, African professional philosophy and African feminism.⁷⁸ According to Biakolo (2002: 9), the concept Other confirms the "political project behind the Western construction of cultural paradigms".

submerged would depend on the severity of the case or previous convictions. If the ducking stool was not punishment enough, the wife would be paraded around town, as a warning to other women, wearing an iron mask clamped onto her head. This mask had a metal bar in the mouth to hold her tongue down. The last woman convicted of being 'a common scold' was Jenny Pipes, Leominster, England, 1809 (Pease, 2005: 16-17).

⁷⁵ Feminist jurisprudence suggests that, because women have different world views to men, women bring an innovative and unique perspective on law and jurisprudence to the legal community. "[B]ecause women have been excluded from shaping our [Western] legal structure in general, that structure reflects a distorted view of the tension between autonomy and connection and between the individual and society" (Sherry, 1986: 583).

⁷⁶ In 1883 the United States Supreme Court ruled in favour of racial segregation. Between 1890 and 1900 1100 black people were lynched "especially those accused of insulting behaviour towards white women" (Rattanzi, 2007: 44).

⁷⁷ "There are so many laws governing the lives and behaviour of black people that sometimes one feels that the police only have to page at random through their statute book to be able to get a law under which to charge a victim" (Biko, 2007: 109).

⁷⁸ See Mudimbe's *Invention of Africa* (1988) and *The Idea of Africa* (1994); Ramose (2002{b}); Biakolo (2002: 9); Oyewumi (2002: 381) and others.

2.4.3 The Synonyms: White Women and Africans

Western philosophy characterises females and Africans as essentially the same: as beings deficient in reason and rationality. Whilst Western rationality characterised women as beings that emphasise love, intuition, caring, and compassion over rationality, Africans are perceived as illogical, primitive⁷⁹, intuitive beings (Imbo, 1999: 136). Both Western feminism and African philosophy⁸⁰ question and contest Western philosophy's marginalising categories of 'women' and 'Africans'. In the Western theory of ideas 'women' and 'Africans' find themselves marginalised by philosophy's privileged approach to reason and rationality. Whilst Western philosophy claims philosophical universality, its discourse reveals a hierarchy of privilege, domination and oppression. Its philosophical universality continues to speak on behalf of all humanity. Western feminism and professional African philosophy find solidarity in their aims and methodologies in deconstructing Western reality: in revealing its codified forms of discrimination against Western women and Africans.

Postmodern approaches adopted by Western feminism and African philosophy challenge the oppressive, traditional ways of thinking within Western epistemology. Hegeman (cited in Imbo, 1998: 136) finds "the connection between issues in feminism and the debate about the existence of an African philosophy striking because both feminists and African nationalists have at times embraced similar, essentialist notions of alternatives for women and Africans respectively". Western feminists and African professional philosophers find solidarity in the fact that they have been marginalised and denied the right to self representation.

As feminists have a broad range of critiques against Western philosophy, they find common ground with the African Other in deconstructing and dismantling

⁷⁹ The sociologist Lévy-Bruhl characterised Africans as 'underdeveloped peoples' with a 'pre-logic mentality'. In his *Les Fonctions Mentales Dans les Sociétés in Férieures* (1910) and *La Mentalité Primitive* (1922) he discusses amongst other things how societies are classed as either civilised (Western) or primitive (non-Western) and elaborates on the mental inferiority of Africans.

⁸⁰ See 3.3.5.

post-Enlightenment liberal philosophy and its Eurocentric hierarchies. Imbo (1999: 135) lists the following feminist critiques of Western philosophy to be used by African professional philosophers for comparative purposes:

- Large numbers of philosophers are, and have been, European men.
- Men and women bring different discursive resources to their understanding of their environments; therefore there is a bias in the choice and definitions of problems when the process is filtered through masculine views of reason and rationality.
- There is a lack of concern for women's interests.
- The implicit assumption that the male represents the species, leads to a bias in interpreting human experience.
- There is a neglect of women's issues.
- There is a depreciation of feminine values.
- There is a denial of moral agency for women.
- There is a devaluation of women's moral experience.
- Radical feminist critiques question the very assumption of objectivity and rationality that underlie Western philosophy.

Common ground between Western feminists and the African Other does not only exist in the critique of Western liberalism, but also in the fact that the feminist worldview is Other-directed. In contrast, Western liberalism views Western males primarily as individuals and the communities they form as secondary. Sandel (cited in Tushnet, 1992: 545) describes the Western male's atomistic vision of autonomy and separation as follows: "What separates us is in some important sense prior to what connects us – epistemologically prior as well as morally prior. We are distinct individuals first, and *then* we form relationships and engage in co-operative arrangements with others; hence the priority of plurality over unity". Nozick⁸¹ sees his minimal state as an archetypal example of the consequences

⁸¹ Nozick' sees the minimalist state, based on an atomistic philosophy, with no room for collectivity: But why may not one violate persons for a greater social good? Individually, we each sometimes choose to

of an individualistic philosophy with the 'root idea' consisting of different individuals with separate lives. According to Nozick, the minimal state is merely a method of allowing each individual to attain individuality: "The minimal state treats us as individuals ...; it treats us as persons having individual rights with the dignity this constitutes ... [this treatment] allows us, individually or with whom we choose, to choose our life and to realize our ends and our conception of ourselves, insofar as we can, aided by the voluntary co-operation of other individuals possessing the same dignity. How dare any state or group of individuals do more, or less" (cited in Tushnet, 1992: 563).

According to Western feminists, women have a different perspective, or worldview, on life than Western men.⁸² Psychological studies done since 1982 (Gilligan) reveal that the Western women's concept of self differs from that of the Western male. While men primarily focus on separation and autonomy, women's primary concern is with intimacy, connection and community. In contrast with the atomistic European male perspective on life, women exhibit a collective existence. Chodorow (1978) and Gilligan (1982: 60) conclude that women tend to see others as extensions of themselves rather than as outsiders or competitors. "It is the collective that is important to me, and that collective is based on certain guiding principles, one of which is that everybody belongs to it, and that you all come from it. You have to love someone else, because while you may not like them, you are inseparable from them. In a way, it is like loving your right hand. They are part of you; that other person is part of that giant collection of people that you are connected to".

undergo some pain or sacrifice for a greater benefit or to avoid a greater harm ... In each case, some cost is borne for the sake of the overall social good. ... But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits others. Nothing more". (cited in Tushnet, 1992: 563).

⁸² Western feminist scholars identify the following three primary dichotomies between men's and women's thinking: "while women emphasize connection, subjectivity and responsibility, men emphasize autonomy, objectivity and rights" (Tushnet, 1992: 582).

In stark contrast with post–Enlightenment liberal thinking, Mbigi (1997: 2) explains the African concept of *ubuntu* as follows: “Ubuntu is a literal translation for collective personhood and collective morality. It is best expressed by the Xhosa proverb, *umuntu ngumuntu ngabantu* which means *I am because we are*. We have to encounter the *collective we* before we encounter the *collective I*. I am only a person through others. Ubuntu is not just an abstract concept of our African lives. It is expressed in our collective”. *Ubuntu* is based on strong communitarianism and group rights and contrasts with Western liberalism. It is, however, similar to Western philosophy in the sense that as philosophy, it too is hierarchical, patriarchal and oppressive.⁸³ De Beauvoir posits (1997: 22): “All religions invented by men reflect this wish for domination and use philosophy and theology to suppress women”.

It is, however, not only Western liberalism’s approach to reason and rationality that marginalised women and Africans, but its outright superior attitude towards these categories of humanity. Throughout the history of Western liberalism European women and Africans were at most perceived as adults with the status of children. In Rosseau’s seminal work, *Emile* (1762), he propounds the idea of women’s inferiority when he gives instruction on marriage. “Women’s entire education should be planned in relation to men, to win their love and respect, to raise them as children, to care for them as adults, counsel and console them, make their lives sweet and pleasant”.⁸⁴ Kipling’s poem *You will be a man My Son* (cited in Muendane, 2006: 70) reveals the Eurocentric thinking that denigrated also Africans to the level of children:

Take up the White man’s Burden
Send forth the best ye breed
Go bind your sons in exile

⁸³ See 4.11.3.

⁸⁴ In Rosseau’s *The Social Contract* (1968:18) this great Enlightenment philosopher calls his wife, Thérèse Le Vasseur, “backward and stupid and plain”. More astonishing about this icon of Western philosophy is the fact that “Thérèse bore him five children, who were all dispatched to an orphanage as soon as they were born”.

To serve your captive's need
To wait in heavy harness
To fluttered folk and wild
Your new-caught sullen peoples
Half-devil and half child.

Western feminism, as postmodernist philosophy, opposes the dominance of liberalism: its masculine power structures, gender biases and laws that discriminate against the category Other. Feminism is political⁸⁵ and committed to bring an end to the oppression, subordination, abuse and exploitation of women and the Other. Their aim is to restore to all Other the freedom, equality, autonomy and human dignity that is due to all humanity. Western Feminism adds a new dimension to Western philosophy, insisting that a person's gender conditions the way he or she approaches the world. Feminists insist that women can do philosophy as well as European men and add the bonus of humanness and intuition.

Feminist postmodernism⁸⁶ and African philosophers claim there are more philosophical realities than the Western male's claim to reason. They see Western rationality as a tool to monopolise philosophy and dominate humanity. As postmodernism reveals the bigger picture in philosophy, Western feminists and African philosophers argue that "the Western theory of ideas is not the self appointed right to reason, the sole producers of wisdom and the holders of truth" (Ramose, 2002{a}: 2). As categories of the Other, they reject the gatekeeper style of European rationality, its dualism: opposing itself to the Other; its philosophical claims of a single absolute truth and single value system. They are adamant that there is no longer a single universal truth, only different

⁸⁵ Elam (1994, 1;11;18) states that whilst feminism is seen as a political project, deconstruction seems more philosophical. Whereas "feminist philosophy turns into feminist readings, deconstructive philosophy depends upon the deconstruction of philosophy"; there is however "disciplinary crossing".

⁸⁶ Feminist postmodernism maintains social identity is fragmented. "Feminist postmodernism replaces unitary notions of women and feminine gender identity with plural and complexly constructed conceptions of social identity, treating gender as one relevant strand among others, attending also to class, race ethnicity, age, and sexual orientation" (Nicholson, 1990: 34-35).

philosophies. Whilst “philosophical apartheid” persists in the West it must be stated that ‘different’ does not mean inferior. The ‘different’ Other calls for a radical renewal of the term philosophy.

2.4.4 Opposing Worldviews

Aristotle insisted that philosophy begins with and continues as a ‘sense of wonder’.⁸⁷ This ‘sense of wonder’ urges the philosopher to reflect on the human experience and search for answers to fundamental questions. A philosopher’s sense of wonder or philosophy, always springs, according to Imbo (1999: 4), “from the society in which the philosopher grows up, with its religious proclivities or the lack thereof, the social class from which the philosopher has been drawn and the events that have shaped the philosopher’s education”. Imbo implies that the human experience does not present itself to us in the same way, rather that different worldviews⁸⁸ produce different philosophies. One’s worldview is one’s comprehensive reality originating from one’s culture, religion, politics and social class; one’s worldview is one’s philosophy.

Wittgenstein says the central aim of philosophy is to see something as it is: “We might say ‘every view has its charm,’ but this would be wrong. What is true is that every view is significant for him who sees it so (but that does not mean ‘sees it as something other than it is’). And in this sense every view is equally significant” (cited in Bell, 2002: 1). In line with Wittgenstein, thinkers have appealed for the so-called Principle of Charity to be applied. This principle states that one should be maximally charitable when judging worldviews, or philosophies, of other cultures. According to Sogolo (2002: 258), one should assume that worldviews from another culture accord “with the standards of one’s own culture and one should assume further that it is consistent and correct”. According to Davidson (cited in Sogolo, 2002: 258), “[t]he Principle of Charity is ‘forced on us; whether

⁸⁷ In the *Republic*, Plato shares the same view as Aristotle when he says that to wonder is the beginning of philosophy.

⁸⁸ A worldview is one’s ideology or philosophy which is based on one’s set of beliefs or values (*weltanschauung*).

we like it or not, if we want to understand others, we must count them right in most matters”.

In spite of Wittgenstein’s plea “that every view has its charm” or the Principle of Charity, Western philosophical reality is that every view is not equally significant. Because of this discriminative philosophical basis, communitarian societies, viz. traditional African societies, American Indians and the Aborigines and Maoris of Australasia have been denied the right to voice their worldviews in the Western tradition. They have been branded as pre-scientific, irrational, primitives and denied the right to voice their theories of ideas. Neither the Greek idea of philosophy being a universal reflective exercise, nor Wittgenstein’s idea of philosophy being a mirror image of one’s worldview, proved itself fruitful in the Other’s quest to be included as equals in the universal enterprise called Western philosophy.

As the Western theory of ideas is synonymous with the ideals of democracy and human rights, the West as torchbearer of these liberal ideals, is supposed to comprehend the importance of acknowledging worldviews of the Other. The worldview of a Westerner should be as significant as the African’s view of reality. Negating the Other’s worldview equals a declaration of war. Different worldviews should therefore not make comparative judgments on each other but should strive for tolerance and cross-cultural understanding of each other’s philosophies. Bell (2002: 1) rightfully argues that the time has come to grant the status of philosopher also to those whose customs, history, religions, mode of expression or worldviews are foreign to ‘ours’. This would imply however that the assumed post-Enlightenment fundamentals of Western philosophy are not universal to all humans.

Postmodern philosophy argues that traditional approaches in Western philosophy exclude and marginalise the Other. Postmodernism⁸⁹ and Western feminism compel Western philosophy to bring about an inclusive philosophical approach that would embrace humanity's different experiences and worldviews.

The role of Western philosophy as the advocate of racial prejudice will now be discussed.

2.5 WESTERN PHILOSOPHY: A PHILOSOPHY CONDONING RACIAL PREJUDICE

Before the onset of the Atlantic slave trade in the seventeenth century, there was “no racism in the instrumentalist sense” (Davidson, 1994: 337). However, when the droves of chattel slaves arrived from Africa, Europeans began to depict Africans as inferior humanity. The subhuman nature of African chattel slaves sparked a cultural bias, called the “older racism” (Davidson, 1994: 319). In the eighteenth century, the Enlightenment philosophers sparked a “new racism” (Davidson, 1994: 319) which justified slavery and imperialism and condemned Africans as less than human. The Enlightenment rationalised racial superiority and ethnocentrism. Abraham (1962: 160) and Ramose (2002{b}: 28-29) posit that “racism was implanted in Africa through European colonisation” and reshaped Africa in the best interest of European colonial powers. It is suggested that Christian missionaries brought not only Christianity to Africa, but the progressive destruction of African reality. This section gives an overview of the following:

⁸⁹ Theron (1995: 85) describes postmodernists as thinkers who “would simply rejoin that indifferent, we might almost say pre-veridical, state of pre- or non-Christian world”. He accuses the modern philosophical movements of the West of collectively representing “a large-scale apostasy, to which modern philosophers such as Spinoza have supplied the metaphysics, Jews, free-masons and Protestants working together behind the scenes, through publishing houses, politics and international finance, to destroy the Western Catholic heritage with its distinctive tenets in favour of a New Age type of humanism now posing as universalist and anti-colonial”.

- Background.
- Racial prejudice and slavery.
- Racial prejudice and the Enlightenment.
- The contradictions of the Enlightenment.
- Racial prejudice and colonialism, and
- Racial prejudice and the Christian civilising process.

2.5.1 Background

As Europeans have historically posed Africa as a continent devoid of history and philosophy, it has become imperative for African scholars to deconstruct and reconstruct⁹⁰ African history and philosophy in order to establish the African reality. Whilst deconstruction techniques on the one hand confront African scholars with Europe's colonial incursion and ravage of the African continent, reconstruction techniques bring challenges to establish Africa's true place in world history, culture and philosophy. The importance of deconstruction is emphasised by Oruka (1978) when he states that African philosophy is the African continent's philosophical reaction to its colonial legacy. From an African point of view it is essential to point out "the wretchedness that has resulted from [Europe's] imperialistic deployment and to locate the source of the stench that continues to affect intellectual praxis concerned with African philosophy" (Outlaw, 2002: 139). Whilst Western philosophy views itself as an inclusive, universal philosophy the African Other view it as a Gorgon.⁹¹ African philosophy is a philosophy intertwined with the injustices of Western philosophy: a philosophy entrenched in racial prejudice.

⁹⁰ Outlaw (2002: 139) posits that deconstructive and reconstructive practices have been applied in an "attempt to sanitise African intellectual practices of their necrophilia: that is, their concern to construct a self-image in the mirror of a decomposing, putrid, Greco-European philosophical anthropology that has been embodied in the dominant voices and traditions of Western Philosophy".

⁹¹ According to Greek mythology, a Gorgon was a hideous monster in the form of a female with wings, tusks protruding from its mouth and snakes for hair. A single glance from a Gorgon could turn anyone who saw it into stone.

It is generally acknowledged that the term race entered English and European languages in the sixteenth century as “race began to refer to family, lineage and breed” (Rattanzi, 2007: 230). It was, however, not until the eighteenth century that race became entrenched in European society. Davidson (1994: 337) argues that there was “no racism in the instrumentalist sense in which the term is rightly used today” before the onset of the Atlantic slave trade.

Although racism was not endemic, people were always biased towards Others as far-away peoples were universally seen to be “abnormal, disliked and not to be trusted”. Davidson (1994: 338) illustrates this notion by going back as far as the histories of Herodotus in 450 B.C., the *locus classicus*, indicating that peoples far away from ‘the known world’ were universally seen as strange, and as distance widened “they altogether ceased to be human like you and me”. According to Davidson, this universal belief was still evident half a century ago among the Lugbara of Uganda who “found to believe in all good faith that people became hostile, strange, and ‘upside down’ in the measure that they dwelt farther away or far from the Lugbara homeland. The most distant strangers known to the Lugbara, even if known only by hearsay, were believed to be creatures that habitually walked on their heads or hands and indulged in other habits which the Lugbara thought perverse and wicked. Distance multiplied deviation, and all this bespoke customary superstition, distrust of foreigners, various onslaughts on xenophobia, and so on. But it did not bespeak racism”⁹² (Davidson, 1994: 338).

Between the fifteenth and eighteenth centuries, the growing presence of European traders, missionaries, military forces and racial prejudice resulted in the colonial exploitation of sub-Saharan Africa. Portuguese traders were the first to arrive in West Africa between the mid-fifteenth and mid-seventeenth centuries to set up trading posts for slaves, ivory, gold and ostrich feathers (Pakenham, 2005: 16). From the mid-seventeenth century onwards, the Dutch, Belgian, French, German and British also started invading Africa. Meanwhile, in the New

⁹² African reality also poses a manicheism, or Other. See 4.11.4.

World, European investors planted cotton and sugar and soon realised that they needed slaves to work their plantations. Their desperate need of slaves in the New World resulted in the West African slave trade⁹³ and vested European interest in the African continent.

The role Western prejudice played during the slave trade will now be discussed.

2.5.2 Racial Prejudice and Slavery

Slavery had existed in Africa since time immemorial; long before the onset of European colonialism. Not only did Egyptian pharaohs make use of slave labour to build their pyramids, but Africans tribes in central and southern Africa habitually enslaved each other after armed clashes. These slaves were considered part of the tribe or family and could regain their freedom in various ways. According to Van Dijk (2006: 81), these early forms of slavery cannot be compared with the subsequent trade in African slaves launched by Arabs and Europeans, which began in the fifteenth century. The Arab slave traders from North Africa were the first to launch the international slave trade in African men, women and children from Central Africa. The bitter truth of the magnitude of the slave trade was that “the slave trade was made possible by the co-operation which European slave traders got from Arab⁹⁴ as well as African slave traders. In many cases African rulers enriched themselves at the expense of their subjects” (Van Dijk (2006: 83).

⁹³ “Like the gold trade it [slave trade] demanded no European interference in the mysterious affairs of the [African] interior. Down to the steamy ports of the Slave Coast west of the river Niger came the lines of shuffling slaves, to be unshackled and graded, marketed, reshackled, loaded and despatched with minimum loss (perhaps a third died) to the slave farms of Brazil, America and the West Indies” (Pakenham, 2005: 16).

⁹⁴ “I assure you, the Arab man is not our brother. He is our rapist and our slave master for a thousand years in Africa. He is our devil bastard child, even worse than the white one ... The Arabs and the Muslims ... are without peer the two greatest pressors of Black people in world history. No nation of Black men on earth has ever been more abused, more violated or more dehumanised than they have been by this thousand years of Arab Muslim racial and religious slavery, genocide and oppression. As I wrote to my beloved Amiri Baraka – if I had to choose between the Arab slavemaster and Caucasoid slavemaster – I would choose the white Caucasoid. For at least he can be impressed, seduced and mentally manipulated” (Boof cited in Stewart, 2005: 175).

This sub-section includes the following:

- Chattel slaves from Africa.
- African slave traders;
- Justice and slavery, and
- Western philosophers condone slavery.

2.5.2.1 Chattel Slaves from Africa

The European invasion of Africa began in 1415. First the Portuguese, then the Spanish and later the English, Dutch, French, Belgians and Germans joined in the conquest of Africa. In the late fifteenth century, Portuguese traders were the first to trade gold, ivory and African slaves from North Africa on the Iberian market to be sold as slave labourers on the sugar and cotton plantations of the Atlantic islands and later, in the colonies of the New World (Freund, 1998: 37-38). Slavery was nothing new to the Spanish and Portuguese as they had been involved in slavery even before the new World was discovered, but there were very few chattel slaves. With the discovery of the New World by Columbus in 1492, the English, Germans, French, Portuguese and Scandinavians flocked there in their droves. “After most of the ‘Indians’ of North America and the ‘Indios’ of South America had been wiped out⁹⁵ [by the settlers], the few survivors were found to be ‘useless’ as labourers and other labourers were urgently required for the extensive plantations which the Europeans had established” (Van Dijk, 2006: 85). According to Davidson (1994: 337), “no ideology of instrumentalist racism existed up until then” but when the droves of chattel slaves from Africa arrived “something more was needed if the slave trade was not to be threatened by abolition”. Europeans had to justify the use of African chattel slaves.

⁹⁵ According to van Dijk (2006: 91), the original inhabitants of America had been “dispossessed of their land and their numbers reduced through genocide and infectious European diseases, which further demoralised them”.

Chattel slavery, a new dehumanising form of slavery, had to be legitimised. Chattel slavey was justified by Europeans by depicting Africans as a pagan people of an inferior humanity; a people who could only benefit from slavery and baptism at the hands of their European saviours. Davidson (1994: 340) narrates how the Catholic kingdoms of Spain and Portugal legitimised African slavery by presenting their arguments for the enslavement of Africans in their distinctive courts. In 1450, Zurara, the Portuguese royal chronicler, assured the Court in Lisbon that West Africans were “sinful, bestial, and because of that naturally servile” and argued that enslavement presented a means of “spreading Christianity, of giving the means of salvation to pagans otherwise condemned, ineluctably, to the fires of hell” (Davidson 1994: 340). Both of these Christian kingdoms presented Africans as subhumans; pagans only fit for enslavement. European slave traders of the triangular trade left Europe in sailing ships in the seventeenth century to barter goods for slaves on the African west coast en route to the New World. Along with slavery came its “twin brother, racism”, also called the “older racism” (Davidson, 1994: 319), which spread around Europe after the Atlantic slave trade reached its peak in 1630. It was easy to justify slavery in European and American societies as they held African humanity in contempt. “Slavery was legitimised by already existing views of Africans as inferior, which were then developed once the institution of slavery became firmly entrenched” (Rattanzi, 2007: 30). “Even men and women of otherwise thoughtful and generous disposition came to think it well and wise that Africans were carried from their endless night of savage barbarism into the embrace of a superior civilisation” (Davidson, 2003: 216).

The African Diaspora had begun: twenty million⁹⁶ African men, women and children were to be shipped off as slaves from Africa across the Atlantic where they were to be auctioned to slavers⁹⁷ in the New World. Up to the 1800s the

⁹⁶ Conservative estimates suggest that 20 million African slaves were shipped off by European slave traders. Estimates however, range between 20 million and 50 million slaves.

⁹⁷ According to *The Economist* (February, 2007: 59), the role Africans themselves played in the ‘triangular trade’ is usually conveniently ignored. Before the Europeans arrived in Africa “the slave trade and slavery

mortality rate⁹⁸ of the slaves was so high that whole slave populations had to be replaced every few years (Davidson, 2003: 218). As the inhumane and oppressive conditions of the African slave trade was hidden from the public eye⁹⁹, the European public was unaware or barely knew about the degradation, humiliation, atrocities and injustices that accompanied this abhorrent trade.¹⁰⁰

In Britain, as in Spain and Portugal, it was not difficult to justify African chattel slavery. Slavery was nothing new in Europe as Europeans had traded in east European, Mediterranean and Muslim slaves from North Africa since medieval times. “[N]one of this slavery was chattel slavery, mass slavery [or] plantation slavery; rather, it took the form of what may perhaps be called ‘wageless labour’ – coerced, but in no way subject to any kind of market law” (Davidson, 1994: 336). Davison (1994), Freund (1998) and Rattanzi (2007) confirm that racial prejudice towards East European, Mediterranean and Muslim slaves from North Africa did not exist. But the chattel slaves of West Africa were very different from these slaves.

were already integral parts of local tribal economies”. A Ghanaian historian, Akousa Adoma Perbi, writes that “slavery became an important part of the Asante state ... For three centuries, Asante became the largest slave-trading, slave-owning and slave-dealing state in Ghana”.

⁹⁸ According to an English captain, when a slave refused to eat at sea “first his mouth was forced open by placing a hot coal next to his lips and then a metal funnel was inserted in his throat through which food was forced down” (Van Dijk, 2006: 92). Slave mutiny at sea resulted in ‘Negroes’ being shot or drowned on the spot. The only successful mutiny of African slaves occurred on the Spanish slave ship, *Amistad*, in 1839. These slaves were later charged with mutiny and murder. In the ensuing court case the slave, Pieh, made the following impassioned plea in the court in Mende; “We are the people of Africa and there were born free. Since the day of our birth we were free and have the right to be free. That is why we must remain free and not be slaves” (Van Dijk, 2006: 94). The film *Amistad*, directed by Spielberg, is based on this mutiny.

⁹⁹ See American Anti-Slavery Society’s *American Slavery as It Is: Testimony of a Thousand Witnesses*. 1839. New York, for a full account of the horrors of slave life.

¹⁰⁰ Davis (cited in Hooks, 1981: 27) argues that the rape of black female slaves was not just a case of white men satisfying their sexual lust, but an institutionalised method of terrorism which had as goal the demoralisation and dehumanisation of black women. “In confronting the black woman as adversary in a sexual contest, the master would be subjecting her to the most elemental form of terrorism distinctly suited for the female; rape. Given the already terroristic texture of plantation life, it would be as potential victim of rape that the slave woman would be most unguarded. Further, she might be most conveniently manipulated if the master contrived a random system of sorts, forcing her to pay with her body for foods, diminished severity of treatment, the safety of her children, etc”. According to Hooks (1981: 33), black slave women were seen as the embodiment of female evil and sexual lust and imposed upon the identity of ‘sexual savage’.

The Economist (February, 2007: 59) states that in England¹⁰¹, slavers counted on the Archbishop of Canterbury to justify African chattel slavery before God, and on politicians like William Gladstone, to plead their case in parliament. To justify the enslavement of Africans it became necessary to prove that Africans were subhuman, primitive and pagan. The subhuman nature of Africans was the spark that ignited European ethnocentric cultural bias and racial prejudice, the “older racism” (Davidson, 1994: 319). Whilst the European enslavement of whites was at the time deplored as an act of barbarism, the mass enslavement of Africans was justified by the ideology of racial prejudice.¹⁰² What Christians and the law alike forbade Europeans to do to other Europeans was justified when done to Africans under this new ideology (Davidson, 1994: 340).

2.5.2.2 African Slave Traders

Freund (1998), Lamb (19987), Davidson (1994) and Van Dijk (2006) note that Europeans were rarely involved in procuring African slaves in the African interior. According to Freund (1998: 44-45), “Europeans rarely ventured far from the coast in pursuit of slaves ... The trade was an African trade until it reached the coast”. The triangular slave trade birthed an evil alliance between European, Arab and African slave traders who made sure that human stock was in abundance. Portugal, for example, procured African slaves from King Alfonso of the Bakong tribe in the Congo River estuary. Van Dijk (2006: 87-89) narrates how the Portuguese equipped the Bakong king with weapons, firstly to aid the expansion of Bakong territory and secondly, to hunt people in the adjacent regions and sell them as slaves to his Portuguese and European allies. According to Freund (1998: 45-46), Africans from states in West Africa such as

¹⁰¹ The Economist (February, 2007: 59) states that slavery was so integral to the British economy “that there were few men and institutions of wealth who did not invest in it, from the Royal Family and the Church of England downwards”.

¹⁰² Long claimed to have a special knowledge of Africans and stated that Africans were not only a separate species but that slavery civilised them. “Long was convinced that the lower class of women in England ... are remarkably fond of the blacks and worried that in the course of a few generations more, the English blood will become so contaminated ... till the whole nation resembled the Portuguese and Moviscoes in complexion of skin and baseness of mind” (Rattanzi, 2007: 31).

Oyo, Dahomey, Benin and the Asante, the Igbo-speaking country behind the Niger Delta, and the Imbangala of the Angolan hinterland obtained slaves through raiding expeditions, wars, raids, kidnapping, famine and violence on the continent and then traded or sold their slaves to European slavers.

2.5.2.3 Slavery and Justice

In 1789 Equiano, an African slave who purchased his freedom, tried to convince the British people of the horrors of the African slave trade and slavery itself. In his autobiography, *The Interesting Narrative of the Life of Olaudah Equiano or Gustavus Vasa, the African*, Equiano provided a powerful argument against the idea that Africans were different from any other people (Metaxas, 2007: 98). According to Metaxas, Equiano was not only a deeply sensitive, extremely intelligent human being but also a devout Christian. Al Gore (2007: 86) states that neither logic nor morality was sufficient to dispel slavery because of the corrupt understanding of property that lay at the heart of slavery.

Because European slave traders had a complete disregard for basic human rights, African slaves were reduced to a mere tradable commodity to be sold at a profit.¹⁰³ It is common knowledge that the African slave trade was immensely profitable and became synonymous with wealth and profit. Despite the risk of piracy, shipwrecks and disease at sea, “the slave trade was a factor in the accumulation of capital which helped to fuel the industrial revolution ... and played its part in laying the foundation of capitalism” (Freund, 198: 42).

Dooling (2007) recites how in the seventeenth and eighteenth century South Africa, wheat and wine production in the Cape Colony was carried out under labour-intensive slave regimes. To sustain such labour-intensive regime required “the use of force [which] dominated the relationship between master and slave

¹⁰³ To regulate the slave trade European slave traders were issued with permits. In terms of this control measure African slaves “were no longer considered as individuals but measured in tonnage. The first such permit was awarded in 1518, while a document dating from as late as 1696 gave permission to the Portuguese Company to transport ‘10 000 tons of Negroes’ annually” (Van Dijk, 2006: 92).

and assured the authority of the former ... they were routinely beaten, whipped and deprived of the basic requirements of well-being” (Dooling, 2007: 40). Throughout the world, laws regulating slavery were meant to ensure that slaves surrendered their labour to the authority of the masters.

Dooling narrates (2007: 41-45) how slave compliance in the Cape Colony was controlled by an elaborate body of laws of the VOC because “maintaining slavery was not incidental but crucial – slavery disintegrated wherever state support was absent”. Justice for slaves in the Cape Colony consisted of a number of *placaats* which were published in the Cape Colony between 1692 and 1784 to regulate slave labour. The slave code of 1754 for example, stipulated that if a slave or slave women lifted his or her hands to his master he or she would be punished by death. Although slaves in Roman law had limited rights, these rights were locally seen as the intrusion of the state in master-slave relations and a violation of the patriarchal household. Justice for slaves was further impeded by the fact that *landdrosts*¹⁰⁴ in the colony were not independent and frequently worked to the detriment of slaves and servants. According to Reverend Van der Kemp of the mission station at Bethelsdorp, *landdrosts* and *heemraden* were biased, favouring their friends and relations; they were sometimes even accomplices in ill-treating slaves and susceptible to bribery¹⁰⁵ (Dooling, 2007: 45). Africans soon learned that European laws did not bring them justice.

2.5.2.4 Western Philosophers Condone Slavery

Europeans tended to shy away from the truth about slavery as the philosophy of the day had a formidable influence on how Africans were perceived. Hegel

¹⁰⁴ “*Landdrosts* were salaried officials of the VOC who effectively acted as rural judges. In cases that came before the Court of Justice in Cape Town they served as public prosecutors. *Heemraden* were unsalaried and chosen from among the most notable land- and slave-owners in their respective districts” (Dooling, 2007: 43).

¹⁰⁵ “For example, when Gerrit Visser of Tulbagh stood accused of killing Marsitrie, a ‘bastard Hotentot’ he made a gift of 125 sheep to the *landdrost*, H. van de Graaff. In return Van de Graaff did his best to bury the case. The Circuit Court of 1812 must have had such instances in mind when it found that some *landdrosts*, ‘in order to obtain sufficient subsistence according to their office,’ were forced to make use of means, not at all consistent with the dignity of the situation of *Landdrost*” (Dooling, 2007: 45).

(1991: 99) for instance justifies the slavery of “Negroes” as “a phase of advance from the merely isolated sensual existence – a phase of education – a mode of becoming participant in a higher morality and the culture connected with it. Slavery is in and for itself *injustice*, for the essence of humanity is *Freedom*; but for this man must be mature”. Hegel describes the Negro race as an inferior savage people where neither tyranny nor cannibalism is wrong. “Cannibalism is looked upon as quite customary and proper ... their lots in their own land is even worse, since there a slavery quite as absolute exists; for it is the essential principle of slavery, that man has not yet attained a consciousness of his freedom, and consequently sinks down to a mere Thing – an object of no value” (Hegel, 1991: 95-96). Montesquieu concurred that “slavery was against nature, but nonetheless justified it for its economic value” (Internet {b}, 2007).

Hegel (1991: 99) justifies the injustices of chattel slavery as a necessary educating and civilising mission and urges for the gradual abolition of slavery rather than a sudden abolition thereof. Rousseau, in contrast with most Western philosophers, never justified slavery. Rousseau (1991: 53) argues that no man has the right or the natural authority to enslave another. He contends that “the right of slavery is seen to be void” and illegitimate because “the words slavery and right are contradictory, they cancel each other out”.

The Hegelian (1991: 99) principle of justice constitutes slavery as an *injustice*; however, Hegel perceives the enslavement of Africans as “a phase of education” which did not constitute an injustice. Whilst Papal prohibitions at the time declared the enslaving of Christians an injustice, European laws and Christianity too, forbade the enslavement of Europeans (Davidson, 1994: 340). European principles of justice were on the one hand morally bound to obey laws and the church, yet on the other hand, justified the mass enslavement of African chattel slaves as a means of salvation and civilising of the beasts. “Can anybody honestly and seriously suggest ... the scales of justice are evenly balanced?” (Mandela, 1994: 312-313).

From an African point of view this inconsistency in justice “is immoral, unjust, and intolerable. Our consciences dictate that we must protest against it, that we must oppose it and that we must attempt to alter it ... men I think are not capable of doing nothing, of saying nothing, of not reacting against injustice, of not protesting against oppression ...” (Mandela, 1994: 317). Another African view of justice, that of the ancient Egyptian King Tutmosis III, 18th dynasty, reveals the following: “Treat the person you know equally with the person you do not ... Let men fear you because you offer justice ... This is laid upon you” (cited in Theroux, 2004: 228).

Thanks to Wilberforce – influenced by the philosophy of Rousseau – slavery was abolished in Britain and its colonies in 1807. Slave trading was abolished in Denmark in 1803, Britain in 1807¹⁰⁶, United States in 1808, France in 1818 and South Africa in 1838.¹⁰⁷ Although slave trading in the United States was abolished, the slave trade continued until the Thirteenth Amendment to the America Constitution abolished slavery in America in 1865.¹⁰⁸ It must be noted that Africa was the only continent from which so many people were forcibly abducted and enslaved. Since the abolition of the Atlantic slave trade, “slavery has been recognized as the most abhorrent violation of a person’s liberty” (Kapstein, 2006: 107). Article 7(1) (c) of the Rome Statute of the International Criminal Court, 1998, classifies slavery as a crime against humanity.

¹⁰⁶ In 1807 Britain abolished slave trade in all British colonies. Britain recently celebrated two centuries of freedom from slavery; the reality is, though, that the modern global slave trade is alive and well. Kapstein (2006: 103-115) states that the slave trade was not eliminated during the nineteenth century, but that it continues to thrive in our modern era of human rights. Kapstein accentuates the fact that the modern global slave trade is as pernicious and much larger than the Atlantic slave trade ever was and notes the following: The United States government estimates that 600,000-800,000 people are subjected to human trafficking each year; the United Nations states that slaves are being trafficked from 127 countries and exploited in 137 countries; 80 percent of slaves on the global market are female of which 50 percent are under 18 years of age; 43 percent of these slaves are used for sex, whilst 32 percent are used as unpaid labour; the average price paid for a slave is \$12,500. It is estimated that 27 million people are currently suffering some form of enslavement (Metaxas, 2007: x).

¹⁰⁷ On 1 December 1838, 38 000 slaves were set free in the Cape Colony. “The freed slaves left their masters *en masse*” (Dooling, 2007: 116).

¹⁰⁸ In 1883 the United States Supreme Court ruled in favour of racial segregation. Between 1890 and 1900 1100 blacks were lynched “especially those accused of insulting behaviour towards white women” (Rattanzi, 2007: 44).

Although liberal modernity denies its racialised history and prejudiced culture it is a fact that the notion of race rooted itself in European societies from the sixteenth century. The role played by Western racial prejudice and the hegemony of liberalism during the Enlightenment will be discussed.

2.5.3 Racial Prejudice and the Enlightenment

By the 18th century, European philosophy had entered into the Enlightenment or the Age of Reason. The European Enlightenment signalled the Age of Reason, an era that would finally shed the shackles of medievalism, authority and superstition. A group of enlightened thinkers¹⁰⁹ challenged the tyranny of the feudal societies based on the inherited privileges of kings, the church and nobles. The following will be discussed in this subsection:

- Background.
- The philosophies of Hume, Kant, Hegel, Voltaire, Montesquieu and Rousseau, and
- The Contradictions of the Enlightenment.

2.5.3.1 Background

The Enlightened philosophers vocalised the dissatisfactions of the growing middle-class and proposed the 'rights of man' against 'the divine rights of kings', pointing out the inequalities of a rigid and corrupt feudal society. The Enlightenment emerged in Britain and spread to France, Spain, Italy, Germany and beyond, proclaiming the rule of rational law, the belief in human equality and individual liberty.¹¹⁰ The Enlightenment marked a philosophical paradigm shift: the beginning of the Western love affair with science and technology. Central to the Enlightenment was the assault on religious superstition and the replacement

¹⁰⁹ Enlightenment philosophers, viz. Paine, Rousseau and Hume, questioned and challenged the authority of both church and state.

¹¹⁰ De Tocqueville is of opinion in his thesis, *Democracy in America*, that liberty and equality are not entirely compatible and that the desire for equality will ultimately destroy liberty.

of God by a new 'rational religion'. Rationality embodied reason and a scientific worldview void of any religion and superstition. Religion was moved from public life and public authority and reserved for the private sphere and private practice. Enlightenment liberalism signalled the dawn of the modern individualist tradition. With individualism at the centre of the Enlightenment the individual became the creator of truth and reality. Through science and reason, the watchwords of the Enlightenment, philosophers believed they would establish a living paradise on earth: a society in which there would be equality; no more misery or injustice (Soloman et al., 1996: 192). This new intellectual movement brought victory over the authority of the church¹¹¹; sparked European rationality to claim universality; empowered women to raise the question of their inequality; and challenged the domestic tyranny of men. The down side of this optimism however was that the riches and affluence that made the Enlightenment possible came from the toil of Others, as "the elite members of the European culture built their position on the backs of [African] slaves" (Soloman et al., 1996: 193). The new paradise on earth with its promises of eradicating all forms of misery and injustices were clearly not meant for Others; least of all for Africans.

The Enlightenment's commitment to equality tragically resulted in nothing more than lip service. For the Other, the Enlightenment's conception of individuality signalled the reality of racial prejudice, patriarchy, class, gender and racial restrictions. With the rise of the Enlightenment dawned a "new racism", viz. "frantically an anti-Black racism" (Davidson, 1994: 319) which manifested itself through the racist and ethnocentric philosophies of Enlightened philosophers such as Montesquieu, Voltaire, Locke¹¹², Hume, Kant and Hegel. These

¹¹¹ The enlightenment freed science from morality and "ultimately nourished the Holocaust" (Rattanzi, 2007: 24) and apartheid.

¹¹² John Locke, the great defender of natural rights, was the owner of a number of slaves (Soloman et al., 1996: 193). Bracken contends in *Philosophy and Racism* that Locke "is a pivotal figure in the development of modern racism in that he provides a model which permits us to count skin color as a nominally essential property of men. This comes about because in the course of his formulations of theories of essence and substance it emerges that the essential properties of men are computed like those of *gold*. What appears to be a simple system of classification based on tallies of observed properties in fact facilitates counting color,

Enlightenment philosophers were instrumental in the “new racism”: a racial prejudice that justified slavery and imperialism and condemned Africans to being less than human. Kant and Hegel maintained the same view on Africans and proclaimed that only “European modernity grasps the real in contradistinction to the ephemeral non-reality of non-European existence” (Serequeberhan, 2002: 65). The ethnocentric stereotyping of Africans and the prejudices of the Enlightenment philosophers resulted in the intellectual, cultural and psychological divide between Europeans and Africans. The idea of Rousseau’s “noble savage”, the life of American Indians depicted as paradise before the fall, made way for the general racist philosophy of the Enlightenment era: depicting Rousseau’s noble savages as pre-scientific barbarians. The racist philosophies of the Enlightenment proclaimed in “trite and bland *prejudice* that European existence is, properly speaking, true human existence *per se* ... [and justified] the metaphysical ground for the ‘normality’ and legitimacy of European global expansion and conquest” (Serequeberhan, 2002: 66). The Enlightenment era rationalised and legitimised European imperialism and racial prejudice in Africa. Faber, a scientist at Stony Brook University, found “the Enlightenment model of dispassionate reason as the duty of citizenship empirically bankrupt” (cited in Gore, 2007: 28). It was the same dispassionate reason that ultimately birthed scientific racism, Nazi anti-Semitism and apartheid.

2.5.3.2 The philosophies of Hume, Kant, Hegel, Voltaire, Montesquieu and Rousseau

2.5.3.2.1 Hume

The English philosopher, Hume (1711-1776), was a key figure in the age of Enlightenment. He evaluated the moral, rational and intellectual capacities of people by classifying them according to skin colour. Hume believed a profound

sex, language, religion, or IQ as ‘essential’. Indeed, there is no mechanism within the Lockean model to rule out counting skin color as the ‘essential’ property of men” (cited in Ramose, 2002{b}: 12-13).

and fundamental difference existed between different races in not only skin colour but also mental capacity. In his revised version of *On National Character* (1754) Hume notes: "I am apt to suspect the Negroes in general and all species of men (for there are four or five different kinds) to be naturally inferior to the whites. There never was a civilized nation of any other complexion than white ... No ingenious manufacturers amongst them, no arts, no sciences. On the other hand, the most rude and barbarous of the whites, such as the ancient Germans, the present Tartars, have still something eminent about them ... Such a uniform and constant difference could not happen ... if nature had not made original distinction between these breeds of men" (cited in Rattanzi, 2007:27). Hume alleges that Africans' lack of industries, arts and sciences justifies its subordinate role in Western society. His "philosophical casting of racial differences between Europeans and Africans framed the African outside of 'proper' humanity" (Eze, 198: 214).

Hume affirms the inferior and subhuman status of Africans to Europeans. He not only denies the rational capabilities of the African brain but seriously doubts any meaningful intellectual achievement on their part. He compares the intellectual achievement of Africans to those of parrots that can speak a few words. "In Jamaica indeed they talk of one Negroe as a man of parts and learning; but it is likely that he is admired for slender accomplishments, like a parrot who speaks a few words plainly" (Hume cited in Wiredu, 1998: 199). African philosophers, viz Wiredu and Biakolo accuse Hume of racial prejudice. Biakolo (2002: 9) maintains the philosophies of Hume, Voltaire and Montesquieu is ethnocentric. It must however be acknowledged in Hume's favour that he condemned slavery.

3.5.3.2.2 Kant

The German philosopher, Kant (1724-1804), had a profound influence in the areas of philosophy of religion, ethics and aesthetics. Kant, known for his *Moral*

Philosophy and Third Critique, perceived the Enlightenment¹¹³ as the age for 'man's release from his self-incurred tutelage'. From Kant's point of view the Enlightenment signalled Europe's liberation from intellectual oppression and the emancipation of reason. Whilst Enlightenment philosophy challenged the tyranny of feudal societies, the church and nobles in its quest for an equal and just society, Kant, in 1764, clearly indicates his racial bias as follows: "this fellow is quite black ... a clear proof that what he said was stupid" (cited in Rattanzi, 2007: 27). Kant believes Europeans to be superior to the rest of the world and observes Africans to be without the faculty of reason and unable to affect 'man's release from his self-incurred tutelage'. According to Kant, Europe was to bring enlightenment or civilisation to Africans by giving them the law of reason. Kant (1960:110-111) affirms the ethnocentric bias of Hume in his *Observations on the feeling of the beautiful and sublime* as follows: "The Negroes of Africa have by nature no feeling that arises above the trifling. Hume challenges anyone to site a single example in which a Negro has shown talents, and asserts that among the hundreds and thousands of blacks who are transported elsewhere from their countries, although many of them have even been set free, still not a single one was ever found who presented anything great in art or science or any other praise-worthy quality, even though among the whites some continually rise aloft from the lowest rabble, and through superior gifts earn respect in the world. So fundamental is the difference between these two races of man, and it appears to be as great in regard to mental capacities as in color".

In Kant's *Von den verschiedenen Rassen der Menschen* (1775) he explains the emergence of humanity as originally consisting of the white race. According to Kant (cited in Neugebauer 1991{a}: 247-257), the black race emerged because of humid heat scorching the white skin of the original species. Kant classifies four

¹¹³ According to Kant, in the *Foundations of the Metaphysics of Morals* and *What is Enlightenment*, "Enlightenment is man's release from his self-incurred tutelage. Tutelage is man's inability to make use of his understanding without direction from another. Self-incurred is this tutelage when its cause lies not in lack of reason but in lack of resolution and courage to use it without direction from another. *Sapere aude!* Have courage to use your own reason" (cited in Ramose, 2002{b}: 9).

human races: the superior European white race, Asia's yellow race, Africa's black race and the red race of the Americas. He finds the races lowest on this racial scale deficient of reason and rationality, in particular the African peoples, and blames anthropological and climatic reasons for Africans being idle and lacking in character. Kant finds the difference in mental capacity between the two races as profound as their difference in colour and fears that by interbreeding the different races, the white race will be disfigured. In his opinion, idle Africans can however be 'trained' as servants by means of corporal punishment; flogging them into submission with a split bamboo rather than a whip, inducing the necessary pain on the Negro's thick skin. Kant's notion of African people lacking "true rational character, true feeling, moral sense, true worth and dignity" (cited in Serequeberhan, 2002: 69) is questionable since he never left his country or native city, Königsberg, to pay Africa a visit. Whilst both Hume and Kant pose as experts on Africans, their "acquaintances with black people was negligible" (Rattanzi, 2007: 27). Whilst Eze (2002: 430) accuses Kant of producing the "most profound raciological thought of the eighteenth century, Wiredu (1980: 49) maintains Africans needs a certain levelheadedness to deal with Western philosophy as "[n]either Hume nor Kant displayed much respect for the black man".

2.5.3.2.3 Hegel

The German philosopher, Hegel (1770-1831), is known as the foremost philosopher of his time. Hegel, a follower of Kant, explains his profound idea of history¹¹⁴ in *The Philosophy of History* at Jena in 1821. In his philosophy of history, Hegel concludes that the history of the world is none other than the progress of the consciousness of the world. Hegel (1991: 91-99) concludes that Africa has played a nonexistent role in the history of the world. He observes

¹¹⁴ In 1963, in a series of television lectures on *The Rise of Christian Europe*, the Oxford Historian, Hugh Trevor-Roper, dismissed the history of Africa as meaningless. "Perhaps in the future," he argued, "there will be some African history ... But at present, there is none; there is only the history of the Europeans in Africa The rest is darkness ... and darkness is not a subject of history". Trevor Roper's interpretation was part of a long-standing European school of thought, going back to Hegel and beyond" (Mazrui, 2002:3).

African culture and finds that because Africans live in a primitive state, unconscious of themselves, they are incapable of culture, history¹¹⁵ and reason. Hegel (1991: 99) states that Africa has “no historical part of the world; it has no movement or development to exhibit ... What we properly understand by Africa, is the Unhistorical, Underdeveloped Spirit, still involved in the conditions of mere nature, and which had to be presented here only as on the threshold of the World’s History”. Hegel finds the characteristic feature of Africans to be the fact that their “consciousness has not yet attained to the realization of any substantial existence – as for example, God, or Law – in which the interest of man’s volition is involved and in which he realises his own being. The distinction between himself as an individual and the universality of his essential being, the African in the uniform, undeveloped oneness of his existence has not attained; so that the Knowledge of an absolute Being, an Other and a Higher than his individual self, is entirely wanting” (Hegel, 1991: 93).

Hegel sees the African in Hobbesian terms, as man in the original state of nature, living a short and savage life without rules; a slave to desire and interest. He stereotypes the African as man who “exhibits the natural man in his completely wild and untamed state. We must lay aside all thought of reverence and morality – all that we call feeling – if we would rightly comprehend him; there is nothing harmonious with humanity to be found in this type of character” (Hegel, 1991: 93).

Because Hegel finds Africans to be of a “peculiar character” and without reason, “the mind cannot in such be conscious of Universality. The Negroes indulge,

¹¹⁵ In the ‘Fides et Ratio, Vatican 1998’ Pope John Paul II implies that Africa has produced nothing remarkable or worth recalling in the history of philosophy since antiquity to the contemporary period. Neither Composta nor Copleston give credit or status to African philosophy in antiquity (Ramose, 2002{b}:5). Nkrumah (1998: 62) says “[t]he history of Africa, as presented by European scholars, has been encumbered with malicious myths. It was even denied that we were a historical people. It was said that whereas other continents had shaped history, and determined its course, Africa had stood still, held down by inertia; that Africa was only propelled into history by European contact. African history was therefore presented as an extension of European history. Hegel’s authority was lent to this a-historical hypothesis concerning Africa, which he himself unhappily helped to promote”.

therefore, that perfect contempt for humanity, which in its bearing on Justice and Morality is the fundamental characteristic of the race ... Tyranny is regarded as no wrong and cannibalism is looked upon as quite customary and proper” (Hegel, 1991: 95). Hegel suggests Africans should be excluded from philosophical universality and bases his claim on the following: “The peculiar African character is difficult to comprehend, for the very reason that in reference to it, we must quite give up the principle which naturally accompanies all our ideas – the category of Universality” (Hegel 1991: 193). Although he never set foot in Africa, Hegel claims to be an expert on Africans, giving himself the right to conclude “we leave Africa, not to mention it again” (Hegel, 1991: 99). Hegel’s orientation to Africa “was widely shared by many of its earliest European visitors (explorers, missionaries, seekers after wealth and fame, colonisers, etc.), whose travelogues and ‘reports’ serve to validate the worst characterisation as the European *invention* of Africa and Africans out of the racism and ethnocentrism infecting Europe’s project in its encounter with Africa as a different and black other” (Outlaw, 2002: 142).

2.5.3.2.4 Voltaire

Voltaire (1694-1778) and Rousseau are said to be the two most famous and influential French philosophers of the Enlightenment. Together with Montesquieu and Rousseau, Voltaire contributed to the *Encyclopédie*, a landmark of the Enlightenment. Voltaire not only passionately defended reason and individual autonomy, but also stereotyped Africans as unfit for philosophy. According to Voltaire, “[Africans] are incapable of great attention, they reason little, and do not seem made to enjoy the advantages of our philosophy nor the disadvantages of our philosophy” (cited in Foutz, 1999: 3). Voltaire compares the profound difference between Africans and Europeans as follows: “the Negro race is a species of men different from ours as the breed of spaniels is from that of greyhounds. The mucous membrane, or network, which nature has spread between the muscles and skin is white in us and black or copper in them” (cited in Foutz, 1999: 6).

Not only does Voltaire view Africans as inferior, he also belittles the African physique and intelligence as follows: “Their round eyes, their flat nose, their lips which are always thick, their differently shaped ears, the wool on their head, the measure even of their intelligence establishes between them and other species of men prodigious differences. If their understanding is not of a different nature from ours, it is at least greatly inferior. They are not capable of any great application or association of ideas, and seem formed neither in the advantages nor the abuses of our philosophy” (cited in Foutz, 1999: 7). Voltaire is of the opinion that Africans do not possess the intelligence to philosophise. Voltaire’s racist prejudice becomes evident in his opinion of Scripture’s monogenism: “It is a serious question among them whether [Africans] are descended from monkeys or whether the monkeys came from them. Our wise men have said that man was created in the image of God. Now here is a lovely image of the Divine Maker: a flat and black nose with hardly or any intelligence. A time will doubtless come when these animals will know to cultivate the land well, beautify their houses and gardens, and know the paths of the stars: one needs time for everything” (cited in Foutz, 1999: 7). It is interesting to note that according to Foutz, Voltaire too never set foot in Africa and that an analysis of his personal library reveals that out of 3, 867 books only four dealt with Africa.

2.5.3.2.5 Montesquieu

The French philosopher, Montesquieu (1689-1755), was of the opinion that all men were created equal but that as a result of temperature changes, heat caused visible and predictable gradations among them. According to Montesquieu, despotism flourished in hot countries, constitutional societies inhabited temperate climates. He explains his philosophy as follows: “You will find in a climate of the north, peoples with few vices, many virtues, sincerity and truthfulness. Approach the south, you will think you are leaving morality itself, the passions become more vivacious and multiply crimes. The resignation passes to the spirit and leads people to be without curiosity, nor the desire for noble

enterprise” (cited in Foutz, 1999: 4). Montesquieu was perplexed by the idea that God could place a good soul in a black body. He states that “one cannot take it into one’s mind that God, who is a wise being, has placed a soul, especially a good soul, in a wholly black body” (cited in Baker, 1974: 18).

What has to be noted about the great Enlightenment philosophers Kant, Hume, Hegel, Voltaire and Montesquieu is the fact that whilst they, as experts on Africans, stereotyped Africans as subhuman, not one of them ever set foot on African soil.

2.5.3.2.6 Rousseau

The French philosopher, Rousseau¹¹⁶ (1712- 1778), was an outstanding writer and philosopher and best known for his political philosophy in his progressive anti-Enlightenment writing, *The Social Contract* (1762). Rousseau’s (1968: 49) provocative statement in the first chapter reads as follows, “Man is born free but is everywhere in chains. Those who think themselves the masters of others are indeed greater slaves than they”. Rousseau implies that humans are born free¹¹⁷ and uncorrupted in a state of nature but that European civilisation put humans in oppression and bondage. Rousseau appeals to human emotion and indicates how reason has imposed constraints on fellow humans in the process of domesticating or civilising them, leaving them “dependent, oppressed, unhappy and immoral” (Eze, 2002: 435).

¹¹⁶ Rousseau attacked all the social injustices, but overlooked one. In his seminal work on education, *Emile*, (1762) he writes: “Men and women are made for each other, but their mutual dependence is not equal. We could survive without them better than they could without us. They are dependent on our feelings, on the price we put on their merits, on the value we set on their attractions and on their virtues. Thus women’s entire education should be planned in relation to men. To please men, to be useful to them, to win their love and respect, to raise them as children, to care for them as adults, counsel and console them, make their lives sweet and pleasant” (cited in Rodriques et al., 2001: 11). In *Emile* Rousseau (1966: 131- 135) describes how a woman was “made to be dominated ... Once it has been shown that men and women differ in character and temperament, it follows that they ought not to have the same education ... It is not enough that [women] be beautiful: they must be pleasing”.

¹¹⁷ Menkiti and p’Bitek reject Rousseau’s statement that man is born free and is everywhere in chains. Both philosophers state that no African is really independent; that the African person’s reality is an interwoven interdependence in a web of social relationships which includes the ancestors and spirits. (Imbo, 2002: 143-149).

In Rousseau's *Discourse on the Sciences and the Arts* (1750) he argues that human nature and morals are destroyed by the evils bred by European society or civilisation. Because Rousseau viewed society and its effect on humans as bad, he idealised [American] Indians and the 'uncivilised' as Noble Savages. The Noble Savage¹¹⁸, Rousseau's model of humanity uncorrupted by civilisation, was put in bondage and slavery by enlightened Europeans. The duality of European philosophy as both the liberator and enslaver is evident in Rousseau's philosophy. "Thus for [European] philosophy, which conceives of 'mind' as the guide of the world, violence and conquest are masks for the rationality of the real. This then is how European philosophy in general participates in and contributes to the invention of 'other realities' – that is, of the replication of Europe as its cultural, material / physical substratum" (Serequeberhan, 2002: 67). In his *Discourse on Inequality*, Rousseau urges his contemporaries to return to the primeval forests and become Noble Savages again. Rousseau was one of the first philosophers to object to "the depiction of the Khoisan¹¹⁹ as subhumans, the missing link between civilised man and the bestial apes" (Holmes, 2007: 32). Rousseau's philosophy also had a profound influence on Wilberforce, who brought about the abolition of slavery in British colonies.

2.5.3.3 The Contradictions of the Enlightenment

Whilst Enlightenment philosophers proclaimed human equality and individual liberties, Sarah Baartman¹²⁰ (1789-1815), our female African icon, stands testimony to the exploitation and degradation experienced by the African Other during this period. Whilst working as a domestic servant in Cape Town, Baartman caught the attention of a visiting English surgeon. He acquired her and set off for London in 1810.

¹¹⁸ Biko (2006: 27) reminds liberals in South Africa that "the days of the Noble savage are gone; that the blacks do not need a go-between in their struggle for their own emancipation".

¹¹⁹ In Diderot's *Encyclopedia* he described Hottentots as "the most barbarous savages" (Holmes, 2007: 32).

¹²⁰ We do not know what Sarah Baartman, also known as Saartjie's, real name was. She was a member of the Khoisan of the Western Cape, derogatively called Hottentots by European settlers.

Baartman, the Hottentot Venus from the Gamtoos River in South Africa, became a stereotype of African Otherness, savagery and barbarism as she was paraded throughout Europe. Enlightenment philosophers were instrumental in stereotyping African women for their alleged promiscuity. Baartman's steatopygia, protruding buttocks, and "legendary extended labia"¹²¹ attributed to Khoisan women" (Holmes, 2007: 65) became "the most famous theatrical attraction in Piccadilly, London" (Holmes, 2007: 70). Baartman, the black female slave was "offered as sexual tourism dressed up as education" (Holmes, 2007: 84) by her European master. After objections from opponents of slavery she was sold in 1815 to a Frenchman who carried on the same spectacle in Paris. The exploited 'Noble Savage' from Africa, died in Europe at the age of twenty-five after a few years of being 'dependent, oppressed and unhappy'. At her death Baartman was an alcoholic and presumably died from venereal disease. After the anatomical dissection of her body in Paris, with particular interest in her genitalia, leading European scientists De Blainville (1816) and Cuvier (1817)¹²² superimposed their template of scientific racism upon her remains.¹²³ According to Holmes (2007: 185), scientific racism¹²⁴ proclaimed that "Europeans were at

¹²¹ It was fictitiously believed that Hottentot women developed a piece of leather on their pubic bone to cover their external sexual organs. The 'Hottentot apron' resulted from the elongation or 'pulling' of the *labia minora* and is done manually amongst certain groups. The myth of the African male's reknowned large penis was also borne during this period (Rattanzi, 2007: 28).

¹²² De Cuvier's *Report on Observations* of Baartman's medical dissection notes the following: "The Negro race ... is marked by black complexion, crisp woolly hair, compressed cranium and flat nose. The projection of the lower parts of the face, and the thick black lips, evidently approximate it to the monkey tribe: the horde which it consists have always remained in the most complete state of barbarianism ... these races with depressed and compressed skulls are condemned to a never-ending inferiority .. her moves had something that reminded one of the monkey and her genitalia recalled those of the orang-utang" (Holmes, 2007: 225).

¹²³ "For two hundred years, Saartjie's skeleton was rattled, her brain dissected, her genital matter fingered by inquisitive European men who believed that her pickled organs held secrets that would reveal the mysteries of the 'dark continent' of African female sexuality" (Holmes, 2007 : 184). Baartman's dissected body became one of Europe's most frequently analysed specimens, propounding the belief that races were biologically different. A wax cast of Baartman was displayed in the Musée de l'Homme in Paris until 1974. In 1995 the Khoisan and San petitioned the South African government to negotiate with the French government to have Baartman's remains brought back to South Africa for burial. On 9 August 2002, Sarah Baartman was laid to rest in Hankey in the Eastern Cape. Sarah Baartman's grave was declared a national monument.

¹²⁴ According to Holmes (2007: 185), British imperialism incorporated scientific racism into its ruling ideology in South Africa and "[t]he apartheid regime followed suit".

the top of the human scale of evolution in the Great Chain of Being, Africans at the bottom; and the so-called 'Hottentots' and 'Bushmen' of sub-Saharan Africa were the missing link to the animal species. "Allegedly degenerate and brutally inferior, 'Hottentots' were assigned the 'lowest' rank among the admissibly human" (Holmes, 2007: 185).

The Enlightenment, renowned for proclaiming individual freedom and equality, birthed Baartman, the ultimate example of "scientific justification to racism", to European scientists, anthropologists, ethnographers, psychologists and philosophers. Scientific racism affirmed the superior biology of Europeans over the genetic inferiority of the Others. Chamberlain and Gilman (1985: 292) state as follows: "Initially, degeneration brought together two notions of difference, one scientific – a deviation from the original type – and the other moral, a deviation from the norm of behaviour. But they were essentially the same notion, of a fall from grace, a deviation from the original type". Not only did scientific racism attempt to prove the inferiority of black and yellow nations but also the inferiority of women. "With the growing popularity of the measurement of the skull and brain size, it was often claimed that women's low brain weight and deficient brain structures were similar to those of lower races, and this explained their inferior intellectual abilities. Women and the lower races were regarded as being impulsive, emotional and unable to engage in abstract reasoning that was the preserve of the white man" (Rattanzi, 2007: 33).

The impact of the philosophical reasoning of the Enlightenment philosophers resulted in the European justification of racial superiority and subjugation of the African race. They "established their superior biology as a way of affirming their privilege and dominance over 'Others'. Those who are different are seen as genetically inferior, and this, in turn, is used to account for their disadvantaged social position" (Oyèwumi, 2002: 390). Western philosophy proclaimed European

superiority over African inferiority. The ethnocentrism¹²⁵ of philosophers such as Hegel, Hume, Kant, Voltaire, Montesquieu and others painted Africans as irrational, unintelligent, brutish, ignorant, idle, treacherous, savage, thieving, mistrustful and superstitious. Philosophers such as Kant, Hegel and Voltaire, denied Africans their status as rational beings and argued for their exclusion from the 'category of Universality'. These and other discriminating philosophical claims resulted in the conclusion that "skin colour was decisive in conceding reason" (Ramose 2002{b}: 15).

The Enlightenment philosophers fuelled the "new racism" and stereotyped Africans as irrational and inferior beings, resulting in the cultural and intellectual ascendancy of Europeans over Africans. According to Masolo (1994: 3), the Western attitude started out as a mere cultural bias but gradually grew into a formidable two prong reality: slavery and the slave trade on the one hand and academic expressions made by prominent European scholars, such as philosophers Kant and Hegel, on the other.

The proclaimed superiority of the European race resulted in a continuous process of enculturation, dehumanisation, inferiority, shame and self-hatred in the minds of Africans. According to Irele (2002: 35), Western racial prejudice resulted in "the black man recognis[ing] himself as belonging to an 'out group', an alien in relation to the West, which controls the total universe in which he moves ... The sentiment of belonging no longer to oneself but to another goes together with an awareness of inferiority, which becomes translated in social terms into a caste and class consciousness". Modisane (cited in Irele, 2002: 36) captures this inferiority when he says that "[W]hite is right, and black is to be despised, dehumanized ... classed among the beasts, hounded and persecuted, discriminated against, segregated and oppressed ... by man's greed. White is the positive standard, black the negative". The explicit humiliation and

¹²⁵ Serequeberhan (2002: 74) defines Eurocentrism as "a pervasive bias located in modernity's self-consciousness of itself. It is grounded in its core in the metaphysical belief or idea that European existence is qualitatively superior to other forms of human life".

degradation suffered by Africans resulted in the acceptance of their inferiority and internalisation of self hate.¹²⁶

Wiredu (1998) shares his emotions by describing how difficult it is for an African philosopher to take the same cultural pride as the Western student in the philosophical achievements of the great Enlightenment philosophers such as Aristotle, Kant, Hume, Husserl or Frege. Wiredu (1998: 198) advises Africans to “be level-headed when studying some of these philosophers like Hume for example that had no respect for the black man”. The principle of discrimination during the Enlightenment created the belief that “not all persons were thought to share the same level of development or potential to realize rationality, especially at its highest levels” (Outlaw, 2002: 141). The Enlightenment’s principle of discrimination led to the belief that only certain groups of individuals or civilizations could engage in philosophy. European philosophers told Africa that its ‘savage’ African minds produced no history, no culture and no philosophy. Although the great European Enlightenment proclaimed individual liberty and human equality, it showed a definite intolerance towards the philosophies, culture values and rights of the African Other. By Christianisation and ‘civilising’ the African, traditional African values were slowly but surely replaced by the individualistic values of European liberalism. African philosophy finds itself in direct opposition to the notions of the Enlightenment philosophers.

The Eurocentric racial prejudice of the Enlightenment philosophers would however be perpetuated in the colonies of the European colonisers. The age of reason closed the rational minds of Europeans to the African cries of human suffering. After America’s Declaration of Independence in 1776, its Constitution, based on natural law principles¹²⁷ proclaimed humanity and equality for all. The inalienable rights of the American Constitution “thus set the precedent for

¹²⁶ See 2.8.

¹²⁷ Story (cited in Van Blerk 2004: 55) affirms this invocation of natural law as follows, “One of the beautiful boasts of our jurisprudence is that Christianity is part of our common law from which it seeks the sanction of its rights, and by which it endeavours to regulate its doctrine”.

America's most lamentable crime of institutional slavery" (Foutz, 1999: 10). The theologian Cone states that "for the black and red peoples in North America, the spirit of the Enlightenment was socially and politically demonic, becoming a pseudo-intellectual basis for their enslavement or extermination" (cited in Foutz, 1999: 10).

Throughout the Enlightenment and thereafter, Western liberalism rationalised racial superiority and racial domination to such an extent that it became normalised in the Western philosophical tradition. The role philosophical racial prejudice played during colonial rule will now be discussed.

2.5.4 Racial Prejudice and Colonialism

"At a time in Europe when the slave trade became illegal "the experts on Africa yielded to the new winds of change, and now began to present African culture and society as being so rudimentary and primitive that colonialism was a duty of Christianity and civilisation" (Nkrumah, 1998: 62).

The Berlin Act of 1885 formalised Europe's scramble for Africa and took no heed of the ethnic realities in Africa. Europe's liberation of the "Dark Continent" resulted in the "European cannibalization of Africa" (Outlaw, 2002: 153). Civilised society replaced existing African social structures and values with the model of the European nation state whilst colonial laws maintained control over the African masses. Under European subjugation, Africans were to be deprived of every human right. Racial prejudice and colonial rule will be discussed next:

- Background.
- British Colonial rule.
- Portuguese and Belgian colonial rule.
- French colonial rule, and
- German colonial rule.

2.5.4.1 Background

The exploitation and destabilisation of the African continent began with slavery and continued with colonialism and neo-colonialism. Together with slavery and colonialism came racial prejudice and the denial of African humanity. Abraham (1962: 160) draws our attention to the fact that “Europe brought racism into Africa”. Ramose (2002{b}: 28), Mamdani (1996: 19) and Gyekye (2002) agree that “racism was implanted in Africa” through the process of European colonisation. Mazrui (2002: 28) too, emphasises that “the process through which Europe colonised Africa was that of racism”: a process particularly marked by the dehumanising treatment of the black populations of the African continent. The European logic of colonisation was justified by philosophical pronouncements which resulted in scientific racism, Social Darwinism and the eugenics movement.¹²⁸ In all the imperialist countries, it was regularly said that “colonisation equalled civilisation, and that the brave pioneers out in Africa were helping ‘the natives’ to a better life” (Davidson, 2003: 193).

In October 1884 fourteen European countries assembled in Berlin, at the invitation of the German imperial chancellor Von Bismarck, for the Conference of Great Powers. Bismarck called this conference to discuss the increasing rivalry among European states to acquire African colonies. The Berlin Conference of 1884 finalised agreements among European powers and paved the way for the legitimisation of colonial rule in Africa.¹²⁹ Although no African state was present or represented at the Berlin Conference, European colonial powers reached consensus on their political division of Africa. In 1885 these countries signed the General Act of the Berlin Conference “which provided that any power that

¹²⁸ Social Darwinism is Darwin’s theory of evolution by natural selection. “Chief amongst social Darwinists was Spencer who coined the phrase ‘survival of the fittest’, which sanctioned the belief that the technological advances and refined customs of the white races were proof of their greater ‘fitness’ and the natural necessity that they rule over dark, inferior races” (Rattanzi, 2007: 54). Social Darwinism spawned the eugenics movement: “a study of methods of improving the quality of the human race especially by selective breeding” (Collins, 2004: 537).

¹²⁹ For Europeans the practical application of Descartes’, ‘I think, therefore, I exist’ became ‘I think, therefore, I conquer and enslave’ (Ramose, 2002: 464).

effectively occupied African territory and duly notified the other powers could thereby establish possession of it” (Lamb, 1987: 104). In the Berlin Act signatories undertook to “watch over the preservation of the native tribes, and to care for the improvement of their moral and material well-being” (Van Dijk, 2006: 106).

The Berlin Act of 1885 took no heed of prevailing ethnic realities in Africa. The entire African continent with its multiplicity of peoples, cultures and languages was carved into different colonies by the capitalist powers of Europe whilst sitting around conference tables in Berlin (Wa Thiong’o, 2006: 4). These colonial powers divided Africa into countries, viz. Tanganyika, Ghana, Kenya¹³⁰, Nigeria and so forth without considering the existing social, economic or political realities of the African continent. As Britain’s Prime Minister Lord Salisbury, remarked to a London audience: “We have been giving away mountains and rivers and lakes to each other, only hindered by the small impediment that we never knew exactly where they were” (cited in Meredith, 2005: 2). Mazrui (2002: 49) mentions that these artificial geographical divisions are “all fictions ... Africa is a geographical fiction ... We were all Africans until colonialism split us”. Pre-colonial Africa experienced a oneness¹³¹ and knew no borders until the scramble for Africa or, the “European cannibalization of Africa” (Outlaw, 2002: 153). Africa was geographically reshaped in the best interest of European colonial powers. Africa’s geographical division served the purpose of not only avoiding conflict among the colonial powers in the ‘scramble for Africa’¹³² but also enabling them to exploit their colonies undisturbed.

¹³⁰ “Actually, Kilimanjaro should today belong to Kenya. But Queen Victoria gave it to her nephew, Kaiser Willie, as a birthday present. That’s how things were done in Africa in those days” (De Villiers & Hirtle, 1997: 145).

¹³¹ An English settler in Africa (cited in Mazrui 2002: 49) states that “the administration of some of these artificial divisions have made a practice of trying to foster a synthetic patriotism towards ‘Tanganyika’ or the ‘Gold Coast’ ... These loyalties to a wholly artificial and unrealistic administrative boundary ... tend to obscure and undermine the underlying sense of oneness across the continent which I have heard expressed in the constantly reiterated phrase “we Africans”.

¹³² In 1880 *The Times* termed the European invasion of Africa the ‘scramble for Africa’ (Davidson, 2003: 283).

African tribes and families were separated and forced together with hostile tribes and peoples with whom they had little in common.¹³³ Khapoya (1994: 109) states:

During Europe's scramble for Africa, external colonial armies, businessmen, settlers and missionaries conquered different African nations, destroyed indigenous networks of community self-government, reorganized long-standing patterns of trade, took over ancestral lands and undermined local belief and value systems. European colonialism in Africa interrupted important continuities of local life as well as the continuing development of great traditions in large-scale political economies throughout the continent.

Groups with no common history, culture, language or religion were enclosed in their new colonial territories. Muslim and non-Muslim were thrown together. The Masai for example were split between German-ruled Tanganyika and British-ruled Kenya (Lamb, 1987: 104) and Somaliland was carved up between Britain, Italy and France. Henceforth, Africa was to be defined in terms of European languages, viz. French-speaking, Portuguese-speaking, German-speaking and English-speaking African countries. Except for Liberia and Ethiopia, the rest of Africa was geographically divided by European colonial powers by 1914. The new colonial borders were artificial and separated African people who had been grouped together for centuries. "By the time the scramble for Africa was over 10,000 African polities had been amalgamated into forty European colonies and protectorates. Thus was born the modern states of Africa" (Meredith, 2005: 2). But as Ugandan president Museveni said: "You can't talk about colonialism without talking about African chiefs. Colonialism walked into an open house. Like a robber coming to a house and somebody opening the door for him" (cited in Van Dijk, 2006: 89).

¹³³ King Moshoeshe of the Basuto was so fearful of the encroaching British settlers in his mountain kingdom that he appealed to Queen Victoria for protection, arguing that his people might be considered "fleas in the Queen's blanket" (Meredith, 2005: 2-3).

The Berlin Conference formalised Europe's scramble for Africa and the acquisition of Africa's land, resources and labour. The colonial powers saw themselves as the liberators of the Dark African continent, asserting themselves, the superior colonisers, over the inferior colonised. Norton (cited in Davidson 1994: 326), professor of Colonial History at Oxford University, defended colonialism in 1920 as "the right way ... of dealing with the native problem ... what had happened was the introduction of order into uninteresting, brutal barbarianism". In the late twenties Coupland (cited in Davidson 1994: 326), a successor of Norton at Oxford, justified colonialism on the grounds that "the main body of Africans ... had stayed, for untold centuries, sunk in barbarism. Such, it might almost seem, had been nature's decree ... So they remained stagnant, neither going forward nor going back. The heart of Africa was scarcely beating". This kind of academic scholarship fuelled racial prejudice in the colonial model. European colonisers perceived Africa as a static, backward and uncivilised continent and deemed it their Christian duty to civilise and evangelise the Africans. Whereas "Berlin of 1884 was effected through the sword and the bullet ... the night of the sword and bullet was followed by the morning of the chalk and the blackboard. The physical violence of the battlefield was followed by the psychological violence of the classroom"¹³⁴ (Wa Thiong'o, 2006: 9).

The devastation brought about by Europe's civilising mission is confirmed by African writers, African academics and African philosophers alike. Mutwa (1998: 535) explains the colonial civilising process as follows:

When all your attempts at exterminating us failed, you tried to 'civilise' us, which is only a euphemism for bending thought patterns and life habits to suit your ends, for sacrificing our cultural heritage and individuality and adopting a watered-down

¹³⁴ Cheik Hamidou Kane describes the civilising process as follows: "On the black continent one began to understand that their real power resided not at all in the canons of the first morning but in what followed the canons. Therefore behind the canons was the new school. The new school had the nature of both the canon and the magnet. From the canon it took the efficiency of a fighting weapon. But better than the canon it made the conquest permanent. The canon forces the body and the school fascinates the soul" (cited in Wa Thiong'o, 2006: 9).

replica of your own. You fed us on falsehoods in your places of education. You threatened and cajoled us into accepting your religion,— and, to our eternal regret, we partly did – because today you are not only strongly inclined to doubt the very religion you brought us, but you are calling those of us who still cling to your teachings de-tribalised fools.

As European society was the model for civilised society, the colonisers saw fit to replace existing African social structures with the model of the European nation state. To ensure obedience of their African subjects various laws were put in place by the colonial powers. Law became a crucial component for the European minority to maintain control over the African masses. Colonial jurisprudence consisted of one of two systems of European governance: direct rule and indirect rule. Mamdani (1996: 16-17) summarises direct rule¹³⁵ as followings:

No 'native' institutions would be recognised. Although 'natives' would have to conform to European laws, only those 'civilized' would have access to European rights ... Citizenship would be the privilege of the civilized; the uncivilized would be subject to all-round tutelage. They may have a modicum of civil rights, but not political rights, for a propertied franchise separated the civilized from the uncivilized ... For the vast majority of natives, that is, for the uncivilized who were excluded from the rights of citizenship, direct rule signified an unmediated – centralized – despotism.

Indirect rule suggested a dual system of law: whilst European law regulated all public and private affairs under urban colonial jurisdiction, customary law regulated the rural areas. Mamdani (1996: 17) describes the segregation of European and customary law under indirect rule as follows: “Alongside received law was implemented a customary law that regulated nonmarket relations, in

¹³⁵ Mamdani gives the colonial powers of the Cape Colony as an example of direct rule during the eighteenth and nineteenth centuries. According to Mamdani (1996: 66), the British Governor in the Cape Colony, Sir George Grey, established the prerequisites of direct rule as the “appropriation of land, destruction of communal autonomy and the establishment of the ‘freedom’ of the individual to become a wage worker. Also the single legal order was confined to matters of personal law; in the public realm, natives were ruled by proclamation and magistrates held absolute power”.

land, in personal (family), and in community affairs. For the subject population of natives, indirect rule signified a mediated – decentralized – despotism”. According to Mamdani (1996: 66; 17), direct and indirect colonial rule resulted in the same outcomes: “a mediated – decentralized – despotism”.¹³⁶ Mamdani argues that the segregation of indirect colonial rule provided the impetus for segregation and ultimately apartheid in the twentieth century. Britain and France were the two major European powers to establish colonial systems in Africa.

Whilst Britain, Portugal and Belgium made use of policies of indirect colonial rule, the French made use of a policy of assimilation. African rulers or kings who resisted colonial rule were killed in battle, executed or exiled. Examples of such exiled African kings who were banished from their homelands by European powers include, *inter alia*: the Mandingo king; King Samori who died in his second year of exile; King Agyeman Prempeh of the Asantehene who was exiled for thirty years; King Cetshwayo of the Zulu nation; and King Behazin of the Dahomey (Meredith, 2005: 3). Colonialism came to an end as a result of the Africans’ struggle against colonialism. The process of decolonisation and independence for Africans started in 1950 and continued until 1968.

2.5.4.2 British Colonial Rule

The British colonial policy of indirect rule¹³⁷ segregated the British from the traditional African people. Indirect rule did however, allow for cultural relativism among the different societies. The British were convinced that the most effective way to govern Africa was to rule through African chiefs or tribal authorities. The British appointed African chiefs who were directly accountable to British

¹³⁶ Davidson (2003: 288) confirms Mamdani’s notion that there was no difference in brutality between direct and indirect colonial rule. See 2.5.4.4

¹³⁷ British indirect rule was based on the principle that if a society aspired to change direction, it would be a mistake to do it either totally or in a sudden move. According to the Anglo-Irish philosopher, Burke, “political prudence requires political sensitivity to history”. Indirect rule was based on a Burkean principle of gradualism. As he put it, “People will not look forward to posterity who never look backward to their ancestors” (cited in Mazrui, 2002: 135). Many colonial policy makers felt convinced that you could not persuade Africans to look to posterity unless you respected their tendency to look backward to their ancestors.

commissioners. These tribal chiefs were recruited as agents of the colonial authorities and ceased to be responsible for their African societies. In exchange for financial benefits and protection, tribal¹³⁸ chiefs had to enforce colonial laws, collect taxes and provide cheap labour for their British colonial masters. Colonial chiefs often experienced resistance¹³⁹ from their own people and were easily deposed and replaced by the British. The introduction of chiefs within African societies created not only internal conflict but also ethnic tensions¹⁴⁰ among Africans. Khapoya (1994), Anderson (2003), Elkins (2005), Hewitt (2008) and others confirm that British indirect rule created conflict and ethnic tensions amongst Africans. Indirect rule systematically undermined traditional African social structures, played off ethnic groups one against the other and accelerated and manipulated socio-economic differentiation in the African society (Elkins, 2005: 19).

An example of the devastating effects that British colonial policies had on African societies is best illustrated by the mass rebellion of the Kikuyu or Mau Mau of colonial Kenya against the British colonial government. This rebellion was a direct result of Britain's land policy¹⁴¹ in Kenya. Although both British and French governments refused to allocate land to European settlers and companies in

¹³⁸ Tribalism became the alternative to racism. Tribalism became the "main way of defining the social, legal' and political status of the colonized. On the face of it, tribe as social litmus had none of the disadvantages that race did. In fact, its advantages were obvious: unlike race, tribe would dissolve the majority of the colonized into several tribal minorities; furthermore, tribal identity could be argued to be both natural and traditional" (Mamdani, 1996: 90). Mamdani (1996: 91) sees "the recognition of natives as belonging to tribes" as the root difference between French and English systems of control.

¹³⁹ "The introduction of chiefs brought with it a bitter internal conflict within the Kikuyu community, a conflict that only intensified over time ... The competitive environment that spawned the chiefs was a direct result of the intense internal competition for resources and wealth that peaked at the time of colonization. The chiefs merely capitalized on the opportunities that came with the power they derived from colonial rule ... To add insult to injury, the chiefs were rewarded for their loyalty to the colony and the Crown with larger and more fertile parcels of land in reserves, superior seed, licenses to conduct internal trade and access to local cheap labor, all ingredients for success in the peasant agricultural sector" (Elkins, 2005: 19).

¹⁴⁰ Colonialism and the subsequent capitalist penetration into Africa led to the interruption and disruption of indigenous modes of production as well as the established values and social relations in general (Mangena, 1996:17).

¹⁴¹ Pakenham (2005: 677) describes the land issue in Kenya as such: "But the grievance that touched them [Kikuyu] most widely was the land. More than half of Kenya is barren steppe and desert. The British settlers had reserved exclusively for themselves the best farmland, the cool, green 'White Highlands' on the highway to Uganda".

West Africa, land was taken from Africans in French Equatorial Africa, the Belgian Congo, British East Africa and Central Africa and sold to Europeans and European companies (Gordon, 2001: 50). Colonial rule deprived Kikuyu of political rights, their land and their religion. Consequently, Kikuyu led their armed rebellion against Britain's colonial government, demanding firstly, the return of their land and secondly, their freedom from colonial oppression.¹⁴² Davidson (cited in Teffo et al., 2002: 168) cites how the Kikuyu "lost all control over ancestral forests and fields that had been theirs from 'time out of mind': they lost, it could be said, their environment". Davidson concludes:

"[T]his sense of degradation, the product of dispossession, is the nearest we will get to an explanation of phenomena such as Mau Mau. As was the case among other subjected peoples, colonial dispossession led to a more or less complete disjuncture from previous Kikuyu history. With a contemptuously dismissive hand, the ancestors were banished to realms of impotence and anonymity from which there seemed no way of recalling them, and so, for 'the living and the yet unborn', there was no way of conserving the notion of community as these people had learned to understand".

During the Mau Mau¹⁴³ uprising¹⁴⁴ of 1952-1956, 32 European settlers¹⁴⁵ and 1 800 African loyalists died at the hands of the Mau Mau. The British, however,

¹⁴² Anderson (2003: 300-301) indicates that 46 000 Kenyan Africans lost their lives in British service between 1914 and 1918. The French mobilised 211 000 Africans from West Africa of whom 24 762 died that were deployed in the Western Front in France. Mazrui (2002: 31) states that the total number of Africans killed in anti-colonial wars in Africa totalled three million.

¹⁴³ According to Mutwa, (1996: 582) the Kikuyu regard the wild cat as a sacred animal. The name Mau Mau was derived from the sounds the cat makes.

¹⁴⁴ The Mau Mau massacred 2 000 Kikuyu and maimed another 1 000; "black savages, slashing *pangas*, cruel hacking, murderous assault – a pitiless, defenceless, helpless nightmare until they were left dismembered in a pool of blood" (Hewitt, 2008: 295). Hewitt (2008: 20-21) says: "All the killing and savagery of the Mau Mau uprising was little different from what had been going on in darkest Africa between various tribes for centuries past ... By western codes and values, everything witnessed and suffered during Kenya's emergency was primitive, insensate genocide or homicidal mania. But what was it by tribal African measure?"

¹⁴⁵ Elkins (2005) Hewitt (2008) and Anderson (2006) dispel the myth that the Mau Mau violence was primarily directed at European settlers. Hewitt (2008: 296) states that during the emergency, European security forces suffered 164 casualties of which two-fifths were killed. By 1955 Europeans had suffered 222 casualties whilst the loyal African bore the brunt of the Mau Mau onslaught.

killed 12 000 Mau Maus and held more than 70 000 Kikuyu supporters of the Mau Mau in detention camps, in detention without trial, at the peak of the struggle (Anderson, 2006). According to Anderson, 150 000 Kikuyu were detained in detention camps during the course of the rebellion. 1 090 Kikuyu were hanged and many executed by soldiers. “Between 1952-1960, when the fighting was at its worst, the Kikuyu districts of Kenya became a police state in the very fullest sense of that term” (Anderson 2006: 5).

The response of Britain's colonial government towards the Kikuyu rebellion was to detain one and a half million men, women and children in either detention camps or concentration camps. The concentration camps confined the Kikuyu in “villages ringed with barbed wire and portrayed and treated them as sub-human savages” (Elkins, 2005). According to Elkins, “a hundred thousand or more [Kikuyu] died from the combined effects of exhaustion, disease, starvation and systematic physical brutality” in these camps.¹⁴⁶

One of the few examples of an African victory over European colonial rule occurred when Cetshwayo, the Zulu king, defeated the British army in 1879. Van Dijk (2006: 100-102) narrates how, after the British conquered the Ashanti in Ghana and the Xhosa in the Eastern Cape, they wanted to take active steps to check the arrogance of King Cetshwayo. On 11 December 1878, the British government presented Cetshwayo with an ultimatum to disband his forces. Cetshwayo replied as follows: “The king has, however, declared and still declares

¹⁴⁶ A similar example of the devastation which resulted from British colonial rule occurred at the height of British imperial rule in South Africa when Britain set out to include the Boer republics of the Transvaal and Orange Free State into the British Empire. It resulted in the three-year Anglo Boer War of 1899-1902 where Boers responded to the British with guerrilla warfare. The British retaliated with scorched earth tactics to impoverish and break the will of the Boers. The British burned and razed Boer farmhouses to the ground and slaughtered livestock on a massive scale. 116 000 Boers were rounded up in 40 concentration camps where 26 251 women and children and 1 676 elderly men perished from disease, starvation and exposure (L'ange, 2005: 145). Some 115 000 Africans were also herded into 66 concentration camps where 20 000, mostly women and children, died whilst kept in conditions “even worse than in white camps” (L'ange 2005: 145). This incident sparked Afrikaner nationalism amongst the Boers. After conquering the Boer republic, Britain had virtually the whole of Southern Africa under its domination.

that he will not commence a war but wait till he is attacked before he enters into a defensive campaign”.

In January 1879 the British launched their attack which resulted in 20 000 Zulu warriors descending on them. The British were defeated on 22 January 1879.¹⁴⁷ “The myth that white people could not be defeated was dealt a decisive blow” (Van Dijk, 2006: 102). Cetshwayo’s forces were destroyed in July of that year. He was captured by the British and banished to Cape Town from where he wrote numerous letters to petition his release from Queen Victoria. In 1881 he wrote: “I have done you no wrong, therefore you must have some other object in view in invading my land” (cited in Van Dijk, 2006: 103). Cetshwayo even undertook a trip to London in 1882 to petition the Queen but by then his Zulu kingdom was reduced to dismal numbers.

2.5.4.3 Portuguese and Belgian Colonial Rule

The Portuguese and Belgian colonial governments controlled smaller areas in Africa and also made use of policies of indirect rule. Their colonial policies were no less violent nor less destructive than those of other colonial powers. The Belgians were notorious for their paternalistic colonialism; their curfews¹⁴⁸; and forced labour which continued in the Congo until the 1950s. Belgium however, made provision for one rare exception in colonial rule: children were taught not only in European languages in mainly Catholic missionary schools but also in their ethnic languages (Internet, 2007{c}: 2). The most atrocious example of the ravage that resulted from the Berlin Conference, however, occurred in the Congo and involved King Leopold II of Belgium.

In 1876, King Leopold II of Belgium declared an enormous territory of 2 344 000 square kilometres (Internet{b}, 2007: 3) in the Congo under Belgian administra-

¹⁴⁷ See Greaves’ *Crossing the Buffalo* for an account of the 1879 Zulu war.

¹⁴⁸ The Belgians were notorious for their “kind of Apartheid” curfews and other restrictions for Congolese ‘natives’ (Internet, 2007{c}: 2)

tion. In 1885, Leopold II secured the Congo Free State in his private capacity, at the Berlin Conference. King Leopold's Congo Free State was not a colony of Belgium but the king's private business enterprise, run by the King Sovereign, one of Europe's richest men. The reality was that "there was hardly any other colony which was so relentlessly exploited for the private gain of a European ruler as the Belgian Congo" (Van Dijk, 2006: 105). King Leopold II's Congo Free State¹⁴⁹ was exploited for rubber, copper, uranium, ivory and other minerals. He ruled the state with an estimate of 30 million people until it was annexed by Belgium in 1908. Leopold II's rule in the Congo Free State gave rise to a reign of unprecedented terror¹⁵⁰, mass killings¹⁵¹, slave labour, rape, corruption and bribery in Africa.

Under pressure of missionaries who reported Leopold's atrocities, the Belgian Foreign Office sent Casement to investigate the situation (Davidson, 2003: 291). The Casement report¹⁵² found that workers were not paid; were tortured and killed; and that soldiers would collect baskets full of chopped hands¹⁵³ and ears to prove that they were carrying out their orders and not wasting their bullets while policing the rubber plantations (Internet{d}, 2007:1). European and United States press agencies exposed the atrocities committed by King Leopold II to the world in 1900 (Internet{b}, 2007:9). Further investigations led to the Janssen's Report, which confirmed the Casement findings but also "blamed the Catholic

¹⁴⁹ King Leopold named his estate the Congo Free State –"intended to imply [tax] free trade there for European merchants" (Davidson, 2003: 285).

¹⁵⁰ Joseph Conrad's novel *Heart of Darkness* and Mark Twain's *King Leopold's Soliloquy* attest to Leopold II's colonial regime of mass killings, rape and slave labour.

¹⁵¹ One such example of indiscriminate killings occurred when the soldiers punished a village that had protested against working conditions. A Danish missionary gave the following account of what occurred: "The white officer in command ordered us to cut off the heads of the men and hang them on the village palisades, also their sexual members, and hang the women and children on the palisade in the form of a cross" (Internet{b}, 2007: 6).

¹⁵² According to Casement, indiscriminate wars, starvation, reduction in births and diseases, viz. sleeping sickness contributed to the depopulation of the Congo Free State (Internet{b}, 2007: 6).

¹⁵³ Forbath is cited as follows: "The baskets of several hands, set down at the feet of the European post commanders, became the symbol of the Congo Free State ...The collection of hands became an end in itself. *Force Publique* soldiers brought them to the stations in place of rubber; they even went out to harvest them instead of rubber ... They became a sort of currency. They came to be used to make up for shortfalls in rubber quotas, to replace ... the people who were demanded for the forced labour gangs; and the *Force Publique* were paid bonuses on the basis of how many hands they collected" (Internet{b}: 2007: 6).

missionaries for keeping silent about the atrocities they had witnessed” (Pakenham, 2005: 657). Public and diplomatic pressure on Belgium led to the end of King Leopold II’s rule. Belgium then annexed the Congo Free State as a colony of Belgium. The Belgian plunder of the Congo continued and the “Congolese were hardly better off than when colonized by Leopold II” (Internet{d}, 2007: 1).

An official Belgian commission reported in 1909 that the population of the Belgian Congo was reduced by half¹⁵⁴ since the beginning of the Congo’s European occupation in the 1880s (Davidson, 2003: 291). Although sources differ on the Congolese death toll, a conservative estimate is 3 million.

In the absence of a census (the first was made in 1924), it is even more difficult to quantify the population loss of the period. British diplomat Roger Casement’s famous 1904 report set it at 3 million for just twelve of the twenty years Leopold’s regime lasted; Forbath, at least 5 million; Adam Hochschild, 10 million; the *Encyclopedia Britannica* gives a total population decline of 8 million to 30 million.¹⁵⁵

On 24 May 2006, a motion was presented to the British Parliament whereby Britain acknowledged the mass killings caused by Leopold II, King of Belgium in the Congo Free State, as genocide. The British Parliament called upon Belgium to apologise to the people of Congo for the mass killings orchestrated by Leopold II (Internet{b}, 2007: 1). The following example of Belgian indirect rule illustrates how Belgium initially fuelled and later condoned ethnic killings between the Hutus and Tutsis in Rwanda. The twentieth century witnessed one of the worst crimes against humanity: the genocide in Rwanda which was unleashed on 6 April 1994 when the Hutu proceeded on their quest to exterminate the Tutsis. 800 000

¹⁵⁴ Davidson’s estimate is confirmed by Vasina. “Jan Vasina, professor emeritus of history and anthropology at the University of Wisconsin, showed that the population halved during this period” (Internet, 2007{b}: 6).

¹⁵⁵ See Internet{b} (2007: 6).

Tutsis were subsequently killed in 100 days of the Rwandan genocide.¹⁵⁶ The origins of these killings date back to the early 1930s.

Although the Hutus and Tutsis share the same religion, language, customs, food, dress, culture and names, the Tutsi minority had dominated the Hutu majority for several centuries. At the Berlin Conference, Burundi and Rwanda were declared part of German East Africa. The Germans ruled this area through the established Tutsi-dominated social and political order. After World War 1, Rwanda, a German colony, was transferred to Belgium. Like the Germans, the Belgians favoured the Tutsi ruling class through their system of indirect rule. In the 1940s and 1950s, Belgium Catholic Church leaders sought to redress the inequity of the minority dominating the majority. "These church leaders, imbued with modern concepts of democracy and fundamental human rights, sought to redress the imbalance by promoting education, jobs and access to power for the subjugated Hutu. The restructuring of political, social and ethnic order coincided with the sweeping changes across Africa that brought independence and self rule to the former colonies" (Khan, 2001: 4).

When the Tutsis demanded independence however, the Belgians withdrew their support of the Tutsis and "began stoking the long-smouldering embers of Hutu hatred of the Tutsi for their oppression ... In 1959, Belgian support led to the uprising of more than two million Hutu peasants against 300 000 Tutsi living in Rwanda" (Van Dijk, 2006: 195). 50 000 Tutsi men, women and children were murdered whilst Belgium looked on. In the period leading up to independence 120 000 people, primarily Tutsis, fled to neighbouring countries to escape the violence of the gradual coming to power of the Hutu. By the end of the 1980s more than 480 000 Rwandans had become refugees in Burundi, Uganda, Zaire and Tanzania (Khan, 2001: 5).

¹⁵⁶ Genocide involves the intentional mass destruction of entire groups or members of a group and is, according to the Rome Statute of the International Court, Act 27 of 2002, the most serious crime against humanity[□] (Dugard, 2005: 180 -181).

On 1 October 1990, the Tutsis marched on the Rwanda capital, Kigali, to exterminate the Hutus. The Hutu leader, Habyarimana, asked France for assistance. France responded swiftly and with the assistance of French and Zairian forces fended off the attack. The only solution to the ethnic tension was either compromise or confrontation. In 1994, despite the Arusha Accord, the Hutus engaged in their carefully planned massacre or ethnic cleansing. The international community, the United Nations Security Council and the Organisation of African Unity looked on as Rwandans engaged in the genocide of almost a million Tutsis (Van Dijk, 2006: 197).

2.5.4.4 French Colonial Rule

In contrast to Britain's indirect rule, France established a colonial policy of assimilation. The French policy of assimilation held that Africans were not to be segregated as was the case with Britain's indirect rule. For Africans, assimilation¹⁵⁷ comprised of a three-stage process of first, dismissing traditional African culture; second, converting to French culture; and third, becoming citizens of France. "The French have never doubted that the best thing that could happen to an African is to become French" (cited in Theroux, 2004: 70). During this process of acculturation the French colonial power asserted its European superiority over the indigenous African peoples. According to Davidson (2003: 288), the French destroyed traditional authority wherever they went, "concentrating all powers in the hands of their own commanders and administrators". Gordon (2001: 48) mentions the rationale of centralised French assimilation as follows: "French administration maintained the necessity of deliberately creating an African elite that would accept French standards and then become 'associated' with the French rulers in the work of governing the colonies".

¹⁵⁷ The first president of Moçambique, Samora Machel, described French assimilation as follows: "Assimilation was not merely the fascist caprice of a senile dictator, but was in fact mental enslavement to the foreigner in its purest form, a deliberate process of negating all culture, history and traditions of our people. A man thus spiritually destroyed became a living corpse, a docile receptacle for the colonizer's way of thinking, acting and living" (cited in Theroux, 2004: 94).

The French ideal of assimilation became apparent in their education policy in Africa: a policy deliberately limiting African education to primary school levels and geared only towards semi-skilled occupational training¹⁵⁸ (Gordon, 2001: 49). Although Gordon suggests that British indirect rule had been more respectful of African traditions and culture than French assimilation, Davidson (2003: 288) is of the opinion that for Africans on the receiving end, the difference was far less obvious than for the theorists in Europe. According to Davidson, both Britain and France relied “in almost every case upon a combination of direct and indirect rule through a European officer and indirect rule through local collaborators or agents”. The only difference between Britain and France was in their methods of exploitation (Davidson, 2003: 291).

To name but one documented example of French exploitation we turn to France’s Congo-Océan railway. To build the French colonial Congo-Océan railway, 127 250 Africans were recruited to work on the line between 1921 and 1932. According to official figures (Davidson, 2003: 293), 14 000 African men perished whilst working on the railway. Coquéry-Vidrovitch (cited in Davidson, 2003: 293) however places the true total that perished on the line at 20 000 Africans. Coquéry-Vidrovitch reminds us that recruitment for the railway was carried out “by no gentle means by police operations”; that it was impossible for the recruits to escape and that their recruitment was a probable “condemnation to death”.

2.5.4.5 German Colonial Rule

Before the Berlin Conference, Germany had already declared Luderitz and other territory in South West Africa a German possession and placed it under protection of the German Empire. In 1884 Germany proclaimed South West

¹⁵⁸ According to Davidson (2003: 319), for the majority of Africans “colonial education either had no meaning, because it did not touch them, or none that was useful as an instrument of cultural enlightenment”.

Africa¹⁵⁹ a German Protectorate or *Schutzgebiet*.¹⁶⁰ Togo, Cameroon and Tanganyika were soon to follow. In Von Papen's words: Colonies are an economic necessity for Germany ... To afford her an opportunity of spreading culture and civilization" (cited in Theroux, 2004: 71). A typical example of what German colonial rule entailed is illustrated by the Herero rebellion against German South West Africa. In 1893, soon after the Germans invaded South West Africa, the land of the Herero, Nama and Ovambo, they had their first clash with the Nama. As there were continuous reports of cattle thefts and insubordination to white settlers, reservists were called up. After the German settlers confiscated cattle and land belonging to the Herero in 1904, the Herero "declared outright war on the Germans" (Davidson, 2003: 298) and besieged Windhoek, Omaruru and Okahandja. "No one in Germany could explain why these simple Herero tribesmen, as docile as their cattle for a decade, had suddenly turned on their masters like hungry wolves" (Pakenham, 2005: 604). 18 January 1904 signalled the beginning of the Herero rebellion against German colonial rule. The uprising lasted only a few months.

German General, Von Trotha, a man with a reputation for ruthlessness, was entrusted with the task of putting down the unruly Herero and the Nama.¹⁶¹ Von Trotha writes the following on his experience with the peoples of German South West Africa: "I know these African tribes ... They are all the same. They respect nothing but force. To exercise this force with brute terror and even with ferocity was and is my policy. I wipe out rebellious tribes with streams of blood and streams of money. Only by sowing in this way can anything new be grown, anything that is stable" (cited in Davidson, 2003: 298-299). Von Trotha and his *Schutztruppe* entrapped the Herero and Nama in the Waterberg region and

¹⁵⁹ German East Africa, Togoland and the Cameroon were not acquired for colonisation but for their resources and commerce (Cana, 1916: 361).

¹⁶⁰ Walvis Bay was not included in the German protectorate as it had been British since 1878.

¹⁶¹ All ethnic groups in South West Africa were oppressed by the Germans. Germany declared Ovamboland a reserve in 1906 and assumed control of the region. "In 1908 Captain Viktor Franke sought 'declarations of obedience' from various Ovambo leaders. Ovambo men were secured for the diamond mines ... and the traditional political and economic structures of the Ovambo no longer functioned under the authority of its own leaders" (Cooper, 2006: 119).

relentlessly drove them into the Omaheke desert. Von Trotha sealed the wells behind them and declared a no-go zone which made it impossible for the Herero to escape.

While they were trapped in the Omaheke, Von Trotha (cited in Pakenham, 2005: 611) issued the following proclamation to the Herero:

I, the Great General of the German soldiers address this letter to the Herero people. The Herero are no longer considered German subjects. They have murdered, stolen, cut off ears and other parts from wounded soldiers and now refuse to fight on, out of cowardice. I have this to say to them ... the Herero people will have to leave the country. Otherwise I shall force them to do so with guns. Within the German boundaries, every Herero whether armed or unarmed, with or without cattle, will be shot. I shall not accept any more women or children. I shall drive them back to their people – otherwise I shall order shots to be fired at them.

Von Trotha signed the proclamation as “The Great General of the Mighty Kaiser, Von Trotha”. Von Trotha boasted about his policy – extermination. The systematic extermination of the entire Herero nation had begun. Half the population of 80 000 Herero and 20 000 Nama men, women and children were left to die of starvation and thirst in the Omaheke (Pakenham, 2005: 614). Herero that were encountered by German soldiers were shot and bayoneted as a matter of duty. Herero who surrendered were sent to labour camps. Those who escaped death were put into concentration camps where over half of the 15 000 Hereros and 2 000 Nama died as a result of the inhumane conditions (Pakenham, 2005: 614). According to Davidson (2003: 299), Von Trotha’s terror killed 75 000 Herero and Nama between 1904 and 1911. German governor Leutwein justified these killings as follows, “Colonisation is always inhumane. It must ultimately amount to an encroachment on the rights of the original inhabitants in favour of the intruder” (cited in Theroux, 2004: 73). When Von Trotha returned to Germany the Kaiser rewarded him with the Order of Merit for devotion to the Fatherland.

The German policy of extermination resulted in the first ethnic genocide of the twentieth century. As 80% of the Herero and 50% the Nama¹⁶² were killed, “their land was transferred to German Settlers with longstanding loans subsidized by the German government. These farms remain the heart of Namibian agriculture today” (Cooper, 2006: 114). The tragedy of the German and all other European civilising missions become evident in the words of a Herero to a German soldier during the 1904 Herero rebellion: “The missionaries say that we are the children of God like our white brothers ... but just look at us. Dogs, slaves, worse than baboons¹⁶³ on the rocks ... that is how you treat us” (cited in Pakenham, 2005: 602). The German Protectorate in South West Africa lasted until the outbreak of World War 1. After the war South West Africa was handed over to South Africa for administration. In 2001, the Herero instituted a claim¹⁶⁴ for reparations against Germany for the genocide of 65 000 Herero during the German colonisation of South West Africa, 1904-1907 (Cooper, 2006: 113).

European colonial powers saw the colonisation of Africa by European imperialism as its colonial gift to the uncivilised Dark Continent. From an African point of view, Africans perceive the goals of Africa’s colonial subjugation as being the offloading of Western civilisation and Christianity. The process through which Europe colonised, civilised and Christianised Africa was, according to Africans, clearly marked with an air of racial, moral, cultural and religious supremacy. From an African point of view, European colonial policies resulted in the destruction of African authority, culture, values, tribal and family life and led to the infusion of

¹⁶² According to a census of 1911, only 9 800 out of 20 000 Nama of a decade before and only 15 000 out of the original 80 000 Hereros survived the ethnic killings.

¹⁶³ In 1904 the Germans sent Colonel Von Leutwein, a peacemaker, to the Hereros. “Leutwein was the first to deplore what he privately called the ‘barbarous’ conduct of white settlers - the brutal floggings and the reckless murders, many of which went unpunished, and the rape of Herero women, which was commonplace. (The settlers prevented any case ever being brought to justice). At best, the Herero who worked for the Germans had to suffer systematic humiliation. They were called ‘baboons’ to their face. The settlers told the government in a petition that it was ‘almost impossible to regard them as human beings’. Leutwein deplored this, yet thought it unavoidable” (Pakenham, 2005: 607).

¹⁶⁴ The Chief Hosea Kutako Foundation instituted a legal claim of \$2 billion against the German government and another \$2 billion against three German companies in reparations resulting from the ethnic genocide against the Herero (Cooper: 2006:1).

ethnic rivalry. Not only was European sameness forced onto Africans but African reality, humanity and values were totally ignored. Their land was taken; their human rights and human dignity violated; their customs, religion, law and traditions scoffed at and eroded. Colonisation “had no more regard for the interests of African human beings than it had for those of African animals, and sometimes even less” (Davidson, 2003: 293).

In their state of subjugation African were to be deprived of every human right. Could Africans have asserted themselves against colonisation? Mutwa (2003) and Muendane (2006) are of the opinion that it was impossible for Africans to repay Europeans, an eye for an eye. Muendane (2006: 48) argues that “Africans could not have been as cruel and brutal as the Europeans because they saw them as human beings; one cannot treat another human being as an animal unless one dehumanises that human being in one’s mind”.

2.5.4.6 Racial Prejudice and the Christian Civilising Mission

“When the white man came
They had the bible and we had the land
Now we have the bible and they have the land” (African saying cited in van Dijk, 2006: 116).

This subsection deals with the following:

- Background.
- Missionaries and African culture.

2.5.4.6.1 Background

Ancient African Christianity was brought to in 42 A.D. and flourished in Northern Africa for seven centuries. When Islam was founded in Arabia in the seventh century it spread rapidly through Egypt, North and North West Africa and wiped

out most of Ancient except in Egypt and Ethiopia.¹⁶⁵ During the fifteenth and sixteenth centuries, Spanish and Portuguese Catholic missionaries brought Christianity to Western Africa but it died out after two centuries as European missionaries found it difficult to cope with warfare, disease and primitive conditions.

The nineteenth and twentieth centuries however, saw a concerted effort of paternalistic endeavour¹⁶⁶ and self sacrifice by Christian European missionaries to bring Christianity to the whole of Africa. Their fervour brought not only Christian values but also Western culture which would ultimately change the character of the entire continent. "By 1900 there were few large regions where Christian [Catholic and Protestant] missionaries had failed to arrive and settle" (Davidson 2003: 282). By 1910, 16 000 European missionaries were stationed in Africa south of the Sahara (Meredith, 2005: 7). On the one hand, these missionaries were instrumental in getting slavery abolished in the colonies; on the other hand, their civilising efforts resulted in the undermining of all African cultures and values.

The colonial goal of civilising Africa went hand in hand with its complementary goal of evangelising Africans. According to Ramose (2002{b}: 36), "colonisation took place under the banner of the Christian religion, a religion professing love, compassion and tolerance, but after the cross was offloaded by the colonialists the humanity of the indigenous African people was questioned". The establishment of Christianity disrupted traditional African societies as its Christian values opposed Africa's traditional social structures, religious beliefs, cultural practices and African values. Africans had to denounce what missionaries considered "the evils of African traditions such as polygamy and female

¹⁶⁵Rastafarianism is a combination of Ethiopian Christianity, Old Testament Judaism and traditional African religion.

¹⁶⁶ Dr Albert Schweitzer, a French Protestant clergyman and medical doctor, writes as follows in 1921, "The Negro is a child ... and with children nothing can be done without the use of authority ... With regard to Negroes, then, I have coined the formula: I am your brother, it is true, but I am your elder brother" (cited in Lamb, 1987: 142).

circumcision and were authoritarian and paternal in their approach to Africans” (Lamb, 1987: 142).

During the nineteenth century and the beginning of the twentieth century, explorers, anthropologists and theologians, viz. Tempels¹⁶⁷, reported on the primitive and savage nature of pagan Africa. Influenced by their reports of the darkest heathenism, European missionaries brought Christianity to Africa. These missionaries shared the common European philosophy that Europe’s civilising effort in Africa could lift Africa out of its pagan beliefs and primitive savagery. Nineteenth-century missionaries in Africa faced many setbacks, of which the greatest was the fact that they had no resistance to malaria¹⁶⁸ and other fevers and diseases endemic to Africa. “As many as fifty-two missionaries are said to have succumbed to one or other fever along the West Coast in 1825 alone, but the flow of volunteers never failed” (Davidson 2003: 282).

2.5.4.6.2 Missionaries, African Culture and Values

Christian missionaries played a leading role in the colonial powers’ civilising mission throughout the empire. It was the white man’s burden¹⁶⁹ to bring Christianity and civilisation to the Dark Continent of Africa. They were determined to convert the Africans not just to Christianity but to the Western way of life. Elkins (2005: 20) describes how different Christian denominations in Kenya established mission stations “which included churches, schools and medical clinics, condemning the heathenism of Kikuyu religion and cultural practices and preaching the values of Christianity, commerce and civilisation. For the European colonial governments, missionaries offered civilisation on the cheap”.¹⁷⁰

¹⁶⁷ Father Placide Tempels (1969: 171-172) justifies the Christianisation of the Africans by saying: “our civilizing mission alone can justify our occupation of the lands of uncivilized peoples. All our writings, lectures and broadcasts repeat *ad nauseam* our wish to civilize the African people”.

¹⁶⁸ Kwame Nkrumah (cited in Stewart, 2005: 69) suggested building a monument in Accra for the Anopheles mosquito, carrier of the deadly disease malaria, which made Europeans reject West Africa as unsuitable for colonisation.

¹⁶⁹ From Rudyard Kipling’s poem: *You will be a man my son*.

¹⁷⁰ Elkins (2005: 20) states that all education or welfare services provided to the local African population were delivered largely by missionaries.

Mission schools were foremost in providing Western education, culture, morals and Christianity to receptive young African minds. In the missionary schools African languages were gradually replaced with colonial languages. Wa Thiong'o (2006: 11) describes how his language, Gikùyù, had to bow before English:

One of the most humiliating experiences was to be caught speaking Gikùyù in the vicinity of the school. The culprit was given corporal punishment – three to five strokes of the cane on bare buttocks – or was made to carry a metal plate around the neck with inscriptions such as I AM STUPID or I AM A DONKEY. Sometimes the culprits were fined money which they could hardly afford.

The outcome of these colonial language policies was that indigenous African languages were systematically suppressed by the compulsory use of the 'superior' colonial language. The compulsory use of colonial languages and the deliberate suppressing of African languages were by no means accidental or merely because they served practical purposes. Habermas argues that no language is purely linguistic. He says: "Language is *also* a medium of domination and social force. It serves to legitimate relations of power ... [T]o hypostatise language in a manner of linguistic and hermeneutic philosophy, is to fall into the conservative clutches of a naïve and submissive idealism" (cited in Van Blerk, 2004: 227). Although colonial languages were portrayed as neutral universal languages, the use of English or French for that matter legitimised Western liberal values in African societies. By downplaying African culture and communal values, colonial languages positioned themselves as neither neutral nor universal languages.

Colonial missionary schools alienated African children from their African identity, values and culture and replaced it with European history, culture, values, its literary tradition and the Eurocentric view on life. Mutwa (2003: 30), a product of colonial missionary education, has the following to say about his Christian education: "I found that Western education conditioned us to despise Africa,

which is why we never realized the tremendous store of knowledge that lies hidden in the minds of those people called sangomas or traditional healers". In the 360 degree change needed to civilise Africans, missionaries launched attacks on African culture, African Religion, values and customs and questioned the very existence of the African.

Colonial education inculcated European values and signified a clear break with the recipients' traditional African past. Missionary schools became instrumental in proclaiming European superiority and African inferiority. Biko (2007: 119-120) rightly asks: "How can an African avoid losing respect for his tradition when in school his whole cultural background is summed up in one word: barbarism?" Fanon (1990: 169) states, "colonialism is not satisfied merely with holding a people in its grip and emptying the native's brain of all form and content. By a kind of perverted logic, it turns to the past of the oppressed people, and distorts, disfigures and destroys it". The destruction of everything held dear by Africans resulted in the painful transformation to colonial reality. Africa would never be the same. The Kikuyu Chief, Kabongo, leader of "the subjugated, put forth their own interrogative to the vacuity 'constructed' by Europe". Chief Kabongo said: "We elders looked at each other. Was this the end of everything that we had known and worked for?" Indeed it was! (Serequeberhan, 2002: 66).

The colonial civilising and evangelising role of European missionaries was to convert Africans from their communal pagan past¹⁷¹, African Religion¹⁷², to

¹⁷¹ "Before one appoints oneself as a judge of any race of Man on earth, one must have a thorough knowledge of the religions and beliefs of that particular race. The reason people from beyond the seas judge the Black Man so very wrongly is that they have not the slightest inkling of the true nature of the religions of Africa's sons and daughters. Ask any of these wise ones from abroad what the Bantu people believe in, and they will say the Bantu worship the spirits of their dead ancestors; they will tell you that the Bantu are a fetish-ridden, superstitious race sunk in the lowest levels of heathenism. And they will be utterly wrong" (Mutwa: 1998: 552).

¹⁷² Mutwa (1998: 559) states that for all races of man, except Africans, medicine, politics, science, military affairs, economic affairs and religion are set apart from one another. For the black man, "everything he does, thinks, says, dreams of, hopes for, is moulded into one structure – his great belief. Things like disbelief, doubt, agnosticism, atheism, and disobedience are entirely unknown, unfathomable, senseless, within the framework of the Great Belief".

Christianity.¹⁷³ African Religion, a religion that embraces God, animism¹⁷⁴, ancestors, reincarnation and communalism was confronted with Christianity, a religion based on an individual relationship with God. Christianity is in stark contrast with African Religion's palpable presence of ancestors as guides of wisdom, its spirits, witches and sangomas which Christianity deems as pagan. Whilst Christianity demonises the *tokoloshe*¹⁷⁵ and African Religion's ancestors, witches, sangomas, and other spirits, Mutwa (2003: 27) affirms that in African reality, sangomas have always been the spiritual leaders of the African people. According to Mutwa, they made it possible for Christian missionaries "to operate freely in Africa, because we told our people to accept these foreign men with strange ideas. It was at our sanction and with our permission that they came; but, ironically enough, the very missionaries we welcomed into Africa turned around destroying us". As in the case of Mutwa, Ogot (cited in Davidson, 2003: 296) confirms how the Luo of eastern Kenya accepted British rule without armed resistance. Ogot narrates how "the diviners foretold of the coming of the red strangers who emerged from the sea". The Luo were told by their diviners not to show hostility to the intruders "lest they incur the wrath of the ancestors". Although many of the initial African encounters with colonialism did not meet with violence, violence and destruction became synonymous with the colonial period. Episodes of colonial resistance all over Africa were settled by sharp swift actions.

¹⁷³ Greaves (2005:76) narrates how disgruntled Norwegian, German and British missionaries campaigned and petitioned the British to lead a war against King Cetshwayo of Zululand. The missionaries' endeavours over many years to convert the Zulus had met with widespread resistance from the Zulus. With equal fervour Bishop Colenso argued against the missionaries' campaign for war as a prerequisite for Christianity. On 2 April 1878 Durnford wrote to his mother on this subject: "These missionaries are at the bottom of all evil. They want war so that they might take the Zulu country, and thus give them homes in a good and pleasant land. They have not been turned out. They came of their own accord. The Zulus do not want them and I for one cannot see why we should cram these men down their throats".

¹⁷⁴ "African tribal societies typically embrace animism, the belief that entities throughout nature are endowed with souls, often thought to be souls of ancestors who are no longer individually remembered. Nature, for most traditional Africans, is full of living forces. Spirits dwell within it and human beings can interact with them ... The African conviction that human beings are intimately connected to nature is part and parcel of the traditional belief that nature is essentially spiritual" (Solomon & Higgens, 1996: 171).

¹⁷⁵ The *tokoloshe* is a fearful, aggressive, short creature that specialises in sexually assaulting African women.

The prominent goal of the Christian missionaries was to effectively replace African Religion and its value system with Christianity and its Western value system. For Africans, life was not far removed from the domain of their ancestors as “life from birth to death was a series of transitions rites¹⁷⁶ that brought [them] nearer and nearer to their ancestors (Achebe, 1986: 87). In utter ignorance of African Religion, missionaries proclaimed: “Your gods are not alive and cannot do you any harm ... they are pieces of wood and stone. ... but who will protect us from the anger of our neglected gods and ancestors if we leave our gods?” (Achebe, 1986: 105). In their civilising quest, these missionaries not only belittled African Religion but also destroyed African customs, rituals and values dear to them. Moravia (cited in Lamb, 1987: 141) cites the reality of the Christian civilising mission as follows:

It is dangerous ... to destroy a religion at a single blow, rather than allow it to die from old age and unreality, especially a primitive religion, which is at the same time both a faith and a culture. I believe, in fact, that there is no greater suffering for man than to feel his cultural foundations giving way beneath his feet. They have destroyed something they do not understand.

The erosion of African values and the devastating effect the colonial Christian civilising mission had on the African psyche is illustrated by one of South Africa's great political philosophers, Biko (2006: 103) when he writes:

It was the missionaries who confused the people with their new religion. They scared our people with stories of hell. They painted their God as a demanding God who wanted worship ‘or else’. People have to discard their clothes and their customs in order to be accepted in this new religion. Knowing how religious the African people were, the missionaries stepped up the terror campaign on the emotions of the people with their detailed accounts of eternal burning, tearing of

¹⁷⁶ Mutwa (1996: 14) states that initiation schools teach Africans the deepest spiritual mysteries of African people and Africa. “We are taught that the reason that our forefathers told us that our gods and goddesses were capable to change shape, or be part animal and part human being, is that they wanted to instil in the minds the oneness of the human being, the animal and the deity”.

hair and gnashing of teeth. By some strange and twisted logic, they argued that theirs was a scientific religion and ours a superstition – all this in spite of the biological discrepancy which is at the base of their religion. This cold and cruel religion was strange to the indigenous people and caused frequent strife between the converted and the ‘pagans’, for the former having imbibed the false values from white society, were taught to ridicule and despise those who defended the truth of their indigenous religion. With the ultimate acceptance of the Western religion down went our cultural values!

Biko suggests Christianity was responsible for the erosion of African values. As African values could not hold its own against universal Western values it is evident African values were unique. Kenya is an excellent example of the devastating effect orchestrated Christianisation had on African values. During colonial times in Kenya, protestant missionaries throughout the British Empire launched an attack against the African cultural practice of clitoridectomy¹⁷⁷, FGM or female circumcision.¹⁷⁸ According to Elkins (2005: 20), clitoridectomy “was the glue that held social life together, binding families over the longer term in relations of obligation and reciprocity. The challenge to [prohibit] clitoridectomy therefore seemed, to many Kikuyu, to be a direct challenge to the reproduction of their society”. In the 1920s, several missionaries banned this practice for their converts, which later led to prominent Protestant churches declaring clitoridectomy an evil practice that was to be suspended by Christian churches (Anderson, 2006: 19). In 1929, thousands of Kikuyu in Kenya protested against Christian interference in this cultural issue. Kikuyus left Christian churches and schools in droves to continue their cultural practice of clitoridectomy.

¹⁷⁷Anderson (2005: 18) mentions that “Kikuyu custom held that a woman could not marry until the operation and the rites associated with it had been properly carried out. Any women who refused the operation would therefore not find a Kikuyu husband. Without clitoridectomy there would be no transfer of bridewealth - the exchange of livestock and goods given to the family of the groom”. “Clitoridectomy is a mark of femininity, erasing anything that detracts from women’s beauty, health, or the performance of her traditionally encoded role as wife and would-be mother” (Ogunyemi, 2003: 238).

¹⁷⁸Feminists and gender activists refer to clitoridectomy as female genital mutilation or FMG.

Clitoridectomy was one of the issues that sparked the national liberation struggle in Kenya in 1940 and led to the Mau Mau rebellion¹⁷⁹ against British colonial rule.

Whilst missionaries tried to eradicate polygamy in African societies, Mutwa (1998: 633) states that in accordance with “Bantu law” a man may have no sexual relations with his wife during menstruation or for the duration of her breast feeding an infant. According to Mutwa, Christian “[o]pposition to polygamy encourages extensive immorality and destruction of Bantu family life and traditions”. As Christianity forbids polygamy, missionaries forced African men to forsake their culture and have one wife only. Mutwa is of the opinion that this endeavour of the missionaries to force Africans to live by colonial standards, not only forced African men into the arms of prostitutes and mistresses, but also disintegrated African family life and led to the spreading of sexually transmitted diseases.

Mutwa (1996: 24) also mentions the example of a thousand-year-old African ritual that was eradicated by missionaries. The African ritual called “feeding the grandmother” was stopped and forbidden by “over-zealous and ignorant missionaries” in his childhood days. Feeding the grandmother was practised by many tribes in Africa during winter when leftovers from the tribe’s meals would be gathered over three days and then ceremoniously buried in their infertile fields. As this ritual enabled tribes to fertilise their barren fields, all fields were hereafter left infertile and resulted in smaller crop yields. Another example of a “savage, pagan custom” that was banned was the ancient Zulu custom, *Ukwetshwana*, or first fruit ceremony. This Zulu custom was banned after the British defeated King Cetshwayo, king of the Zulu nation, at the battle of Ulundi on July 7, 1879. The annual ceremony of the first fruits was initiated in the Zulu king’s Royal Palace with the king’s tasting of the harvest. If the harvest was to the king’s liking he

¹⁷⁹ In Kenya, the bitter and violent Mau Mau rebellion against British rule saw the death of thirty-two white settlers and 12 000 Mau Mau rebels. At the peak of the struggle Britain held more than 70 000 Africans in detention camps without trial (Anderson, 2005). See Elkins’ *Britain’s Gulag: Britain’s Dirty War in Kenya and the End of Empire* and Anderson’s *Histories of the Hanged; the Brutal end of Empire in Kenya* for a full account of the rebellion.

would instruct the Zulu nation to proceed with the harvesting.¹⁸⁰ As part of the ceremony young warriors had to kill a black bull with their bare hands to gain a bond with the regional ancestors. By forbidding these and other cultural practices, Africa was rudely reminded by missionaries that “pagan customs” had no place in civilised society.

When one looks at the bigger picture it has to be acknowledged that Christianity, a gospel propounding love and tolerance, furthered all the philosophical ideals of the Western philosophical tradition. Not only did Christianity erode African values and sanction patriarchal rule in Africa but it also became the mouthpiece justifying the stereotyping and marginalising of Africans. In spite of what Africans have suffered as a result of Christianity, Mbiti (1991: 183) reminds Africans of the following:

The Christian Gospel and Christian faith brought Africans its teachings, its ideals, and the schools, [churches] and hospitals which have accompanied the preaching of the Christian gospel. It was in these schools that the majority of African leaders of today were educated. It is also by the Christian ideals of justice, human dignity, love and brotherhood that African leaders were inspired to fight against colonialism and foreign domination. It is through the same ideals that they still continue to fight against the remaining forms of colonialism, racism and exploitation.¹⁸¹

¹⁸⁰ King Zwelethini, King of the Zulu nation, has restored this ancient Zulu custom at his eNyokeni Royal Palace since December 1992. The restoration of this annual ceremony at the Royal Palace sparked a public outcry from animal activists and animal lovers. The Sunday Tribune (December, 2004: 12) reported on Beauty Without Cruelty and the Humane Education Trust who protested against this “barbaric custom”. During the ceremony young Zulu warriors have to kill a black bull with their bare hands to prove their manhood. According to the Sunday Tribune, the bull is killed within forty minutes by “gouging out its eyes, tying its penis in a knot, breaking its tail, pulling out its tongue and stuffing dirt down its throat before breaking its neck”.

¹⁸¹ Mbiti (1991: 183) is optimistic that Christian ideals will also “inspire the fight against tribalism, poverty, corruption, exploitation, unemployment and other ills which afflict the independent African nations today”.

2.6 AFRICAN LAW VERSUS CUSTOMARY LAW

In colonial Africa a dual system of law lay at the heart of colonial rule: a European legal system and European-made 'customary law'. When speaking of customary law it must be borne in mind that African jurisprudence regulated African existence long before the first colonialists appeared on the African horizon. But the new custodians of the law eroded traditional African jurisprudence which had existed since time immemoria. This section covers the following:

- African law.
- Customary law, and
- Colonial laws and justice.

2.6.1 African Law

Africa prior to colonisation was not a lawless continent in a permanent state of anarchy. On the contrary, Africans observed rules of law which, although not codified, formed part and parcel of the fabric of local tradition (Ebo, 1995: 139). Ebo maintains that indigenous law was the possession of a restricted group and "its jurisdiction was coterminous with cultural boundaries and defined each of the cultural entities as a jural community; a panorama of indigenous law would appear as a kaleidoscope of shifting types". In spite of these variables, however, Ebo states that certain conceptions and principles of law are common to all African groups. This notion is confirmed by Ojwang (1995: 56) when he writes that "the laws of various tribes have a considerable basis of uniformity". Ojwang (1995: 44) defines African law as the unwritten law of tribal societies which rests upon face to face relations, mediation and conciliation, and a common ideology shared by the people. According to Ojwang (1995: 45), African law reflects not only the social control systems and the cultural orientation of the society, but also African beliefs and value systems. African law has its origins in African culture

and “holds the seeds of local values and community morality” (1995: 56). Nhlapo (1995: 162) notes that African law has always had a patriarchal basis.

Pre-colonial “High Laws of the Bantu” (Mutwa, 1998) or African law, differed profoundly from the colonial laws of the European colonial powers. As African law and jurisprudence was transmitted orally it differed profoundly from the codified Western jurisprudential tradition. Mutwa (1998: 624) states that the fundamental difference between black and white people of Africa becomes evident when one studies the laws that govern their lives. He distinguishes between “the white man’s legal code which is based on the Ten Commandments and the High Laws of the Bantu which consist of hundreds of commandments from the ancestors and which are common to all Bantu races in Southern, Central and East Africa”, to illustrate the difference. Ebo (1995: 145) confirms this notion by stating that African law is not only the law of the living, but also the law of the dead. According to Ebo, “an act of rebellion against the legal status quo is regarded as odious and scandalous in the eyes of not only the living contemporaries but also of the ancestral spirits who perpetually hover around the edge of the community”. African law is inextricably interwoven with African spirituality. Nduka (1995: 25) maintains that the “mystical and symbiotic relationship between the living and the ancestors” provides a theoretical support for the belief in natural justice.

One of the profound differences between African law and European law is that African law is positive and not negative. African law does not say: ‘Thou shalt not’, but rather ‘Thou shalt’ (Ramose, 2002: 93). According to Ramose, African law is positive and does not create offences or criminals, but directs individuals and communal behaviour towards each other. “Its whole object is to maintain an equilibrium, and the penalties of African law are directed, not against specific infractions, but to the restoration of this equilibrium”. Justice is not served by the prescription of penalties, but by the “restoration of the balance upset by an unjust act”; the primary object to maintain equilibrium between the interests and forces

of the society (Ebo, 1995: 34). According to Driberg (1934: 232), African law is always constructive and palliative.

Pre-colonial African law differed profoundly from Western concepts of law. Whilst colonial concepts of justice embraced individual rights and punishment, African justice focused predominantly on group rights, duties, restorative justice and the sense of shame instilled in the offender and his family. A guilty person would be shunned, ostracised and ridiculed or “regarded as a non-person”, losing his status in the community, no longer in a position to participate in communal activities, till his offence was purged and his status restored (Ebo, 1995: 39). Mazrui (1989: 256) argues that the emphasis in African law lay firstly, in the protection of the innocent; secondly, in compensating the victim; and thirdly, in the sense of shame the community instilled in offenders. The African social value of collective shame served as an effective deterrent for potential offenders as it did not only affect the offender, but also shamed his group who had to take collective responsibility. Dealing with crime and disputes in Africa was a process which involved the whole community. “Ubuntu-botho¹⁸² did not allow perpetrators to escape the necessity of confessing and making restitution to survivors, since it placed the needs of society – the restoration of relationships – at the heart of reconciliation” (Tutu, 2006: 347). Restorative justice is a characteristic of African law.

Traditional modes of dispute resolution resembled modern day mediation tribunals and always resulted in peaceful win/win solutions to problems. Judgment in traditional African societies was not given by a learned academic individual but by the chief and elders of the tribe. Achebe (1986: 65; 67) describes how judgment was given by African elders: Judgment would be given after “[w]e have heard both sides of the case ... Our duty is not to blame this man or to praise that, but to settle the dispute”. African justice does not only involve

¹⁸² According to Ramose (2002: 81), *ubuntu* is the basis or foundation of African law.

the community but also the spiritual dimension or ancestors of the relevant persons. Mutwa (1998: 627) maintains African law and African spirituality is interrelated. He states that if an African man wanted to divorce his wife he is compelled to confer with both his and his wife's ancestors, without his wife's knowing. The man had to lay before the ancestors the reason why he wanted to dissolve the marriage. Only after having consulted with the necessary ancestors would he take the problem to his family and seek their advice. Any matter in Africa was only settled after the spiritual dimension had also been attended to. African legal codes and its underlying philosophy maintained spiritual and social equilibrium in the community.

The purpose of justice in traditional Africa was to restore equilibrium and harmony in communitarian societies as soon as possible. Although African justice was predominantly restorative¹⁸³, punishment¹⁸⁴ was not unknown. Mutwa (1998: 627- 631) relates how in Zululand all rapists, perverts and adulterers¹⁸⁵ were given the ant death. According to him, "this simply consisted of opening an anthill and the condemned man was spread naked over it with his hands and feet pegged to the ground and honey spread on his belly". All witches and wizards were thrown from high cliffs; adulteresses fed to crocodiles; adulterers castrated and a thief caught stealing oxen, tied hand and foot in the opening of the cattle

¹⁸³ Restoration primarily involved the payment of compensation by the perpetrator's family to the injured party or injured family. Restorative judgment, a characteristic of African jurisprudence, focused on the victims of crime, and restitution and reconciliation were considered as crucial to right the wrong caused by crime while imprisonment was not an option. African families took collective responsibility for one another and if the matter could not be settled within the family circle, community members assisted the reconciliation process. Both the victim and offender participated actively in the justice process. The offender was required to compensate the injured party and then partake in a ritual meal in which those present ate one of the animals imposed as a fine. (Naude, 2006: 102). Naude points out that reconciliation was not always sought in cases where disputes involved strangers or outsiders..

¹⁸⁴ Mutwa (1986: 22) narrates the following punishment given by King Jobe of the Mthethwa people, to a young man who had the offensive habit of urinating in any river or stream he came across. The man was given huge volumes of marula beer, a diuretic, to drink and fed a huge meal of corn cakes and fat goat's meat. A piece of raw hide was tied around the man's penis which prevented him from urinating and a mealie cob was placed in his anus. The man was then buried up to his waist in the ground. As he was unable to relieve himself he "suffered horribly for several days before the king dispatched him with a savage battle-axe blow to the head".

¹⁸⁵ Ebo (1995: 25) states that a man found guilty of adultery in Nigeria had to compensate the husband by paying a fine.

pen and the herd driven over him (Mutwa, 1998: 631). Mutwa states that if anyone “called another man’s wife, mother, sister or daughter names or insulted their womanhood”, the injured man was bound by African law to kill¹⁸⁶ that person. According to Mutwa (1998: 632), justice could sometimes only be done when the member or members of a family against whom the crime was committed, executed the criminal. If for example a man raped another man’s wife, the perpetrator would be brought before the elders and if found guilty, be handed to the injured man or his family to execute. “The Bantu consider it utterly ridiculous for a judge or a state executioner to punish a person who had done them no wrong. Bantu execution is not merely punishment; it is a sacrifice to appease the ancestral spirits of a family, who cry out for revenge” (Mutwa, 1996: 18). Not only man but also ancestral spirits can punish a person. African law has a spiritual dimension that has to be attended to before a matter can be finally set to rest. According to Ebo (1995: 39):

The spirits of the ancestors also have their share of the stake and commitment in ensuring law is preserved intact against anything that would derogate from its plenitude of authority and control ... the authority behind the law is so overwhelming as to make enforcement by means of a body of officials such as police unnecessary.

2.6.2 Customary Law

Pre-colonial African jurisprudence was not the African customary law of today. Mamdani (1996), Bhengu (1997) and Roederer et al. (2004) agree that the official versions of customary law represent corrupted versions of what pre-colonial African jurisprudence or African law is said to have embodied. In the

¹⁸⁶ Mutwa (1996: 631) narrates how witchdoctors who broke the law were killed by sewing up the condemned person in the wet skin of a slaughtered ox and left in an exposed position. “Although he could breathe through the gaps, the skin would shrink and slowly squeeze him. By sunset he would be dead”. Mutwa (1986), Nduka (1995: 23) and others narrate how the birth of twins was regarded as an abomination against human custom and divine law. In most instances both the babies and in some cases even the mother was killed.

BHE case¹⁸⁷ it was pointed out that customary law has become so distorted, it is out of step with the real values and circumstances of the people they are meant to serve.

A key term in African jurisprudence has always been the concept of *ubuntu*. Bhengu (1997), Johnson (2001: 206) and Ramose (2002) confirm that *ubuntu* forms the basis of African law. Bhengu (1997:1) adds that the ancient *ubuntu* philosophy of Africa was eroded by “the European colonial conquest with its obsession to be the custodians of the Law”. During the colonial period customary law was documented by Western anthropologists and academics “who lacked nuanced understanding of many of the rules and practices they were recording ... but it is the most accessible source from which African jurisprudence may be extracted”¹⁸⁸ (Roederer et al., 2004: 449). Mamdani (1996: 22) argues that there was not one set of customary rules for all Africans, but as many customary laws as there were tribes and that whilst colonial authorities selected certain forms of customary law they suppressed others. According to Mamdani (1996: 22),

Customary law was defined as the plural, as the law of the tribe, and not in the singular, as a law for all natives ... The genius of British rule in Africa was in seeking to civilise Africans as communities¹⁸⁹, not as individuals ... the African was containerized, not as a native, but as a tribesperson ... More than anywhere else, there was in the African colonial experience a one-sided opposition between the individual and the group, civil society and community, rights and tradition.

Customary law became an “administratively driven affair” (Mamdani, 1996: 2) which set Africans and their customary practices apart from the laws of ‘civilised

¹⁸⁷ 2005 (1) BCLR 1 (CC) par. 82.

¹⁸⁸ Roederer et al. (2004: 441) mentions three sources of African jurisprudence in the South African context, namely African customary law, academic and juridical engagement with the concept of *ubuntu* and the African Charter of Human and Peoples Rights.

¹⁸⁹ Dame Margery Perham (cited in Mamdani, 1996: 77), a historian of indirect rule “congratulated British rulers on having ‘corrected the nineteenth century complacency about the universal superiority of our own ideas and institutions’. According to her, “[t]he preservation of native law and custom is not an end in itself, but a transitional stage by which Africans may in their own right become members of the civilized world, not as individuals, but as communities”.

society' and "played an inferior role in relation to European laws in colonial Africa". Whilst colonial laws regulated civil society, the codified European version of African law, or customary law, regulated traditional or rural African societies. In practice, colonial laws regulated the private and public sphere whilst "customary law regulated¹⁹⁰ non-market relations in land; in personal (family) and in community affairs" (Mamdani, 1996: 211). Law in colonial Africa consisted of two radically opposed types of jurisprudence. According to Kagame, this dual system of law caused great confusion amongst African people. Kagame (cited in Mudimbe, 1988: 150) states:

First, there are juridical laws that the society controls through the judges and lawyers. They do not bind individual consciences, and whoever can escape them is considered intelligent. Second, there are taboo-laws¹⁹¹, principally of a religious nature; these are generally negative and clearly specify what should be avoided. They contain in themselves an immanent power of sanction, and God is the sole judge. Therefore whatever the transgression, no human being – not even chief, priest, or king - can sanction or forgive the taboo sin. The problem and its resolution lie between the transgressor and God and also between his or her still existing family on earth and the departed ancestors.

Mamdani is of the opinion that the compartmentalisation of customary law on the one hand and the laws of civilised Western society on the other hand, "institutionalised racism in Africa". According to Mamdani, the differentiation between urban and rural subjects inspired segregation and eventually, apartheid in South Africa. Because of the "inferior role customary law played during colonial and apartheid rule, its development as a formal legal discipline has been stifled, and the official version thereof is said to have little in common with the way that cultural practice and ritual manifests itself in reality" (Roederer et al., 2004: 450). According to Roederer et al. (2004: 449-450), current versions of customary law

¹⁹⁰ According to Mamdani (1996: 22), the African chief under colonial rule had "the right to pass rules (bylaws) governing persons under his domain, he also executed all laws and was the administrator in his area, in which he settled all disputes. The authority of the chief thus fused in a single person all moments of power: judicial, legislative, executive and administrative".

¹⁹¹ See 4.10.3.

have been crippled by colonialism, modernisation, urbanisation, politically imposed poverty and socio-economic hardship and resulted in the fact that customary law is perceived as “both dysfunctional and distanced from the traditional values it is meant to represent ... This means that codified versions of customary law should be treated with suspicion when attempting to ascertain the content of African jurisprudence”.¹⁹²

Customary cases in colonial Africa were heard and settled by native courts, specially established by British authorities. The British added two more innovations to customary law: firstly, the right of appeal from native courts to higher courts with judges trained in civil and criminal justice as presiding officers and, secondly, the use of imprisonment as a sanction for transgressions. “Native customary law” was described by a British judge in a West African case as “more or less in the same position as foreign law and it must be established by an expert before courts other than native courts” (cited in Mamdani, 1996: 112). Mamdani (1996: 112) narrates how in British- and French-controlled African territories judges sat with African assessors who had a lived African experience of African law to inform them about the customary law principles in question. The main difficulty of it all was that, according to Rattray, a famed British administrator-anthropologist, neither the judge nor the assessors knew what the African past was really like. Those who “did possess the required knowledge ... are illiterate, and in consequence generally inarticulate for practical purposes, except when approached by the European who has spent a life time among them and has been able to gain their complete confidence”. Governor Cameron states that it was sometimes very difficult to find out what the customary system was, because although the “assessors know perfectly well, but for one reason or the other, they may not tell you” (cited in Mamdani, 1996: 112).

¹⁹² “In the context of the customary law of succession in South Africa for instance, Mbatha shows how codification of cultural practice has served to entrench gender discrimination, and that ‘living’ customary practice has adapted beyond the rigidity of codification to operate significantly more fairly towards women” (Roederer et al., 2002: 450).

2.6.3 Colonial Laws and Justice

The colonial legal system confronted urban Africans with the police, arrests, detentions, court procedures, appeals, imprisonment¹⁹³ and capital punishment. Whenever urban Africans punished their perpetrators in accordance with African law, they were persecuted and punished in accordance with colonial laws. A British colonial district commissioner (cited in Achebe, 1986: 139) described the Western process of justice as follows to urban African people:

We have brought a peaceful administration to you and your people so that you may be happy. If any man ill-treats you we shall come to your rescue. But we will not allow you to ill treat others. We have a court of law where we judge cases and administer justice just as it is done in my own country under a queen. I have brought you here because you joined together to molest others, to burn people's houses and their place of worship. That must not happen in the domain of our queen, the most powerful ruler in the world. I have decided you will pay a fine of two hundred bags of cowries.

Colonial laws and justice were senseless in the eyes of African people. According to Achebe (1986: 125), African prisoners in the colonial era would for example, have to clear government compounds, fetch firewood for the white Commissioner or perform other menial tasks whilst serving prison sentences. "Some of the prisoners were men of title who should be above such occupation. They were grieved by the indignity and mourned their neglected farms". Colonial justice did not represent African justice and remained a foreign concept to indigenous African people.

¹⁹³ "The substitution of the cage for the villain to replace compensation for the victim, the insistence on objective guilt as against subjective shame, the focus on personal individual accountability as against collective responsibility have all resulted not only in escalating violence, and criminality, especially in African cities, but also in the relentless decay of the police, judiciary, legal system and prison structures" (Mazrui, 1989: 257).

Contrary to Western concepts of law, African law confers no rights and liberties on its legal subjects, only group rights, duties and responsibilities. In Western law, the concept of rights assumed central importance as Western liberalism secured rights for its individuals in order to lead its atomistic lives without disadvantaging anyone else. Locke's Enlightenment liberalism culminated into what Rawls¹⁹⁴ and Dworkin calls rights-based theories of justice where individuals have the right to protect their interests. Africa was confronted with the dichotomy between a rights-based jurisprudence and its own jurisprudence of community. In colonial Africa, Africans soon learned that a rights-based jurisprudence was the norm. Under colonial rule justice was done "once the delinquent was subjected to deprivation of his liberties for a term, as by imprisonment, or of his life, as by sentence of death" (Ebo, 1995: 35). The colonial powers did not give a hoot about what Africans thought of all of this.

As Westerners deemed African law "primitive law ascribed to pre-literate peoples" (Ebo, 1995: 139) a burning question arises: did colonial laws bring justice to Africans? The mere fact that colonial rule necessitated a dual system of law in Africa is an indication of the irreconcilable ideals of Western and African jurisprudence. Western jurisprudence's concept of rules, depicted as neutral and universally valid, found little or no application in traditional Africa. When Ojwang (1995: 351) compares Western and African jurisprudence, he finds that whilst Western jurisprudence centres on the rights and liberties of the individual, "community as such dissolves, as a possible bearer of rights; the individual takes the upper hand". African jurisprudence, however, ensured social control, unity and harmony for the communitarian African society. The conferring of rights upon individuals took second place. It must also be noted that Western jurisprudence during colonial times was positivistic and separated law and morality from one another. In African jurisprudence however, law and morality are inseparable as morality, or African Religion, is the source of African law¹⁹⁵. As colonial legal

¹⁹⁴ See Rawls's *A Theory of justice* (1971).

¹⁹⁵ See 4.11.

doctrines were not reflective of the shared moral values of the African community, the rights consciousness of Western liberalism undermined the notion of African communitarianism.

Colonial laws did not embody justice for all its subjects. Wacks (1995: 451) maintains that the neutral nature of the Western judicial function has long been exposed as a myth, “as the American realists demonstrated that judges are not untainted by personal predilections or political predispositions”. As rights are not politically neutral it is crude to deduce that colonial laws in Africa “served nothing more than ideology” (Wacks, 1995: 465); they furthered liberal ideology and were not concerned with bringing justice to Africans.

The injustices brought about by the white man’s superior form of law only became evident when ‘civilised law’ under the influence of Western legal positivism resulted not only in American racial segregation and the Holocaust in Nazi Germany, but also in the atrocities of apartheid South Africa. Law itself became an oppressor. Western jurisprudence eroded traditional African jurisprudence.

2.7 APARTHEID

The Second World War resulted directly in the liberation of Africa. African independence from European colonial powers commenced with the independence of Egypt, Morocco, Tunisia and the Sudan in North Africa.¹⁹⁶ The strongholds of white settlers who remained in Africa were concentrated in Rhodesia, South West Africa¹⁹⁷ and South Africa. In South Africa “Afrikaners did

¹⁹⁶ When the last Portuguese colonies became independent in 1974 no African country remained under colonial rule.

¹⁹⁷ After Germany’s defeat in the First World War, the League of Nations granted the Union of South Africa a mandate to administer South West Africa. After the Second World War, South Africa refused to hand over South West Africa to the United Nations. The oppressed black majority (SWAPO) in South West Africa fought for their country’s independence, resulting in the UN declaring South Africa’s occupation of South West Africa illegal. In 1968 The UN recognised the former South West Africa as

not regard themselves as colonists or colonial rulers. For them South Africa was quite simply their country: they were born there, and had no direct links with Europe anymore” (Van Dijk: 2006: 134). Unlike other settlers who left Africa for Europe in their droves after African independence, the Afrikaners of South Africa were here to stay (Van Dijk: 2006). For Africans in South Africa, however, independence after five hundred years of slavery and colonisation was not yet in sight. They had to endure another forty years of exploitation and dehumanisation under the National Party’s white apartheid rule. This subsection deals with the following:

- Perpetuating colonial philosophy, and
- Justifying unjust laws.

2.7.1 Perpetuating Colonial Philosophy

In 1945, the Allies found the Nazi leaders guilty of crimes against humanity at the Nuremberg Trials: “The enormity of the atrocities committed by the Nazi regime dramatically changed the nature of international law” (Dugard, 2005: 309). According to Dugard, the atrocities of the Nazis compelled statesmen to accept a new world order where “the state was no longer free to treat its own nationals as it pleased”. The Charter of the United Nations of 1945 proclaimed a new world order which recognised the protection of human rights as its primary goal. South Africa, sadly, did not follow in the fresh footprints of the Western tradition, but preferred to walk Western jurisprudence’s well-trodden paths of yesterday – and declared South Africa a pariah state in 1948.

The ideology of apartheid¹⁹⁸, traditionally seen as the brainchild of Verwoerd, was not, according to Mamdani (1996), a South African invention. If anything

Namibia. In 1965 Ian Smith’s white minority government unilaterally declared Rhodesia independent from Britain. After a civil war in Rhodesia in the 1970s, Rhodesia gained its independence in 1980. Zimbabwe was liberated and Mugabe was held in high esteem by the international community.

¹⁹⁸ Art 1 of the International Convention on the Suppression and Punishment of the Crime of Apartheid (1974) declared apartheid as a crime against humanity. Art II criminalises the principle features of

“apartheid idealized a form of rule that the British Colonial Office dubbed ‘indirect rule’ and the French, ‘association’” (Mamdani, 1996: 7). When the National Party came to power in 1948 in South Africa, “full-fledged indirect rule” (Mamdani, 1996: 89) was introduced. According to Mamdani (1996: 27) apartheid, as was the case with indirect colonial rule, reinforced ethnically bound institutions of control which “ruled along a double divide: ethnic on the one hand, rural-urban on the other.” Mamdani (1996: 29) sees apartheid since the 1940s as the “upgrading of indirect rule authority in rural areas to an autonomous status combined with police control over ‘native’ movement between the rural and urban areas”.

What gave apartheid its “particularly cruel twist”, according to Mamdani, was the de-urbanisation of thousands of Africans through legalised forced removals, pass laws, the Group Areas Act and the homeland policy¹⁹⁹. He argues that although the repression of Africans by the white minority of South Africa has been ‘exceptionalised’ by the world, apartheid was not an exception to African colonialism. According to Mamdani (1996: 30-31), “the notion of South African exceptionalism could not be an exclusively South African creation ... Its brutality in a semi-industrialized state notwithstanding, apartheid needs to be understood as a form of state, the result of a reform in the mode of rule which attempted to contain a growing urbanised-based revolt, first by repackaging the native population under the immediate grip of a constellation of Autonomous Authorities so as to fragment it, and then by policing its movement between country and town so as to freeze the division between the two”.

Mamdani believes that the urban-rural tensions and uprisings of Sharpsville (1960), Durban (1973), Soweto (1976) and elsewhere can only be understood once one understands the struggle between state repression and urban uprising as uprisings against the indirect rule of Native Authorities. Mamdani maintains

apartheid such as murder, torture and arbitrary arrests of members of a racial group to legislative measures calculated to prevent a racial group from participating in the political, social, economic and cultural life of a country, when committed for the purpose of establishing and maintaining domination by one racial group over any other racial group and systematically oppressing its members (Dugard, 2005: 161).

¹⁹⁹ Independent homelands, or Bantustans, existed in Transkei, Ciskei, Venda and Bophutatswana.

that apartheid South Africa was not an exceptional form of state; rather a state that reached a stalemate when colonial indirect rule could no longer repress the uprisings of the black majority.²⁰⁰ As the Western world shunned and turned its back on apartheid South Africa, Mamdani reminds us of the double standards of the West. Was apartheid South Africa indeed a proverbial chip off the old colonial block; a continuation of Western philosophical bias, racial prejudice and injustice?

After five hundred years of injustices suffered by Africans as a direct result of the ideology of Western philosophy, South African black peoples had to endure a further dose of Western liberalism's ingrained bias towards Africans. As the cancerous growths of racial prejudice seem to have infiltrated all Western rationality, the Europeans in South Africa too, viewed Africans inferior. Apartheid and its ideology of "full-fledged indirect rule" suffered from Western philosophy's "new racism" and its accompanying superiority complex. As Western philosophy's liberal ideals were paramount to white South Africans, not only Western racial prejudice but also capitalism and Christianity were implanted throughout South Africa. With the discovery of gold and diamonds in South Africa an industrial revolution was created after the European model (Nolan, 1989). Nolan posits that, as in Europe, two classes of people were created: the owners and the workers. The only difference was that in South Africa the workers were black South Africans.

As discussed earlier²⁰¹, Christian missionaries played a leading role in the colonial powers' civilising mission throughout the empire, and were instrumental in justifying European colonisation of Africa. These missionaries shared a common philosophical ideal: lifting Africa out of its pagan beliefs and primitive savagery. As in the case of colonialism, the ideology of apartheid too, was justified by the South African Christian clergy. "The theology of apartheid

²⁰⁰ By 1990 half of South Africa's black population lived in Bantustans which comprised of only 14% of South African land.

²⁰¹ See 2.5.4.6.

received theological justification from the Calvinist Dutch Reformed Churches to which most Afrikaners belong. From the early days of colonialism the fact that Christianity was part of European culture contributed to the assumption of European superiority” (Shutte, 1993: 114). With the blessing of the church, apartheid’s dehumanising characteristics took root. The horrors of apartheid compare well with those of colonialism. Apartheid’s education policies, group areas act, influx control, detentions without trial and other injustices do not stand back for colonial education policies, Britain’s detentions without trial in Kenya and human rights violations and crimes committed in both South West Africa and the Belgian Congo. Indirect colonial rule could well have served as an initial blueprint for the ideology of apartheid, as Mamdani suggests. Like colonialism, it eroded African law, African Religion, African culture and tradition, and traditional African values.

2.7.2 Justifying Unjust Laws

As was the case in colonial Africa, apartheid South Africa also introduced a dual system of law: South African law and customary law. South Africa merely followed the colonial blueprint created by indirect rule in Africa. As colonial laws served Western ideology, so apartheid’s laws served the ideology of apartheid: an ideology grounded in the biases of Western philosophy. Both colonialism and apartheid imposed Western liberalism and its accompanying values and legal institutions as the dominant culture in Africa and ensured that Western culture, Christianity and individual autonomy prevailed.

History confirms that neither neutral laws²⁰² nor neutral judges existed either in colonial Africa or in apartheid South Africa’s legal system. Dugard (1978: 401-2) acknowledges that for African people under apartheid symbolised repression. He maintains the following:

²⁰² The critical legal studies movement (CLS) which emerged in America in 1977 argued that law was political and not neutral.

The South African legal system was a repressive system imposed without consultation and enforced by an array of instruments of coercion – the army, the police, and the legal-administrative machine. It is therefore small wonder that blacks do not share the admiration of the white South African for the majesty of South African law, the mysteries of the Roman Dutch tradition, and the impartiality of the South African judiciary and administration.

If then, neither colonial laws nor apartheid's laws ensured just legal systems, the question must be asked why judges did not resign in apartheid South Africa? Surely, there must have been a moral clash between a judge's conscience and his calling. Wacks (1995: 469) answers this question by arguing that the matter was not so simple, for a judge's resignation would have been a clarion call: "a statement of judicial despair and outrage. It would be an assertion of the judge's absolute fidelity to justice, a protest against the abuse of law. In a repressive legal order it would constitute an act of faith in the face of unconscionable legislation". The bitter truth for those believing in the neutrality of the judiciary is that no South African judge ever resigned²⁰³ in apartheid South Africa (Wacks, 1995: 467).

In *S v Werner*²⁰⁴, and many other cases, the Appellate Division was given the opportunity to limit the injustices of the Group Areas Act.²⁰⁵ In this case the coloured accused and his wife moved from an overcrowded and unhygienic designated area to a neighbouring white area with adequate housing, which resulted in Werner's conviction under the Group Areas Act. In a unanimous judgment the court conceded that although the application of the act was unfair, the unfairness was foreseen by the legislator. In making this and other judgments during the apartheid era it became clear that South African law did not embody justice.

²⁰³ Wacks (1995: 468) notes that the resignation of judges in Southern Rhodesia on moral grounds had "almost no effect at all on the events in that country".

²⁰⁴ 1981 1SA 187 A.

²⁰⁵ Act 36 of 1966.

South African judges were influenced by the dominant jurisprudential approach to law during the eras of colonialism; America's separate but equal policy; scientific racism and the Nazi Holocaust, namely legal positivism. In applying this approach to law, Western jurisprudence separated law and morals from each other; it was irrelevant whether law was just and fair.²⁰⁶ Dugard (1995: 440) maintains that Western jurisprudence's legal positivism "failed tragically in a number of other occasions involving racial equality; for, arguably, slavery²⁰⁷, Nazism and colonialism²⁰⁸ have also benefited from the vulgar outlook on the part of lawyers and judges". In a critical assessment of apartheid's Bench, Van Blerk (2004: 103-105) cites the following critique:

- Cameron critiques former Chief Justice Steyn for being influenced by policy considerations rather than principles and standards expressive of individual rights.
- Wacks critiques the "offensiveness of judges, who are unelected officials, wielding legislative power ... over a disenfranchised majority who can neither change the law nor the lawmaker". Wacks maintains that apartheid's repressive rights viz. racial discrimination and security legislation were representative of the community morality of white South Africans only. He laments the fact that judges who regarded apartheid as unjust had no option but to resign. By remaining in office however, morally-inclined judges lent legitimacy to apartheid's unjust legal system and delivered 'lying judgments'.

²⁰⁶ Saint Augustine, Saint Thomas of Aquinas, Mahatma Ghandi, Martin Luther King, Bram Fischer, Nelson Mandela and many others maintained "an unjust law is no law at all". In their approach to law, justice could only be served if legal rules had a moral content.

²⁰⁷ In a thorough study of anti-slavery and the judicial process Cover acknowledges that legal positivism determined the complicity of judges as "the prevailing course of action of the antislavery judge was to speak in conclusory terms of the obligation to apply 'the law and the law alone'; of the obligation to refrain from considering conscience, natural right, or injustice" (cited in Dugard, 1995: 440).

²⁰⁸ During the Mau Mau uprising against British indirect rule in Kenya, 1952-1960, legal positivism justified the detention of one and a half million Kikuyu men, women and children in concentration camps which resulted in more than one hundred thousand deaths from exhaustion, disease, starvation and systematic, physical brutality.

The evils of apartheid cannot be ignored, for Africans could not turn away or escape the pain and dehumanisation associated with it. Ramodibe (1990: 44) claims that apartheid fostered the “static culture of the [African] patriarchal system in order to legitimise itself and to divide and oppress people in a society where racism was used to benefit capitalism”. African women were not only discriminated against on the basis of race, but also on the basis of their sex. “Being black was tough and being a [black] woman was even worse” (Zuma, 2007: 32). Oduyoye (2001: 109) argues that apartheid’s unfair laws eroded the dignity of Africans and made slaves of black women. She gives the example of South Africa’s Land Act which not only forced black males into cities and mines, but also onto the farms of white people to sustain life. According to Oduyoye, the South African society made laws which turned “women into slaves in their homes as was the lot meted out to Blacks in South Africa; slaves in the land of their ancestors. This kind of suffering is exploitation; it is suffering that goes to enrich others while the victims are dehumanised. Here there is neither the element of choice nor of mutual enrichment, nor even the joy of seeing others live, because you let go”. Slavery, Christianity, colonialism and apartheid eroded the reality of traditional African people.

Although apartheid was declared a crime against humanity as early as 1974, the door to the abolition of apartheid was only opened in 1990 by the National Party. In 1994, South Africa became a democratic state. But even though the people were free, more than five hundred years of repression and oppression of African peoples resulted in their scarred collective consciousness.

2.8 THE LINGERING INFERIORITY COMPLEX

“I no longer have a borrowed soul.

I no longer have borrowed thoughts or ideas.

I no longer speak in a borrowed language” (Mobutu Sese Seko cited in Theroux, 2004: 94).

Uhuru! Africa is ululating and free at last from European colonial rule. Africa is finally liberated from the yoke of imperialism. But political freedom, according to Lamb (1987), Fanon, (1990), Appiah (1992), Bhengu (1996{a}), Wa Thiong'o (2006) and Muendane (2006), is but skin deep. According to them, more than 500 years of European oppression left postcolonial Africans with a scarred collective consciousness. "[T]he dominance of one social bloc over another, not simply by means of force or wealth, but by a social authority whose ultimate sanction and expression is a profound cultural supremacy" (cited in Mudimbe, 1988: 185). It was not racial prejudice, discrimination, the violation of their human rights, or the genocides that resulted in the scarring of the African collective consciousness. It was something more subtle and more destructive than an atom bomb.

The West has wielded its greatest weapon, the "cultural bomb", against the collective consciousness of Africans. Its aim was to "annihilate a people's belief in their names, in their languages, in their environment, in their heritage of struggle, in their unity, in their capacities and ultimately in themselves" (Wa Thiong'o, 2006: 3). This "veritable Apocalypse" (Fanon, 1990: 202) Africans have been caught up in, or as Mutwa (1998: 691) and Wa Thiong'o (2006: 3) respectively calls it the "hydrogen bomb" or "cultural bomb", resulted in despair, despondency and a collective death wish amongst postcolonial Africans. More than five hundred years of slavery, colonialism, apartheid and neo-colonialism left deep emotional and intellectual scars on the psychological mindset of Africans that linger even today. According to these sources, Africans are still suffering from mental slavery and mental colonialism and their attitudes towards themselves can best be described as "self-denigration and self hate" (Muendane, 2006: 51; Bhengu (1996{a): 19).

Although slavery, colonialism and apartheid are things of the past, Muendane (2006: 50) argues that Africans suffer from a continued acceptance of their inferiority. Whereas Africans are supposed to have taken up their place as equals in the West, reality suggests that Africans have not been freed mentally. Although colonial powers have relinquished their political stronghold on Africa, the dehumanising experience of slavery, colonialism, apartheid and neo-colonialism still holds African minds captive. Bhengu (1996{a}: 19) maintains the element of Africanness within Africans have been killed. "It killed Ubuntu within us, it killed our African personality, and we became neither fish nor fowl. We became an empty shell". According to Muendane (2006: 51), Africans still subscribe to white supremacy and African subservience. The reason for this behaviour lies locked up in the psychology of imperialism. Lamb (1987: 140) states that after colonisation the "cruellest legacy left behind on the African continent was a lingering inferiority complex ... a confused sense of identity because African peoples were told that, as subhumans, they could never be as capable or clever as their colonial masters". Any inferiority complex, if left to linger too long, becomes a self-fulfilling prophecy. This self-fulfilling prophecy is confirmed by Ramose (2002{b}: 36) who states that the colonial experience denigrated the indigenous African people to such an extent that they suffer from an injured and humiliated consciousness and perceive themselves as an injured and conquered people. In short, "Africans see themselves through the lenses conferred on them by their European heritage" (Appiah, 1992: 136).

Muendane, Lamb and Ramose's notions of the disturbed psychology of the African mind are supported by Fanon, the psychiatrist, who has since 1954 drawn attention to the psychiatric phenomena affecting the behaviour and thought of the colonised peoples in Algeria. Fanon (1990: 200-204) describes the mental pathology of his African patients as "a reactionary psychosis which is the direct product of oppression". According to Fanon (1990: 200), "colonisation resulted in a systematic negation of the other person and a furious determination to deny the other person all attributes of humanity; colonialism forces the people

it dominates to ask themselves the question constantly: in reality, who am I?" Fanon (1990: 201) states that when the sum total of harmful stimuli oversteps a certain threshold, the African's defensive attitudes give way and result in mental pathology. "Over the years they [Africans] have accepted that they need to be civilised because their traditions, their customs, their cultures, their religions, their languages and even their colour were not the right ones" (Muendane, 2006: 50). Constant dehumanisation, abandonment of their African reality and the embracing of a foreign European culture, Christianity and Western values they ill understood, resulted in what Fanon terms "the mental pathology of the African people". Five hundred years of Western indoctrination and humiliation are ingrained in the minds of indigenous Africans. Muendane (2006: 51) argues that "Africans continue to be racially exploited, disposed and humiliated nationally and internationally" even in the twenty first century. Although Africa's decolonisation and independence from European colonial powers brought Africa freedom from political and socio-economic oppression in the mid-twentieth century, it did not restore African humanity in the eyes of the Western world.

Five hundred years of slavery, colonialism, apartheid and neo-colonialism birthed an African solidarity and Afrocentrism²⁰⁹ amongst African peoples. Mazrui (2002: 37) claims that the greatest service Europe has rendered to the African people was not Western civilisation or Christianity but the supreme gift of African identity. "The humiliation and degradation of Black Africans across the centuries contributed to their mutual recognition of each other as 'fellow Africans'. An identity was born and started its search for unity" (Mazrui, 2002: 38). A black consciousness was born in response to the racial prejudice and discrimination of European ethnocentrism.

In an effort to finally rid Africa of its lingering inferiority complex and the deliberate recovery of African pride throughout the African continent, African

²⁰⁹ Ethnocentrism means that one sees one's own culture as the norm and judges other cultures as sub standard. In reaction to the superior attitude of Eurocentrism towards Africa, Africa developed its own kind of ethnocentric thinking called Afrocentrism.

leaders accentuated the importance of Afrocentrism. Mbeki (1999: 10) airs his views on the importance of recovering African pride as follows: “An enormous challenge faces all of us to do everything we can to contribute to the recovery of African pride, the confidence in ourselves that we can succeed as well as any other in building a humane and prosperous society. None of us can estimate or measure with any certainty the impact that centuries of the denial of our humanity and contempt for the colour black by many around the world have had on ourselves as Africans. But certainly it cannot be that successive periods of slavery, colonialism and neo-colonialism and the continuing marginalization of our continent could not have had an effect on our psyche and therefore our ability to take our destiny in our own hands. Among other things, what this means is that we must recall everything that is good and inspiring in our past. Our arts should celebrate both our humanity and our capabilities to free ourselves from backwardness and subservience. They should say to us that if we dare to win, we will win”.

In an effort to overcome this lingering inferiority complex, the African Renaissance, Moral Regeneration Movement, *Batho Pele*, *Ubuntu Plege*, Heartlines Project and other projects aspire to restore eroded African values by reviving the concept of *ubuntu*.

2.9 SUPERIOR VERSUS SUBHUMAN

Since the Enlightenment, European academic scholarship has provided mounting evidence that Africans are not on the same intellectual, cultural, historical or scientific par with their intrinsic superior Western counterpart. This evidence suggests that Africans are inferior and subhuman. Western civilisation has been conditioned by these principles of discrimination, believing that “not all persons were thought to share the same level of development or potential to realize rationality, especially at the higher levels” (Outlaw, 2002: 141). Are

Africans subhuman²¹⁰ or is it Western philosophy's dualism that poses Africans as the Other, the Manichaeism? The following will be discussed in this subsection:

- Background, and
- Different worldviews.

2.9.1 Background

The French philosopher and sociologist Lévy-Bruhl marked a watershed in Western anthropology in his works *Les fonctions mentales dans les sociétés inférieures* (1910) and *La mentalité primitive* (1922) when he paved the way from his predecessors' evolutionary quests to bring a new understanding of the African Other. Instead of indicating a society's evolutionary progress from stage to stage, Lévy-Bruhl classified human societies in two types: the primitive and the civilised. He found the key indicating the difference between savage and civilised cultures, between Western and non-Western civilisations. Lévy-Bruhl (as cited in Biakolo, 2002: 10) states the following: "The collective representations of primitives, therefore differ profoundly from our ideas or concepts, nor are they their equivalent either. On the one hand, as we shall presently discover, they have not the logical character ... On the other hand, they see many things there of which we are unconscious". Lévy-Bruhl invented the concept of "primitive mentality" suggesting that primitive people are not governed by reason but by their emotions. Lévy-Bruhl's terms "primitive mentality" or "pre logic mentality" stereotyped African intellect as inferior. His works "composed an articulated western discourse on Africa, which emerged as the antithesis of Europe in the structure of ideas and images by which the colonial ideology was sustained" (Irele, 2002: 114).

²¹⁰ The International Lesbian and Gay Association based in Brussels estimates that Africa has more than 24 million active homosexuals. According to *The Economist* (April, 2007: 46), most African leaders call homosexuals "subhuman" and "unAfrican" whilst Zimbabwe's Robert Mugabe calls them "worse than dogs and pigs".

To have justified slavery, colonialism and apartheid Africans were stereotyped as primitives of a savage, pre-logical and mystical nature. In contrast, the Western civilised culture was pictured as individualistic, logical, scientific and literate. In the most widely read account of the Mau Mau rebellion, Ruark writes in his 1955 bestseller, *Something of Value*, that “to understand Africa you must understand a basic impulsive savagery that is greater than anything we civilized people have encountered in two centuries” (cited in Anderson 2006: 1). Africans would never agree with the Lévy-Bruhl’s or Ruark’s depiction of the African Other as subhuman, primitive savages. In Mudimbe’s *The invention of Africa* (1988) and *The idea of Africa* (1994), he draws our attention to the deliberately construed Western “political project”, to pose Africans as Others. African philosophers agree that the deliberate racial prejudice directed at Africans was implanted in Africa through colonialism. Ramose (2002{b}: 28) finds “the deepest roots of racism in Africa traceable to Western philosophy”. In the quest to restore their human dignity Africans therefore find themselves combating the ideology of Western philosophy.

2.9.2 Different Worldviews

The difference between the African Other and its European counterpart became so entrenched in Western philosophy that ‘difference’ signified inferiority. Mazrui (2002: 18) states that “the whole issue of race, and therefore racism, is steeped in value, belief and symbolism”. Mazrui argues that Africans are not only discriminated against because of their skin colour but also because of the different worldview²¹¹ they hold. The term worldview signifies a person’s image of reality and “encompasses the whole of man’s life” (B.J. van der Walt 2002: 40). All persons hold worldviews which they perceive to be the truth. In fact, worldviews are so descriptive and prescriptive that they become a person’s blueprint of reality. According to B.J. van der Walt (2002: 41), all worldviews are

²¹¹ “A worldview is an integrated, interpretive set of confessional perspectives on reality which underlies, shapes, motivates and gives direction and meaning to human activity” (B.J. van der Walt, 2002: 39). According to Turaki (1991{a}: 133), the African worldview, or reality, is derived from the African spirit world and is embodied in African culture, religion, custom, values and tradition.

“pre-scientific” and “not to be confused with sciences or disciplines such as Philosophy²¹² or Theology”. A person’s worldview provides the understanding of reality and of man himself and distinguishes between friend and enemy: “Should a worldview get into a crisis its proponents are shaken to the depths of their being” (B.J. van der Walt, 2002: 54).

Different worldviews, therefore, look at reality through their own prejudiced spectacles and feel comfortable only with the view they have been conditioned to see. The European and traditional African worldviews are two such typical opposing worldviews: one perceived as right and superior whilst the other is viewed as inferior and substandard. Whilst the Western worldview epitomises liberalism with its characteristics of individualism and capitalism, the traditional African worldview represents a communitarian way of life based in the spiritual realm. B.J. van der Walt (2006: 126) summarises his comparative study of Western and traditional African worldviews as follows:

Component	Western Worldview	African Worldview
God	A secular, materialistic, capitalistic god. Post-Christian	Distant creator god, not demanding responsibility, replaced by unpredictable spirit world. Pre-Christian
Norms	<i>Individual</i> autonomy Subjectivism (things are laws) Self-interest, individual egoism	<i>Communal</i> autonomy Subjectivism (the kinship group is the law) Group interest, group egoism

²¹² B.J. van der Walt (1999: 9) posits that, like a worldview, philosophy provides a total picture of reality and a conception of the whole, but that it also differs from a worldview. Whereas a worldview is more implicit, philosophy is explicit. Van der Walt sees a worldview as pre-theoretical or first order thinking and philosophy as theoretical, second order thinking, a scientific reflection about a worldview. “... a culture arrives at full self-consciousness in philosophy. Philosophy could be defined as the self-consciousness of a culture”.

Man	A reductionistic anthropology characterised by individualism, materialism, hedonism, etc.	A reductionistic anthropology in which one aspect (the communal) is absolutised and the individual aspect subordinated, suppressed.
Community	Atomistic-liberalistic: Individual liberty and rights first. Destroys communality, finally results in totalitarianism.	Organic-communalistic: First communal equalities and duties. Destroy individuality, leads directly to totalitarianism.
Nature	Viewed anthropocentrically: Separate from man; to be used and exploited for wealth.	Viewed holistically: Man a part of nature; it should therefore be revered and not interfered with.
Time and History	A commodity to be measured and used for one's own benefit Future-oriented (progress)	Something to be shared and enjoyed with others Past-oriented (restitution)

By comparing Western and traditional African worldviews the difference between these philosophies become evident. The Western worldview emphasises individual autonomy and independence whilst the traditional African worldview embraces communal²¹³ life and values. Western liberalism protects the individual's rights and liberties whilst African communalism protects group rights and duties.²¹⁴ Whilst the Western worldview is scientific and task-oriented the traditional African worldview is community-oriented and reveals pre-scientific or religious modes of thought. When viewing the difference between the Western and traditional African worldviews, the clash between the individualistic value

²¹³ Mbiti (1990: 140) describes being African as follows: "I am because we are, and since we are, therefore I am".

²¹⁴ Menkiti (1979: 167) stresses that whilst Western individualism is based on individual rights and freedoms, Africa gives priority to duties: "In the African understanding priority is given to the duties which individuals owe to collectivity, and these rights, whatever they may be, are seen as secondary to the exercise of their duties. In the West, on the other hand, we find a construal of things in which certain specific rights of individuals are seen as antecedent to the organization of society, with the function of government viewed, consequently, as being the protection and defense of these individual rights".

orientation of the West and the traditional African communal culture becomes evident. In describing the traditional African worldview, Imbo (1999: 9) acknowledges that it is intricate and complex. "The beliefs, myths and cosmology of the Bantu are interwoven with their moral codes. In this mix one finds a religious dimension of Bantu beliefs about ancestors, gods and spirits; how the Bantu see the world and understand their place in it". In the African worldview the spirit world has a profound influence on every aspect of African life. According to Turaki (1991{a}: 135), the "spirit world is in control of all existence. It is the power that acts on the human world, anything material and immaterial". Turaki (1991{a}: 135) summarises the characteristics of the traditional African worldview as follows:

- Social and spiritual phenomena can be explained by the law of the spirit.
- The world/nature is held in balance by the spiritual laws and therefore should not be tampered with.
- The moral and spiritual obligation of man is to live in harmony with and in obedience to spiritual forces in the human and the non-human world.
- The orientation is towards the glorious, perfect, primordial state of the past and less to the unknown, uncertain future.
- The world of the ancestors is always better, closer to the perfect origin and therefore has more potency than the present or the future. Thus, anything passed down from the ancestors, such as culture, religion, technology, education, values, social institutions, etc. must be maintained, preserved, protected and eventually passed on to the next generations.
- The moral obligation to conform to traditions and conventions overrides any desire for change or non-conformity, and
- The conception is that the best in life lies in the past, the world of the ancestors and the origin.

In contrast to the traditional African worldview, the Western worldview promotes rights, democracy, individualism, capitalism and Christianity. Stevenson (2002:

30) maintains the following factors are responsible for promoting individualism in the Western worldview:

- Western religion focuses on the individual's relationship with God.
- Western philosophy from Plato to the seventeenth century focuses on the individual relationship to ideal truths.
- Western science focuses on the individual's relationship to the physical laws of nature.
- Western capitalism has focused on the individual as an economic unit.
- American [Western] democracy sees all individuals as equal and free rather than connected to each other in a specific way.

In the Western philosophical tradition, 'different' means inferior, but different does not have to be inferior. 'Different' can be different. As long as one worldview remains ignorant of the Other or refuses to acknowledge the Other, ethnocentrism will prevail. Guhrs (2004) reflects an objective attitude towards the African worldview and states that "as long as we insist on judging it from a Western perspective, we will be outsiders – we will be forever baffled by it. The complexities of African attitudes that seem to confound us are perhaps not so complex after all; it is their very simplicity that we fail to understand. On the road to a civilised enlightenment, have we lost the ability to see life in its most fundamental essence?"

Our opposing worldviews have become our prisons as we seem to be unable to appreciate the worldviews of the Other. Reality confirms that there is not only one reality, but many different ones. The worldview of the Westerner is therefore as significant as that of the Other, and in this sense, every view is equally significant. If every view is not equally significant, Wittgenstein's philosophy should be filed in the dustbin of fantasies. From the African margins comes Taylor's plea that "[t]he white man must at least respect the African's right to be different, even if he is too slow to realize how much the world needs the African

vision” (cited in Theroux, 2004: 95). Excluding the worldview of the Other as part of the universal reality, goes against the spirit of the Universal Declaration of Human Rights. Art 1 of the Universal Declaration of Human Rights, 1948, states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of brotherhood”. According to the Universal Declaration of Human Rights, the Other are human²¹⁵ and therefore entitled to their worldview.

The unspeakable injustices – suffering, humiliation, degradation and denial of African humanity as a direct result of Western philosophical doctrine – have to be noted and accounted for. These injustices will unfortunately be perpetuated as long as one worldview views itself superior to another. Neugebauer (1991{b}: 248) is of the opinion that it is “the philosopher’s duty to destroy the theoretical base of racism” and that “unless it is done, racism will be present”. According to Neugebauer, meaningful philosophical activity will only take place once racism has been acknowledged and dealt with.

From a traditional African perspective, Mutwa points out that an unbridged divide exists between the values of Western liberalism and African communitarianism. African High *Sanusi*, Mutwa (1998: 624), blames ignorance of each other’s worldviews as the primary source of conflict between Europeans and Africans. Mutwas (1998: 624)says:

The disease afflicting Africa today is the direct result of the blundering ignorance of both the white man’s ancestors and mine, the direct result of different races living together and each thinking it could turn the other into a replica of itself. The bloody wars that the white man’s ancestors and mine have fought, the hatred and the

²¹⁵ Holmes (2007: 186) states that the “discovery of DNA molecules in the 1950s proved that race is a socially constructed phenomenon with no biological basis”. DNA studies confirm that “there are no inferior races”, destroying the scientific basis for racism and eugenics. According to Holmes, Unesco’s international meetings of scientists in 1950 and 1952 “declared that race was a social myth, not a biological fact, and that humans belong to a single species *Homo sapiens* ... the facts of biology had made racism indefensible and that humans are one and the same group; the likenesses among men are far greater than their differences”.

bitterness still exist, could all be avoided – if only we had known better, known *each other* better. I know from experience that complete trust, friendship and integrated co-operation between Black and White is inherently impossible. Our different backgrounds, present ways of life and future ambitions are far too ingrained in our various cultures, conditioned over many hundreds of years. These differences cannot be wiped out in a matter of decades. Let alone by the stroke of a pen. But surely it is possible to achieve peace between races no matter how different their outlook, or their ideals and creeds.

In concurrence with Neugebauer and Mutwa, it must be stated that it surely is the philosopher's duty to destroy prejudice, the theoretical base of racism and to seek peace. We expect of liberal modernity to deny Otherness and overcome what it has been instrumental in fabricating. In postmodernity, race should be irrelevant: but all is race. As Cole (1997: 94) states: there is a "discrepancy between rhetoric and action". Whilst modernity aspires to implant principles of liberty and equality into the world's complex social reality, Cole (1997), Carter (1997) and Rattanzi, (2007) bring evidence which supports their notions of the emergence of a new racial prejudice²¹⁶ among Europeans of the twenty-first century.

African philosophy then is the philosophical attempt of Africans to come to grips with their traumatic history and injustices suffered at the hands of Others; an attempt to recover eroded values; the deconstruction of the African experience and reconstruction of African history, African reality and African humanity. But after more than five hundred years of indoctrination by Western rhetoric, Europeans posed the following arrogant question to postcolonial Africans: Is what Africans term as 'philosophy' really philosophy in the strict sense of the word?

²¹⁶ Cole (1997) ascribes the current emerging racism in Europe to the fact that myriads of immigrants from Africa and other third world countries to Europe signals Europe's transition to a multicultural world.

2.10 CONCLUSION

The South African Constitution compels courts to promote all values that underlie its democratic society. In an effort to give recognition to African law and legal thinking, as part of the values that underlie this democracy, the Constitutional Court fused the concept of *ubuntu* into Western jurisprudence in *S v Makwanyane*. Giving recognition to African law and legal thinking is imperative in South Africa's young democracy. The incorporation of the concept of *ubuntu* into South Africa's Western legal tradition seems insignificant, but in philosophical terms it is of the utmost significance. With the incorporation of *ubuntu* into South African jurisprudence, Western philosophy and African philosophy meet on equal terms for the first time in history. In the real world however, Western philosophy and African philosophy are anything but equal. Western philosophy and African philosophy have always been portrayed as opposites of one another: the superior versus the inferior; human versus subhuman; scientific versus mystic.

In deconstructing the traumatic relationship between Western and African philosophy it becomes evident that Western philosophy has, since its classical Greek inception, always been biased towards the Other. Classical Greek philosophy was however not racist, as the African philosopher Augustine of North Africa can attest. He produced many philosophical works in the Greek tradition of philosophy. The situation changed between the fifteenth and eighteenth centuries, however, when a desperate need for slaves emerged in the New World. Although slave trading had existed between Europe, Eastern Europe, the Mediterranean and North Africa since medieval times, racial prejudice towards these slaves did not exist. However, when the droves of African chattel slaves arrived in Europe, their Otherness evoked an "older racism" in Europe's civilised Christian superiors. The "subhuman nature" and pagan values of Africans ignited a fuelling ethnocentric bias and racial prejudice towards these people of an inferior humanity.

A “new racism” became entrenched in Western society in the eighteenth century when Enlightenment philosophers propounded freedom and equality, justified slavery and imperialism, and condemned Africans as less than human. This entrenched racial prejudice was transplanted to Africa through Europe’s colonising mission and Christianisation of the African continent. The scramble for Africa resulted in British, Portuguese, Belgian, French and German colonial rule and resulted in the destruction of African authority, African Religion, African values, African law, culture, tribal and family life and led to the infusion of ethnic rivalry. In their state of colonial subjugation Africans were deprived of every human right. After the Second World War, most African states gained independence from European colonial powers which brought political freedom to a ravished continent. But not all were liberated from the yoke of imperialism. After five hundred years of European oppression, Africans in Rhodesia, South West Africa and South Africa had to endure more bias, racial prejudice, exploitation and dehumanisation. Non-white South Africans were to experience another forty years of “full fledged indirect rule” under the National Party’s white apartheid regime.

In 1994 South Africa eventually became a democratic state and Africans were liberated from political oppression. But freedom from racial prejudice, discrimination, and violations of basic human rights did not render Africans free. Their values were eroded. The West’s greatest weapon, the “cultural bomb”, had eroded and in some cases annihilated African beliefs, values and culture over centuries of Western oppression. Despite the fact that the Rome Statute of 1998 declared slavery a crime against humanity; despite the British parliament’s acknowledgement of the mass killings of Africans in the Congo Free State under the Belgian King Leopold II as genocide; despite the Herero claim for reparation against the German government for the genocide of their people in 1904-1908; and despite the fact that apartheid was declared a crime against humanity by the International Convention on the Suppression and Punishment of the Crime of

Apartheid, Africans throughout the African continent confess that they are still suffering from mental slavery, mental colonialism and self hate.

Africans have been discriminated against for more than five hundred years, not because of their skin colour, but as a direct result of their pagan, unscientific, mystic worldview. In the Western philosophical tradition there is one scientific universal truth and different means inferior. The African worldview, African Religion, African laws and communal values represent the antithesis of Western liberalism. The South African Constitution, however, does not take the history of philosophy into consideration. The Constitution compels courts to promote *all* values that underlie its open and democratic society based on human dignity, equality and freedom. Western philosophy entertained in Court is no longer the patriarchal philosophy of the past. International human rights mechanisms have subjugated Western philosophical thought and jurisprudence to its creed. Despite its history, Western thought and legal thinking has made a 360 degree turn to embrace fundamental human rights.

Deconstruction exposed Western philosophy's historical biases towards the African Other. Centuries of oppression of the African Other were justified because Africans were perceived as pagan, unscientific, entertained 'barbaric' rituals, believed in clitoridectomy and polygamy, could not think for themselves and practised an inferior type of law. Western philosophers, missionaries and politicians justified racial prejudice and subjugation of the Other by posing Christianity and Western values as the antithesis of African Religion and African values.

The injustices against the African Other did not go by unnoticed. Apart from the fact that slavery and apartheid have been categorised as crimes against humanity, the genocides of the Herero and Congolese people received recognition in the Western theory of ideas. It was, however, not the physical killing of Africans but the erosion of their communal values which resulted in the

destruction of their collective psyche and resulted in their lingering inferiority complex.

The “seamless text” of South Africa’s “rainbow jurisprudence” conceals the volatile philosophical relationship between Western liberalism and traditional African reality: two opposing realities.

CHAPTER THREE

AFRICAN PHILOSOPHY: MYTH OR REALITY?

3.1 INTRODUCTION

The concept of *ubuntu* has received recognition from the Preamble of the 1993 Interim Constitution, the Constitutional Court, Higher Courts, the legal fraternity, legal academics, philosophers and South African government programmes, viz. the Moral Regeneration Movement²¹⁷, government Imbizo Programmes, Letsema and Batho Pele principles. *Ubuntu* is described by Ramose (2002{b}: 40) as the root of African philosophy; by Archbishop Desmond Tutu (Wilkinson, 2002: 356) as the essence of African philosophy; and by Rhoederer et al. (2002: 442) as the crux of African philosophy. Broodryk (2007: 45), Ramose (2002{d}: 230), Bhengu (2006) and others talk of the “unique” (Broodryk, 2007: 39) concept of *ubuntu* as “the philosophy of *ubuntu*”. The Constitutional Court describes *ubuntu* as traditional Africa’s moral philosophy.²¹⁸

Both the Interim and Final Constitutions of South Africa imposed a duty on South African Courts to promote values which underlie a democratic society based on freedom, equality and human dignity. In *S v Makwanyane*²¹⁹ the Constitutional Court emphasised that recognition had to be given to African law and legal thinking as part of the source of values which sec. 35 of the 1993 Constitution (sec. 39 of the 1996 Constitution) requires the courts to promote. According to Sachs J, one of the values of an open and democratic society is that the values of all sections of society must be taken into account and given due weight when

²¹⁷ See the Moral Regeneration Movement and *Ubuntu* Pledge, compiled by the National Religious Forum and the Heartlines Project which was initiated by the Nelson Mandela Foundation to promote *ubuntu* values (Broodryk, 2007: 48).

²¹⁸ Mokgoro J, *Ibid* par. 308.

²¹⁹ 1995 (3) SA 391.

matters of public importance are being decided.²²⁰ The court however lamented the fact that traditional African jurisprudence and its accompanying values had not been researched for the purposes of the determination of the issue of capital punishment.²²¹ The constitutionality of capital punishment in South Africa was determined by *inter alia* the concept of *ubuntu*, even though very little research had been done on this concept.

From a South African point of view the concept of *ubuntu* seems to be inextricably linked to African philosophy. Seen from a global perspective, Western and professional African philosophers deny the existence of *ubuntu* as a unique philosophy of traditional African societies. They perceive *ubuntu* as pre-scientific myth; not philosophy. Because academic or professional African philosophers view philosophy as a universal enterprise and subscribe to the philosophical criteria of Western philosophy, only their texts are generally viewed as philosophy. Are what they produce as philosophy truly African philosophy, or merely Western philosophy produced by Africans? *Ubuntu* philosophy, or the collective philosophy of African traditionalists, is denied the status of African philosophy.

Professional African philosophers vehemently deny, firstly, that their texts do not constitute African philosophy and secondly, that any unique *ubuntu* philosophy exists in traditional Africa. Apart from the global debate on African philosophy, a regional debate has also been raging between professional African philosophers and traditional African philosophers. True to the Western tradition of philosophy, professional African philosophers deny the existence of Africa's unique philosophy of *ubuntu*. *Ubuntu*, or ethnophilosophy, is labelled as inferior, degenerate, retarded and debased: an outmoded traditional African belief system. According to Houtondji (1996: 120), ethnophilosophy is a myth, but for Constitutional purposes it is essential to deconstruct the myth.

²²⁰ *Ibid* par. 368.

²²¹ *Ibid* par. 252.

Chapter Three attempts to deconstruct African philosophical values in terms of African philosophy. Deconstruction aims at ascertaining first, whether there is an African philosophy and second, why *ubuntu* is not acknowledged as African philosophy. Although African humanity has always been perceived as subhuman and inferior and its worldview denied the status of philosophy, postmodernity demands that the voices of the Other be heard. For centuries, Europeans have denied Africans their history, science, dignity, humanity, values and philosophy. The Belgian missionary priest, Placide Tempels, turned the tables on the European notion of Africa's inferiority when he 'discovered' that Africans possess a unique collective philosophy. Tempels' *Bantu Philosophy* sparked a heated philosophical debate in 1945 and placed the pervasive denial of African humanity under scrutiny.

The following aspects will be discussed in this chapter:

- The debate on African philosophy.
- Oruka's six trends in African philosophy, and
- Whether philosophy is a universal enterprise?

A heated philosophical debate was ignited by Tempels' *Bantu Philosophy* when he revealed the existence of a unique collective philosophy amongst the Baluba of the Congo in Africa.²²² This debate is still raging between Western and African philosophers on the one hand and professional African philosophers and African traditionalists on the other. The debate addresses the following: Does Africa have an ancient tradition of philosophy? Do Africans have the ability to philosophise? What is African philosophy and is ubuntu philosophy uniquely African?

In an attempt to structure the discourse on African philosophy Henry Odera Oruka identifies six trends in African philosophy.²²³ Oruka's initial four trends in

²²² See Tempels' *Bantu Philosophy* at 3.3.1.1.

²²³ See Henry Odera Oruka's six trends in African philosophy at 3.3.

Four Trends in African Philosophy (1987) categorise African philosophy as follows: ethnophilosophy; sagacious philosophy (sage philosophy); national-ideological philosophy (political philosophy), and professional philosophy. Oruka added two additional trends, viz. hermeneutics and the narrative trend to his traditional *Four Trends in Sage Philosophy* (1990). A variation of these trends in African philosophy will be introduced by academic intellectuals in 3.3.8. As *ubuntu* seems to form part of African philosophy it is imperative to locate which of Oruka's trends represent *ubuntu*, the collective philosophy of traditional African societies.

Western philosophy will be continuously scrutinised to assess whether it is in fact a universal inclusive philosophy, as proclaimed by Aristotle and Descartes. The academic reality of teaching a 'decontextualised' Western philosophy in African educational institutions will also be brought forward as well as the answer to the question of whether African philosophy exists.

Chapter Three brings evidence that African philosophy has come full circle. In an era of postmodernism the original idea of philosophy, as depicted by Aristotle and Descartes, is deconstructed, not only to bring full humanity to Africans but also to acknowledge the existence of African philosophy. African philosophy will be introduced as Africa's postcolonial response to the Western denial of Africa's humanity: the affirmation of African culture, religion, politics, tradition and values. In an attempt to deconstruct the truth about African philosophy and African philosophical values, we have to start at the very beginning – the debate on African philosophy.

3.2 THE DEBATE ON AFRICAN PHILOSOPHY

Until the latter half of the twentieth century, Africans were subjected to the intellectual denial of their history, science, dignity, humanity and philosophy. Up until then, *all* discourse relating to Africa had for centuries been dominated by

Europeans. As 'pre-scientific savage barbarians', Africans had no voice in the discourse on Africa. European history, Western philosophy and their European colonial masters had reduced Africans to silence. Discourse on Africa was conducted by Europeans, speaking on behalf of Africans and Africa. However, one can now state that "the wind of change is blowing through this [African] continent".²²⁴ There is no turning back. Africa is affirming its humanity, history, values and philosophy.

For the past fifty years, a lengthy philosophical debate has been raging between Western intellectuals and African scholars on whether Africans have in fact produced philosophical thought that could be termed African philosophy. The philosophical debate on African philosophy was ignited after the publication of Catholic missionary, Placide Tempels', *Bantu Philosophy* in 1945. Whilst ministering among the Baluba people of the lower Congo in the 1930s, Tempels observed a coherent collective philosophy among the Baluba that governed their everyday life. Tempels found this oral collective philosophy²²⁵ to be based on reason²²⁶ and grounded in the philosophy of "vital force".²²⁷ Moreover the Baluba's collective philosophy was very different from contemporary Western philosophy. Tempels (1969: 167-168) writes:

²²⁴ Prime Minister of Britain, Harold Macmillan's prophetic speech addressing both houses of South Africa's parliament in Cape Town, February 2, 1960. Although [this speech] is usually remembered as heralding the new nations of Africa onto the world stage, it was in fact intended as an attack on apartheid (Anderson, 2006: 3).

²²⁵ This idea of a whole group philosophising is an open denial of Plato's maxim that "the multitude cannot be philosophic" (Oruka, 2002{a}: 121).

²²⁶ A significant number of African intellectuals were very pleased with the publication of *Bantu philosophy* since "the humanity of Africans was defended and vindicated: Africans too, were reasoning beings, thus very human, even more important, since a European said so" (Outlaw, 2002: 143).

²²⁷ Tempels (1969: 61-63) describes a Bantu ontology that differentiates between beings in a spiritual hierarchy which he calls "forces". He ranks these forces in relation to their ability to influence one another, viz. God (Spirit or Creator), the first fathers of men or founders of the different clans, the dead of the tribe or living dead, human beings, animals, vegetables and minerals. African tribal societies typically embrace *animism*, the belief that entities throughout nature are endowed with souls, often thought to be souls of ancestors who are no longer individually remembered. Nature, for most traditional Africans, is full of living forces. Spirits dwell within it and human beings can interact with them. The African conviction that human beings are intimately connected to nature is part and parcel of the traditional belief that nature is essentially spiritual (Solomon & Higgins, 1996: 171).

This discovery of Bantu philosophy is so disconcerting a revelation that we are tempted at first sight to believe that we are looking at a mirage. In fact, the universally accepted picture of primitive man, of the savage, of the proto-man living before the full blossoming of intelligence, vanishes beyond the hope of recovery before this testimony ... We feel that we should speak from one school of wisdom to another, from one ideal to another, from one conception of the world to another conception of it. The gods are dethroned, the disinherited stand before us as equals.

Tempels confirmed what Europeans had learned from Senghor's poetic Negritude: Africans are human and capable of reason. What distinguished Bantu philosophy from European philosophy was that Bantu philosophy did not represent individual thought but rather the philosophical ideals of the community. Tempels named the Baluba's communal philosophy, "Bantu philosophy"²²⁸ and was henceforth considered the European founder of African communal or collective philosophy. Whilst Oruka (1990{a}: 28) termed Tempels' Bantu philosophy "folk philosophy", Houtondji (2002: 125) later renamed Bantu philosophy, by coining the term ethnophilosophy.²²⁹

Tempels claimed that it was impossible for the Baluba to formulate their collective philosophy as Bantu vocabulary and language could not hold up to Aristotelian and Thomistic thinking – the standard for universal philosophy (Imbo, 1999: 10). As Baluba communal philosophy was an oral philosophy, Tempels articulated this newly found Bantu philosophy by writing it up as *Bantu Philosophy*. In the last chapter on *Bantu Philosophy*, Tempels states the goal of his book: "Bantu Philosophy And Our Mission To Civilize" (Tempels, 1969: 167),

²²⁸ Bell (2002: 22) states that the famous book of the Belgian Priest Placide Tempels, *Bantu Philosophy* is the most important work in this early genre of ethnophilosophy. According to Irele, "[t]he attraction of Tempels' work resides not only in its apparent vindication of the African claim to an elevated system of thought but also in its providing a conceptual framework for the African mode of thought. The vitalist emphasis of Bantu philosophy ties in very well with the epistemology implicit in Senghor's *Négritude*" (cited in Bell 2002: 23).

²²⁹ Ethnophilosophy takes a culture-specific view of philosophy and finds African philosophy in folk tales, proverbs, myths and sculptures of traditional cultures. Professional African philosophers deny the existence of ethnophilosophy.

which represents the European ideal to equip European missionaries with insight into indigenous African philosophy and the African way of thinking. Tempels (1969: 169) argues that in contrast with the “European idea that we stood before them like adults before the newly-born. In our mission to civilize, we believed that we started with a ‘*tabula rasa*’, though we also believed that we had to clear the ground of some worthless notions, to lay foundations in a bare soil”. Tempels (1969: 184) was a great proponent of the Christian civilising mission in colonial Africa by “colonials of *goodwill* only” and saw *Bantu Philosophy* as a necessary tool with which to equip missionaries to aid them in converting Africans to Christianity. He warns, however, that the “superficial Europeanization of the masses can only kill Bantu culture”, but that Christianity can serve “to purify and to ennoble a real Bantu civilization” (Tempels, 1969: 187). *Bantu Philosophy* aimed to establish a point of reference between Bantu philosophy and Christian theology and “to reconcile Africa and Europe at the level of spirituality and indeed, of mind” (Irele, 1983: 16-17).

A heated philosophical debate erupted between Europeans and European and African intellectuals after the publication of *Bantu Philosophy*. The debate centred on the following questions:

- Does Africa have a philosophy?
- Does Africa have an ancient tradition of philosophy?
- Do Africans have the ability to philosophise?
- What is African philosophy?
- Is African philosophy uniquely African?

One of the most contentious questions in the debate on African philosophy is: Does Africa have a history of philosophy? This question is usually brushed aside by Westerners who assume that philosophy originated in Greece. As Africans are in the process of reconstructing their history, they feverishly seek the answer to these questions.

3.2.1 Does Africa Have a History of Philosophy?

For anyone to *ipso facto* deny the existence of the history of philosophy in Africa equates discrimination and the rejection of the idea of philosophy itself. The following will be discussed in this section:

- Background.
- The oral tradition.
- The written tradition, and
- Africa's ancient origins of philosophy.

3.2.1.1 Background

Despite the outright rejection of the history of African philosophy by the Western philosophical tradition, there is mounting evidence that African philosophy had its origins in ancient Egypt. Ramose (2002{b}: 35) posits that “far from being a region of darkness irrelevant to the history of humanity, pre-colonial Africa was both the heartland of philosophical rationality and the birthplace of *homo sapiens*”.²³⁰ Diop (1974; 1987) argues that ancient Egyptian civilisations were in fact a Negro-African achievement and attempts to prove that the West owes its enlightenment to Africa.²³¹

Whilst Houtondji (1996), Okolo (1990) and Lefkowitz (1996) deny the existence of philosophy's ancient African heritage, Diop (1974: 1987), Bernal (1991),

²³⁰ Freeman (2003: 6) states in his *The Closing Of The Western Mind: The Rise Of Faith And The Fall Of Reason* that archaeological evidence from South African caves indicates that Africans were able to provide “rational adaptations to their changing environment 70 000 years ago”. Oppenheimer (2003) argues in *Out of Africa's Eden: The peopling of the world* that all non-Africans can be shown to have sprung from a single successful exodus “out of Africa”. According to science, this massive global African diaspora brings proof that every human descends from Africa (Mazrui, 2002: 27).

²³¹ See Diop, C.A. *The African origin of civilization: myth or reality* (1974), *Precolonial Black Africa* (1987) and Obenga, T. *Egypt: Ancient History of African Philosophy* where he states that it is mere prejudice to believe that the philosophy of humanity begins first among the Greeks in the fifth century, because that implies that other ancient peoples did not engage in philosophical thought. According to Diop, Egyptian thought made the greatest achievements in the fields of philosophy and science (Obenga, 2004: 31; 55).

Summner (1994), Onyewenyi (1993), Obenga (1995: 2004) and others confirm Africa's ancient written tradition of philosophy. On tracking Africa's philosophical origins, a distinction has to be made between the written philosophical tradition of Africa north of the Sahara and the oral philosophical tradition of Africa south of the Sahara.

3.2.1.2 The Oral Tradition

The philosophical picture presented by Africa south of the Sahara is very different from that of North Africa. Africa south of the Sahara is based on the oral tradition of traditional African societies. Tracking African history, it becomes evident that the cultures of Africa south of the Sahara were either abruptly broken up or destroyed by European and Islamic incursions during the last 500 years (Bell, 2002: ix). Although some of these Southern African cultures had great kingdoms and civilisations, very few of their written texts survived the turmoil in the region.

The sub-Saharan region was ravaged and oppressed by slavery, foreign religious dogma, diseases, wars and European colonial rule. Fortunately some of the artefacts and icons of these oral African traditions, viz. narratives, culture, music, values and art were preserved and handed down orally from generation to generation. According to Kapagwani (1991: 182), the oral tradition of Africa embodies the "traditional wisdom, institutions, myths, folktales, beliefs, proverbs and languages in Africa". Oral traditions include details of specific past events, such as the outcomes of wars, outbreaks of epidemics, and romantic versions of the past as embodied in African legends, ballads and stories of ancestry (Mazrui 2002: 5). It must be noted that this oral tradition is not characteristic only of Africa south of the Sahara but is symbolic of the entire African continent. In the absence of written texts, it is easy to understand why the uninformed doubt the accuracy, reliability and validity of the African oral tradition. Professional African philosophers, viz. Houtondji, Masolo, Towa, Keita, Imbo and Karp, regard only written texts of philosophy as philosophy in the strict sense. These African

philosophers regard the oral tradition, characteristic of traditional African thought, to be void of any philosophy.

The truth about African oral culture is that it is a meticulously preserved tradition where every ancient word or skill is sacredly guarded and passed on from generation to generation. Apart from the traditional wisdom, myths, folktales, beliefs, proverbs, law, art and values which are synonymous with the oral tradition of traditional African societies, there is far more to this tradition than meets the stranger's eye. Certain aspects of the oral tradition are, according to Mutwa (1998), kept secret by traditional societies. South Africa's well known Zulu High *Sanusi*²³², sangoma and sage, Credo Mutwa, reveals some of the ancient secrets surrounding the oral tradition of traditional African societies. Mutwa (1998: 654) discloses that the "Great Knowledge" or the total of all African knowledge of history, legends, mythology, philosophy, psychology and spiritualism "with a strong leaning to the occult", are controlled by the "Chosen Ones"²³³ or "High Custodians" of traditional Africa. According to Mutwa (1998: 555), only certain pieces of knowledge are passed on from the Chosen Ones to the High Ones of the tribe and only if their duties require such knowledge; little knowledge is passed on to the ordinary or "common people" of the tribe and *no* knowledge is ever revealed to "strangers"²³⁴ or outsiders (Mutwa, 1998: 556).

The "Chosen Ones" are sworn to secrecy under "High Oath", to impart their secret knowledge²³⁵ only to their sons and they, to their sons, "without adding or subtracting a single word" (Mutwa, 1998: 556). The Chosen Ones or "High Custodians form a Hidden Brotherhood" is a secret society that oversees that the

²³² A *sanusi*, or sangoma, is according to Mutwa (1996: xv), someone who is "accountable both to the natural and supernatural realms, and ultimately to the entire patterns of the universe." As High *Sanusi*, Mutwa leads more than 500 traditional healers.

²³³ Mutwa (1998: 555) reveals that the Chosen Ones are medicine-men, tribal narrators, blacksmiths, woodcarvers etc. of traditional Africa. He uses the example of how a blacksmith, as a Chosen One, would be told everything about the history of metal working, the characteristics of various metals, the legends, rites and ceremonies a blacksmith must perform and the laws that pertain to his trade.

²³⁴ See 4.11.3. for a definition of a stranger according to *ubuntu* reality.

²³⁵ Mudimbe (1988: 186) maintains ethnophilosophy or "[g]nosis is by definition a kind of secret knowledge".

Chosen Ones forget nothing of the oral tradition; impart only relevant knowledge to chiefs, elders and *indunas*; and leak *no* knowledge to strangers (Mutwa, 1998: 556). The Chosen Ones report annually to the Hidden Brotherhood for “additional checks, clarification, confirmation and to receive new knowledge acquired in the meantime” (Mutwa, 1998: 556). The Hidden Brotherhood also meets when young Chosen Ones are initiated²³⁶ under oath²³⁷ before assuming their duties. “The Chosen Ones are forbidden from revealing the identity of the High Hidden Ones of the Hidden Brotherhood who are respected as Lesser Gods” (Mutwa, 1998: 556) by the Chosen Ones. These male custodians of the secrets of the oral tradition are the essence or heartbeat of the African oral tradition. Because so little of the essence of the oral tradition is ever revealed to “strangers” much of what it encapsulates is concealed from public scrutiny.

For centuries the Western philosophical tradition treated the oral traditions of traditional Africa as pre-scientific, pagan, mystical and superstitious and, therefore, not philosophical in the strict or true sense of the word. Contrary to this notion, Kagame (1956), Tempels (1959), Abraham (1962), Senghor (1964), Nyerere (1968), Mbiti (1991), Mutwa (1998), Somé (1999) and others confirm the existence of a collective African philosophy which is firmly embedded in the oral tradition. Africa’s oral tradition cannot be overemphasised as it provides evidence that Africans have been and are philosophical people, as Tempels and others suggested.

3.2.1.3 The Written Tradition

Philosophy north of the Sahara is characterised by a long tradition of written philosophical, cultural and religious knowledge. Not only is North Africa seen by

²³⁶ Although it is, according to Mutwa, forbidden to give too much detail about the initiation of Chosen Ones, Mutwa (1998: 556) reveals that the ceremony lasts fourteen days. During this time “effective methods” are implemented to ensure that none of the initiates ever forget what they were taught.

²³⁷ According to Mutwa (1996: xviii), he, Ogotomelli and Somé (1998) felt compelled to break their sacred oaths and disclose their tribal secrets. Mutwa was afraid that the lore of his people would die with him and be lost forever and therefore “decided to open his knowledge to the planetary community”. According to Mutwa, he is despised by African people for doing so.

Diop (1987), Bernal (1991), Onyewuenyi (1993), Ben-Jochanan (1994) and Obenga (1992: 2004) as the cradle of African and Western philosophical origins, it has also always been a focus point of the Islamic philosophical tradition. According to Bell (2002: ix), Egyptian and Abyssinian (Ethiopia²³⁸ and Eritrea) civilisations “have long traditions of written history and civilizations older than Greek civilizations; they also have a philosophical and religious literature of considerable interest”.

Philosophical sources which predate the modern era include for example, Egyptian texts that date back to 300 B.C.; a collection of treatises from Abyssinia dating back to the seventeenth century A.D. (Hallen, 2002: 4); and the moral teachings of Ptah-hotep 2400 B.C. Part of Ptah-hotep’s manuscripts of the fifth Dynasty contain his moral principles for correct moral behaviour, called Maat.²³⁹ These principles of Maat are also evident in the Yoruba moral epistemology as recorded by Hallen and Sodipo (Hallen, 2002:7) and the moral values of *ubuntu* (Broodryk, 2002: 142; 2004: 88; 2007: 42). Sumner has published many volumes of Ethiopian philosophy since 1974 and champions a collection of medieval and early modern texts from Ethiopia which include the story of Skendes written in 1438-68 AD and the seventeenth century philosophy *The Treatise of Zera Yacob* (Presby, 2002: 361). Presby states that “even the most critical sceptics of the African oral tradition must pause at Sumner’s findings of medieval and early modern texts of philosophy from Africa”. The philosophical reflections of Ptah-hotep, Zar’a Ya’aqob and Amo fly in the face of any person who denies or ignores Africa’s ancient written philosophical achievements.

²³⁸ It must be noted that Ethiopia was never colonised and has a long tradition of philosophy. The most notable of Ethiopia’s preserved manuscripts include the work of Ya’ecob, a contemporary of Descartes. Ya’ecob’s philosophy “used a rational method to discover the basic principle, the basic goodness of human nature, which he then developed into a theology, ethics and psychology” (Carel et al., 2004: 100).

²³⁹ The holy belief Nechtar Maat was associated with seven virtues and forty-two Admonitions of Maat. According to Broodryk (2002: 142), *ubuntu* shares the same seven virtues as Maat, viz. perfectibility, truth, justice, propriety, harmony, balance, reciprocity and order. Although the admonitions of Maat were written 1 500 years before the Christian Ten Commandments were discovered, it is believed that the Ten Commandments were deduced from these admonitions of Maat (Broodryk, 2002: 144). The Ten Commandments form the essence of Jewish law and were, according to the Bible, given to Moses by God on Mount Sinai.

These and other writings sparked the Afrocentric debate by Diop (1987), Bernal (1991), Onyewuenyi (1993), Ben-Jochanan (1994), Obenga (1992: 2004) and others who argue that ancient Greek philosophy was directly derived from Egyptian civilisation.²⁴⁰ Their claims are substantiated by *inter alia*, Homer's *Iliad* which recounts the visit of Zeus and other Greek gods to their annual banquet in Ethiopia; Herodotus' writings which affirm that Pharaonic cultures were derived from inner Africa²⁴¹, from the lands of the long-lived Ethiopians; Aristotle's confirmation that "Egypt was the cradle of mathematics"²⁴² and Diodorus of Sicily who writes in 50 BC that the Ethiopians were the first of all men and that Egyptians were in fact colonists sent out by the Ethiopians (Davidson, 1994: 324). Diodorus of Sicily writes in his historical summaries in 50 BC that "the black peoples were the first of all men; and the proofs of the statement, say the historians, are manifest. As for the Egyptians themselves, the Greek historians of those times - of the last four or five centuries BC - accepted what the Egyptians had told them: that "the Egyptians are colonists [i.e. immigrants] sent out by the Ethiopians, meaning by 'Ethiopia' not the peoples of the geographical Ethiopia

²⁴⁰ See James's *Stolen Legacy: Greek Philosophy is Stolen Egyptian philosophy*; Diop's *Precolonial Black Africa: A Comparative study of the Political and Social Systems of Europe and Black Africa from Antiquity to the Formation Of Modern States*; *The African Origin of Civilization: myth or reality*; Bernal's *Black Athena: the Afroasiatic Roots of Classical Civilization*; Onyewuenyi's *The African Origin of Greek Philosophy: an exercise in Afrocentrism*; Ben-Jochanan's *Africa, Mother of Western Civilisation* and Obenga's *Ancient Egypt and Black Africa: a student's handbook for the study of ancient Egypt in philosophy, linguistics and gender relations*; *Egypt: Ancient History of African Philosophy*. Obenga argues that ancient Egypt contributed significantly to philosophy and ethics as well as to the world consciousness of later times by receiving and educating many Greek scholars and philosophers. According to Obenga, (2004: 31; 55) prejudice could make one believe that the philosophy of humanity originated from the Greeks in the fifth century, implying that other ancient peoples did not engage in philosophical thought. Diop argues that ancient Egyptian thought made the greatest achievements in the fields of philosophy and science. See also Draper's *Black Pharaohs*.

²⁴¹ Herodotus concluded on his travels in 450 BC that Egypt's cultural origins lay in continental Africa (Davidson, 2003: 15). "On the subject of circumcision, for example he remarked that 'as between the Egyptians and the Ethiopians (by which he meant those since called Negroes), I should not like to say which learned from the other'" (Davidson, 2003: 15).

²⁴² Ammianus Marcellinus (cited in Alford, 2002: 53) revealed the following in the 4th century A.D: "But if anyone in the earnestness of his intellect wishes to apply himself to the various branches of divine knowledge, or to the examination of metaphysics, he will find that the whole world owes this kind of learning to Egypt".

we know today but, generally, the inhabitants of inner Africa south of Egypt” (Davidson, 2003: 27-28).

There is a general tendency amongst Westerners to leave Egypt out of the history of Africa. This tendency has been generally defended by nineteenth-century European thought which stated that Egyptians were not Africans (Davidson, 2003: 25). According to the African historian, Davidson, little can be said for this view. “[I]t now seems perfectly clear that the vast majority of pre-dynastic Egyptians were of continental African stock, and even of central-western Saharan origins, there is likewise serious dispute among the authorities even as to whether the hypothetical ‘dynastic race’ associated with the foundations of Pharaonic Egypt had come from outside Africa” (Davidson, 2003: 26). It is common knowledge today that the Kushite or Nubian pharaohs of the Nubian Pharoanic Dynasty (New Kingdom, 1570-1070 B.C.) that ruled central Egypt were indeed Black pharaohs.

On viewing Western philosophy itself, most of the Greek philosophers of the Classical Age acknowledged the cultural primacy of Egypt²⁴³ and submitted themselves to Egyptian wisdom, guidance and inspiration. In his *Republic* (1997) Plato (427-347 B.C) recorded that Thales (624-546 B.C.), the founder of Greek philosophy, geometry and astronomy was educated in Egypt under Egyptian priests. According to Law (2007: 24), “Pythagoras was advised by Thales to visit Egypt to learn about mathematics”. Diop (1987) argues that ancient Egypt was a Negro-African civilisation which brought enlightenment to Greece whilst Bernal (1991) presents empirical evidence to confirm interactions between Greek and African peoples.

²⁴³ In the fifth century BC Herodotus stated that the Egyptians were the best historians of any nation. “Herodotus pointed out that the Egyptians gave him their historically written records at Memphis containing the names of three hundred and thirty monarchs who succeeded Min, the first king of Egypt” (Davidson, 2003: 25).

The Afrocentric claims that Egypt is the seat of ancient African philosophy and that Western philosophy originated in Egypt are, however, dampened by countless counterclaims by Western scholars, such as Lefkowitz (1996), who claim that Egypt did not produce philosophy; rather philosophy originated in ancient Greece. Professional African philosophers, viz. Houtondji (1996: 33) and Okolo (1990: 27-28) add fuel to the fire by insisting that African philosophy has no ancient history and that the history of African philosophy can only be traced for fifty years or more.

3.2.1.4 Africa's Ancient Origins of Philosophy

From a hermeneutic point of view, it is interesting to note Davidson's comments on the existence of an ancient African philosophy. Davidson (1994: 320-322) and Bernal (1991) argue that before 1830, it was universally held by Europeans that ancient Egypt was an African civilisation and the source of Greek civilisation. After 1830 however, ancient Egypt suddenly ceased to be seen as part of Africa. Philosophers and propagandists of the new imperialism accentuated the subhumanity of Africans which resulted in, as Davidson (1994) claims, a sea change in history that was racist-motivated. This new imperialism with its characteristic racial bias, "shoved whatever the ancient Greeks had thought and written about African origins under the academic carpet and lost it there" (Davidson, 1994: 22). This new imperialism set about constructing an Aryan model which proclaimed Greece as the original source of Western civilisation and confirmed that "Egypt ... does not belong to the African Spirit" (Hegel, 1956: 99).

In an effort to tell the true history and achievements of Africa prior to slavery and imperialism, Mazrui (2002) confirms that Afrocentrism²⁴⁴ attempts to re-establish the role and place of Egypt and Africa in the development of classical Greek and Western civilisation. In the midst of the ongoing debate about the origins of

²⁴⁴ According to Mazrui (2002), Afrocentrism is the study of the African human condition and confronts Eurocentrism from an African perspective. Afrocentrism emphasises the impact of Africa on the world and accentuates the uniqueness of the African people. Afrocentrism argues that ancient Greek philosophy and science originated from the ancient Egyptian civilisation.

African philosophy, it is however, evident that Africa was never devoid of philosophical thought. As Onyewenyi (1993: 286) states: “Africa originated the discipline of philosophy and taught the same to the Greeks”. Contrary to Western philosophical teaching, Greece no longer seems to be the cradle of philosophy as many ideas of Greek philosophy, viz. mathematics, geometry, astronomy and the Greek concept of the soul, were imported from Egypt (Law, 2007).²⁴⁵

Contrary to popular Western belief, African scholars have produced substantive evidence in an attempt to prove Africa's ancient philosophical origins. This evidence can no longer be ignored by the philosophical fraternity as it denounces the Western philosophical notion of Africa as a continent historically void of philosophy. Based on the evidence of both the oral and written traditions of philosophy in Africa, one can conclude that Africa has a history of philosophy. One of the grounds upon which Westerners founded their denial of Africa's philosophical history was the Western assumption that Africans are unable to produce logical reasoning. The arrogant question continually posed by Westerners during the debate is: Do Africans have the ability to philosophise? In short, are Africans deficient in critical, rational thinking?

3.2.2 Do Africans Possess the Ability to Philosophise?

Descartes, the French father of modern philosophy, held the opinion that all human beings have the ability to reason. For Descartes “the essence of man lay in being a purely thinking being” (Law, 2007: 279). Like his Greek predecessor Aristotle, who proclaimed all men rational animals, both of these acclaimed philosophers pronounced philosophy a universal enterprise. Despite the wisdom of Aristotle and Descartes, Africans have been perceived by Westerners as “emotive, mythical and unlogical” beings (Oruka, 2002{a}: 121). Obenga (2004: 31) argues that it is wrong to assume that some races are superior to others.

²⁴⁵ See Obenga, T.'s *African Philosophy of the Pharaonic Period* (1989).

According to him, such reasoning constitutes racial prejudice which is “founded on the belief that one race is superior to another”.²⁴⁶

According to the Greek philosophers, Aristotle and Descartes, all humanity has the ability to reason. However, whilst Descartes experienced Greek reasoning as an analytic exercise, Senghor experiences African reasoning as an emotional experience. The following different ways of comprehending reality will be discussed next:

- I think therefore I am.
- I feel therefore I am.
- Emotion versus reason, and
- Opposing views.

3.2.2.1 I Think therefore I Am²⁴⁷

African philosophers such as Ramose (2002{a}), Masolo (1995) and Outlaw (2002) posit that the question of whether there is an African philosophy, is superficial. According to them, there is a much deeper philosophical struggle at stake. They argue that the real philosophical struggle between European and African is the struggle over the Aristotelian concept of ‘reason’; “a struggle that created the great divide, dividing civilised and uncivilised, logical and mystical, Western and non-Western” (Masolo, 1995: 1). Outlaw (2002: 128) claims that the struggle for reason is the struggle over the words “man” and “civilised human” as defined according to the Greek standard. According to Outlaw, the Greek standard for civilised man was set by Aristotle, the most advanced Greek intellect

²⁴⁶ Serequeberhan (2002: 67) comments on Africa’s so-called deficiency in reason and states that “in this gauging of the ‘lack of reality in reality’ European civilization is both the standard and the model by which this deficiency is first recognized and then remedied”.

²⁴⁷ I think therefore I am, or “*Cogiti ergo sum*”, defined reason for Descartes. According to Descartes, reason could be relied upon to tell us what is true and what is not (Stevenson, 2002: 18). “Descartes’ solution to the epistemological problem of what we can know is called *rationalism*. It’s the belief that the mind is capable of knowing things even without experience” (Stevenson, 2002: 18-19).

of his time. Aristotle defined all men as rational animals because reason to him was the essence of all things.

African philosophers posit that although Aristotle's universal definition declared all men rational animals, Western philosophy claimed reason as the Western male's exclusive, distinctive trait, elevating him to a position of superiority. Ramose (2002{a}: 5) states that the Western standard for rational man became the civilising standard of the European: "Philosophy became the self appointed norm of this rationalisation and was off-loaded to Africa through greed and imperialism, guided by the cross and domination". According to Ramose, Aristotle's definition became the cornerstone of the struggle for reason: "the reason for the struggle between colonialists and Africans and the foundation for the struggle between men and women" (Ramose 2002{a}: 2; 5). Reason and rationality became the Western male's trait, the defining criterion of being human. The Other – all Africans²⁴⁸, American-Indians, aborigines of Australasia (Ramose 2002{b}: 16-17) and European women – were branded as irrational, emotive and devoid of logic. According to Ramose, Africans are perceived neither as rational animals nor as fully human. Whilst Western philosophy proclaims philosophy to be a universal enterprise, primitive, emotive and illogical Africans are denied entry into this enterprise. The ongoing philosophical struggle of the Other to be recognised also as rational animals, flies in the face of both Aristotle and Descartes.

Orika (1990{a}: xxvii) argues that the dichotomy between reason, rationality and intuition has been a tendency in Western academic circles where intuition, perceived as a primitive method of understanding and judgment, has been played down against rationality. Oruka believes that this is wrong. Both Oruka (1990{a}; 1990{b}) and Wiredu (1998) agree that Africans possess reason. Aristotle, Descartes, Oruka (1991{a}: 25; 2002{a}: 120) and Wiredu (1998: 195)

²⁴⁸ Freeman (2003: 6) states that archaeological evidence from South African caves shows that African individuals were able to provide rational adaptations to their changing environment 70 000 years ago.

are of the opinion that rational thinking is not an exclusive Western trait, but present in all humanity. All of these philosophers accentuate that rational and critical thought prevail in Africa. Oruka argues that logic and individuality cannot be replaced by emotion and communality. He challenges anyone “to show the exact examples of African philosophy or at least the areas of African culture where it can be found” (2002{a}: 121). Oruka sees philosophy as “a discipline that employs analytical, reflective and ratiocative methodology and is therefore not seen as a monopoly of Europe or any one race but as an activity for which every race or people has a potentiality” (Hallen, 2002: 120). Wiredu (1998: 195) finds “that rational knowledge is not the preserve of the modern West, nor superstition a peculiarity of the African”. The answer to the question of whether Africans can or cannot reason is best captured by Mutwa (1997: 538) when he notes that “[t]he reason people from beyond the seas look upon the Black Man of Africa as stupid is that we have all along been afraid to show to them that we too can think, that we too have ideas of our own. There is nothing a Black Man fears more than ridicule”. Mutwa and others maintain that Africans can rationalise, but that it involves a different methodology than Western rationality.

3.2.2.2 I Feel Therefore I Am

Like Oruka (2002{a}) and Wiredu (1998), Senghor (1964) finds Africans to possess reason. Senghor (1964: 74) maintains Africans do possess reason, but that it is a different type of reason and reality than that experienced by Europeans. Contrary to professional African philosophers, Oruka and Wiredu, however, Senghor, a traditionalist, argues that Africans do not possess the classical, analytical, European type of reasoning which makes use of the object, but a distinct African mode of reasoning. Senghor (1964: 74) argues that whilst “European reason is analytical, discursive by utilization; Negro-African reasoning is intuitive by participation”. In contrast with Europeans who comprehend reality by utilising analytical, critical, reflective and logical methodology, Africans possess a “distinctly African epistemology with its own methodology for comprehending the universe” (Imbo, 198: 12).

Senghor (1964: 72) compares the difference between European and African reasoning as follows:

Let us consider first the European as he faces an object ... He first distinguishes the object from himself. He keeps it at a distance. He freezes it out of his mind. In a way, out of space. With his precision instruments he dissects it in a pitiless factual analysis ... He makes a means of it. With a centripetal movement he assimilates it. He destroys it by devouring it ... From our ancestors we have inherited our own method of knowledge ... In contrast to the classic European, the Negro African does not hold it at a distance, nor does he merely look at it and analyse it. After holding it at a distance, after scanning it without analysing it, he takes it vibrant in his hands, careful not to kill or fix it.

Senghor distinguishes between the European “precision instruments of reason” and logic and the intuitive African “method of knowledge” inherited from the ancestors. Senghor poses Western scientific methodology and African intuitive methodology as opposing methodologies or reasoning techniques. In contrast with European reality, Senghor (1964), Fanon (1990), Somé (1994; 1997; 1999), Mutwa (1998), Kaunda (cited in Biko, 2006), Biko (2007) and others find Africans to comprehend reality through their senses²⁴⁹ and not their intellect. Senghor is convinced that intuitive African reality is a richer and deeper experience than the superficial discursive reality experienced by Europeans. According to Senghor, (1964:75), the European’s “[d]iscursive reason merely stops at the surface of things; it does not penetrate their hidden resorts, which escape the lucid consciousness. Intuitive reason is alone capable of an understanding that goes beyond appearances of taking in total reality”. Senghor (1964: 73) finds the African non-rational way of comprehending reality, embodied in African intuition and emotion. He illustrates the interaction between intuition and emotion as follows: “The Negro African inherits from his ancestors a consciousness of the

²⁴⁹ Rousseau (cited in Jimack, 1983: 57) advocates that “[we] must *learn to feel* ... to produce the most complex kinds of knowledge” by using the senses.

world according to which the subject and object of observation, the natural and supernatural, the mundane and divine, the material and the spiritual, are united in an inseparable oneness. This oneness is comprehended using the gift of emotion”.²⁵⁰ The mere fact that African logic differs from European logic does not prove that Africans are inferior or that their minds are incapable of critical reflective inquiry. What it does prove is that “Africans, in contrast with Europeans, have a distinct African epistemology” (Imbo, 1998:12).

Senghor finds emotion²⁵¹ as African as reason is Greek. Apart from African reality being intuitive and emotive, Senghor perceives it as dualistic, consisting of the visible and invisible universe. According to Okolo (2002: 211), the invisible or immaterial universe of African reality consists of the following: God, the highest being; the ancestors (souls of the heads of clans and the departed relatives); and nature gods or spirits. The visible or material realm consists of human beings, animals, plants and innate beings. Fanon (1990: 44) explains that “certain wise men find the native a hysterical type because of the interplay between intuition and the emotional sensitivity of the native. This sensitive emotionalism, watched by invisible keepers who are however, in unbroken contact with the core of the personality, will find its fulfilment through eroticism in the driving forces behind the dissolution of the crises”. Fanon seems to concur with Senghor that emotion and intuition lie at the core of African reality and accentuates that African problem solving involves the invisible keepers, or ancestors. “For Senghor, this African mode of appreciating reality through the senses rather than the intellect is at the root of his direct experience of the world, of his spontaneity. The African’s psychology helps to determine a different form of mental operation from the Western, a different kind of logic” (Irele, 2002: 46). It is suggested that this

²⁵⁰ Senghor says “It is the gift of emotion that explains Negritude ... For it is their emotive attitude towards the world which explains the cultural values of the Africans” (Reed & Wake, 1965: 33).

²⁵¹ According to Senghor (1964), “emotion is black as much as reason is Greek”. Senghor explains that “[T]his does not mean that the black man has got no reason as others make me say but rather that his reason is not discursive but synthetic; it is not antagonistic, but sympathetic. This is another way of knowing. While the European reason is analytic by utilization, that of the black man is intuitive by participation” (cited in Masolo, 1995: 26).

“different form of mental operation” or African logic represents a “different kind of logic” to European rationality.

Like Senghor (1964), Kaunda (cited in Biko, 2006) believes that European and African reasoning differ from one another. Kaunda (cited in Biko, 2006: 48) compares Western and African modes of thought and comes to the following conclusion:

[The European] is vigorously scientific in rejecting solutions for which there is no basis in logic. He draws a sharp line between the natural and the supernatural, the rational and non-rational, and more often than not, he dismisses the supernatural and non-rational as superstition ... Africans being a pre-scientific people do not recognise any conceptual cleavage between natural and supernatural. They experience a situation rather than face a problem. By this I mean they allow both the rational and non-rational elements to make an impact upon them, and any action they may take could be described more as a response of the total personality to the situation than the result of mental exercise.

Kaunda finds that whilst European reasoning is merely a scientific mental exercise of applying logic to a problem, Africans apply the pre-scientific method of “total personality”: applying intuition and the supernatural²⁵² to solve a problem. Biko (2006: 48) contrasts the European and African attitudes to problems presented by life in general as follows: “Whereas the Westerner is geared to use a problem-solving approach following very entrenched analyses, our approach is that of situation-experiencing”.

Biko (2006: 49) acknowledges the essential difference between the European and African approaches to reality. He perceives the African mode of thinking as positive, saying: “the African personality with its attitude of laying less stress on power and more stress on man is well on the way to solving our confrontational problems”. This African mode of comprehending reality is confirmed by Mutwa

²⁵² Chapter Four brings evidence which confirms the vital role the supernatural plays in *ubuntu* reality.

(1998: 612) who maintains that “a man who lives with his soul and who lets his soul rather than his brain guide him, is better equipped to face the mysterious and supernatural things because the soul understands these things while they bewilder the brain. The brain drags them into the quicksands of materialism”. Mutwa is of the opinion that it is to the African’s advantage to be guided rather by his emotional “soul” than his logical “brain”. Mannion (2002: 210) states that man cannot live by reason alone in the African worldview as “intuition and imagination are regarded as valid, and logic is not stressed as the path to wisdom; emotion plays a more important role”. Professional African philosophers²⁵³, viz. Houtondji and Wiredu, object to Senghor and other traditionalists as sell-outs “playing into the hands of the West” by emphasising that the African reality consists of emotions and irrationalism (Imbo, 1999: 30) rather than analytical, critical, reflective and logical inquiry. In the West, imagination and emotion are regarded as attributes only of madmen and children (Somé, 1997: 2).

The Western theory of ideas negates the notion of emotional and intuitive reasoning. Emotional and intuitive reasoning does not constitute philosophy, it represents African mysticism. Western philosophy’s universal truth, or rationality, opposes traditional African modes of reasoning. This diabolical philosophical dualism reveals the paradox between Western philosophy and African ‘myth’. Whilst traditional African thought is branded as emotional spirituality, Western philosophy itself will prove to be all but pure rational thought.

3.2.2.3 Emotion versus Reason

The great Enlightenment philosopher Jean Jacques Rousseau defended the philosophical value of emotion along with reason. Contrary to rationalist thinking during the eighteenth century Age of Reason, Rousseau did not see reason as the only avenue by which to establish knowledge. Rousseau did not believe reason to be the sole solution to social and philosophical problems (Stevenson, 2002: 171). Rousseau states that reason, when unaccompanied by the

²⁵³ The term professional philosophy will be discussed under Trends in African Philosophy.

considerations of the heart or emotions, acts in an insensitive and unproductive way. Rousseau argues that emotions must be allowed to surface because as soon as the importance of emotions is suppressed, problems arise: “Many Enlightenment thinkers regarded the emotions as dangerous forces that needed to be reigned in by means of reason, but not Rousseau” (Stevenson, 2002: 171) . For Rousseau, reason was neither characteristic nor prerequisite for civilised man. “With original man, this faculty of self perfection, of each man striving to realize his human qualities, remains dormant. Finally reason, passion and free will, also characterize man and contribute to the desire for self-perfection. But throughout most of history, Rousseau believed, reason and will have been ruled by desire. That is to say, reason acts only in response to problems created by desire. Thus, man progressed from a state of primitive savagery but only by responding to his physical and social environment rather than through reason, attempting to take control of it” (Lively & Reeve, 1989: 118). Rosseau maintains European rationality is not ruled by logic alone.

Whilst Rousseau claimed that reason and will have been ruled by desire, Freeman (2003) discloses an important aspect of Western rationality. Freeman maintains that, contrary to what philosophers make us believe about Western rationality, Christianity suppressed the Greek intellectual tradition of reason or rational thinking in the West. According to Freeman (2003: 343), the dawn of Christianity and the rise of Christian faith in the West, resulted in the “fall of reason and the closing of the [Western] mind”.²⁵⁴ Freeman maintains it is a Christian characteristic to be able to reject rational thought and even the evidence of empirical experience when it comes to faith²⁵⁵, as “the subversion of the natural order of things by miracles becomes one of the distinguishing features of Christianity and necessarily goes hand in hand with the waning of

²⁵⁴ Freeman (2003: 343) argues that the Roman Empire absorbed and sustained the Greek intellectual tradition. A century after Constantine’s conversion to Christianity, an alliance between church and state restricted freedom of thought and the tradition of Greek rationalism, which was intrinsic to it. According to Freeman, the revolution of fourth century Christianity led to the closing of the Western mind.

²⁵⁵ Plato condemned faith as a means of finding the truth. The only secure way of understanding the immaterial world was according to Plato through the use of reason (Freeman, 2003: 119).

scientific thought” (2003: 119). This revelation that Western thought does not comprise of logic only, seems to confirm the notion of Isaac Newton when he remarked that “it is the temper of the hot and superstitious part of mankind in matters of religion ever to be fond of mysteries and for that reason to like best what they understand least” (cited in Alford, 2000: ii).

Theron (1995: 57) argues that despite claims of rationality, Western thought, through the influence of Christianity, is ultimately theological. He argues that although Western reason is posed as opposed to faith and scripture, it too is divine. “Now reason, though most often opposed to scripture or faith, is yet analogous to faith as that to which one subjects oneself, as becomes apparent in the practical sphere with the doctrine of natural law.²⁵⁶ But any speculative principle can be stated as law. This is the deeper truth behind the Thomistic synthesis, that reason too is divine, a reflected divine light, which after a certain manner also calls upon man to renounce himself, to adopt a *noble* stance”. Theron maintains that the Christian church has been crucial in the preservation and maintaining of Western philosophy. “Philosophy it can be said, has been largely maintained for the sake of theology” (1995: 64). Rousseau, Freeman and Theron bring alarming evidence to the table and suggest that reason, the foundation stone of Western philosophy, does not comprise of male logic only, but that it is “ultimately theological”.

It seems as though reason is definitely not a constant in Western thinking as Western thinking does not apply logic only in reasoning or decision making. More and more scientific proof accumulates and indicates that emotion and reason are applied in human thought processes.²⁵⁷ In certain instances reason can be shut

²⁵⁶ In contrast with legal positivism natural law has a moral dimension. “The characteristic feature of this approach is that there is a moral code or a set of moral principles that exists irrespective of human interaction or positive law ... If positive law conflicts with these norms it is unjust. An unjust law is no law at all. The legality of legal rules for natural lawyers depends on the moral content of the laws” (Kleyn & Viljoen, 2006: 12).

²⁵⁷ Ramose (2002{b}: 47) maintains “African philosophy would not subscribe to the radical opposition between reason and emotion.” According to him, thought is a wholeness which includes the dependence of the rational and the emotional.

down completely in rationalising, viz. in situations of fear.²⁵⁸ The New York neuroscientist, Joseph LeDoux (cited in Gore, 2007), found emotion to be part and parcel of the Western thinking process and maintains that emotion has a profound influence in our decision making. LeDoux found that “connections from the emotional systems to the cognitive systems are stronger than connections from the cognitive systems to the emotional systems” which proves that emotions are frequently utilised during rationalising (cited in Gore, 2007: 28). In fact psychologists have studied the way Westerners make decisions in the presence of uncertainty and found that humans make judgments based principally on emotional reactions rather than considering all options and making choices carefully (Gore, 2007: 29). As thinking is therefore not devoid of emotions, Rosseau was spot on when he defended the philosophical value of emotion along with reason. The mere fact that logic and reason can be overridden by religion, desire and fear suggest that there is more to the struggle for reason than meets the eye.

Western feminists defend the moral relevance of emotion and maintain that Western philosophy’s denigration of emotion was part and parcel of the cultural devaluation of women. Whilst Western moral philosophy tends to view the moral point of view based on reason, “emotion was regarded not merely as irrelevant but as a cause of bias and distortion in moral understanding ... Defending emotion, including its role in moral understanding, has become for feminists part of the project of evaluating cultural esteem for women” (Friedman, 2000: 209). The diabolical struggle to deny the Other their philosophical status on the grounds of the absence of literacy and/or reason does not hold water in postmodernism of the twenty-first millennium. There is more behind the struggle for reason than just so-called rationality.

²⁵⁸ Al Gore (2007:1; 23) argues that although America usually strives to apply truth and reason “[r]eason, logic and truth seem to play a diminished role in American decision making”. Gore quotes Burke saying, “No passion so effectively robs the mind of all its powers of acting and reasoning as fear”. Gore concludes that the American politics of fear, secrecy and blind faith has subverted American decision making, degraded democracy and imperiled America and the world.

Céssaire (cited in Masolo, 1995) maintains that the Other's struggle for reason is not a struggle between reason, emotion, myth and logic, but that the struggle symbolises something more sinister. Céssaire (Masolo, 1995: 24), Outlaw (2002{a}) and Ramose (2002{a}), find the struggle for reason to be used as an instrument of discrimination. Outlaw (2002: 141) seems to support this notion of Céssaire when he contends that Western civilisation is conditioned not by reason, as posited, but by the principle of discrimination. Ramose (2002{a}: 4-5) claims that despite democracy and the culture of human rights, the foundation for the struggle for reason remains unshaken. Ramose states that the struggle for reason is founded on Western racism which calls into question the humanity of Africans. He posits that reason became the judge, favouring Western thought over African modes of thought.

In spite of Aristotle, Descartes and the Papal Bull *Sublimis Deus*, who declared all men rational animals and philosophy a universal enterprise, "philosophy failed to eradicate and erase the struggle for reason from the social consciousness of successive generations of the former colonizers" (Ramose, 2002{a}: 3-4). Africans feel that the time has come for the Western philosophical tradition to accept Africans' humanity and openly declare as Aristotle did, that all men are rational animals! This yearning amongst Africans to be recognised as equal rational animals was also expressed by Nelson Mandela (1994: 322) whilst defending himself at the Rivonia trial in 1964, when he uttered these famous words: "I have fought against white domination and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if need be, it is an ideal for which I am prepared to die". But the scales of justice are not in equilibrium, as Western philosophers keep tipping the scales in their favour, towards exclusivity.

3.2.2.4 Opposing views

Because Western philosophy is depicted as a universal enterprise, it is generally presumed in the Western tradition of philosophy that all people's thought processes are governed by the same principles of logic. As logic is one of the core areas of philosophy it has been presumed over the years "that the ability to reason logically and to draw valid inferences is an essential characteristic of all races" (Sogolo, 2002: 244). It has been presumed that "all cultures operate within the same framework of logical principles and therefore have to conform to the rules of formal logic" (Sogolo, 2002: 245). However, the Western tradition of philosophy does not enable all humans to take part in the activity termed universal philosophy. Despite the fact that humanity has been declared rational animals, Western philosophy adds extra criteria or rules of formal logic to estimate whether thoughts are indeed rational and philosophical enough to enter its 'universal' domain of reasoning.

The paradox for Africans is that despite their classification as rational animals, traditional African thought is branded by Western philosophy as irrational and mystic and, therefore, void of philosophy. According to Western philosophical 'rules of formal logic', African thoughts do not comply with the scientific standards of Western rationality. The dominant feature of Western philosophy, its so-called universality, is criticised by postmodernists. Postmodernists do not view rationality as the only avenue towards reliable knowledge. Postmodernism negates the notion that rationality can be "certain of success in yielding correct, final answers if its methods are promptly followed" (Teffo et al., 2002: 162).

Can knowledge be obtained or be dependant not only on reason, but also senses, as Africans suggest? On the one hand we have the Western view that knowledge can only be obtained through reason or rationalism whilst on the other hand we have the view that knowledge can be obtained through the senses or experience. Rationalists believe that it is possible to have knowledge without

relying on the six senses. According to Law, (2007: 67) rationalists believe “that it is possible for us to know (some) facts of how the world is outside our own minds, about morality, metaphysics, or even the material world, without relying on our five senses”. Empiricists, however, argue that it is impossible to have or obtain knowledge without relying on experience and the senses. Empiricists argue that “all knowledge of the world outside the mind is based on sense-experience” (Law, 2007: 67). These opposing views are evident also in the debates among philosophers.

Postmodernity takes note not only of different ways of obtaining knowledge but also of the epistemological difference in thought between traditional and professional African philosophers. Okolo (2002: 212) states that the African theory of reality or metaphysics “differs significantly from that of Aristotle, for instance, with its individuated, discrete existences – ‘substances’ he called them – existing in and by themselves, separate from others”. Okolo argues that Africans experience the existence of both the spiritual and the material, physical universe as their realities; realities which constantly interact with one another.²⁵⁹

Do Africans possess the ability to philosophise? Apart from the fact that the question itself demonstrates a superior attitude towards Africans, it is arrogant for any one group to judge the reasoning capabilities of another. It must however be noted that Africans themselves are of two minds as to how they perceive reality. Whilst professional African philosophers profess an analytical thinking process, the traditional African approach professes an emotional and intuitive reality. As this debate has not burned itself out, one has to concur with Aristotle, Descarte and the Papal Bull, *Sublimis Deus* that every *person* (rather than man) is a rational animal.

²⁵⁹ Okolo (2002: 212) states that the “physical, material universe is real for the African, not just an epiphenomenon or shadow of the real, as Plato maintained in some of his dialogues”.

The most controversial question to ask an academic philosopher in South Africa is: Does Africa possess a philosophy? Like his European counterpart in the Western philosophical tradition his reply will be: What is African philosophy?

3.2.3 What is African Philosophy?

The debate on African philosophy does not only include the discourse between Westerners, between Westerners and Africans, but also between African professional philosophers (academics) and African traditionalists. The debate between professional African philosophers and African traditionalists centre on the following issues: firstly, whether the collective philosophy of traditional African societies forms part of the universal enterprise of philosophy; and secondly, whether it constitutes a single or unique philosophy or no philosophy at all. In an attempt to comprehend the struggle for an African philosophy, one has to understand not only the history of Africa but also the internal philosophical struggle between universalists²⁶⁰ and traditionalists; the struggle to define who the African philosopher is; and the struggle to come up with a single definition for African philosophy. The following will be discussed in this section:

- The universalist view.
- The traditional view.
- African philosopher: a definition.
- Critique of the definition, and
- African philosopher: a definition.

African philosophy is generally seen as “Africa’s postcolonial response to the Western belief of Africa’s inferiority”. It is a philosophy intertwined with slavery, European colonialism, Western imperialism apartheid and a myriad of challenges of modern-day Africa that confront the African continent. African philosophy can

²⁶⁰ Professional African philosophers, also called universalists, believe philosophy should adhere to the prerequisites of universal philosophy as practised by the Western tradition of philosophy.

be regarded as proof of the hermeneutical process by which Africa's colonial legacy is deconstructed and the African identity reconstructed. It is a philosophy which illustrates a deep connection with nature and an understanding and respect for the inexorable cycles of African life (Mannion, 2002: 210). African philosophy is "an ontological memorial of the ways our scholarly ancestors thought and lived life through the way they attempted to understand and master themselves and their world" (Osuagwu, 1999: 22).

Oruka sees African philosophy as the philosophical attempt by Africans to affirm their humanity, values, religion, history²⁶¹, politics, culture and traditions. According to Oruka (2002{a}: 120), there are two usages of the term African philosophy. African philosophy is defined either as uniquely African and the opposite of Western philosophy, or it is viewed as philosophy in general "in the strict sense". In an attempt to interpret these two usages of the word African philosophy, terms such as universalist, particularist, African philosopher and African philosophy need to be clarified.

3.2.3.1 The universalist view

The term African philosophy represents two distinct modes of African thought. Philosophy in Africa is perceived either from a universal or a traditional perspective. Universalists represent African professional philosophers, or academic philosophers, whilst particularists or traditionalists, represent traditional African modes of thought.

African philosophers, who have been trained in Western philosophy and have adopted its analytical methodology, adopt the universalist definition of philosophy. They view Western philosophy as a measure for all philosophy. These professional African philosophers, or universalists, believe philosophy must have the same meaning in all cultures. They assert the universal nature of

²⁶¹ See Hallen's *A Short History of African Philosophy* and Bell's *Understanding African Philosophy: a Cross-cultural Approach to Classical and Contemporary Issues*.

reason and logic and are opposed to African philosophy seeking its own single or unique philosophy. Wiredu (1996: 145), a universalist, holds the opinion that “[t]he post-colonial era in African philosophy is the era of professionalism”. Although professional African philosophers might differ with regard to their subject matter, they share a concerted rejection of traditionalists, or ethnophilosophy²⁶², the so-called communal philosophy of traditional African societies (Imbo, 1999: 39). Professional African philosophers, viz. Houtondji, Oruka, Wiredu and Bodunrin fiercely oppose ethnophilosophers such as Tempels, Mbiti, Gyekye and Keita. Bodunrin (1981: 173) sees African philosophy as criticism which involves “rational, impartial and articulate appraisal whether positive or negative”. Bodunrin argues that African philosophers should oppose traditional African cultural beliefs and folk wisdom just as Socrates and Plato opposed popular beliefs and opinions in the ancient Greek context. Professional African philosophers utilise European techniques of logic to criticise African philosophy.

Houtondji (1996: 120; 2002: 125) sees African philosophy as a universal enterprise; a critical discourse which consists of a body of written texts addressed to Africans. He denies the existence of a unique²⁶³ or collective African philosophy in traditional African societies which depends on the oral transmissions of their philosophy. Houtondji (1996) identifies four criteria to which ‘universal’ African philosophy must comply:

- African philosophy must be written texts not oral philosophy.
- African philosophy must be scientific.
- It must be exclusively of African geographic and ethnic origin, and
- African philosophy must be purely dialectical.

²⁶² The term ethnophilosophy will be discussed in 3.3 under Trends in African Philosophy.

²⁶³ Bell (2002: 43) states that “[t]he growing consensus is that there is no single ‘African’ philosophy, partly because African culture is highly pluralistic and partly because the nature of philosophy itself is such as to divert attention from singular and simple solutions or unitary systems to particular problems”.

Like Houtondji, Bodunrin (cited in Hallen, 2002: 20) contends that African philosophy is “a scholarly enterprise, [which] is critical argumentative and reactive in character”. According to Bodunrin, philosophy cannot be based upon values and beliefs of Africa’s indigenous cultures.

Professional African philosophers or universalists, argue that philosophy in the strict sense should involve reflection, argument, criticism, systematic thinking and be in a written format. According to them, African philosophy should comply with universal standards for philosophy which is the analytical methodology of Western philosophy. Universalists see African philosophy as the “scientific reconstruction of African philosophy concerning diverse matters of its identity and difference, problems and project, its objectives, discoveries, development, achievements and defects or failures” (Osuagwu, 1999: 25). The universalistic approach to African philosophy is favoured by Houtondji, Wiredu, Bodunrin, Boulaga, Towa, Keita, Serequeberhan, Appiah and Cabral.

3.2.3.2 The traditional or particularist view

African traditionalists oppose the philosophical views of professional African philosophers. They oppose the notion of philosophy as a universal enterprise. African traditionalists²⁶⁴ view the philosophy of communitarian African societies as uniquely African and define African philosophy from a historical and cultural specific point of view.²⁶⁵ They believe that African philosophy represents the unique reality of Africa’s collective philosophy.²⁶⁶ Africa’s collective philosophy is best illustrated in Oruka’s trends, viz. ethnophilosophy, sage philosophy and literature of the Negritude movement. Traditionalists are of the opinion that African philosophy’s “moral” definition proves its uniqueness. Imbo (2002: 91) and Kapagawani (1991: 82) argue that African philosophy is embedded in the

²⁶⁴ African traditionalists are proponents of *ubuntu*.

²⁶⁵ Teffo and Roux (2002: 163) state that “there is a strong tendency to approach philosophy in a culture specific way, which describes and discusses the views of the different cultural groups, and not to come up with views that are supposed to apply to all cultures on the continent”.

²⁶⁶ Theron (1995: 47) is of the opinion that “the African advocates of a dynamic, racially collective worldview are simply refusing to adopt the philosophical mentality as such”.

oral traditions of African culture, viz. the history, traditions, customs, religion, values, rituals, myths, songs, dances, poetry, proverbs, parables, stories, art and folk tales of traditional African people. Included amongst the traditionalists are Tempels, Ogotemeli, Mbiti, Senghor, Gyekye, Griaule, Mutwa, Kagame, Somé, Mbigi and others. The traditionalist approach to philosophy is based on the traditional African worldview and perceptions of reality which are irreconcilable with the Western worldview's notions of individualism, capitalism and analytical methodology. In support of the existence of Africa's unique philosophy, Solomon et al. (1996: 298) note that "until recently philosophy has been treated as a uniquely Western tradition but that there is a strong move towards multicultural and comparative philosophy".

Professional African philosophers stand in direct contrast to African traditionalists. Whilst professional African philosophers proclaim the universal character of African philosophy, African traditionalists emphasise African philosophy's unique or single African character. This constant criticism of professionalists and traditionalists of one another undermines the notion of an African philosophy. Professional African philosophers see their body of texts as individual rational, critical reflections on philosophy which comply with criteria set for universal philosophy of the Western tradition.²⁶⁷ Universalists characterise the intellect and mentality of indigenous African cultures as "precritical, prereflective, protoratorial, prescientific, emotive, expressive, poetic and so forth" (Hallen, 2002: 17). It seems as if the Western bias against African philosophy is perpetuated by professional African philosophers. Typical of the Western tradition, professional African philosophers²⁶⁸ support the claim that there is no single or unique African philosophy, just philosophy.

²⁶⁷ Ramose reminds us that the philosophical character of the Western tradition "was intent upon establishing and maintaining, in all the colonized parts of the world, the European conception of reality, knowledge and truth. The European colonial enterprise was a philosophical urge to impose a universal sameness" (2002{b}: 36).

²⁶⁸ Oyewumi (2002:403) describes universalists as "anti-nativists because of their very critical stance toward any espousals of an African culture. The other group, who entertains a notion of an African way of being, is referred to as nativist in their orientation. For the anti-nativists the problem of the avoidance of central issues stems from the fact that many African thinkers are cultural nationalists; the charge is that

Like feminism, traditional African philosophy is viewed as a Manichaeism. How does one equate African philosophy based on the Western tradition with traditional African views based on *ubuntu* philosophy and “vital force”? Was it not Aristotle himself who understood metaphysics, or first philosophy, to be theology? Ramose (2002{b}: 97); (2002{c}: 643) argues that “*ubuntu* philosophy ... is the continuation of religion and not theology”. St Thomas of Aquinas states the following in *De Potentia* I, IV (cited by Theron, 1995: 52): “For wisdom is twofold: namely, worldly wisdom, which is called philosophy, which considers lower or caused causes and judges according to them; and divine wisdom, which is called theology and which considers higher or divine causes and judges accordingly”. Even in the Western theory of ideas the chasm between Western science and Western spirituality is closing and the reason might be what postmodernists observe as a “growing boredom and rejection of positivism, formalistic scientism and systematic and rigorous philosophizing” (Mannion 2002: xii). Philosophy or wisdom does not, however, only encapsulate the thoughts and worldviews of Westerners. Postmodernism propounds a universal translucent philosophy where even the transcendental thoughts of the African, American-Indian, Maori and Aborigine can be accommodated. As Mannion (2002: xii) puts it: the wisdom of the ancients is missed in the twenty-first millennium. But who and what are these wise men called African philosophers?

3.2.3.3 African philosopher: a definition

Before a definition of African philosophy can be offered the question of who an African philosopher is must be clarified. Professional African philosophers, viz. Houtondji (1996), Serequeberhan (1991) and Ramose (1994) see the African philosopher as follows: Houtondji (1996: 65-66) emphasises the “essential point” when defining African philosophers as “the criterion now being the geographical

these thinkers are unwilling to acknowledge Africa’s failures and European technological superiority and thus focus simply on how different Africa is from the west. The anti-nativists argue further that the nativists set themselves apart from the West in order to shore up their self-esteem”.

origin of the author rather than an alleged content". Houtondji (1991: 121) draws the line "between African and non-Africans [philosophers], not because one category is better than the other, or because both might not, in the last analysis, say the same thing, but because the subject being African philosophy, we cannot exclude a geographical variable, taken here as empirical, contingent, extrinsic to the continent or of significance to the discourse". Houtondji defines the African philosopher in geographical terms and sets as prerequisite that such a person should be African.

Serequeberhan sees the task of an African philosopher as a calling. Serequeberhan (1991: xxii) sees the African philosopher as someone who has experienced a calling to do African philosophy. In his view the African philosopher must bring proof of his lived history in the African struggle for liberation against European oppression. According to Serequeberhan (1991: xxii),

[T]his call comes from a lived history whose endurance and sacrifice – against slavery and colonialism – has made our present and future existence in freedom possible. The reflective explorations of African philosophy are thus aimed at further enhancing and expanding this freedom – at thinking the origins of its possibility and the deficiencies of its actuality and thus in its further development and growth.

Ramose (1994: 2-3) sees the African philosopher as "an individual of geographically African origin, whose historical circumstance is particularly African in nature, and who can claim to subscribe to African culture and custom, can be given consideration as an African philosopher".²⁶⁹ Ramose views the African philosopher as one who subscribes to African culture and custom. Oruka's (2002{a}: 120) definition of an African philosopher seems to be less discriminating when he states: "African philosophy is seen to exist not as a peculiar phenomenon (for most philosophical problems transcend cultural and

²⁶⁹ Ramose (2002{b}: 37) posits that the African philosopher must base his philosophical reflections upon the culture and experience of African people.

racial confines) but only as a corpus of thoughts arising from the discussion and appropriation of authentic philosophical ideas by Africans or in the African context”.

Houtondji, Serequeberhan and Ramose implicitly state that for a philosopher to qualify as an African philosopher, he must be African. Whilst Houtondji and Ramose accentuate the philosopher’s geographical African origin as prerequisite, Serequeberhan and Ramose require an African way of life; proof that such person has supported the struggle for liberation and has a lived experience of African culture, values and customs.²⁷⁰

3.2.3.3.1 Critique of the definition

Outlaw (2002), B.J. van der Walt (2006) and Shutte (1993) view Houtondji’s definition of the African philosopher as “very narrow”, “particularly disturbing” and “at best naïve”. To add fuel to the philosophical debate, Houtondji (2002: 128) states that “African philosophers aim to *define* themselves and their peoples in the face of Europe, without allowing anybody else to do it for them, to *fix* and *petrify* it at leisure”. This is a direct threat to everybody else, other than Africans born and bred on the African continent, to maintain a hands-off approach when it comes to African philosophy. The policy of “philosophical apartheid”, practised by the Western tradition of philosophy, gave rise to a new exclusive group called professional African philosophers.

Houtondji (1996: 56-66) proclaims that a radically new definition of African philosophy has been produced with “the criterion now being the geographical origin of the author rather than an alleged specificity of content”. Outlaw (2002: 151) finds Houtondji’s definition of an African philosopher “particularly disturbing and at best naïve”. Outlaw (2002: 151) uncovers that Houtondji uses the word

²⁷⁰ Whilst professional African philosophers profess to support a universal philosophy, their narrow definition of an African philosopher is restrictive and typical of a closed society (see 4.11.3). African feminists suffer from the same restrictive symptoms and definition as African philosophers (see 4.12).

“African as a signifier not just for geographical origins but also for race/ethnicity. This attempt to circumscribe ‘African’ is frustrated by the play of forces that brings on a deconstructive encounter with the ‘white mythology’ infecting philosophy. At the core of this mythology is a substance-accident metaphysics grounding a supplemental philosophical anthropology: the soul, consciousness or person is regarded as the *essence* of the human being; their race, ethnicity, or gender is secondary or accidental”. Outlaw (2002: 152) argues that Houtondji’s ethnic and racist bias towards non-Africans who attempt to do African philosophy “leaves philosophy without universality and unity”. Whilst professional African philosophers proclaim on the one hand that philosophy is a universal praxis they propound on the other hand that African philosophy is exclusively African. Are African philosophers after all also bias and racist? Indeed, it seems as if African philosophers are not only ethnic and racist biased, but also sexist. According to Imbo (1999: 138), patriarchy in African societies is so deep-seated that African women are not considered philosophical. B.J. van der Walt’s (2006: 212) general impression of the definition of the word ‘African philosopher’ is that “many professional philosophers in Africa are of the opinion that only real (black) Africans can produce a genuine African philosophy. I think this very narrow definition of an African philosopher should be broadened to include philosophers from other continents who know the relevant issues of our continent”. This narrow definition of an African philosopher reveals the same ethnic, racist and sexist bias African philosophers and African feminists²⁷¹ have accused Western philosophers of.

The definitions of professional African philosophers, viz. Houtondji, Serequeberhan and Ramose are discriminating and very non-universal. Houtondji’s definition in particular, functions as a two-edged sword. Houtondji (1996: 66) sees African philosophy “as a methodical inquiry with the same universal aims as those of any other philosophy in the world. In short, it destroys the dominant mythological conception of Africanness and restores the simple,

²⁷¹ See 4.12.

obvious truth that Africa is above all a continent and the concept of Africa an empirical, geographical concept and not a metaphysical one". Whilst Houtondji hails the universal philosophical character of empirical Africa, it immediately excludes all the "everybody else" philosophers. Not only does his universal definition reveal racial discrimination against all non-Africans per definition but it also excludes all philosophers that subscribe to the African oral tradition. Not only are non-African philosophers of the universal tradition of philosophy discriminated against but traditionalists, although African, are found to be not logical or Western enough in Houtondji's eyes to be seen as African philosophers. African traditionalists might be African, but according to Houtondji's definition, not rational²⁷² enough to qualify as African philosophers!²⁷³

It is ironic that whilst professional African philosophers and African traditionalists find it hard to reach consensus on the existence and definition of African philosophy, American academics are producing "Africana Philosophy".²⁷⁴ Africana philosophy is according to Outlaw (2004: 90-92), an effort by academics in the United States of America to systematise works from *anybody* who has "the same philosophical concerns as African-descended people". Thanks to American philosophers, the universal playing field of African philosophy can now be entered by non-Africans. It is interesting to note that whilst Africans accuse the Western white male of philosophical racism, African philosophers, clones of

²⁷² More (2004: 155) argues that if African philosophy is perceived as philosophy of geographical Africa, then philosophy by white South Africans must also be recognised as African philosophy. He suggests that philosophical works produced by white South Africans concerning problems related to Africa and Europe should qualify as African philosophy. Kaphagawani (1999: 185) views Houtondji's geographical definition of African philosophy as biased as it excludes valuable and potential contributions from being made by "exterior" philosophers of the world.

²⁷³ See 4.11.3 for an understanding of *ubuntu* and the Other.

²⁷⁴ Lucius Outlaw (2004: 90-92) speaks of the term "Africana Philosophy". He sees Africana Philosophy as an effort by professional philosophers in the United States of America to "collect and organize philosophical and related articulations (writings, speeches, etc.), practices (of research, conferencing, teaching, etc.), and traditions of Africans and peoples of African descent". The difference however is that works of people not African or not of African descent, but who have the same philosophical concerns as African-descended people, can contribute to Africana Philosophy. Outlaw finds the development of an excellent graduate programme in Africana Philosophy in the USA a pressing need. According to Mazrui (2002: 21), the term *Africana* indicates that it involves the Black world as a whole.

these Western white males' universal analytical philosophy, suffer from the same deformity: discrimination.

3.2.3.4 African philosophy: a definition

Finding *the* definition for African philosophy seems to be as daunting a task as it is finding *the* definition for philosophy. There are as many definitions of African philosophy as there are African philosophers. Definitions of African philosophy are given from either a universalist or a traditional African perspective. From a universalist point of view, professional African philosopher, Houtondji (1996: 120), defines African philosophy as follows: "By 'African philosophy' I mean a set of texts, specifically the set of texts written by Africans and described as philosophical by their authors themselves". Houtondji (2002: 151) adds that African philosophy is conceived "as a methodical enquiry with the same universal aims as those of any philosophy in the world". Oruka (2002{a}: 120) defines African philosophy as not "a peculiarly African phenomenon but only as a corpus of thoughts arising from the discussion and appropriation of authentic philosophical ideas by Africans or in the African context". Oruka (2002{a}: 120) views philosophy as "a discipline that, in the strict sense, employs the method of critical, reflective, and logical enquiry. African philosophy then is not expected to be an exception to this meaning of philosophy".

While both Houtondji and Oruka see African philosophy as a universal philosophy employing analytical methodology, Oruka, in contrast to Houtondji, does not require written texts as a prerequisite for African philosophy. According to Oruka (1990{a}: xxiii), writing should not be a prerequisite for philosophy²⁷⁵ as philosophy does not depend on literacy and therefore includes the oral philosophy of philosophical sages as African philosophy.²⁷⁶ Oruka (1990{a}: xvi-

²⁷⁵ In the introduction to *Sage Philosophy*, Houtondji remarks that Oruka's work is "in contrast to the claim that philosophy is and can only be a written enterprise" (Oruka 1990{a}: xv).

²⁷⁶ Philosophers who characterise philosophy as a written praxis only, seem to have lost track of the African reality. The Mail and Guardian (2007, November 23-29: 10) reports that in South Africa alone 9,6 million adults are illiterate. "Of these 4,7 million have never been to school and are considered totally

xvii) defends the philosophical thought of the illiterate sages by referring to the philosophies of both Thales and Socrates who did not write their thoughts down: this was “a function carried out by others”.

From a traditional African or particularist point of view, Gyekye (1995: 33) defines African philosophy as an “acquired appellation” which is based on its “philosophical reflections upon the culture and experience of African peoples” (Gyekye, 1995: 33). Mbiti (1990: 2) defines African philosophy as “the understanding, attitude of mind, logic and perception behind the manner in which African peoples think, act or speak in different situations in life”. The definitions of both Gyekye and Mbiti represent the traditional African worldview. Professional African philosophers perceive the traditional African worldview as unscientific, “emotive mystical and unlogical” (Oruka, 2002{a}: 121; Houtondji, 1983: 66). The traditional African worldview represents the collective or *ubuntu* philosophy of Africa’s indigenous people.

These definitions clearly illustrate the philosophical divide between professional African philosophers or universalists and African traditionalists. Whilst universalists subscribe to individual critical thought, traditionalists support a collective philosophy. Kiros (1999: 5) gives an alternative inclusive definition of African philosophy when he defines African philosophy as “a set of written texts, when available, as well as orally transmitted texts, that deals with the human condition in Africa on which Africans and non-Africans reflect”. Kiros’ inclusive definition of African philosophy provides a springboard from which meaningful discourse on African philosophy can take place, especially as this definition includes the philosophies of universalists and traditionalists.

illiterate; another 4,9 million dropped out of school before grade seven and are termed functionally illiterate”.

The question of whether African philosophy is a uniquely African philosophy or just part of the universal enterprise called philosophy²⁷⁷ depends whether one supports the universalist or the traditionalist viewpoint of African philosophy. Whereas African traditionalists propagate the uniqueness of African philosophy, professional African philosophers argue that African philosophy “is viewed as a universal activity of philosophy” (Orika, 2002{a}: 120). Professional philosophers such as Orika (2002{a}:120) are adamant that “the talk of a uniquely African conceptual framework or way of thinking (African mentality) with respect, at least, to the discipline of philosophy is not entertained”.

In an attempt to discern between the different categories in African philosophy, Orika’s famous trends in African philosophy will be discussed.

3.3 ORUKA’S SIX TRENDS IN AFRICAN PHILOSOPHY

During the debate on African philosophy Kenyan philosopher, Henry Odera Orika, identified the need to structure the discourse on African philosophy. Orika saw African philosophy as the African continent’s philosophical reaction to its colonial legacy. In 1978, Orika presented his seminal paper, *Four Trends in Current African Philosophy*²⁷⁸ and introduced his famous four trends or approaches which were to become the template for African philosophy. Orika’s *Four Trends in Current African Philosophy* is perceived as the first attempt to construct the history of African philosophy. Orika (2002{a}:120) observes African philosophy “in terms of Africa’s past, current, or potential contributions to philosophy in the strict meaning of the term”. Since Orika, various other attempts

²⁷⁷ Theron (1995: 41; 44) is of the opinion that “[i]n so far as Africans have not become used to making abstractions at the level required for philosophy they should not be encouraged to imagine that in the nature of things there must be an African philosophy. There is only philosophy, as there is only physics. There was no Jewish physics, only physics as incidentally if very well practiced by Jews. And if there should emerge such matter thought up by Africans alone, then this will be entirely non-signifying with respect to its truth or falsity... So for African philosophy to become a reality of note ... it will have to take up the task of abstractive analysis, a procedure that discloses nothing distinctively African, English, French or anything else, even though an African may find his own distinctive way of performing this common task as in the main, Latins do it differently from Germans”.

²⁷⁸ Henry Odera Orika’s *Four Trends in Current African Philosophy*, was presented at the William Amo Symposium in Accra, 24-29 July 1978.

have been made “to construct a mental map of African philosophy, laying out the various forms and arguing for the primacy of one over the others ... [laying] claim to territory by implicitly wresting it away from ‘universalist’ Western philosophy” (Janz, 2004: 109). Oruka’s four trends in African philosophy include:

- Ethnophilosophy.
- Philosophical sagacity or sage philosophy.
- Nationalist-ideological philosophy or political philosophy, and
- Professional philosophy.

Ethnophilosophy represents the collective or folk philosophy of traditional African societies. Oruka (2002{a}: 121) defines ethnophilosophy as “works or books which purport to describe a world outlook or thought system of a particular African community or the whole of Africa”. Sage philosophy represents the individual philosophies of sages in traditional Africa. Oruka (1990{a}: 5; 2002{a}: 121) defines sages as “rigorous indigenous thinkers ... men and women (sages) who have not had the benefit of modern education. But they are none the less critical independent thinkers who guide their thought and judgments by the power of reason and inborn insight rather than by the authority of the communal consensus”.

National-ideological philosophy or political philosophy is the post-colonial philosophical perspective of African politicians and statesmen who led the struggle for independence in Africa. Oruka (2002{a}: 122) finds this trend to consist of African philosophical literature from politicians and statesmen and that “some of works in it are not in the strict sense, really philosophical”. Professional African philosophy consists of the work of academic African philosophers from Africa who were educated in the Western philosophical tradition. Oruka (2002{a}: 123) defines this trend as “works and debates of the professionally trained students and teachers of philosophy in Africa”. Oruka’s four trends provide a conceptual framework for African philosophy and must not be seen as four

different types of African philosophy but rather as four methods used in African philosophy (Kapagwani, 1991: 181). Outlaw (2002: 146) sees Oruka's "currents" in African philosophy as very "useful for initial surveys of the field of African philosophy, but they only provide a rough view of the landscape". In *Sage Philosophy*, Oruka (1990{a}: xx) added another two trends to the existing four trends, viz.:

- The hermeneutical trend; and
- The artistic or literary trend.

According to Oruka (1990{a}: xx), the hermeneutical trend consists of a "philosophical analysis of concepts in a given African language to help clarify meaning and logical implications arising from the use of such concepts". The literary trend consists of the narrative element in African philosophy (Oruka. 1990{a}: xxi). These trends will be discussed in more detail.

3.3.1 Ethnophilosophy

Ethnophilosophy represents the collective worldview of traditional African societies. Broodryk (1997: 33) incorporates *ubuntu* in the "brotherhood of ethnophilosophy"²⁷⁹ because it represents the collective personhood and collective morality of the African people, best described by the Xhosa proverb, *umuntu, ngumuntu ngabantu* or "I am a person through other persons". *Ubuntu*, as ethnophilosophy, represents the collective philosophy of either a specific African community or traditional African societies as a whole. This trend is the only of Oruka's six trends which represent the collective worldview in African philosophy. Oruka's other trends represent individual philosophies. This subsection deals with the following:

²⁷⁹ Shutte (1993: 15) describes ethnophilosophy, a term coined by Nkrumah, as "a worldview or system of thought of a particular African community or language group or even of the whole of Africa. Strictly speaking ethno-philosophy only acquires systematic written formulation in the works of modern writers (Senghor and Tempels for instance) who combine the knowledge of African traditional thought and a European philosophical education in their work".

- Tempels' Bantu philosophy.
- The trend ethnophilosophy.
- The critique of professional philosophers.
- The critique of African feminists, and
- Optimism about ethnophilosophy.

3.3.1.1 Tempels' Bantu philosophy

The founder of ethnophilosophy, the Belgian priest Tempels, believed his discovery of the Baluba worldview in 1943 affirmed the idea that Africans have a collective philosophy. He found the Baluba's collective philosophy totally different from Western philosophy and documented his observations as *Bantu Philosophy* (1945). In *Bantu Philosophy*, Tempels believed that he had not only disclosed the collective worldview of the Baluba but also provided an understanding of African people (1969: 21). Tempels (1969: 75) describes the most fundamental and basic concept in Bantu thought as "vital force" or African spirituality, saying that "mythological *Bantu philosophy*, namely the wisdom of the Bantu based on the philosophy of vital force²⁸⁰ is accepted by everyone; is not subjected to criticism, for it is taken by the whole community as the imperishable truth". Temples maintains ethnophilosophy is based on African Religion.

Bantu Philosophy represents the Baluba's worldview as a spiritual or religious philosophy in which man occupies the central position. African Religion, life force, or "vital force" sees everything "[f]rom God through man, down to the grain of sand, as a seamless whole. Man in his role as person, is the centre of this universe" (Tempels, 1969: 46). According to Tempels, Africans see God as the creative Force that endows every human, animal, vegetable and mineral with

²⁸⁰African tribal societies typically embrace vital force or animism. Animism is the belief that entities throughout nature are endowed with souls, often thought to be souls of ancestors, who are no longer individually remembered. "Nature, for most traditional Africans, is full of living forces. Spirits dwell within it and human beings can interact with them ... The African conviction that human beings are intimately connected to nature is part and parcel of the traditional belief that nature is essentially spiritual" (Solomon et al, 1996: 171).

vital or life force; all forces²⁸¹ are connected and affect each other (Tempels, 1959: 58-60). “Force” and “being” are intimately linked in African culture: “Force is the nature of being; force is being, being is force” (Tempels, 1969: 51). Everything in Baluba reality interacts with the metaphysical. Different forces are distinguished from one another in an orderly manner. (Tempels, 1969: 55). According to Tempels, Bantu wisdom or knowledge consists of the “Bantu’s discernment of the nature of beings, of forces; true wisdom lies in ontological knowledge” (Tempels, 1969: 71). He sees Bantu knowledge as metaphysical in nature (Tempels, 1969: 73) and Bantu moral standards depend “on things ontologically understood” (Tempels, 1969: 121).

Tempels (1969: 21-24) attempted to convince Europeans that a comprehension of the collective African worldview or Bantu philosophy was essential and had to be taken into account in the conversion of Africans to Christianity. For Tempels, the conversion of Africans could only be successful if there was a fusion between African Religion and Christianity: “The moral system that we wish to teach them, should be linked up with this supreme final cause, this absolute norm, this fundamental concept: vital force” (Tempels, 1969: 179). Tempels advocated for the integration of Christianity into traditional African thought. He (1969: 187) warned that the “superficial Europeanization of the masses” will lead to the destruction of African culture.²⁸² Not only Tempels but also Nkrumah foresaw that Christianity would erode traditional African values. Nkrumah (1998: 69) emphasises the fact that “man in Africa is regarded as primarily a spiritual being, a being endowed originally with a certain inward dignity, integrity and values. It stands refreshingly opposed to the Christian idea of the original sin and degradation of man”.

²⁸¹ According to Tempels, these life forces are hierarchical. At the top is God, followed by the forefathers, the dead of the tribe or intermediaries, the living and then the lower forces, viz. animals, vegetables and minerals.

²⁸² Tempels formed the *Jamaa Movement*, an interdenominational religious movement in the former Belgian Congo in an attempt to translate the message of Christianity into the African context.

Through *Bantu Philosophy*²⁸³, Tempels proved that Africans possess a well-developed collective philosophy and that Africans are indeed capable of philosophical thought. It is said that “a significant number of African intellectuals were very pleased: the humanity of Africans was defended and vindicated; Africans too were reasoning beings, thus were human, even more importantly, since a European said so” (Outlaw, 2002: 143). By disclosing this new-found truth about the Baluba to Europeans in *Bantu Philosophy*, Tempels placed Africa on the philosophical agenda of the West. His construction of a unique collective African philosophy stirred heated philosophical debate between the West and Africa. Most important, *Bantu Philosophy* “challenged the rationalizations of the colonisation, enslavement, and exploitation of Africans and the resources of Africa” (Outlaw, 2002: 143).

Tempels’ *Bantu philosophy*, or folk wisdom as Oruka (1990{a}: 23) named it, was renamed as ethnophilosophy by Houtondji. Houtondji (2002: 125) finds Tempels’ *Bantu Philosophy* to be “an ethnological work with philosophical pretensions, or more simply, if I may coin the word, a work of ethnophilosophy”.²⁸⁴ Houtondji categorises works of anthropologists, sociologists, ethnographers and philosophers based on the myths, folklores and folk wisdom of the collective worldview of African peoples as ethnophilosophy (Oruka, 1990{a}: 164).

3.3.1.2 The Trend Ethnophilosophy

Ethnophilosophy embodies the collective attempts of Tempels, ethnographers, anthropologists and ethnophilosophers who endeavoured to identify specific worldviews (*weltanschauung*), wisdom and philosophies in African societies. The aim of these attempts was to bring an understanding of African identity and its

²⁸³ According to Irele (cited in Bell 2002:23), “[t]he attraction of Tempels’ work resides not only in its apparent vindication of the African claim to an elevated system of thought but also in it providing a conceptual framework for the African mode of thought. The vitalist emphasis of Bantu philosophy ties in very well with the epistemology implicit in Senghor’s *Négritude*”. Houtondji (1991: 34-44) discusses the role Tempels’ *Bantu Philosophy* played in the development of African philosophy. Bell (2002: 22) describes *Bantu philosophy* as the most important work in the early genre of ethnophilosophy.

²⁸⁴ Shutte (1993: 15) claims Nkrumah coined the word ethnophilosophy.

collective philosophy since pre-colonial times. These philosophical attempts aim at analysing “the traditional cultures of Sub Saharan Africa, such as the Bantu and the Yoruba, using terms drawn from European philosophy” (Carel et al., 2004: 101). Ethnophilosophy reflects the collective African worldview of a specific group or tribe, viz. Yoruba philosophy and Dogon philosophy, or the collective philosophy of the whole of Africa. Ethnophilosophy reflects the communal or collective philosophy of traditional African societies and is also known as *ubuntu* (Broodryk, 1997: 33). As ethnophilosophy represents the collective philosophy of traditional African societies, individual philosophies are not entertained in this trend.

Oruka (2002{a}: 121) defines ethnophilosophy as “works or books which purport to describe a world outlook or thought system of a particular African community or the whole of Africa”. Oruka (2002{a}: 121) finds ethnophilosophy’s “folk philosophy” very different from Western philosophy’s individualistic, scientific and logic tradition. The collective worldview of traditional African societies juxtaposes Western rationality. In ethnophilosophy, “communality as opposed to individuality is brought forth as the essential attribute of African philosophy” (Oruka, 2002{a}: 121). In contrast with Western individualism, African communitarianism is portrayed by African proverbs, viz. the Xhosa proverb *umuntu, ngumuntu ngabantu* and the Sotho proverb *motho ke motho ka batho* which negates Western individualism and affirms that a person can only be human through other persons. African proverbs affirming “I am because we are, and since we are, therefore I am” (Mbiti, 1991: 123); a ‘person is a person through other people’ and ‘injury to one is injury to all’ emphasise that the traditional African person is not seen as an individual but as part of the whole, or community. Membership of the African community defines the African person. An African individual obtains personhood²⁸⁵ only through membership of the community and ceases to be a person if detached from the community (B.J. van der Walt, 2006: 113).

²⁸⁵ See 4.7.4.

The collective African worldview is represented by an oral philosophy. As the Baluba, Dogon, Yoruba and other traditional African societies were illiterate, Tempels, anthropologists and ethnographers utilised different methods to extract and transcribe ethnophilosophy from the sources of these oral cultures. Hallen (2002: 50) states that the sources of ethnophilosophy are embodied in the “authentic traditional culture of the pre-colonial variety of Africa prior to modernity”. These “pre-colonial” and “pre-scientific” sources are embedded in the oral accounts of traditional African societies. Kapagwani (1991: 182) finds the sources of ethnophilosophy to be “embodied in the traditional wisdom, institutions, myths, folktales, beliefs, proverbs and languages in Africa”. Okot p’Bitek sees the sources of the oral tradition²⁸⁶ “as expressed through their songs, dances and material culture” as the primary texts that constitute the record which he calls “the people’s philosophy of life” (cited in Imbo, 2002: 91). The sources of ethnophilosophy are: traditions, customs, values, law, rituals, myths, songs, dances, poetry, proverbs, parables, stories, art and folk tales of the African people.²⁸⁷ Ethnophilosophy is embedded in African Religion. Mbiti (1991) states: “African philosophy is African Religion”.²⁸⁸

Orika (1990{a}: 9) states that the works of Tempels, Kgame, Senghor, Mbiti, Horton, Ruch, Onyewuenyi and Anyanwu can be regarded as ethnophilosophy. Tempels’s *Bantu Philosophy*; Mbiti’s *African Religion and Philosophy*; Griaule’s *Conversations with Ogotemmeli*; and Hallen and Sodipo’s research among the

²⁸⁶ Mazrui (2002: 5) states that by the oral tradition he means two things: “on the one hand, the handing down, by word of mouth, from one generation to the next, of details of specific past events, such as the outcomes of wars, outbreaks of epidemics, etc. and, on the other hand, the romantic versions of the past which take the form of legends, ballads, and stories of ancestry. Clearly it is more difficult to gauge the accuracy and reliability of these oral stories – but that is simply a new challenge. It does not destroy the validity of the material”. According to Mutwa (2003: xxv), the keepers of traditional stories are called “guardians of the tribal history”. To become this kind of storyteller requires “an aptitude for precise memorisation” and also the dramatic and artistic recitation of stories.

²⁸⁷ “Thoughts of the individual men and women of intellect (sages, philosophers, poets, prophets, scientists, etc.) constitute the critical part of a tradition or culture while beliefs and activities of the type found in religion, legends, folk tales, myths, customs, superstitions, etc. constitute the uncritical part” (Oruka, 2002: 121).

²⁸⁸ “The distinction between philosophy and religion, as well as the distinctive notions of reason and faith is a Western concept” (Soloman et al. 1996: 80).

Yoruba medicine men, are all regarded as prime examples of ethnophilosophy. The philosophical contributions of Mbiti, Mutwa, Senghor, Gyekye, and Kagame also represent the trend ethnophilosophy.²⁸⁹ Kagame's *La philosophie Bantu-Rwandaise de l' être* (1956) reconstructs the philosophy underlying the Rwandan worldview and concurs with Tempels that all Africans in traditional African societies share the same collective philosophy. Abraham's *The Mind of Africa* (1960: 4) confirms the "communal mind" of traditional Africans people. Mbiti's *African Religion and Philosophy* (1991: 5) confirms that all traditional African people share a communal existence based on African Religion. Mbiti maintains traditional African people are deeply religious.²⁹⁰ According to Mbiti (1991), it is impossible to separate African Religion from African philosophy in the traditional African context. Nkrumah's *Consciencism* (1998) confirms that ethnophilosophy represents Africa's collective philosophy, either as the worldview of a specific African community or of Africa as a whole. Not only Nkrumah but also Nyerere "developed ethnophilosophical observations about the communal character of African societies into African socialism which they used to solve concrete political problems in Ghana and Tanzania" (Carel et al., 2002: 101).

Ethnophilosophers are convinced that the collective thought of the African traditional people represents a unique or single African philosophy.²⁹¹ They see ethnophilosophy as "a blend between European and African traditions in order to create theories that can be effectively applied to the problems of the modern state" (Carel et.al., 2004: 101). B.J. van der Walt (2006: 208) states that the aim of ethnophilosophy was to:

²⁸⁹ B.J. van der Walt (2006: 208) notes the following categories of ethnophilosophers: White ethnophilosophers: Tempels and Apostel; Black ethnophilosophers: Kagame and Mbiti; African personality philosophers: Blyden; Negritude philosophers: Césaire and Senghor.

²⁹⁰ Mutwa (1998), Bhengu (2006) and Mbigi (2005) confirm that the communal worldview of traditional African people is represented in *ubuntu* philosophy.

²⁹¹ Oruka (2002{a}: 120) finds two distinct senses of the expression African philosophy. In the debased sense African philosophy is explained as *uniquely* African, radically different from European philosophy, and considered non-rational, intuitive and mystical. In the strict sense philosophy is viewed as a universal discipline, critical, reflective and logical. Besides the two broad senses, he detects a third sense, which has aspects of both, but is not clearly articulated.

- revive amongst Africans a respect and appreciation for their indigenous culture;
- note that the sole purpose of ethnophilosophy was to convince Europeans that Africans are human beings and capable of philosophical thought; and
- remind us that ethnophilosophers invented a unique African philosophy to prove that it was radically unEuropean.

According to B.J. van der Walt (2006: 208), ethnophilosophers first tried to revive respect and appreciation for African culture among Africans and then tried to prove to the European public that Africans are human and capable of philosophical thought. Professional African philosophers deny the existence of ethnophilosophy's unique or single African philosophy and describe it as "emotive, mystical and unlogical" (Oruka, 2002{a}: 121). Although philosophers such as Senghor, Nyerere, Nkrumah, Tempels, Kagame, Hallen and others are convinced of the existence of a unique collective African belief system in traditional African societies, professional African philosophers question ethnophilosophy's methodology and claims. According to them this collective belief system is outmoded and irrelevant in modern day Africa.

Ethnophilosophy was unfortunately 'invented' by Tempels. The mere fact that *Bantu Philosophy* served as textbook on how to convert Africans to Christianity, seems to have outlawed this trend. Reality is, however, that although the trend as such is in disregard, nothing has changed concerning the fact that Africans in traditional societies practise a collective philosophy called *ubuntu*. In these closed societies²⁹² throughout Africa, ethnophilosophy or *ubuntu* represents the unique or collective philosophy or worldview of indigenous African people.²⁹³ *Ubuntu* is unique in the sense that it differs dramatically from Western

²⁹² Traditional African societies are generally categorised as closed societies. See 4.11.3.

²⁹³ *Ubuntu* is the shared value and belief system of traditional African societies. See 4.6.1

philosophy.²⁹⁴ *Ubuntu*, the collective African belief system of traditional African societies, exists, just as Senghor, Nyerere, Nkrumah, Kagame Broodryk, Mbigi and Bhengu proclaim. Mutwa, Mbiti, Somé and African feminists²⁹⁵ confirm the existence of indigenous Africa's oral collective philosophy or *ubuntu*.

In these indigenous communitarian societies, *ubuntu* philosophy's group consensus is its survival mechanism. The community is also its source of values (Van Blerk, 2004: 200). This "outmoded traditional belief system" is not irrelevant to either Africa as a whole or South Africa. One of the goals of the African Renaissance is to revive traditional African culture and its accompanying value system which had been eroded by slavery, colonisation, neo-colonisation and apartheid in the case of South Africa. The Moral Regeneration Movement in South Africa strives towards the revival of *ubuntu* and its accompanying African values.

3.3.1.3 The Critique of Professional Philosophers

The philosophical tradition of the West and professional African philosophers negates the existence of a unique African philosophy. They deny that the philosophical notions of traditional African societies represent "philosophy". They are biased against ethnophilosophy and regard it as 'inferior, degenerate, retarded and debased'. The attack of professional African philosophers on ethnophilosophy is firstly based on the trend's assistance of colonisers in their civilising mission of Africans in the Belgium Congo; secondly, on the fact that ethnophilosophy exerted itself to convince the European public that Africans are not subhuman but human after all; and thirdly, on the idea that there are no philosophical notions in Tempels' so called "collective philosophy" or Oruka's "folk philosophy".

²⁹⁴ Chapter Four highlights the difference between *ubuntu* and Western thought.

²⁹⁵ See 4.12.

Professional African philosophers view philosophy from a Western point of view and define philosophy as an individual critical inquiry²⁹⁶, opposing ethnophilosophy's notion of being a collective or folk philosophy. Oruka's view of philosophy is that it should reflect "the method of critical, reflective, and logical inquiry" (Oruka, 2002{a}: 120). According to Oruka (2002{a}: 120), ethnophilosophy does not comply with the universal standards set for Western philosophy and does, therefore, not constitute philosophy in the strict sense. Professional African philosophers regard ethnophilosophy as an oral, non-rational, pre-scientific, intuitive, emotive²⁹⁷ and mystic philosophy which differs radically from philosophy in the strict sense or critical tradition. According to Oruka (2002{a}: 121), the "[t]houghts or works of the individual men and women of intellect (sages, philosophers, poets, prophets, scientists, etc.) constitute the critical part of the tradition while beliefs and activities of the type found in religions, legends, folk tales, myths, customs, superstitions, etc. constitute the uncritical part".

Oruka (2002{a}: 121) finds that the shortcoming of ethnophilosophy lies in the fact that it represents the group's mythical, uncritical²⁹⁸ and emotive part of the African tradition.²⁹⁹ Oruka's (1990{a}: 43) critique against ethnophilosophy lies therein that he regards it as a "communal consensus. It identifies with the totality of customs and common beliefs of a people. It is a folk philosophy ... it is not identified with any particular individuals ... It is at best a form of religion". Because ethnophilosophy does not represent individual thought Oruka does not

²⁹⁶ In this sense African philosophy is not regarded as uniquely African, but as a corpus of "authentic philosophical ideas by Africans or in the African continent". See *Four trends in current African philosophy* (2002: 120)

²⁹⁷ Senghor states that whilst Greeks utilise logic for philosophical enterprise, Africans in contrast appeal to emotion.

²⁹⁸ According to Oruka (2002{a}: 121), the "[t]houghts of the individual men and women of intellect (sages, philosophers, poets, prophets, scientists, etc.) constitute the critical part of a tradition or culture while beliefs and activities of the type found in religion, legends, folk tales, myths, customs, superstitions, etc. constitute the uncritical part".

²⁹⁹ Irele (cited in Bell, 2002: 23) finds the vitalist emphasis of Bantu philosophy to tie in well with the epistemology implicit of Senghor's *Negritude*.

entertain it as philosophy.³⁰⁰ As a critic of this trend, Oruka denies ethnophilosophy philosophy status. Oruka (1990{a}: xv) argues that this trend leaves the impression that Africa “is a place of philosophical unanimity allowing no room for a Socrates or Descartes”. According to him, ethnophilosophy suggests that indigenous Africans cannot detach themselves from beliefs and taboos to offer a critique of such beliefs. In *Sage Philosophy*, Oruka opposes the notion of ethnophilosophy as a folk philosophy by contending that individual rational thought does exist among African sages. In contrast to other professional African philosophers, Oruka critiques only the fact that ethnophilosophy represents a folk philosophy and not the fact that it represents the oral tradition.

Most professional African philosophers such as Houtondji, Wiredu, Bodunrin and others reject ethnophilosophy as African philosophy. Professional African philosophers do not accept that the whole community can philosophise as it is “an open denial of Plato’s maxim that the multitude cannot be philosophic” (Oruka, 2002{a}: 121). Houtondji (1996: 120), one of the fiercest critics of ethnophilosophy, was the first African philosopher to criticise ethnophilosophy’s communal approach to philosophy, stating that ethnophilosophy is no philosophy but merely a “Eurocentric response to European critics of African philosophy”.³⁰¹ He perceives ethnophilosophy as a myth, a trend that “maintains the fiction of a collective philosophy” (Houtondji, 2002: 128). Houtondji (2002: 128) is adamant about excluding ethnophilosophy from African philosophy because *Bantu philosophy* was aimed at Europeans - colonials and missionaries – and is therefore a myth (2002: 131). According to Houtondji (2002: 132), “the ethnophilosopher made himself the spokesman for All-Africa facing All-Europe”. He denies ethnophilosophy philosophical status, as the oral transmissions of traditional African societies are not regarded as philosophy in the strict sense of

³⁰⁰ As the father of sage philosophy Oruka defends the existence of Africa’s individual rational thinkers, the sages or wise men and women.

³⁰¹ Houtondji (2002: 126) argues that on closer scrutiny it becomes clear that ethnophilosophy is not addressed to Africans, but to Europeans, “and particular to two categories of Europeans: colonials and missionaries”.

the word. Because ethnophilosophy lacks both writing and rational inquiry, Houtondji characterises it as a “pseudophilosophy”.

Houtondji (1996: 120) defines ethnophilosophy as a “pre-philosophy mistaking itself for a metaphilosophy, a philosophy which, instead of presenting its own rational justification, shelters lazily behind the authority of a tradition and projects its own thesis and beliefs on that tradition”. According to him, philosophy must neither be confused with the traditions and worldviews of folk wisdom nor should it create the belief that all Africans share the same thought patterns.³⁰² Houtondji criticised Kagame’s research which supported Tempels’s view of the collective African consciousness, as ‘mythological in nature’. He finds Kagame “on the whole the prisoner of an ideological myth, that of a collective African philosophy” (Houtondji, 1983: 42). Another ground on which Houtondji denies ethnophilosophy the status of philosophy, is the fact that Tempels was not African: “A work like *Bantu Philosophy* does not belong to African philosophy, since its author is not African” (Houtondji, 1983: 64). Bodunrin (Bell, 2002: 27) argues that “African philosophy must be as opposed to traditional cultural beliefs and popular folk behaviour as Socrates and Plato were opposed to popular beliefs and opinions”.

Houtondji sees philosophy as a universal enterprise which should consist of written texts by Africans. Houtondji’s hard-line stance on writing is supported by universalists Bodunrin, Keita and others who require written texts as a prerequisite for African philosophy (Imbo, 1998: 57). Professional African philosophers such as Houtondji, Masolo, Towa, Keita, Imbo³⁰³, Eboussi-Boulaga Karp and others agree that ethnophilosophy³⁰⁴ is not philosophy. they are adamant that no unique “philosophy” exist in Africa, only beliefs.

³⁰² Imbo (1999: 71) supports Houtondji’s view stating “[c]ontemporary Africa is not the Africa of our ancestors”.

³⁰³ Imbo agrees with Houtondji’s assessment of ethnophilosophy as Eurocentric. Imbo however criticises Houtondji by saying that “his own procedure is equally Eurocentric” (Imbo, 1998: 22).

³⁰⁴ Bell (2002: 23) subdivides ethnophilosophy into two categories, viz. universalistic ethnophilosophy and pluralistic ethnophilosophy. (a) Universalistic ethnophilosophy assumes all Africans share the animistic

Like Oruka and Houtondji, Hallen (2002) and Wiredu (1980) see ethnophilosophy as a pre-scientific philosophy. Ethnophilosophy creates a standard “that excuses African thought and philosophy from having critical, reflective rational, scientific, and progressive content produced by individual thinkers” (Hallen, 2002: 51). Wiredu (1980: 39) finds traditional African societies comparable with societies in the pre-scientific stage of development and therefore finds the interest anthropologists have shown in African thought, understandable. However, he says “instead of seeing the basic non-scientific characteristics of African traditional thought as typifying traditional thought in general, Western anthropologists and others besides have mistakenly tended to take them as defining a peculiarly African way of thinking, with unfortunate effects”. Wiredu is adamant ethnophilosophy does not represent all African modes of thought.

Serequeberhan (1991) harbours the same attitude towards ethnophilosophy as other professional African philosophers. He sees ethnophilosophy’s only aim to expose the African mentality to European missionaries who were tasked with civilising the African. Serequeberhan (1991: 17) questions the racist agenda of Tempels and other ethnophilosophers who see themselves adequately trained and fit to document the African worldview, as embodied in its religion, customs and rituals. According to him, traditional African people are posed as not having the capacity of philosophical thought to record their folk philosophy. Serequeberhan says ethnophilosophy boils down to a “method of control” of the African people. He deduces this “method of control” from *Bantu Philosophy* where Tempels found the Baluba people unable to formulate their folk philosophy as they did not possess either the necessary philosophical skills or vocabulary to articulate their philosophy. In *Bantu Philosophy* Tempels (1969: 36) reveals: “We do not claim, of course that the Bantu are capable of formulating a philosophical treatise, complete with an adequate vocabulary. It is our job to proceed to such

worldview, e.g. Tempels’ *Bantu philosophy*, where the animistic worldview is universally applied to all African thought patterns; (b) pluralistic philosophy aims to indicate culture differences within the African context.

systematic development. It is we who will be able to tell them, in precise terms, what their inmost concept of being is. They will recognise themselves in our words and will acquiesce, saying 'you understand us: you know us completely: You 'know' in the way we 'know'".

Professional African philosophers, viz. Appiah, Towa, Mudimbe, Eboussi-Boulaga and others argue that Tempels' *Bantu philosophy* is not African philosophy. According to them, it is the Thomastic-Catholic philosophy of a Catholic missionary who could not distinguish between philosophy and a pre-scientific worldview. The Negritude poet Césaire critiques ethnophilosophy as a "diversio". According to Césaire (cited in Houtondji, 2002: 127), "ethnophilosophy diverts attention from the real political problem experienced by Africans - the reality of colonial exploitation – by fixing it on a level of fantasy". Césaire accuses Tempels of "ignoring the stark historical situation by prescribing the spiritual values of the Bantu peoples as a universal remedy for the ills of the former Belgian Congo".

When one views professional African philosophers' critique of ethnophilosophy it is comprehensible why some conclude that traditional Africa has collective philosophy and "that the African mind is the savage mind, accessible to Western anthropology, but not to philosophy" (Janz, 2004:107). African traditionalists, however, hold a different viewpoint.

3.3.1.4 The Critique of African Feminists

Whilst ethnophilosophers claim their stake in African philosophy, professional African philosophers deny ethnophilosophy its philosophical status by pronouncing it a 'degenerate, retarded and debased' trend which is irrelevant to the discourse of African philosophy. In the midst of this never-ending philosophical struggle between ethnophilosophers and professional African

philosophers, African feminists³⁰⁵ bring a new dimension to the discourse on ethnophilosophy. They criticise ethnophilosophers for concentrating on the collective belief system in traditional African societies whilst “ignoring the structures in African societies that oppress and marginalize women. To uncritically accept those belief systems is to take an approach that ignores the experience of women in patriarchal and male dominated societies. In societies that have been dominated by men, dehumanizing and oppressive customs, taboos and traditions are the ‘normal’ cultural elements.”³⁰⁶ African women have always suffered from these patriarchal structures” (Imbo, 1998: 68). According to Imbo, feminists viz. Oduyoye, Ramodibe, Zoe-Obianga and others agree African men in traditional African societies are regarded superior to African women and that women are kept in a state of submission whilst oppressive gender relations are perpetuated.³⁰⁷ African feminists agree ethnophilosophy or *ubuntu* has a disregard for human rights, gender equality and human dignity of African women.

African feminists criticise ethnophilosophy for revealing only the traditional African belief system but not its underlying oppressive, marginalising structures that discriminate against women. A few examples are given by African feminists who illustrate how sources of ethnophilosophy contribute to female oppression in African traditional societies (Imbo, 1998: 68):

- Most of the African parables, proverbs and myths illustrate the superiority of men.³⁰⁸

³⁰⁵ “African feminists look to traditions to create new myths that redefine what it means to be an African woman. African women thus begin by examining their agency within the domestic space of family and clan and extending outward to the public space of the nation” (Imbo, 1998: 87).

³⁰⁶ Unigwe (cited in Stewart, 2005: 171) says: “I am angry that many societies have different rules of conduct for women. I am angry that Igbo proverbs that deal with women tend to negate them (unless that woman is a mother. What of less fecund women?) I am angry that in Igbo societies, a male’s birth is celebrated more lavishly than a female’s. That my mother told me proudly that having given birth to a third son in a row, an Igbo husband would have killed a goat for me. I am angry that someone very close to me was send out of her matrimonial home for having three daughters but no son”.

³⁰⁷ Ethnophilosophy’s link with gender oppression will be addressed in 4.12.

³⁰⁸ Oduyoye (2001: 31) confirms this notion as follows: “[T]here are many sayings such as ‘there is no woman as beautiful as the obedient one’ and ‘women are the servants of men’ which women cannot help

- Myths about skill in magic illustrate how women leave havoc, war and destruction in their wake; these myths are meant to raise suspicion when dealing with women.

African feminists emphasise that traditional African women are not permitted to question the status quo in their societies. According to them, ethnophilosophy condones and sustains firmly entrenched sexism in traditional African. (Imbo, 1999: 72). African feminism brings the following criticism against ethnophilosophy:

- Ethnophilosophy fails to “examine oppressive cultural practices”.
- From an intellectual point of view it remains a discourse controlled by Europeans.
- From a hermeneutical point of view, ethnophilosophy has failed to contribute to “cultural, social, and political liberation”.

Oduyoye (1995; 2001) applies cultural hermeneutics to scrutinise the oral tradition in Africa. She posits that cultural hermeneutics does not only affirm positive aspects and history in African culture, but also “challenges inhuman and domesticating customs and traditions that subjugate and oppress African women”. According to Oduyoye, folk talk³⁰⁹ or philosophy, “shapes women’s lives in traditional societies, criticises women who seek equality, anti-polygamy and are too demanding”. Whilst Oduyoye and others attests to the richness of oral hermeneutics, she laments the fact that although oral philosophy is prevalent throughout Africa, African males do not critique or “pay attention to this important dimension of philosophy”.

but object to if they have any sense of self ... we continue to struggle with how the images of womanhood rule our lives”.

³⁰⁹ Oduyoye (1995: 35) says folk talk aims at shaping communal values and behaviour. “For me, African myths are ideological constructions of a by-gone age that are used to validate and reinforce societal relations. For this reason, each time I hear ‘in our culture’ or ‘the elders say’ I cannot help asking, for whose benefit? Some person or group or structure must be reaping ease and plenty from what follows”. See also Nnaemeka, O. 1994. *From Orally to Writing: African Women and the Inscription of Womanhood. Research in African Literatures*, 24: 4.

It is important to note that whilst African feminists criticise oppressive marginalising structures in traditional African societies, they neither negate the claims of ethnophilosophers nor the fact that a collective philosophy exists in traditional African societies. These allegations of African feminist need to be addressed as, according to the Constitutional Court, all values which underlie our democratic society should promote equality, freedom and human dignity.³¹⁰

3.3.1.5 Optimism about Ethnophilosophy

In spite of all the criticism of ethnophilosophy, a positive outlook on this trend prevails among certain African philosophers. Both Keita (1991) and Kapagawani (1991) see ethnophilosophy in a positive light and acknowledge its valuable contribution to African philosophy. Layele (2002) has a different point of view to Appiah, Towa, Mudimbe and Eboussi-Boulaga and states that there can be no doubt about the sincerity of Tempels' intention in formulating the Baluba's philosophy. Layele (2002: 86) acknowledges the "deeprootedness of philosophical activity within the whole of humankind's mental existence" and agrees with Tempels saying that anyone who refuses to admit "the existence of black thought, in so doing exclude(s) blacks from the class of human beings".

Deacon (2002: 108) claims that African philosophers hold a bias against ethnophilosophy because "it is seen as a contribution to the colonial tyranny and subjugation of Africa, for it is assumed to express the pre-logicality and primitiveness of Africans and their thought". According to Deacon (2002: 108), the mere fact that Tempels was accused of having "diabolic colonialist connections" resulted in ethnophilosophy being viewed by professional philosophers as "being too degenerate to be regarded as a meaningful contribution to the discourse of African philosophy".³¹¹ Deacon (2002: 110) and

³¹⁰ See *S v Makwanyane* at 4. 4.1.1.

³¹¹ Irele (cited in Bell, 2002: 23) mentions that "[t]he attraction of Tempels' work resides not only in its apparent vindication of the African claim to an elevated system of thought but also in its providing a

Mudimbe (1988: 141) both speculate that if Tempels had not included the word philosophy in the title of *Bantu Philosophy*, his contribution “would perhaps have been less provocative”.

Deacon (2002: 111) holds that ethnophilosophy definitely has potential in the area of culture philosophy.³¹² According to Deacon (2002: 111), “ethnophilosophy can present to the discourse of African philosophy both interesting and useful material on which to draw for analyses of the traditional and cultural manifestations of African existence”. She contends that because much of Africa maintains its traditional basis, ethnophilosophy cannot be ignored.

Certain sources argue that viewing African philosophy from a culture-specific perspective illustrates how much it has in common with ethnophilosophy. The work of Mazrui, Teffo et al., Hallen and many others stands testimony to the fact that there is a tendency to approach philosophy in a culture-specific way. Although the approach to philosophy from a culture-specific perspective does not confirm a collective African culture or folk philosophy, it does “describe and discuss the views of specific cultural groups such as the Akan, the Igbo, the Yoruba or the Zulus” (Teffo et al., 2002: 136). In light of Africa’s dream to realise an African Renaissance and the African Dawn as well as efforts being made by South Africa’s National Heritage Council³¹³ to preserve, protect and promote African oral culture, ethnophilosophy has a major role to play.

Mazrui (2002: 13) maintains that philosophy in the end is not just about all its techniques and methods of research but primarily about discovering how

conceptual framework for the African mode of thought. The vitalist emphasis of Bantu philosophy ties in very well with the epistemology implicit in Senghor’s *Négritude*”.

³¹² Mazrui (2002: 18) states that the cultural paradigm includes the perspective of the primacy of values, beliefs, symbols, modes of communication, lifestyles, etc. According to him, African studies have played a major role “in re-establishing the Africans a historical people; in linking Africans to the paradigm of science”; and re-establishing that Africans are a religious people.

³¹³ The vision of the National Heritage Council is to create an enabling environment for the effective and efficient preservation, protection and promotion of South African heritage for present and future generations.

Africans lived. Because African Religion and culture have been demonised by Western society for centuries, the reconstruction of the traditional oral culture has, according to him, only just begun. The process of deconstructing and reconstructing every facet of African reality and humanity is the essence of the hermeneutics of African philosophy. According to Mazrui (2002: 13) “African studies lead the way in developing techniques for using the oral tradition and oral history as documentation for modern historiology”. Mazrui (2002: 18) maintains the cultural paradigm in African studies has played a major role in re-establishing Africans as a historical people; in linking Africans to the paradigm of science; and in re-establishing that Africans were practising African Religion long before Christianity or Islam arrived in Africa. Ethnophilosophy therefore, has a decisive role to play in bringing an understanding of traditional African societies while they still exist.

Ethnophilosophy has an important role to play in presenting Africa’s moral or religious philosophy. As folk philosophy, ethnophilosophy, or *ubuntu*, exists in the religion, legends, folk tales, myths, customs, superstitions, etc. of traditional African people (Oruka, 2002{a}: 121). Ethnophilosophy is the only trend which accommodates the collective philosophy of *ubuntu* of traditional African societies and cannot be ignored. Whilst sec. 39 of the Constitution compels courts to promote values which underlie all sections of society, *ubuntu* values which underlie traditional African societies must be researched. In spite of international and national debates on the existence of African philosophy, the *ubuntu* “moral philosophy” of communitarian African societies clearly illustrates the existence of a collective African philosophy. Bodunrin (cited in Deacon, 2002: 111) emphasises the philosophical reality of ethnophilosophy by saying that the “African philosopher cannot deliberately ignore the study of the traditional belief system of his people”³¹⁴.

³¹⁴ Serequeberhan (1994: 6) insists that “every culture has the right to define itself and claim its own philosophical heritage”.

It is understandable why professional African philosophers regard the trend ethnophilosophy as too degenerate to be regarded as a meaningful contribution to the discourse of African philosophy. As the term ethnophilosophy holds too many postcolonial memories, time has come to reconstruct this most important trend which represents the collective philosophy of *ubuntu*. A perplexing question remains: why do professional African philosophers deny the collective philosophy of traditional African societies so vehemently? Both Mutwa (1998) and Somé reveal (1999) that they are despised by their people for exposing sacred traditional African knowledge to strangers. Could it be that Africans do not want their sacred knowledge debated in the public domain? There might be far more to the denying of ethnophilosophy than meets the stranger's eyes. Section 4.11.4 reveals that, according to *ubuntu* philosophy, traditional African knowledge is not to be revealed to strangers; *ubuntu* laws and justice do not apply to strangers and no stranger can convert to African Religion. These notions are characteristic of a closed society, as is its definition of an African philosopher and African philosophy.

Although Oruka and other professional philosophers deny the existence of a unique collective philosophy in the ethnophilosophical trend, Oruka, contrary to the others, upholds the existence of individual critical thought in traditional African societies. According to Oruka, individual wisdom does prevail in Africa. Individual wisdom or sage philosophy will be discussed next.

3.3.2 Philosophical Sagacity (Sage Philosophy)

Whereas Tempels became famous for ethnophilosophy, Oruka is synonymous with sage philosophy. Oruka's thesis *Sage Philosophy: Indigenous Thinkers and Modern Debate on African Philosophy* stands in contrast to *Bantu Philosophy's* collective philosophy of traditional African societies. According to Oruka, sage philosophy represents individual critical thought amongst the sages of traditional Africa. Sage philosophy is fundamentally different from ethnophilosophy in that it is "both individualistic and dialectical" (Oruka, 2002{a}: 122). Oruka's *Sage*

Philosophy confirms the existence of individual thought in traditional Africa and gives ethnophilosophy “an all-acceptable decisive blow” (Orika, 1990{b}: 36). This subsection discusses the following:

- Background.
- Sage philosophy and sages: definitions.
- Types of sages: folk and philosophical sages.
- Critique of sage philosophy, and
- Optimism about sage philosophy.

3.3.2.1 Background

Orika spent more than twenty years in Kenya doing research on illiterate traditional African sages and concluded that certain sages possess individual, critical thought and are able to philosophise. Orika suggests that, contrary to ethnophilosophical claims, Africans can produce philosophy in the strict sense of the word. Wiredu (1996: 150) praises Orika’s research as “one of the most important developments in post-colonial African philosophy”. *Sage Philosophy* brings proof of the existence of individual philosophies among traditional African indigenous people. Sage philosophy contrasts with ethnophilosophy’s collective philosophy of traditional African societies. Sage philosophy creates an individual, rational philosophy which “suits the African context and rebuts the claims of those that insist that the philosophical enterprise of Africa must be a mirror image of philosophy in the West” (Hallen, 2002: 52). Orika brings a counterclaim to professional African philosophy, which suggests that philosophy in the strict sense does not always have to be in writing. As a proponent of oral philosophy, Orika (1990{a}: xxiii) argues that “writing should not be a prerequisite for philosophy³¹⁵ as philosophy does not depend on literacy”. Orika (1990{a}: xxvii) posits that it is wrong to associate sages with “primitive societies and philosophers with civilised, developed societies. It is a mistake”. Orika (1990{a}:

³¹⁵ In the introduction to *Sage Philosophy* Houtondji remarks that Orika’s work is “in contrast to the claim that philosophy is and can only be a written enterprise” (Orika, 1990{a}: xv).

43) contends that Africans are neither pre-logical, pre-scientific, pre-literate primitive men with primitive mentalities nor is their philosophy at best a pre-philosophy or a myth.

Orika maintains African sages are not self-professed wise men or women, but are rather recognised as such by their respective communities. They are wise elders, firmly grounded in African culture and tradition and although illiterate, knowledgeable about the history, customs, traditions, African Religion and values of their communities. They are regarded as sources of philosophical insight and consulted by their people for wisdom and counsel. African sages are people “who can demonstrate their ability and practise in critical thinking ... at best, a good narrator of traditionally imposed wisdom and myths” (Oruka, 1990{a}: 5).

In his thesis *Sage Philosophy: Indigenous Thinkers and Moderate Debate on African Philosophy*, Oruka (1990{a}) explains that sage philosophy focuses on the wisdom of traditional African sages that consists of “a reflective exercise that re-evaluates culture philosophy without the benefit of writing or contact with Europe” (Hallen, 2002: 52). According to Hallen, Oruka suggests that apart from the task of a philosopher to analyse and criticise, sages must also be able to “intuit and postulate insights”. Oruka argues that the gift of intuition distinguishes between great and common philosophers in the West.

3.3.2.2 Sage Philosophy and Sages: Definitions

Orika (1990{a}: 28) defines sage philosophy as “the expressed thoughts of wise men and women³¹⁶ in any given [African] community and is a way of thinking and explaining the world that fluctuates between *popular wisdom* (well known communal maxims, aphorisms and general common sense truths) and *didactic wisdom*; an expounded wisdom; and a rational thought of some given individuals

³¹⁶ Presby (1996: 1) notes that only one of the twelve sages consulted by Oruka in his research in Kenya happened to be female. She questions Oruka’s sample which indirectly implies that women are not as wise as men.

within a community. Whilst popular wisdom is often conformist, the didactic wisdom is at times critical of the communal set up and the popular wisdom". Oruka emphasises that sage philosophy can be expressed in either written or oral form. Oruka (1990{a}: 44) stresses, however, that being a sage "does not necessarily make one a philosopher". He states that for a sage to become a philosopher he must be able to "go beyond mere sagacity and attain philosophic sagacity". Oruka (1990{a}: 38) defines a sage as a wise person who is acknowledged by the community to possess special knowledge of culture and tradition.³¹⁷

Koka (1996: 2) defines sages as "men revered for their profound wisdom, counselling and guidance". Kapagawani and Malherbe (2002: 227) define sages as "the elders of the tribe, people whose wisdom and knowledge of traditions, the folklore, values, customs, history habits, likes and dislikes, character and thought, of their people is very great". According to Kapagawani et al. (2002: 227), "sages are the mouthpiece of their culture and sought for authoritative judgments and decisions on various matters". Despite their illiteracy, these traditional sages reveal "wisdom within the conventional and historical confines of their culture" (Oruka, 1990{a}: 51). Apart from their special knowledge of African culture and tradition, certain sages apply reason and logic to bring wisdom and insight to their communities.

Oruka sees the existence of sages in Africa as proof of Africa's ancient history of philosophy. Two prime examples of sage philosophy is Griaule's *Conversations with Ogotemmel* and Oruka's *Sage Philosophy: Indigenous Thinkers and Modern Debate on African Philosophy*.³¹⁸ Bodunrin (1991: 71) includes Hallen

³¹⁷ Hallen and Sodipo (1997: 13) find philosophy encased in the traditional wisdom of the Yoruba sages. "One finds the *onisegun* being asked to give advice and counsel about business dealings, family problems, unhappy personal situations, religious problems, and the future, as well as about physical and mental illness".

³¹⁸ Oruka's interviews with the sages are published in his thesis, *Sage Philosophy*.

and Sodipo's work on the Yoruba concept of a person as sage philosophy.³¹⁹ "The oral tradition was central to the discovery that Africans had been a philosophical people all along – although they might not necessarily have known they were engaging in philosophizing" (Mazrui, 2002: 13).

3.3.2.3 Types of Sages

Oruka distinguishes between two types of traditional African sage, namely folk sages and philosophic sages. Oruka (1990{a}: 28) sees a folk sage as a "master of popular wisdom" and a philosophic sage as "an expert in didactic wisdom".

3.3.2.3.1 Folk sages

A folk sage is a traditional wise person who possesses special knowledge and wisdom of African culture and tradition. The folk sage is revered by the community as a wise person usually because he uses his wisdom to the advantage of the community (Oruka, 1990{a}: 31). Oruka (1990{a}: 28) views a folk sage as "a person who is well versed in the culture, customs, values and beliefs of his people and whose thought, though well informed and educative, fails to go beyond celebrated folk wisdom". According to Oruka, a folk sage is a wise person "merely skilled at articulating communal belief" (Imbo, 2002: 38). A folk sage does not apply critical objection to the folk beliefs and taboos and is therefore regarded by Oruka as a "master of popular wisdom". The wisdom, advice and counsel offered by the folk sage are passed down orally from one sage to another from generation to generation. As the folk sage is regarded as the keeper of traditional wisdom he may not deviate from the traditional knowledge passed on to him by his predecessor. Oruka (1990{a}: 44) describes folk sages as persons that "may not be wise (rational) in understanding or solving the inconsistencies of their culture nor coping with the foreign innovations that

³¹⁹ Oruka (1990{a}: xxvi) regards Hallen and Sodipo's *Knowledge, Belief and Witchcraft* (1986) and Gyekye's *An Essay on African Philosophical Thought* (1987) as ethnographical beliefs because they did not directly associate with particular individual sages.

encroach upon it. In other words, they are spokespersons of their people, but they speak what, after all, is known to almost every average person within the culture". He perceives folk sages as "wise within the cultural and historical confines of their culture" viz. sages who are "simply moralists and merely historians" (1990{a}: 44).

Folk sages do not transcend folk wisdom and display an uncritical attitude towards their traditional culture and worldview. Being a folk sage, according to Oruka, does not necessarily render one philosophic. Oruka (1990{a}: 28; 46; 83) refers to Marcel Griaule's *Ogotemmeli*; Kamau, the Dogon sage; and Hallen and Sodipo's³²⁰ Yoruba *Onisege*n (herbalists and traditional healers) as typical examples of folk sages. Oruka (1990{a}: 28) categorises the views of folk sages as first order philosophy. First order philosophy, according to Oruka (1990{a}: 45), "explains and maintains the prevailing culture and includes the sagacious thoughts of the likes of poets, herbalists, medicine men, musicians, fortune tellers, and so on".

3.3.2.3.2 Philosophical Sages³²¹

Oruka (1990{a}: 44) defines a philosophical sage as "a person who is (1) a sage, and (2) a thinker. As a sage, this person is versed in the wisdoms and traditions of his people and very often he is recognised by the people themselves as having this gift". According to Oruka (1990{a}: 28-29), philosophical sages hold the same beliefs and wisdoms as those of the folk sage but are able to make critical assessments of what the people take for granted. Philosophical sages transcend the folk wisdom of their communal cultures, traditions and beliefs by applying rational, critical, reflective thought and insight; they re-evaluate their collective philosophy. "They transcend communal wisdom and go beyond mere

³²⁰ Hallen and Sodipo's research among the Yoruba sages is proof of "philosophy encased in traditional wisdom, not just mythology and stories" (Bell, 2002: 34).

³²¹ The notion of philosophical sagacity was exposed in Marcel Griaule's *Conversations with Ogotemmeli* (1965) and Hallen and Sodipo's *An African Epistemology: The Knowledge-Belief Distinction and Yoruba Thought* (1981).

sagacity and attain philosophic sagacity” (Oruka, 1990{a}: 44). Sages who possess this “philosophic inclination” make a critical assessment of their culture and its underlying beliefs. “By using the power of *reason* rather than the celebrated beliefs of communal consensus and explanation, the sage philosopher produces a system within a system, an order within an order” (Oruka 1990{a}: 45).

Oruka (2002{a}: 122) maintains philosophical sages apply rational thinking to their conventional beliefs and wisdom to produce wisdom which exceeds mere sage or cultural philosophy. According to him, philosophical sages “combine the conventional quality of wisdom with the dialectical and critical attribute of free philosophical thinking” to transcend and transform traditional culture. For Oruka (1990{a}: 28), philosophical sages are independent, critical thinkers and masters of didactic wisdom. Oruka (1990{a}: 45) views these masters of didactic wisdom in the second order of philosophy as worthy of the label philosophy. Oruka (1990{a}: 29; 117; 128) names Mbuya Akoka, Kizito and Ranginya as typical philosophical sages. According to Wiredu (1996: 150), these sages “are the present-day exemplars of our ancestral philosophers”. Oruka (1990{a}: 45) categorises the wisdom of philosophical sages as second order philosophy.³²² In contrast with first order or culture philosophy, second order philosophy is a critical reflection of the first order; it is open minded, critical, rational and sceptical of communal consensus (Oruka, 1990{a}: 45).

3.3.2.4 Critique of Sage Philosophy

Oruka defends the existence of philosophical thought amongst sages in the African oral tradition. According to Oruka, some of these sages demonstrate

³²² Oruka’s *Sage Philosophy* distinguishes between folk sages (Chapter Six) and philosophical sages (Chapter Seven). Ogotommelli, the Dogon folk sage says: “After God made women, he gave her bad blood which has to flow every month”, whilst Mbuya Akoka, a Luo philosophical sage, makes his own rational deduction despite his community’s cultural bias against women. “A man has the physical capacity to run faster than a woman. But on the other hand, a woman has the physical capacity to undergo the pains of carrying and bearing a baby which a man lacks. So we cannot correctly say one is superior or inferior to the other ... In truth, the two sexes are naturally equal or balanced” (1990{a}: 45-46).

philosophy in the strict sense despite their illiteracy. Oruka contends that neither literacy nor writing should be prerequisites for doing philosophy. In the introduction of *Sage Philosophy*, Houtondji (cited in Oruka, 1990: xv) says Oruka's work stands in "contrast to the claim that philosophy is and can only be a written enterprise". Oruka indicates that the philosophies of renowned sages such as Thales and Socrates survived despite the fact that they were not written by the philosophers themselves. The same can be said for the oral philosophies of many other sages, viz. Buddha, Confucius and Jesus which were only written down much later by others.

Professional philosophers Houtondji (1996), Bodunrin (1991)³²³ and Keita (1991) dismiss the existence of philosophy without the support of a written text, a prerequisite for Western philosophy's universal enterprise. They dismiss sage philosophy as philosophy on the grounds of it allegedly being unwritten and unscientific (Oruka, 1990{b}: 36). Keita observes that even Oruka, the defender of the oral tradition, presents his evidence in writing (cited in Imbo, 2002: 57). Oruka (1990{a}: xvii) responds to Keita by saying that Socrates³²⁴, the famous sagacious philosopher, is evidence of a sage who never wrote down his philosophy. "Keita needs to be reminded that Socrates' philosophy, for example, did not exist just because Plato and others gave birth to it through their pens. Plato and others wrote it down (even if they distorted much of it) because it existed in the first place. And such is the case with Sage philosophy in Africa. It exists independent of Odera Oruka or anybody else, so we search for it and write it down as this is the modern practice of keeping thought" (Oruka, 1990{a}: xxiii).

³²³ Bodunrin (1991: 82-83) says: "Writing is not a prerequisite for philosophy but I doubt whether philosophy can progress adequately without writing. Had others not written down the sayings of Socrates, the pre-Socratics and Buddha, we would today not regard them as philosophers, for their thoughts would have been lost in the mythological world of proverbs and pithy sayings".

³²⁴ "Socrates was not only engaged in doing philosophy with his fellow citizens in the streets of Athens, but the very form of *elenchus* caught in his dialogues and the literary form of dialogue itself shaped the thought of scores of philosophers who followed him in a distinctly Socratic mode. Even though we have a written literature from these followers, they were engaged in the active search for truth and trying to justify and ground the concepts of justice, virtue, piety, beauty, knowledge, and truth, in a manner reminiscent of the *oracular* lifelong quest of Socrates in the *agora* of Athens and thus hoping to draw the reader into the dialogue" (Bell, 2002: 111).

Outlaw supports Oruka by highlighting the fact that writing is not a prerequisite for philosophy. Outlaw (cited in Oruka, 1990{a}: 20) contends that these professional philosophers suffer from “selective amnesia” as they tend to forget that Socrates did not write down his philosophy but they criticise the illiterate sages. Wiredu posits that although writing is necessary for developing philosophy as an academic discipline, “one can still do serious philosophy without writing” (cited in Gyekye, 1995: xxxiii). Oruka turns on professional philosophers and accuses them of submitting African philosophy to Western techniques of philosophy (1990{b}:36). Keita and Bodunrin agree with Oruka that sages are capable of philosophical dialogue and that critical and analytical thought exist in Africa, but according to them, they found no proof of “African philosophers in the sense of those who have engaged in organized systematic reflections on the thoughts, beliefs and practices of their people” (Bodunrin, 1991: 74).

Presby (1996: 1) criticises *Sage Philosophy* firstly by questioning why only two of the twelve sages interviewed by Oruka happen to be female, and secondly (1995: 17) by asking why Oruka seems reluctant to criticise the philosophy of the sages. Although Oruka defines a sage as a wise person and seems to be gender sensitive by including women in his sample, the 1: 6 ratio of his sample illustrates the contrary. Presby points out that although Oruka lays down rational and critical criteria for sage philosophy, he hesitates to apply his criteria to the sage elders. Presby (1995: 18) finds it strange that he comments on and criticises the philosophy produced by professional philosophers yet has only praise for the sages. Presby’s criticism, along with the criticism of feminists of ethnophilosophy, leaves one with the impression that women are not treated equally to men in traditional African societies. One wonders whether Koka’s (1996: 2) definition of sages reflects the true state of affairs - the gender bias in these societies - when he defines sages as “men revered for their profound wisdom”.³²⁵

³²⁵ Imbo (1999: 138) maintains women are not considered philosophical in African societies.

The methodology used in Oruka's *Sage Philosophy* can surely be questioned. Oruka's thesis has not proven beyond reasonable doubt that only certain sages possess rational thought and others not. Oruka has neither lain to rest the claims of Tempels' collective philosophy nor Aristotle's or Descartes' claims that all men possess rational thought. He must, however, be lauded for exposing individual critical thought in traditional Africa. Apart from the above-mentioned criticisms, Oruka (2002{a}: 122) voices two important additional objections: firstly, "that sagacity, even if it involves an insight and reasoning of the type found in philosophy, is not philosophy in the proper [or strict] sense", and secondly, "that recourse to sagacity is a fall back on ethnophilosophy".

3.3.2.5 Optimism about Sage Philosophy

Oruka attempts to prove that Africa has a lived history of sage philosophy and that philosophical thought has existed in Africa since the beginning of time. The oral tradition is "central to the discovery that Africans had been a philosophical people all along – although they might not necessarily have known they were engaging in philosophizing" (Mazrui, 2002: 13). Although written texts of philosophy do not exist throughout Africa, there is no proof that Africa is devoid of philosophical thought. On the contrary, according to Oruka, *Sage philosophy* is proof that individual rational thought prevails in Africa and brings evidence of its ancient culture of philosophy.

Oruka (1990{a}: xvii) identifies the following roles for sagacity: firstly, he notes that certain valuable sagacious contributions are worth the attention of professional African philosophers; and secondly, that sagacity provides raw data for further philosophical reflection. Sagacity's third role lies in the area of socio-economic development. According to Kalumba (2004: 274), "Oruka urges African leaders to enlist the input of traditional sages in the process of designing and implementing policies and programs. This is because he believes the sages understand their people's culture and the nature of their problems better than most people". Kalumba (2004: 274) notes a fourth role as suggested by Hallen

and Sodipo: because Western philosophy developed independently of the rest of the world, “it has tended to absolutize many untested presuppositions” which sagacity has the potential to “validate, invalidate, or modify”.

Broodryk (1997{b}: 3) finds sage philosophy a useful and most exciting trend in African philosophy and urges “that sage philosophy needs acknowledgement, encouragement and support from academic institutions in Africa”. Whilst Senghor maintains that emotion³²⁶ is as African as reason is Greek, Oruka affirms that reason is as African as it is Greek!

3.3.3 Nationalist-Ideological Philosophy (Political Philosophy)

This subsection discusses the following:

- Background.
- Oruka and Nationalist-Ideological Philosophy.

3.3.3.1 Background

Whilst African soldiers fought alongside their European masters in World War II, African political consciousness peaked. With the creation of the United Nations in 1945 “the ideas therein contributed to the new visions of the right to freedom from colonial rule that Africans began to voice” (Gordon, 2001: 50). From 1945 - 1960, national political parties took hold in Africa and spawned liberation struggles for the decolonisation and independence of the African continent. African nationalists, viz. Nkrumah, Touré, Azikiwe, Kaunda, Nyerere, Senghor, Houphouët-Boigny, Kenyatta and Moi pressured for political rights and independence (Gordon, 2001: 51). After independence during the 1960s, African leaders developed their own anti-colonial, pro-independence socio-political

³²⁶ According to Senghor (cited in Masolo, 1995: 26), “emotion is black as much as reason is Greek.” He explains that “[T]his does not mean that the black man has got no reason as others make me say but rather that his reason is not discursive but synthetic; it is not antagonistic, but sympathetic. This is another way of knowing. While the European reason is analytic by utilization, that of the black man is intuitive by participation”.

ideologies. Orukas' trend, Nationalist-Ideological philosophy, personifies the African liberation struggle and can be seen as the political facet of African philosophy.

Nationalist-Ideological philosophy or political philosophy represents the political, or liberation philosophies of African statesmen and politicians, viz. Senghor's African socialism; Kaunda's African humanism; Nkrumah's *Consciencism*; Kenyatta's *Harambee*; Nyerere's *Ujamaa* and Moi's *African Nationalism*. Wiredu (2004: 180) calls the first post-independence leaders, viz. Nkrumah, Touré, Nyerere, Senghor and Kaunda, "Africa's philosopher kings". These philosopher kings produced African socialism that was "a political philosophy that combined their understanding of Africa's cultural heritage and certain elements of Western political thought such as Marxism and Leninism" (Wiredu, 2004: 180). According to Bell (2002: 37-38), Marxism was the inspiration for the renewal of the African continent as it "was more compatible with communalism or African humanism³²⁷ than capitalism", whilst "socialism or African humanism³²⁸ was used to affirm African values and the combined struggle of the exploited African peoples against colonialism".

3.3.3.2 Oruka and Nationalist-Ideological Philosophy

Although Oruka did not describe this trend in detail, he sees it as the affirmation of traditional African values by African statesmen and politicians. Oruka (1990{a}: xxi) classifies the following philosophical texts as examples of political

³²⁷ "African humanism is quite different from the 'Western, classical' notion of humanism. The Western, classical notion of humanism stresses a particular concept of education and civilization; it is premised on ancient Greek ideals such as balance of the arts and sciences, cultivation of individual virtues, and the exercise of rational self-control. It places a premium on *acquired individual skills*, and favours a social and political system that encourages *individual freedom and civil right* ... African humanism, on the other hand, is rooted in traditional values of mutual respect for one's fellow kinsman and a sense of position and place in the larger order of things: one's *social* order, *natural* order, and the *cosmic* order. African humanism is rooted in *lived dependencies*" (Senghor cited in Bell, 2002: 40).

³²⁸ Bell (2002: 37) states: "The founder base of African humanism and socialism however, includes the ideological works of Franz Fanon, a particular style of socialism or communalism, and the inspiration of such founding national leaders as Kwame Nkrumah, Julius Nyerere, Leopold Senghor, and Kenneth Kaunda".

contributions under this trend: Kwame Nkrumah's *Consciencism*; Julius Nyerere's *Ujamaa*; Leopold Senghor's *Nationhood and African Road to Socialism*; Ali Mazrui's *The African Condition*; Franz Fanon's *The Wretched of the Earth*; Oginga Odinga's *Not Yet Uhuru* and Arap Moi's *Nyayo Philosophy*. The works of Senghor, Nkrumah and Nyerere represent a unique political theory which is "based on traditional African socialism and familyhood" (Oruka, 1990{a}: 164). These men strove for freedom, liberation from imperialism and colonialism and a return to African values and "genuine and authentic African humanism".

According to these political philosophers (Oruka, 1990{b}: 17), the true nature of African philosophy will be obscured unless the continent becomes liberated, independent and a genuine humanist social order established. Oruka (2002{a}: 122) states that although most of the literature of this trend is contributed by African statesmen and politicians, not all of the works are "in the strict sense, really philosophical".³²⁹ Nkrumah's *Consciencism* and Nyerere's *Ujamaa* were based on African communitarianism and show a similarity with ethnophilosophy; they confirmed the existence of a collective philosophy in traditional African societies. According to Oruka, (2002{a}: 122), national-ideological philosophy differs, however, from ethnophilosophy in the following ways: firstly, it does not imply that European thought is different from African thought, and secondly, although the philosophy is based on communitarian values, it is the philosophy of the author concerned, and not the philosophy of an African community. Thirdly, this philosophy addresses problems of individual and national freedom whilst ethnophilosophy is an "apolitical and free-for-all metaphysics".

A definitive trait of this trend is the rekindling of traditional African values in communitarian societies in traditional Africa. The political philosophy of Nyerere, *Ujamaa*, led to Tanzania's independence in 1961. According to Nyerere (1968: 12), *Ujamaa* or familyhood, was rooted in the restoration of the collective

³²⁹ Oruka states that not all of the works are "in the strict sense, really philosophical" (2002{a}: 122). This implies that works that are not "in the strict sense, really philosophical" are not regarded as African philosophy by Oruka or professional philosophers.

consciousness of African societies, communal values, and rural socialism. *Ujamaa* strove towards the abandoning of capitalism: towards a position where there would be no rich individuals in Africa; a position where wealth would belong to the family; a position where “the whole nation live as one family” (1968: 78). Nyerere’s vision of society was one in which “mutual respect and obligation bound members together, with a central authority or father figure acting as a final arbiter” (Thompson, 2000:46). Nyerere helped to overthrow Idi Amin and supported liberation struggles in Apartheid South Africa, Zimbabwe, Mozambique and Angola.

Nkrumah’s (1998) Nationalist-Ideological view of philosophy, *Consciencism*, sees African socialism as the social revolution of Africa³³⁰: eradicating imperialism and capitalism, emphasising traditional African communalism and traditional African values. Nkrumah (1998: 93) believes that, if African socialism could be brought to fruition, the colonial mentality of the African could be erased and the African restored to his pre-colonial state. He advocated the pan-African cause and encouraged “African colonies to independence and supporting the Organisation for African Unity that he had helped form in 1963” (Thompson, 2000: 42). Nkrumah developed the concept of neo colonialism³³¹ and had a vision for the rebirth and renewal of Africa, championed by what he termed the New African Renaissance (Ramose, 2002{c}: 604). Nkrumah believed that his *Consciencism* would one day form “the collective philosophy of Africans: the African philosophy” (Houtondji, 1996: 149ff).

³³⁰ Nkrumah (1998: 81) sees philosophical *Consciencism* as the social revolution enabling “African society to digest the Western and Islamic and the Euro-Christian elements in Africa, and develop them in such a way they fit into the African personality”.

³³¹ By the concept neo colonialism Nkrumah meant “the relationship of inequality that exists after a country has granted political independence to a colony but continues to dominate its economy” (Thompson, 200: 43).

More (2004{a}: 207) posits that South Africa has its own “philosopher kings”³³², viz. Biko, Lithuli, Sebukwe, Tutu and Mandela, who struggled against colonialism, imperialism, racism and apartheid. In their pursuit of human dignity, justice, equality and democracy “they realized the peculiarity of their situation and therefore did not generalize claims about the entire continent” (More, 2004{a}: 207).

3.3.4 Negritude and Nationalist-Ideological Philosophy

The Negritude movement was founded in Paris in the 1930s by Senghor, Césaire and Damas and flourished as a reactionary philosophy among African and Afro-Caribbean students who rebelled against the alienation of slavery and French colonial domination. This subsection includes the following:

- Background.
- The Negritude trend, and
- The critique of Negritude.

3.3.4.1 Background

The Negritude movement was spearheaded by Leopold Senghor, the politically conscious student and poet from Senegal who studied in Paris. While famous for his poetic Negritude philosophy, it must be noted that Senghor distinguished himself as an ardent African socialist who aspired to unify French West Africa. Senghor (1963: 13) defined negritude as “the sum total of African cultural values” which emphasised the uniqueness of African racial and cultural consciousness. According to Senghor (1963: 13), “Negritude is the whole complex of civilized values, economic, social and political – which characterize the black peoples, or more precisely, the Negro-African world. All these values are essentially informed by intuitive reason. Because this sentient reason, the reason which comes to

³³² Whitehead characterised the entire history of Western philosophy since ancient Greek philosophy as a footnote to Plato. Plato can be seen as “a king among philosophers. In fact, he actually believed that philosophers *should* be kings!” (Stevenson, 2002: 49).

grips, expresses itself emotionally, through the self-surrender, that coalescence of subject and object, through myths, by which I mean the archetypal images of the collective soul". Sarté (cited in Bell, 2002: 26) defines Negritude "as an attitude towards the world – a subjective disposition expressive of the black man's total apprehension of his peculiar situation".

Senghor sees Negritude philosophy as an intuitive, emotional³³³ philosophy which represents the collective African consciousness and "identifies the collective trait of Africans as 'emotion sensitivity'" (Bell, 2002: 25). For Senghor, emotion³³⁴ is as completely Negro as reason is Greek. He justifies Africa's unscientific, non-rational approach to reality by stating that Africans apprehend reality through intuition rather than intellect. Senghor (1964: 72), the great Negritude poet, affirms traditional African values³³⁵ and discloses the source of African knowledge by saying: "[f]rom our ancestors³³⁶ we inherited our method of knowledge".

3.3.4.2 The Negritude Trend

Oruka implies in *African Philosophy: the Current Debate*, that Negritude should be included in the National-Ideological trend in African philosophy. Negritude philosophy established itself as a political literary reaction of African writers and poets who aspired to liberate Africans from the pervasion of colonialism. Mudimbe (1988: 93) describes Negritude as the "intellectual and emotional sign

³³³ Fanon (1990: 171) states that Negritude "was the emotional if not the logical antithesis of that insult which the white man flung at humanity".

³³⁴ Senghor posits that Africans perceive the world differently from Europeans and grounds his philosophy of negritude on the idea that Africans experience the world through emotion. He held that Africans were different from but not inferior to Europeans and led to the negritude movement defending an "unscientific, unanalytical and untechnical African mind" (Imbo, 1998: 12).

³³⁵ Fanon (1990: 171) states: "The unconditional affirmation of African culture has succeeded the unconditional affirmation of European culture. On the whole the poets of Negro-ism oppose the idea of an old Europe to a young Africa, tiresome reasoning to lyricism, oppressive logic to high-stepping nature, and on the one side stiffness, ceremony, etiquette and skepticism, while on the other frankness, liveliness, liberty and - why not? – luxuriance: but also irresponsibility".

³³⁶ "The Africans' mystical conception of the world is for Senghor his principal gift, and derives from his close links with the natural world. Because the African identifies with the life force, the universe is a close system of forces ... Senghor believes the African society is the 'sum of all persons, living and dead, who acknowledge a common ancestor'" (Irele, 2002: 47).

of opposition to the ideology of white superiority". According to Mudimbe, Negritude asserted itself as a "racial negation: rejection of racial humiliation, rebellion against the rationality of domination, and revolt against the whole colonial system". The Negritude movement aspired "to demonstrate the existence of black culture and its great moral achievements" (Oruka, 2002{b}: 62) by reaffirming African culture and values (Masolo, 1994: 3) in the wake of its virtual extinction by colonialism. Negritude philosophy consists of a canon of nationalistic literature which aims firstly at reclaiming and restoring black identity in the face of the colonial³³⁷ rejection of Africans, and secondly, at developing nationalism in Africa. The philosophy of Negritude is said to embody the Africans' "symbolic progression from alienation, through revolt, to self-affirmation and from subordination to independence" (Irele, 2002: 35).

Not only did Senghor's Negritude change the way Europeans perceived Africans but it succeeded in creating a collective African identity which was later confirmed by the ethnophilosophical trend. English and Kalumba (1996: 57) commend the work of Senghor and describe Negritude as "one of the most insightful and controversial themes in African philosophy". Whilst many philosophers posit that the debate on African philosophy originated from the discovery of ethnophilosophy, Masolo (1994: 10) is of the opinion that Senghor's Negritude was "the legitimate origin of philosophical discussion in Africa". Masolo is quite right in assuming that Senghor and not Tempels, was the first to introduce African humanity to the European public. Masolo's notion is affirmed by Fanon (1990: 35) when he acknowledges that Senghor was the first person to introduce African reality to Europeans. Fanon says: "Senghor is Africanizing the Europeans".

3.3.4.3 The Critique of Negritude

³³⁷ Senghor (1964: 80) states in *On African Socialism*: "Let's stop denouncing colonialism and Europe and attribute all our ills to them. Besides not being entirely fair, this is a negative approach, revealing our inferiority complex, the very complex the colonizer inoculated in us and whose accomplices we thereby are secretly becoming".

The critique of Negritude started in the 1950s with attacks first against Sarté and later against Senghor's Negritude philosophy. Both philosophers were criticised for their "theory of a black racial self and the creation of an African collective identity propounded by Negritude and endorsed by ethnophilosophy" (Irele, 2002: 117). According to Irele, Frantz Fanon³³⁸ was one of the fiercest critics of the Negritude movement. In Fanon's *Black Skin, White Masks* (1993) and *The Wretched of the Earth* (1990), he embodies his critique against the Negritude movement. In *Black Skin, White Masks*, Fanon, the psychiatrist and revolutionary, utilises the language of revolutionary awareness by revealing the true state of colonial dislocation, depredation, domination and defilement of culture and territory suffered by blacks. According to Fanon (1993: xi), "[t]he analysis of colonial depersonalization alienates not only the Enlightenment idea of man, but challenges the transparency of social reality". Fanon (1993: xiv) articulates the colonial cultural alienation by comparing "the Negro enslaved by his inferiority [and] the white man enslaved by his superiority".

In *The Wretched of the Earth*, Fanon (1990) deploras Negritude's racial and cultural consciousness and advocates violence against colonialism. In Fanon's³³⁹ (1990: 175) call for a violent struggle he argues that songs, poems, collective values and folklore will not set African "natives" free. Fanon laments the fact that rather than "ensure his salvation and escape from the supremacy of the white man's culture the native feels the need to turn backwards towards his unknown roots and to lose himself at whatever cost in his own barbarous people".

Oruka's objection to Negritude is "the movement's blindness to class differences within the black world". According to Oruka (2002{b}: 62), "Negritude leads to the assumption that all black people form a cultural unit share the same consciousness, class, emotions and tastes" and maintains Negritude has no

³³⁸ Sarté acclaimed Fanon's *The Wretched of the Earth* as "the greatest masterpiece of the anti-colonial struggle; the Third World finds itself and speaks to itself through this voice" (Fanon, 1990: 258).

³³⁹ Imbo states that Fanon's work "has become a road map for freedom fighters around the world, an instrument to help peoples of the world in forging their own sense of identity" (Imbo, 1998: 37).

deep roots among the African masses. According to Oruka, Senghor addressed the French public through Negritude, rather than the traditional African masses. Okot p'Bitek (cited in Oruka 2002{b}: 62) argues that Negritude appealed only to the “alienated intelligentsia; it speaks to alienation and not to exploitation; to the individual and not to the masses; to the modern and not the traditional”. Wiredu (1980: 42) upholds his criticism against Negritude for defining Africans as unscientific, unanalytical and untechnical people. According to Wiredu, “the principle of rational evidence is not entirely absent from the thinking of the traditional African ...The truth, then, is that rational knowledge is not the preserve of the modern west, nor is superstition a peculiarity of the African”.

Not only did Negritude reinforce the difference between European and African thought, values and culture but its critique later resounded in the vehement theoretical attack on ethnophilosophy. Whilst Negritude emphasised African morals, culture and values, ethnophilosophy became synonymous with traditional Africa's collective philosophy and interconnection with African Religion. Both Negritude and ethnophilosophy confirmed the existence of a communal or collective African consciousness, the uniqueness of African culture and values, and aspired to restore African identity during the colonial³⁴⁰ period. According to Houtondji, (1991: 118-19) Negritude and ethnophilosophy “appear as a by-product of underdevelopment, a consequence, among many others, of cultural amnesia”. Although certain African philosophers view Negritude as redundant, it forms a definitive branch of the history of African philosophy. Not only does it embody the reality of Africa's political philosophy, it also represents aspects of Africa's cultural and moral philosophy. The time has arrived for African philosophers to acknowledge the importance of both Negritude and ethnophilosophy for defining the roots of African philosophy and for their invaluable contributions to the history of African philosophy.

³⁴⁰ According to Bell (2002: 25), Negritude and ethnophilosophy are related because both identify “common, fundamental characteristics that were thought to be specifically African or Negro”.

3.3.5 Professional Philosophy

Oruka (2002{a}) states that this trend consists of works and debates of professional philosophers from Africa who have been schooled in the Western tradition of philosophy. This subsection discusses the following:

- Background.
- Professional African philosophers versus African traditionalists, and
- Criticism of professional African philosophy.

3.3.5.1 Background

Oruka (2002{a}: 123) sees professional philosophy as literature that “has been produced or can be produced by African thinkers or in the African intellectual context in any branch of philosophical thought in the strict sense”. Oruka (1990{a}: 164) defines professional philosophy as “philosophy done by African philosophers whether it is in the area of logic, metaphysics, ethics or history of philosophy”. According to Oruka, work by African philosophers will qualify as African philosophy if it “engages in debates on Plato’s epistemology, or on theoretical identities”. He sees African philosophy as a tradition of philosophy in the strict sense which is characterised by criticism and argument.³⁴¹ According to Oruka (2002{a}: 123), philosophy in the strict sense must involve critical, reflective and logical inquiry and “cannot depend just on racial or regional make-up”.

Professional African philosophers see philosophy as a universal enterprise that must have “the same meaning in all cultures, even though the epistemological, metaphysical, and ethical questions prioritized in these cultures are different” (Imbo, 1998: 39). Although professional African philosophers follow the Western philosophical tradition, Oruka foresees cultural differences between African and

³⁴¹ Oruka names himself, Kwasi Wiredu, Paulin Houtondji and Bodunrin as examples of African philosophers who practise philosophy in the strict sense.

Western philosophy. Sogolo (1993: xiv) for instance argues that “raw materials of any tradition of philosophy are to be found in the totality of the practitioners’ own culture and life experience. For this reason the search for an African philosophy has to be home based and conducted from within the African experience” (Sogolo, 1993: xiv). Oruka (1987: 24-29; 1990: 9) includes Bodunrin, Houtondji, Wiredu and himself as professional philosophers. Imbo (1998: 39) adds to Oruka’s list of professional African philosophers by including Keita, Towa and Serequeberhan³⁴² to this trend.

3.3.5.2 Professional Philosophers versus Traditionalists

Professional philosophy is characterised firstly, by the professional African philosophers’ universalist definition of philosophy and secondly, by their rejection of ethnophilosophy. Professional African philosophers believe that philosophy in the strict sense should exhibit a universal character and comply with standards prescribed by Western philosophy, viz. the individual, written, reflective and critical inquiry of knowledge. Professional African philosophers are “usually identified by their credentials as doctors of philosophy” (B.J. van der Walt, 2006: 208) obtained from Western universities and they align themselves with academic philosophers from the West. They perceive the universalist vision for African philosophy as the only philosophy from Africa and reject philosophical contributions from African traditionalists. Universalists accept Western standards of philosophy, they emphasise the importance of science and technology and conveniently ignore culture and African Religion as part of the life of traditional Africans. Bodunrin is hostile to the idea that African philosophy could possibly be based upon “values and beliefs of Africa’s indigenous cultures” (Hallen, 2002: 20).

Like Bodunrin, Houtondji wants intellectual liberation from notions of Africa’s collective philosophy or ethnophilosophy. As one of the fiercest critics of

³⁴² Serequeberhan (1994: 5) criticises Houtondji, Wiredu and Bodunrin for adopting the Western tradition of philosophy in the African context.

ethnophilosophy, Houtondji (1983: 56) argues that African philosophy cannot abandon the universally accepted maxims of Western philosophy applicable to the rest of the world. Houtondji denies the existence of a collective African philosophy because traditional societies depend on oral transmissions of their philosophy. Although African knowledge is meticulously recorded by these oral cultures, Houtondji rejects oral philosophy as philosophy because, first, it is not written and second, it is not written by Africans.³⁴³ Houtondji (1996: 43) criticises Kagame for being “the prisoner of an ideological myth, that of a collective African philosophy” and argues that Kagame’s *La Philosophie Bantou-Rwandaise* is therefore no true philosophy. Houtondji (1996: 46) pleads for a scientific approach to African philosophy that could liberate it from the shackles of the myth of ethnophilosophy. Professional African philosophers are adamant that not all Africans share in traditional Africa’s collective philosophy, as proposed by ethnophilosophers. Like Plato, professional African philosophers oppose the idea of group philosophising and argue in typical Western style, that philosophy is the prerogative of the individual. According to them, the fact that ethnophilosophy is based on oral traditions hampers scientific evaluation of this trend.

Wiredu (1980: 32) posits that traditionalism in Africa stints modernisation of the continent. He maintains scientific endeavour only can bring forth much needed improvement in traditional African existence. According to Wiredu, African philosophers have an appreciation for the methods of science not only because of its intellectual qualities but also because it is necessary for the modernisation and transformation of the African continent. Wiredu (Hallen, 2002: 27) sees the task of the professional African philosopher as one “whose aim is to encourage the introduction of novel, warranted, assertable truths about the origins of our belief, as well as to re-evaluate, revise, or discard old beliefs and to introduce new ideas that might possibly achieve the status of truth”. In contrast to

³⁴³ Professional philosophers Towa and Okolo reject Houtondji’s hard line stance on philosophy as written texts. According to Towa (cited in Imbo, 1998: 31), “Houtondji’s strategy fails because it now reduces Africans themselves to defending Western stereotypes about the lack of philosophical complexity in traditional Africa”.

Bodunrin, Houtondji, Wiredu³⁴⁴ and other universalists, African traditionalists argue that professional African philosophers should shed the shackles of reason and trust their intuition.

Whilst professional African philosophers are seen as protagonists for a scientific approach to African philosophy, Mazrui (2002: 13) assures us that “scientific techniques are currently being utilised to extract Africa’s oral tradition and oral history to reconstruct documentation for modern historiology”. Not only Mazrui and African studies utilise scientific techniques to extract African philosophy but Gyekye (1995) too, is said to have used an analytical approach in his *An essay on African Political Thought: an Akan Conceptual Scheme*. According to Hallen (2002: 27), Gyekye “set a precedent for how material of philosophical substance can be identified in and derived from Africa’s indigenous cultures”. Hallen (2002: 32) finds Gbadegesin’s *African Philosophy: Traditional Yoruba Philosophy and Contemporary African realities* (1991) good examples of “conceptual analysis and the critical evaluation of fundamental methodological techniques”. Hallen argues that there has always been an individualistic, reflective, and critical dimension to the formation and reformation of such beliefs and practices in African cultures. On the evidence gathered by Mazrui and Hallen it seems scientific techniques are currently used to extract philosophy from traditional African societies. The ‘scientific’ arguments by professional African philosophers do, therefore, not hold much water.

3.3.5.3 Critique of Professional Philosophy

One of the criticisms brought against professional African philosophers is that they are academics that have all been schooled in Western philosophy and therefore represent Western thought and not traditional African modes of

³⁴⁴ “Wiredu is out to knock down the fences that have been erected to intellectually segregate the African mentality as somehow idiosyncratic ... He has always been fundamentally committed to the notion that all of humanity shares certain basic rational attributes and that the exploration of the consequences of these attributes for human understanding should be assigned the highest priority for those committees (as Wiredu certainly) to a vision of philosophy that truly crosses cultures” (Hallen, 2002: 22).

thinking. Oruka (2002{a}: 123) voices the criticism often levelled at professional philosophy, that it reflects Western and not African philosophy; as well as the fact that professional philosophers have “learnt hardly anything about African philosophy. So the criticism goes, he comes and treats the latter from a purely European angle: he employs ‘European logic’ and principles to criticize or create what he likes to call African philosophy”. According to Oruka (2002{a}: 123), professional African philosophers have two responses to this criticism. Firstly, some philosophers would argue that Western philosophical thought originates from ancient Egypt and therefore “the thoughts of ancient Egypt are the heritage of black Africans”. This answer implies that Africans have a share in European philosophy. Secondly, other philosophers would argue that intellectual principles and knowledge belong to every race or culture of the world and cannot be monopolised by any one race or culture. Therefore, logic and philosophy do not belong to the West but to all students of philosophy. According to Oruka, professional African philosophers ascribe to the universality and rationality of philosophy and are, therefore, opposed to African philosophy seeking a unique collective form of oral philosophy. They see African philosophy as part of a universal philosophy.³⁴⁵ Universalists who support this view include Bodunrin, Towa, Keita, Houtondji and Sogolo.

Oruka argues the trend, professional philosophy, has certain limitations. Firstly, Oruka (1990{a}: 42) states that the trend lacks “subject matter of its own” as it is mostly characterised for its criticism against ethnophilosophy. He urges professional African philosophers to start addressing specific African issues rather than discussing mere possibilities of African philosophy. Secondly, he

³⁴⁵ Teffo et al. (2002: 163) state in *Themes in African metaphysics* that epistemologists want to account for knowledge in general, as a universal, and not as French or English knowledge. They find that “[i]n Western philosophy practicing philosophy on ethnic or geographical lines, there is no prevailing tradition of presenting and although there is talk of Greek, British, French, or German Philosophy, the assumption is that these are aspects of a common activity and part of an ongoing tradition”. Teffo et al. find philosophy on the African continent not to apply universally to all groups on the continent, but rather that there is at present a strong tendency to approach philosophy in a culture specific way. They state: “There is no reason why all peoples on a continent, or even all members of a cultural group, should think the same about metaphysical matters”.

laments the fact that African philosophy lacks a history and urges professional African philosophers to actively partake in the preservation of the history of African philosophy. Thirdly, Orika encourages professional African philosophers to “enhance its degree of self-criticism”, viz. to intensify the debate between themselves and between themselves and others.

Outlaw finds it intriguing that whilst professional African philosophers proclaim the universality of philosophy, they nonetheless define African philosophy according to the geographical origins of its practitioners. Outlaw (2002: 151) posits that Western philosophy, or “philosophy proper”, as a universal praxis, “is the same, regardless of where it is engaged in, or by whom”. Professional African philosophers maintain that “philosophy is a capability shared by all persons, their race of ethnicity notwithstanding. ‘African’ philosophy, then, by this argument, is distinguished only by the geographical origins of its practitioners, not by a content somehow made different by their Africanness” (Outlaw, 2002: 151). Outlaw finds Houtondji’s definition of African philosophy “particularly disturbing” when Houtondji makes the African origin of the authors the criterion for African philosophy. According to Outlaw (2002: 151), Houtondji uses “African as a signifier not just for geographical origins but also for race/ethnicity”. Whereas race, ethnicity and gender should be accidental to philosophy proper, Houtondji sees it as a prerequisite for doing African philosophy. Houtondji affirms that it is essential for African philosophy to comprise of written works by Africans (Masolo, 1995: 196).

Serequeberhan (1994: 119) criticises professional African philosophers for not recognising the African struggle for liberation as a primary concern of African philosophy. He sees the deconstruction of African philosophy as the “undoing of the Eurocentric residue on the level of theory”. Serequeberhan views African philosophy as an attempt by Africans to “free themselves from European categories and the propensity to unwittingly embrace a Eurocentric worldview ... African philosophy is recourse to violence” (Imbo, 1998: 29). From a

hermeneutical viewpoint Serequeberhan and Imbo criticise professional African philosophers “for not coming to terms with the inescapable violence that has characterized the intercourse of Europe with Africa” (Imbo, 1998: 29). Imbo posits that as philosophy is the “hermeneutics of the existentiality of human existence”, both ethnophilosophy and professional philosophy have failed as philosophy.

As professional African philosophers align themselves with the philosophy practised by Western academics, it is interesting to note that both Western and African academic philosophers share the same prejudice towards African traditionalists. They render the traditional African mind too uncivilised, unscientific and tribal to produce critical, rational and logical thought. In contrast with academic philosophers, viz. Somé³⁴⁶ (1999), a shaman from West African Dagara, and Mutwa (2003), High *Sanusi* and sangoma of Kwazulu Natal, affirm that traditional Africans do not only think differently from Westerners but their collective philosophy differs vastly from that of Westerners.³⁴⁷

Both of these revered men affirm the African collective and spiritual approach to African reality. Somé (1999; Freke, 1999: 27) discloses that “in [traditional] Africa ... life is shamanism”³⁴⁸; life is the ancestors. Mutwa (2003; 1998: 579) affirms that “ordinary Bantu are firmly rooted in the beliefs of their forefathers, no matter how educated or civilized they are”. These notions are confirmed by Mbiti (1990: 5) when he notes the deeply religious nature of Africans. According to Mbiti, African Religion is so interwoven with African philosophy that it is impossible to

³⁴⁶ Malidoma Patrice Somé holds three master’s degrees and two doctorates from among others the Sorbonne and Brandeis University (Freke, 1999: 24).

³⁴⁷ The African-American, Jeremiah Wright, pastor of the Trinity University Church of Christ, pastor of the American presidential candidate, Obama, stated: “blacks are different from whites, but not deficient”. Wright ascribes this difference to *inter alia* the fact that African-Americans are more right brain oriented and whites more left brain oriented (CNN, 2007: 19H00, 29 April). According to *The Economist* (May, 2008: 57), Jeremiah Wright “argues that blacks and whites have different learning styles, further proof that he endorses the racist theory that blacks and whites have differently wired brains”.

³⁴⁸ “Shamanism is not part of life, but provides an understanding that embraces all of life. Shamanism is more than beliefs and rituals. It is an experiential investigation of the visible spirit world which gives rise to the tangible world of the senses” (Somé cited in Freke, 1999: 27).

separate African Religion from African philosophy. The deeply religious nature of Africans is confirmed by Wiredu (2002: 20) who acknowledges that Africans are “profoundly religious people”.³⁴⁹ In contrast with professional African philosophers, traditionalists Somé, Mutwa, Mbiti, Wiredu and others confirm that African Religion *is* African reality for traditional African people.

B.J. van der Walt (2006: 208) suggests that whilst professional African philosophers criticise ethnophilosophers for inventing a unique collective African philosophy for the European audience, they fall into the same trap by inventing a rational philosophy in order to prove to Westerners that Africans are neither different nor inferior. According to Van der Walt, professional African philosophers “succumbed to Western pressure by insisting that real African philosophy should comply with the standards prescribed by Western philosophers”. Mudimbe (1988: 185) states that since professional African philosophers “received a Western education, their thought is at a crossroads of Western epistemological filiation and African ethnocentrism”. Van der Walt (2006: 212) sees professional philosophy as mainly a criticism of ethnophilosophy and observes that this trend lacks a literature of its own. According to him, professional philosophy “can only hope to progress in the future when it switches from predominantly a protest against ethnophilosophy to a more positive study of specific philosophical issues and problems”. B.J. van der Walt (2006: 211) maintains “professional philosophers are busy with a kind of metaphilosophy which has very little relevance to the concrete problems of the continent”.

Whilst Wiredu and Houtondji proclaim the advantages of scientific progress³⁵⁰ for Africa, one wonders whether the adoption of scientific thought in Africa would necessarily bring about a paradigm shift in the Western perception of Africans as inferior. Whilst professional African philosophers on the one hand assure mere

³⁴⁹ Senghor (1964), Nkrumah (1998), Mbiti (1991), Mutwa (1998; 2003) and Somé (1999) affirm the communal and spiritual nature of African societies.

³⁵⁰ Blackburn (2002: xv) states that whilst academic philosophers advocate the importance of scientific philosophy “they do not actually do science themselves, nor necessarily offer any more insightful interpretations of science than those that science writers and journalists manage for themselves”.

mortals of the universal character of African philosophy, African traditionalists on the other hand vouch for the uniqueness of African philosophy. Philosophers who subscribe to the Western tradition propound individualism, capitalism, science and racial prejudice, whilst in traditional “Africa things are quite otherwise, since African civilization is characterised above all by solidarity, communitarianism, traditionalism and participation” (Maurier cited by Teffo et al., 2002; 173). Is it as Gordon suggests, that African philosophy is much broader in scope than Western philosophy? He states: “Now, although this governing fiction suggests at first that ‘real philosophy’ is Western, there is a logic that can show that African philosophy is broader in scope than Western philosophy because it includes the Western in its self articulation. In practice Western philosophy may be a subset of African philosophy” (cited in Hallen, 2004: 130).

In *Sage Philosophy*, Oruka (1990{a}: xx) adds another two trends to the existing four trends, viz. the hermeneutical trend and artistic or literary trend.

3.3.6 The Hermeneutical Trend

The debate surrounding the existence of African philosophy and the discourse on Oruka’s famous four trends have been dominated largely by academics of the Western philosophical tradition. In response to the Western discourse on African philosophy, African philosophers attempt to illustrate that Africans too possess reason, logic, and the ability to philosophise by adopting Western philosophy’s universal methodology for philosophy. The hermeneutical trend affirms that, contrary to Western positivism, “the interpreter and his text cannot be detached from the particular cultural context, and that, to a large extent, understanding is determined by the cultural context” (Van Blerk, 2004: 209).

Gadamer, the father of hermeneutics, states that it is impossible to read anything out of context. In *Truth and Method* (1960), Gadamer (Law, 2007: 330) argues that the author and interpreter are conditioned by their respective historical situations. Gadamer sees interpretation as “a two-way process in which the

perceptions of the author and interpreter merge into a fusion of horizons which has to remain open to new interpretations and cannot be pinned down to a set of methods". Foucault (1982: 179) defines hermeneutics as a "discipline which deals with deep meaning, meaning necessarily hidden from the subject, but nonetheless accessible to interpretation". Foucault maintains the deep meaning of texts is culturally constructed. Oruka (1990{a}: xx) sees the hermeneutical trend as consisting of a "philosophical analysis of concepts in a given African language to help clarify meaning and logical implications arising from the use of such concepts".

In African philosophy, the hermeneutical approach takes the lived African experience as starting point. Hallen (2002: 70) notes a common concern shared by hermeneutical philosophers in the African tradition in their determination to come to terms with the damage done to Africa by colonialism and Western intellectual imperialism. According to Hallen (2002: 70), hermeneutics is perceived as a deconstructive term which symbolises "different aspects of the struggle of African people to control their identity". Hermeneutics deconstructs and reconstructs African history from its liberation struggles, viz. "from neo-colonialism, repression, subordination and social exploitation" (Imbo, 1998: 28) to current problems. "Rooting themselves in what is traditional to Africa, they seek to escape the enslavement of the past by using that past to open up the future ... and call into question the real relations of power in Africa" (Imbo: 1998: 27).

Deconstructive hermeneutics has a postmodern concern with Western universalism and the Western ideology of liberalism. In deconstructing³⁵¹

³⁵¹ Ryan (cited in Outlaw, 2002: 153) describes deconstruction as follows, "In very broad terms deconstruction consists of a critique of metaphysics, that branch of philosophy ... which posit first and final causes or grounds, such as transcendental ideality, material substance, subjective identity, conscious intuition, prehistorical nature, and being conceived as presence, from which the multiplicity of existence can be reduced and through which it can be accounted for and given meaning. Standard practice in metaphysics ... is to understand the world using binary oppositions, one of which is assumed to be prior and superior to the other".

hermeneutics oppose the scientific, positivistic³⁵² analytic methodology of Western philosophy. The term deconstruction was coined by the French philosopher Derrida, who used this technique of “involving close readings of texts to open up the fluidity of meaning by focusing on seemingly incidental details and so uncovering their hidden or unthought aspects” (Law, 2007: 344). The deconstructive hermeneutical approach no longer asks what African philosophy is. Such a question “forces us to justify and identify it from an external perspective” (Janz, 2004: 101). According to Janz (2004: 101), “hermeneutic philosophy replaces Western discourse to the situation in African philosophy which focuses on living and creating philosophy in the African place”.

Hermeneutic philosophers distinguish the hermeneutic trend from both ethnophilosophy and universalist philosophy. They see the deconstruction and reconstruction approach to philosophy as imperative “to demonstrate how Western philosophy is used as an ideological weapon to denigrate the intellectual significance of non-Western, in particular, African cultures” (Outlaw cited in Hallen, 2002: 69) and to unmask and undo the “Eurocentric residue on the level of theory” (Serequeberhan, 1994: 119). Outlaw (2002: 139) argues that African philosophy has been deconstructive and reconstructive in its attempt “to sanitize African intellectual practices of their necrophilia: that is, its concern to construct a self image in the mirror of a decomposing, putrid, Greco-European philosophical anthropology that has been embodied in the dominant voices and traditions of Western philosophy”. Serequeberhan (1994: 19-11) gives Fanon and Cabral as examples of non-Western intellectuals who utilise hermeneutical philosophy from an African perspective. Hallen (2002: 70) perceives the following African philosophers as hermeneutic philosophers, viz. Fanon, Serequeberhan, Outlaw, Towa, Okere, Okolo, Gordon and Bernasconi.³⁵³

³⁵² Coombe (cited in Van Blerk, 2004: 291) states that “one cannot logically explain human behaviour and the laws governing natural events in the same way, and therefore the positivistic arguments that all explanations must conform to the same deductive model cannot be effectively defended”.

³⁵³ See Fanon, F. *The Wretched of the Earth* (1990); Serequeberhan, T. *The hermeneutics of African Philosophy* (1994), *Our Heritage: The Past in the Present of African-American and African Existence* (2000); Okere, T. *African Philosophy: A Historic-Hermeneutical Investigation of the Conditions of its*

3.3.7 The Literary Trend

Oruka states that the literary trend consists of what Wamba dia Wamba and Wole Soyinka refer to as the narrative element in African philosophy (1990{a}: xxi). Oruka acknowledges that many African literary intellectuals represent this trend, but names only the following as examples of the narrative trend: Chinua Achebe, Wole Soyinka³⁵⁴, Ngugi wa Thiongo, Okot p'Bitek and Taban Lo Lo Liyong.

The narrative part of African philosophy reflects the struggle of the African continent to rid itself of colonialism, imperialism, apartheid and other forms of domination. Ngugi wa Thiongo for example, accentuates the importance of reviving the African philosophical tradition through African languages. In his book *Decolonising the Mind* (1986), he says “farewell to English as his language of writing” and embraces his native Kenyan language, Gikuyu. The Nigerian writer, Chinua Achebe, an advocate of European languages, points out the practical aspects of writing in English on a continent with so many diverse cultures and languages. In his first novel *Things Fall Apart* (1986), he addresses the negative impact of colonialism on Igbo traditions. In *No longer at Ease* (1962) Achebe examines the negative impact of Western concepts on African values and traditions and in *Arrow of God* (1986), he illustrates the clash between Western values and traditional African rituals. African writers of the literary trend confirm that Christianity and Western values have eroded traditional African values.

There are, however, many more contemporary African writers to add to the narrative trend in African philosophy. What is significant though is the fact that no female African writer has been identified in Oruka's narrative trend. There is

possibility (1983); Outlaw, T. *African Philosophy: Deconstructive and Reconstructive Challenges* (2002); Wiredu, K. *Conceptual Decolonisation in African Philosophy* (1994); Osuagwu, I.M. *African Historical Reconstruction* (1999) and Masolo, D.A. *African Philosophy in search of identity* (1995).

³⁵⁴ The Nigerian Nobel Laureate poet Wole Soyinka is known for excellent African literary scholarship viz. *The Open Sore of a Continent: a Personal Narrative of the Nigerian Crises* (1996) in which he diagnoses the ills of his country, Nigeria.

no trace of *Ama Ata Aidoo*, Buchi Emecheta, Flora Nwapa, Grace Ogot, Bessie Head or any of the many other female African writers. African feminists accuse African philosophy of representing only the male voice of Africa. In scrutinising the exciting trends in African philosophy, the researcher laments the fact that this accusation seems to be spot on. The narrative trend, as well as the rest of the trends in African philosophy, represents only the male voice of Africa. Like Western philosophy, African philosophy also is characterised by the icon of logic: the male.

3.3.8 Alternative Trends in African Philosophy

Although Oruka's six trends were a first attempt to construct a map of the history of African philosophy, it was certainly not the last. A number of intellectuals have subsequently attempted to reconstruct Oruka's six trends or approaches to African philosophy. Their attempts to reconstruct Oruka's trends are insightful as it stands proof of the effort to deconstruct African philosophy. Outlaw (2002: 147) notes that all suggested notions of change "whether through the meaning(s) they give to the term, or on the basis of their interpretations of the works of others, or in terms of the actual efforts of those who do African philosophy the consequences are the same: the *deconstruction* of African philosophy". Some of the proposed efforts to deconstruct the playing field of African philosophy are represented here by Mudimbe, Serequeberhan, Deacon, Imbo and Nkombe, and Smet:

a) Mudimbe (Outlaw, 2002: 146-147) identifies three categories in African philosophy:

- In the first category Mudimbe includes philosophical contributions in the wide sense. He includes ethnophilosophy and ideologico-philosophy (political philosophy) in this category.
- In the second category he includes philosophy in the strict sense. Mudimbe includes texts of Eboussi-Boulagwa, Towa, Houtondji, Adotevi, Ngoma and himself in this category.

- The third category represents philosophical hermeneutics. Mudimbe includes texts of Atangaga, Njoh-Mouelle, certain texts of Eboussi-Boulagwa, Nkombe, Tsiamalenga, Leleye, Kinyogo and others in this category.
- b) Serequeberhan (1991: 3-23) argues that African philosophy should consist of only two approaches, namely:
- The historical-hermeneutical approach which he views as representative of African traditions and African society, and
 - The scientific approach. Serequeberhan views the scientific approach representative of rational, scientific and analytical philosophy.
- c) Imbo (1998: 34) divides African philosophy into the following approaches:
- Firstly, the ethnophilosophical approach to philosophy as represented by Tempels, Kagame, Senghor, Griaule, Diop, Nyerere, Nkrumah and Mbiti.
 - Secondly, universalist definitions as represented by Wiredu, Oruka, Houtondji, Bodunrin and Gyekye, and
 - Thirdly, hermeneutical orientations as represented by Fanon, Serequeberhan Towa, Okolo, Mudimbe and Outlaw.
- d) Deacon³⁵⁵ (1998: 396-7) suggests African philosophy should be categorised as follows;
- The historical approach, represented by ethnophilosophy; political philosophy and Negritude.

³⁵⁵ Deacon (2002: 98-99) raises a number of objections to Oruka's four-trend classification. Deacon finds Oruka's trends static and she sees the trends "as different aspects of the ongoing philosophical debate in African philosophy". She objects to Oruka's suggestion that African philosophy followed a linear pathway from ethnophilosophy to the professional trend and laments the fact that Negritude is categorised with the National-Ideological trend. She finds Negritude "as important as the four trends".

- The hermeneutical approach represented by African political philosophy; philosophic sagacity and African literary philosophy, and
- The scientific approach represented by philosophical sagacity and professional philosophy.

e) Nkombe and Smet (Outlaw, 2002: 146) suggest the following four trends for African philosophy:

- Their first trend represents the ideological category and includes African Personality, Pan Africanism, Negritude, African humanism, African socialism, scientific socialism, Consciencism and authenticity.
- Second, they include philosophy in traditional Africa.
- Their third trend represents what Nkombe and Smet term the critical school. This trend represents the theoretical reactions against the first and second trends, and
- They identify hermeneutics as a possible fourth trend.

3.3.9 A Feminist Perspective

Whilst Oruka and other Africans are to be lauded for their contributions to the field of African philosophy, it is the researcher's duty to present the bigger picture of philosophy in Africa. One cannot portray only the views of professional African philosophers but should also consider the marginalised voices which represent African reality on the African continent. As the perception of African feminists will be dealt with in Chapter Four, it suffices to say that African philosophy is regarded by African feminists to be repressive and representative of only the male voice of Africa. African feminists (Imbo, 1998: 69) state:

[T]he literature in African philosophy at present may lead to the conclusion that there are no [African] feminists. The keen observer would be hard-pressed to name more than one or two philosophers engaged with the African problematic whose focus could be considered feminist. That signals major problems for the

contemporary practice of African philosophy insofar as traditional belief systems enable, sustain, and perpetuate the silence of feminist voices.

Whilst Western feminists and African philosophers have accused Western philosophy of portraying the voice of the European male, African feminists are coming to the fore and accuse African philosophy of portraying the voice of the African male. Imbo (1999: 137-138) states the following:

There is an inherent bias in the very enterprise of defining African philosophy. In that patriarchal environment, additional burdens and restrictions fall on women ... One must suspect that the standards adopted for defining African philosophy are inherently biased. African women therefore call for an examination of the tradition within African philosophy that runs from Tempels, the 'father' of African philosophy, to the modern professional philosophers.

This places Western feminists in a peculiar situation. In their eagerness to oppose the oppressive, patriarchal, chauvinistic, racial analytical European male philosophers of the West, have they sided with the oppressive, patriarchal, chauvinistic, racist male philosophers of Africa? In the light of all the controversy the logical question to pose would be: is philosophy universal?

3.4 IS PHILOSOPHY A UNIVERSAL ENTERPRISE?

Although the Greeks did distinguish between themselves and Barbarians, Rattansi (2007: 14) vouches that the Greek distinction had nothing to do with skin colour or physical appearance. Aristotle, father of systematised positive thinking, pronounced all human beings and therefore all races, capable of logical reasoning and assumed that philosophy as a universal enterprise, operated among all cultures³⁵⁶ (Sogolo, 2002: 244).

³⁵⁶ According to Sogolo (2002: 244), Aristotle's "formal logic has been described as the systematic formulation of the instinctive logic of common sense".

Western philosophy reiterates the Greek notion of philosophy as universal enterprise but simultaneously bars the Other from taking part in philosophical discourse. As universal philosophy, Western philosophy presents itself as a neutral philosophy yet makes statements on behalf of the Other's humanity. Taking a neutral stance, however, does not prove Western philosophy's neutrality. From the viewpoint of the Other, Western philosophy has never been neutral. As *one* of the marginalised voices excluded from participating in the universal exercise of philosophy, Africans maintain that they too are capable of philosophical thought. Western philosophy however, reasons that in traditional Africa "the mind of Africa is so intellectually malstructured that it does not accord with some presumed universal principles of reasoning. Such principles do not exist" (Sogolo, 2002: 244). Not only do Africans, viz. Sogolo and others, question the existence of "principles of reasoning" but the Western philosopher, Blackburn (2004), comes to the fore and makes the shocking revelation that no such principles or tools, exist.

Whilst Western philosophy dominates the philosophical scene, presumably because its philosophers seem to possess the principles, or tools, to produce a philosophy in the strict sense, Blackburn (2004: xvii) discloses the following: "[W]hether we read Wittgenstein, or Kuhn, or Sellars, or Quine, or Goodman in the analytic tradition, or Nietzsche, or Freud or Foucault in the continental tradition, we keep tripping on the fact that there is no such authoritative set of tools, but only 'suspicion': militant scepticism about whether any such set of tools could exist". Blackburn states that Western philosophy is in urgent need of an active methodology and an authoritative set of tools with which to react to a stimulus. Two frightful questions face us. Has one set of imaginary tools or methods dominated all modes of Western thought? Or has an imaginary set of

tools been ingeniously positioned as gatekeeper, a Cerberus³⁵⁷, between the Other and full humanity?

Gratton's observation on the 'universal' relationship between Western philosophers and professional African philosophers is also noteworthy. According to him, "the only African philosophers read in the West are those trained in the main lines of inquiry such as metaphysics and epistemology. In other words, Africans were taken to be raw materials for inculcation into Western modes of thinking, following earlier forms of military colonialism" (Gratton 2003: 61). Gratton notes that despite all the current philosophical talk of Western philosophy's effort to engage the Other, its relationship with Africa has been one-way. In the light of the above, it is most satisfying to observe that certain professional African philosophers in South Africa, such as Ramose (2002{b}), argue along different lines from the African academics or professional African philosophers in the United States of America and Britain.³⁵⁸

In contrast with the general discourse of professional African philosophers, Ramose argues for "the liberation of African philosophy from the enslavement and dominance of the Western epistemological paradigm" (2002{b}: 37). Ramose denies that Westerners are superior to Africans or that they have an exclusive right to reason, and finds it morally questionable to expect of the African tradition to follow the Western tradition (2002{a}: 7). "The two philosophies are not and cannot be identical, since to be identical they must dissolve into one philosophy only" (Ramose, 2002{a}: 7).

3.4.1 Academic Reality

³⁵⁷ Cerberus was the three-headed dog from classical Greek mythology, with a mane consisting of serpents, who guarded the entrance to Hades. Cerberus prevented the living from entering the underworld and was so dreadful to behold that anyone who looked upon him turned to stone.

³⁵⁸ It is interesting to note that according to Soloman et al. (1996), professional Western philosophers [the philosophers denying the existence of African philosophy] were once located in Cambridge (England), but are now located in Cambridge (Massachusetts), Pittsburgh, Chicago and Berkley.

African philosophers contend that whilst Western philosophy professes its universal character, African students of philosophy in African universities have only been entertained on the superiority of Western analytic philosophy³⁵⁹ and that few African students are aware of the existence of African philosophy or its body of texts which constitute analytical thought on the continent. Shutte (1993: 6) posits that academic philosophy in South Africa has not proven its human worth, as philosophers have “taken refuge from the struggle in the streets and townships and shut themselves up in ivory towers”. He perceives the biggest problem with philosophy in the South African context to be embedded in the style or tradition in which most philosophers stand. According to Shutte (1993: 7), South African academics do philosophy in the European tradition, or what he calls the “Anglo-American analytical part of that tradition that became popular in Oxford and Cambridge” which is “deeply influenced by the philosophy of science and has abandoned metaphysics, and ethics of traditional philosophy”. Shutte (1993: 7) argues that academic philosophy in South Africa inculcates materialism, liberal-capitalism, utilitarianism and atheism and has lost touch with “experience, action and the world of values” and does not engage in “a systematic way with the most fundamental questions and issues of life, as these appear to the vast majority of humanity”.

The decontextualised manner in which Western philosophy is taught by academics at African universities is a matter of concern to African philosophers such as Ramose, Wiredu and More. Ramose (2002{a}: 4) laments the fact that African philosophy is persistently being ignored and excluded from university curricula on the continent. According to Ramose, the deliberate exclusion of African philosophy denies Africans “the experience of being-an-African in Africa”. More (2004{b}: 155) is of the opinion that African philosophy was never on the agenda of white academic philosophers in South Africa.³⁶⁰ In the light of what

³⁵⁹ Kwame Appiah (1992) laments the fact that Africans see themselves and their situation, at least partially, through the lenses conferred on them by the transmission of the European heritage.

³⁶⁰ More (2002: 155) states that neither of the two philosophical journals published in South Africa has ever published a single piece of African philosophy. He finds the obvious reasons firstly to be “the

Ramose describes as the persistent exclusion of African philosophy from academic institutions, both Ramose and Wiredu (More, 2004{b}: 150) call for the liberation and transformation of African educational systems. Ramose (2002{a}: 4) argues that “there is neither a moral basis nor a pedagogical justification for the Western epistemological paradigm to retain primacy and dominance in decolonized Africa”. Ramose argues that the teaching of the African experience will be an act of liberation and that to evade it is to condone and perpetuate racism in academic institutions.

The urgency to transform African academic institutions is also emphasised by p'Bitek. p'Bitek (1972: 7) defines the two tasks of African scholars as follows: firstly, “all false ideas about African peoples and culture that have been perpetuated by Western scholarship”³⁶¹ should be exposed and destroyed and secondly, “the African scholar must endeavour to present the institutions of African peoples as they really are”. In the light of the above accusations made by Ramose, Wiredu, More and p'Bitek, one has to concur that little has been done to enlighten philosophy students in South Africa about “the experience of being-an-African in Africa”. For African academic institutions to teach philosophy from a Western context only, is to condone racial prejudice and negates the notion of Western philosophy as a universal enterprise. The burning question for any reader to answer is: Does such blatant discrimination exhibit reason?

Teaching a contextualised African philosophy presents many challenges. Not only is African philosophy a political activist philosophy but its essence lies *inter alia* in the reclaiming and affirming of African reality, identity and humanity. African philosophy affirms the ancient history of the continent of Africa and deconstructs colonialism, imperialism and other ideologies through the

European construction of the African as the absolute Other” and secondly that “Africans supposedly lack what both the European and philosophy share: rationality”.

³⁶¹ Dlamini (1992: 598-599) deconstructs South African legal education and finds that it is self-contradictory and ideologically-based. Not only has legal education in South Africa ignored inequalities of race, but also social and economic equality. According to Dlamini, South African universities’ curricula emphasise what legal practitioners in the first world are required to know, viz. common law principles of Roman-Dutch law, procedural and commercial law; little attention is given to African customary law.

deconstruction of Western philosophy. African philosophy affirms Otherness and puts Western philosophy in the spotlight. Teaching African philosophy will inevitably force academics out of the comfort zones of their ivory towers as they will have to face the African reality of teaching the “African-experience-in-Africa” to the African audience.³⁶²

Whilst exposing Western philosophy as a biased philosophy, it has to be acknowledged that African philosophy itself is biased. Like Western philosophy, African philosophy is biased, racist and sexist. Professional African philosophers’ definition of the term ‘African philosopher’ presents the racist agenda of certain African philosophers. Such racism is reiterated by many African scholars such as Imbo (2002: 165) when he states as follows: “African scholars have a pressing duty to challenge bad European and American white scholarship. It is imperative that the field of African philosophy does not become the lucrative cottage industry for whites to study Africans”.

3.4.2 The Universal Truth

Whilst Western philosophy continues to reiterate its universal and inclusive nature, the Other have bombarded it with accusations to the contrary. As one of the marginalised voices of the Other, indigenous Africans accuses Western philosophy of discrimination and of privileging Western analytical thoughts over the collective religious, mystical thoughts of traditional African societies. African philosophers such as Ramose maintain that racism, and not logical reasoning, has marginalised traditional African thought. Hallen (2002: 70) too, is of the

³⁶² The complexity of philosophy in Africa is best illustrated by Mudimbe (1988: 185-186): “Today, philosophy and sociology journals and university departments have become the *loci* not only for academic exercises, but also for questioning the meaning of political power and interrogating all power-knowledge systems. In the year 1968-1969, the humanist Senghor closed the University of Dakar to silence this questioning. Mobutu of Zaire, in 1971, moved the Department of Philosophy and the School of Letters two thousand kilometers from the capital. Ahidjo of Cameroon and Houphouët-Boigny in Ivory Coast considered themselves magnanimous for permitting the existence of departments of philosophy, history and sociology they opposed. Kenyatta of Kenya felt similarly and his successor closed the University of Kenya at the first social disturbance that challenged his political power. These examples provoke a question: where does one place philosophy and the social sciences in Africa, if, as a body of knowledge and as a practice of essentially critical disciplines, they seem to be marginal in the power structure?”

opinion that “Western philosophy has failed to achieve its most radical and well-publicised goal – to achieve a ‘rational’ truth that transcends all of humanity’s cultures”. Western philosophy has failed to achieve its “most radical and well-published goal” because quite simply a rational truth transcending all humanity’s cultures is only achievable if stakeholders reach consensus. While the Other philosophise from the margins, there is no evidence of reaching consensus or universality. Outlaw (2002: 152) contends that “unity and universality can only be achieved via the consensus of discursive practices”.

Deconstruction of the term ‘universal philosophy’ reveals that not only logical reasoning but liberalism itself, forms the philosophical basis of analytical philosophy. Philosophical liberalism stretches from Hobbes, Locke, the Enlightenment, Bentham, Mills, Nozick to Rawls. Although there were “deep philosophical differences between the social contract theory, and libertarianism, deontology and utilitarianism, as well as rights based and welfarist accounts”, liberals were united by the following core set of ideas: individualism and equality (Goldberg, 1993: 5). Although Western philosophy professes rationality, individualism, equality and its universal character, it denies its racialised history. According to Goldberg (1993: 10), “race became naturalised in the Eurocentric vision of itself and racist domination came to be normalised in the Western philosophical tradition”.

Western philosophy’s history typifies Africans as illogical, pre-scientific peoples, and nullifies its liberal, universal claims of equality. Universal philosophy exclaims that “[r]ace is irrelevant, but all is race” (Goldberg, 1993: 5). One has to contend that not only rationality and racial prejudice but the very core of universalism, viz. liberalism, disqualifies traditional Africans from taking part in Western philosophy’s universal enterprise. Whereas liberalism upholds logic, individualism³⁶³ and equality, traditional African societies uphold a Manichaeism:

³⁶³ Stevenson (2002:30) gives the following factors that have promoted individualism in the West over the centuries: “Western religion focuses on the individual relationship to God; Western philosophy from Plato

communalism, African Religion and its discriminating “patriarchal structures”³⁶⁴ (Imbo, 1998: 68).

Whilst Westerners proclaim universalism, Africans such as Senghor, Mutwa, Biko and others deny Western philosophy’s universal principles of reason. Sogolo (2002: 248) states that although Westerners and Africans seem to share the “same basic features of the human species”, there is a vast difference “in the ways the two societies conceive of reality and explain objects and events. This is so because they live different forms of life. And it is for this reason alone that an intelligible analysis of African thought demands the application of its own universe of discourse, its own logic, and its own criteria of rationality”. The West’s philosophical alienation of Africans is palpable in 2008 when Ramose (2002{c}: 607) exclaims: “you are still in the renaissance, we have long made the transition to man as a rational animal. We have established ourselves in the Age of Reason”.

The researcher, a female Other, contends that firstly, a universal philosophy has never existed, and secondly, that it has become obsolete in the age of post-modernist philosophy. Postmodernism³⁶⁵ represents the philosophy of twentieth century thinkers such as Lyotard, Foucault, Kierkegaard, Nietzsche and others who negate the values of the Enlightenment; have a distrust of Western scientific thinking and logical reasoning, and a “suspicion of the notion of objective

to the seventeenth century focuses on the individual’s relationship to ideal truths; Western science has largely focused on the individual’s relationship to physical laws of nature; Western capitalism has focused on the individual as an economic unit; and American democracy sees all individuals as equal and free rather than connected to each other in any specific way”.

³⁶⁴ Maurier (cited by Teffo et al., 2002: 173) explains the difference between Western and traditional African societies as follows, “The west has used an individualistic and objectivist framework, and that has given it a civilization where the individual is powerful, where liberty is a good that is absolute, where there is room for the play of free enterprise, where scientific and technological progress covers the world with achievements. In Africa things are quite otherwise, since African civilization is characterized above all by solidarity, communitarianism, traditionalism, participation”.

³⁶⁵ The term postmodernism was coined by Lyotard who “signaled the rise of a new subjectivism and a distrust of human reason as the route to human salvation” (Law, 2007: 341).

knowledge or a single truth”³⁶⁶ (Law, 2007: 43). Wittgenstein’s (1968) belief that truth is contextual is confirmed by Gadamer (1975) who claims that no pure objective truth exists. Gadamer views truth contextually and posits that the belief systems of all humans are rooted in language and history. Like Law, Wittgenstein and Gadamer, postmodernism challenges Western scientific thinking and negates the idea of a single objective truth.³⁶⁷

Postmodernism questions the foundational concepts of Western philosophy and challenges the idea of one reality for all humanity. It objects to the so-called universal fundamentals of philosophy which originated with Aristotelian logic. The fact is, Western philosophy’s principles of rationalism, universal values and individual autonomy have excluded and marginalised the Other. Postmodernism holds that there is no single absolute truth; there are only philosophies (Soloman et al., 1996: 300). In contrast to Western philosophy’s exclusive approach to philosophy, postmodernism calls for an inclusive approach through deconstructing the original Greek ideal of philosophy and reconstructing all of humanity’s experiences. “[A]fter twenty-five centuries of trying to move away from primitive animism to a more mechanical, more scientific view of the world, we have come around full circle, back to beliefs that are shared by the ancient animists and many so-called primitive peoples” (Soloman et al., 1996: 299). Does this signal freedom and a new dawn for *ubuntu*: traditional Africa’s ‘pre-scientific, collective, religious philosophy?

3.4.3 Is there an African philosophy?

To question the existence of African philosophy is to perpetuate racial prejudice. After scrutinising some of the volumes of texts of African philosophy one has to contend, with African philosophers, that there is an African philosophy! African philosophy is a current philosophical reality. African philosophy exists and

³⁶⁶ Nietzsche viewed the Western “idea of truth as a disguise for power, and rationality as an imposition of human distinctions on an irrational world” (Law, 2007: 43).

³⁶⁷ Critical theory rejects the claims of classical Western philosophy. Critical theorists claim there is no such thing as objective truth, as all truth is created by human beings.

reaffirms the history, dignity, humanity, values and experience of Africans in Africa as a philosophical people. There seems however, to be neither a single definition of African philosophy nor a single or unique African philosophy. There is also a Western perception that African philosophers and African philosophy are facing a crisis of relevance. Higgs and Smith (2007{a}: 83) maintain that African philosophy is a Western hybrid as “all they [professional philosophers] succeed in doing is to imbibe ideas from, or contribute to, a philosophical tradition they can hardly claim as their own”. According to African philosophers, African philosophy must be produced by an African, be universal in character and philosophical in nature. “By philosophical in nature is meant that it should be related to the core ideas of Western philosophical tradition, such as epistemology, metaphysics, logic, philosophy of language, and philosophy of science. In this sense, any articulation of African philosophy could not be philosophy in the real sense, except if it were to come out as an extension, or better still, a copy of Western philosophy”³⁶⁸ (Higgs et al., 2007{a}: 84).

African traditionalists view philosophy as unique and culture-specific, and oppose the universalist definition of professional African philosophers. Whilst traditionalists argue that a unique culture-specific³⁶⁹ African philosophy exists, professional African philosophers deny these pre-scientific mystical claims and vouch for African philosophy’s analytical methodology as part of universal philosophy. As a professional philosopher, Oruka (2002{a}: 120) shares the opinion that African philosophy is not uniquely African but is rather a “corpus of authentic philosophical ideas by Africans or in the African continent”. Oruka sees African philosophy as a “discipline that employs analytical, reflective and ratiocative methodology” which is not seen as a ‘monopoly of Europe or any one race but as an activity for which every race or people has a potentiality’. Oruka views professional African philosophy as a universal enterprise which employs

³⁶⁸ Higgs et al. (2007{b}: 49) critiques African philosophy for: not challenging power structures; not accepting women as men’s equals; not encouraging critical thinking; ignoring the needs of the individual person and tolerating cruel superstitious practices, viz the burning of witches.

³⁶⁹ Gyekye (1987) maintains philosophy is a cultural phenomenon grounded in cultural experience.

critical, reflective and logical inquiry. He does not entertain the traditionalist view which experiences African philosophy as a single conceptual framework or unique African way of thinking. The collective African philosophy of African traditionalists is considered to be “basically intuitive, mystical and counter or extra rationalistic” (Orika, 2002{a}: 120). Orika challenges anyone who professes the uniqueness of African philosophy to demonstrate both the nature and uniqueness of their African contribution.

The researcher takes up Orika's challenge to investigate whether there is any unique collective African philosophy in traditional African societies. As professional African philosophers have vouched that there is no unique African philosophy in the analytical approach to philosophy in Africa, the researcher will turn to the mystical, emotional, intuitive thoughts of traditional African societies. Contrary to what Westerners and African professional philosophers believe, there is no truth “in the belief that after colonialism, traditional Africa no longer was in existence” (Orika, 1991: 18). This quest leads the researcher to investigate the *essence*, the *crux*, the *root* of African philosophy – the philosophy of *ubuntu*.³⁷⁰

3.5 CONCLUSION

The 1994 South Africa Constitution landed the courts with an interesting obligation. South African courts have to promote all the values in South Africa which underlie an open and democratic society based on human dignity, equality and freedom. Not only has the Constitution placed Western and African philosophy and jurisprudence on equal ground for the first time in history, but courts also have to promote African law and legal thinking as part of the source of values which underlie our democracy. The court faces a difficult task for the following reasons: firstly, African sources suggest that customary law does not

³⁷⁰ Tutu views *ubuntu* as the *essence* of African philosophy (Wilkinson, 2002: 356); Ramose (2002{b}: 40) describes *ubuntu* as the *root* of African philosophy; and Rhoederer (2004: 442) describes *ubuntu* as the *crux* of African philosophy.

represent African law; secondly, courts have to deliberate African values whilst very little research has been done on the topic; and thirdly, African feminists leave courts with the suspicion that *ubuntu* does not represent the values of either the Constitution or the Bill of Rights.

Since the inception of Plato's Academy, Western philosophy was re-engineered into an exclusive *academic* enterprise for European males to ponder on life in their ivory towers. They and they alone were seen as the custodians of reason. Aristotle's maxim on rational animals conveniently ignored, the Other were categorised as bereft of logic. Notwithstanding this philosophical apartheid, Western philosophy is observed as a universal enterprise, a single truth for all, philosophy anyone can do, provided you possess the *skills* to philosophise in the strict sense. The fact is, Western philosophy's universal truth does not apply to all humanity.

The door to Western philosophy's exclusive club was opened to a few African males who submitted themselves to be taught the skills of philosophy in the strict sense. Not only were Western philosophy's skills cloned into them, but unfortunately also its racial bias. Instead of being grateful after acquiring the tools for philosophy, they bit the very hand that fed them. African philosophers are now acclaimed professional philosophers of Africa, and have barred all but black Africans, from taking part in their philosophical stake: African philosophy. But what they practise is not African philosophy. They are merely perceived as (black) Africans fortunate enough to philosophise under the banner of Western philosophy. African philosophy is Africa's postcolonial response to the Western belief of Africa's inferiority: a philosophy exclaiming its disillusionment with European imperialism. African philosophy is Africa's philosophical response to centuries of slavery, colonialism, neo-colonialism and apartheid suffered at the hands of Europeans. It is Africa's philosophical response to uncountable injustices effected by Western philosophy's racist, oppressive philosophical agenda.

The father of Western philosophy, Plato, defined philosophy as an individual critical enquiry of the mind. It is therefore impossible for any group to philosophise; doing so would be an open denial of Plato's maxim that the multitudes cannot philosophise. In 1943 another father, Father Tempels, turned the tables on Western philosophy when he announced his discovery of a unique communal philosophy amongst the Baluba of the lower Congo, in Africa. Tempels' *Bantu Philosophy* stands testimony to the fact that traditional Africans are human and capable of reason too. Tempels revealed the Baluba's collective mythical Bantu philosophy, based on the philosophy of 'vital force'. The Baluba's folk philosophy did not represent individual thought, but propounded the philosophical ideals of the entire indigenous community: Plato's worst nightmare. Because the Baluba's vocabulary and language did not hold up to Aristotelian and Thomistic thinking, Tempels transcribed their thoughts into what Nkrumah called ethnophilosophy. Ethnophilosophy sparked a heated international debate in philosophical circles; a storm still raging between philosophers in the Western tradition and African philosophers on the one hand, and professional African philosophers and African traditionalists on the other. How can the mystic thoughts of a pre-scientific communal people constitute philosophy?

Thanks to the Kenyan philosopher, Oruka, the discourse on African philosophy was structured. Oruka identified six trends in African philosophy of which only ethnophilosophy represents the collective, folk philosophy, or *ubuntu* philosophy, of traditional African societies. Apart from Tempels' *Bantu Philosophy*; Senghor's *Negritude*; Kagame's *La Philosophie Bantu-Rwandaise de l'être*; Mbiti's *African Religion and Philosophy*; Abraham's *The Mind of Africa*; Nkrumah's *Consciencism*; Griaule's *Coversations with Ogotemmel* and others, also constitute ethnophilosophy. In spite of the fact that Senghor, Nyerere, Kagama, Nkrumah, Tempels, Hallen and others attest to *ubuntu's* collective belief system in traditional African societies, professional African philosophers question ethnophilosophy's methodology and label it as a pre-scientific and outmoded

traditional belief system: a myth irrelevant in modern Africa. Have South African courts saddled themselves with a dying dinosaur by insisting that these outmoded traditional beliefs be taken into account to nurture values for a new South Africa? Professional African philosophers are adamant that philosophy should be critical, argumentative and not based upon the values and beliefs of Africa's indigenous cultures.

Ethnophilosophy, or *ubuntu*, represents the collective worldview of either a specific African community or traditional African societies as a whole. As ethnophilosophy, *ubuntu* forms part of the oral tradition and embodies traditional wisdom, history, tradition, customs, myths, songs, dances, folktales, stories, beliefs, proverbs, rituals, religion and values. The oral tradition is characteristic of the African continent and is a meticulously preserved tradition where every ancient word or skill is guarded and passed on from generation to generation. Little of the oral tradition is however revealed to strangers. It is suggested that *ubuntu's* moral principles are derived from the Egyptian principles of Maat, as evident in Yoruba moral epistemology.

African sources maintain that Africans in traditional African societies possess reason, but that it is a different type of reason or logic than that experienced by Europeans. Traditional Africans do not comprehend reality through their intellect but through their senses, in the form of intuition and emotion. Many sources agree that intuition and emotion underlie *ubuntu* reality. *Ubuntu* reality is dualistic and involves the visible and invisible universe; it does not compartmentalise the natural and supernatural. Problem solving in communitarian African societies involves interaction with the ancestors who are the custodians of knowledge.

In contrast with European logic which is 'merely' a scientific method, *ubuntu* reality is a pre-scientific method which applies intuition, emotion and the supernatural to solve problems. In Africa, life is the ancestors. Traditional African people are viewed as very religious; so much so that it is difficult to distinguish

between religion and philosophy. African traditionalists believe African philosophy represents the unique collective reality of communitarian African societies which is irreconcilable with Western realities notions of individualism, capitalism and analytical methodology of philosophy. *Ubuntu* philosophy is portrayed in the Xhosa proverb *umuntu ngumuntu ngabantu*, which means “I am because we are and since we are, there I am”. This *ubuntu* notion acknowledges that a person can only be a person through other persons and opposes Western liberalism’s atomistic existence. African traditionalists oppose the idea of a universal philosophy as prescribed by African professional philosophers, because it undermines the unique notion of *ubuntu*.

According to Western and professional African philosophers, philosophy is an analytical, critical, reflective, and logical enquiry. They view ethnophilosophy, or *ubuntu*, as an oral, non-rational, pre-scientific intuitive, emotive and religious reality which differs profoundly from philosophy in the strict sense. Professional African philosophers perceive *ubuntu* at best as a folk philosophy or a form of religion. Professional African philosophers negate the idea that a group can philosophise and see ethnophilosophy as nothing more than Tempels’ ideological myth. African feminists too, bring damning critique against ethnophilosophy or *ubuntu* philosophy. According to African feminists, African philosophers are concentrating so hard to disprove the unique collective belief system of traditional African societies that they ignore the dehumanising and oppressive customs, taboos and traditions characteristic of this patriarchal worldview.

Oruka’s sage philosophy defines the difference between folk and philosophical sages. Whilst a folk sage is regarded as a master of didactic wisdom, a philosophical sage is perceived as an expert at didactic wisdom. Sage philosophy proves that rational thought prevails in traditional African societies. Not only Westerners, but also traditional Africans too possess the ability to reason.

Political philosophy highlights the importance of communal life, traditional African values and African Religion in communitarian societies. Nkrumah's *Ujamaa* and Nyerere's *Consciencism* emphasise the existence of a coherent communal philosophy which inspired their followers to rekindle eroded traditional African values. Like ethnophilosophy, this trend affirms the existence of collective values, beliefs and a communal philosophy amongst indigenous Africa's.

Senghor's *Negritude* affirms traditional African values. As an ardent opponent of colonial rule, Senghor demonstrated to the European public that Africans are human too. In his quest to prove the existence of African culture and values he confirmed the existence of a communal value and belief system within traditional African societies. Whilst the hermeneutical trend attempts to deconstruct and reconstruct the damage done to Africans by Western hegemony, the literary trend confirms that African reality consists of a collective philosophy which aspires to rekindle its collective values and beliefs.

In an age of postmodernity the foundational concepts of Western philosophy are scrutinised. Not only are reason, logic and universality dissected, but the imaginary tools of Western methodology are questioned. Man cannot live by reason alone: the Others utilise logic, intuition and emotion on their path to wisdom. This study is proof of the fact that a universal philosophy does not exist. As long as philosophical apartheid prevails there will only be different philosophies. It is evident that African thought and legal thinking does not only consist of traditional African thinking or *ubuntu* thinking. Professional African philosophers and African feminists oppose the pre-scientific, mystic thoughts entertained in traditional African societies. African feminists disclose that ethnophilosophy or *ubuntu* reality harbours patriarchal structures in African societies that oppress and marginalise African women.

CHAPTER FOUR

UBUNTU: THE ROOT OF AFRICAN PHILOSOPHY

4.1 INTRODUCTION

The 1996 South African Constitution imposed a duty on South African courts to promote values that underlie an open and democratic society based on freedom, equality and human dignity.³⁷¹ With the incorporation of the Bill of Rights in the 1996 Constitution, South Africa embraced a culture of human rights to protect the human rights of the individual against the government.³⁷² In *S v Makwanyane*³⁷³ it was argued that “recognition should be given also to African law and legal thinking as part of the source of values which sec. 35 of the 1993 Constitution requires Courts to promote”.³⁷⁴

South Africa’s Black Consciousness leader, Steve Biko (2007: 167), said the following: “We reject the power based society of the Westerner that seems to be ever concerned with perfecting their technological know-how while losing out on their spiritual dimension. We believe that in the long run, the special contribution of Africa will be in this field of human relationship. The great powers of the world may have done wonders in giving the world an industrial and military look, but the great still has to come from Africa – giving the world a more humane face”. Biko rejected most Western values since he regarded them as foreign to African values. He perceived Western values as the root cause of the destruction of African values and Africa’s most cherished belief: *ubuntu*. Like Biko, Dhlomo

³⁷¹ See section 39 of the Constitution of South Africa, 1996.

³⁷² The United Nation’s commitment to human rights is made clear in the Preamble to the United Nations Charter which affirms ‘faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women’. Article 55 obliges the United Nations to promote ‘universal respect for, and observance of, human rights and fundamental freedoms, for all without distinction as to race, sex, language or religion’.

³⁷³ 1995 (3) SA 391.

³⁷⁴ *Ibid* at 393.

(cited by Broodryk, 1997{a}: 33) regards “ubuntu’s greatest strength as that of bringing an indigenous, purely African, philosophy of life. It is not imported from Eastern or Western Europe: it is something out of Africa and all African languages throughout the continent do have a word that defines the person (umuntu)”. Biko saw *ubuntu* as the new world philosophy which would emerge from Africa to bring freedom, understanding and peace to the world. Biko, Broodryk (2007), Bhengu (2006), Mbigi (1997) and many others share Biko’s vision on *ubuntu* as an alternative universal or world philosophy. Broodryk (2005: v-vi) is adamant that “[t]he time has arrived for Ubuntu to be exported to the international arena ... Although Ubuntu philosophy has its origin in Africa as a practical worldview that determines everything a man does and thinks, and the way a man acts, the basic values of Ubuntu are so universal that the whole world could apply them to all aspects of life, management included”. Bhengu (2006: 101-102) describes *ubuntu* as “Africa’s great gift to the global world of thought ... ubuntu advocates a renewed concern for the human person... [gives] a new and profound meaning to the debate on human rights ... and recommends the same spiritual resources as remedy for the ills of the wider world”. *Ubuntu*, Africa’s ancient mystic philosophy, formulated even before the discovery of the Christian Ten Commandments (Bhengu, 2006; Broodryk, 2002), is proposed as a soothing balm for a world ripped apart by a philosophy of rational or universal truth.³⁷⁵

The word *ubuntu* has been so commercialised that every South African has taken note of it; most businesses associate with it, either as part of their brand name or in its pledge to customer service. *Umuntu ngumuntu ngabantu*³⁷⁶ is said to represent Africa’s “humanness”, its brotherhood, its ethic of care. But where is *ubuntu*, Africa’s “humanness”, its brotherhood, its ethic of care in South Africa, Uganda, Zambia, Zimbabwe, the Democratic Republic of the Congo, Kenya,

³⁷⁵ Outlaw (2002: 141) states that Western philosophy’s deep-rooted project is to “condition by a principle of discrimination, the basis of which is the racial/ethnic/cultural identity of the voice in which it is articulated: not all persons or peoples are thought to share the level of development and/or potential to realize rationality, especially at its highest levels”.

³⁷⁶ An often quoted line from John Mbiti’s *African Religions and Philosophy*, meaning: “I am because we are, and since we are, therefore I am”.

Darfur, Rwanda, Algeria, Liberia, Sierra Leone?³⁷⁷ Or does *ubuntu* apply only to the clan or the tribe, and not to strangers or outsiders, as M'Baye (1974), Nyirongo (1997), Turaki (1997), Mutwa (1998; 555-556), Imbo (1999) and Oduyoye (2001: 95) suggest?

The question then: what is *ubuntu*?³⁷⁸ According to Ramose (2002{b}: 50-51), the wholeness of *ubuntu* can only be understood in terms of three interrelated dimensions or a "inseparability trinity" (2002{b}: 122). The first dimension is that of the living; the second dimension those who have passed away from the living through death; and the third dimension is that of the yet-to-be-born. "The ontology of indivisible things is thus the basis of ubuntu metaphysics".³⁷⁹ If the reader cannot comprehend Ramose's explanation of *ubuntu*, let us try Mbigi's and Broodryk's. Mbigi's (1997: 30; 2005: vi) explanation gives *ubuntu* as: "our way of life, our collective solidarity, born out of our kinship culture and it is the heart and soul of our existence ... The cardinal belief of Ubuntu is that *a man can only be a man through others*. In its most fundamental sense it stands for *personhood and morality*".³⁸⁰ Broodryk (2002: 139) describes *ubuntu* as "an ancient philosophy and worldview with its roots anchored in traditional African mystic". One should not despair, for Tutu (1999: 34), Koka and Teffo (cited in Bhengu, 2006: 46) and Mokgoro (1998{b}: 49)³⁸¹ find *ubuntu* a very difficult

³⁷⁷ How reconcilable is *ubuntu* with the notion of ethnic cleansing and violent conflicts in Africa? See Kaarsholm's (2006) *Violence, Political Culture & Development in Africa*. Oxford: James Curry.

³⁷⁸ Broodryk (2007: 60) mentions that if you ask South Africans about *ubuntu*, they will immediately refer you to how their fathers and the fathers of their fathers, and their fathers before them grew up.

³⁷⁹ "Ubuntu cannot contain ubuntu without the intervention of the living-dead. The living-dead are important to the upkeep and protection of the family of the living. This is also true with regard to the community at large. For this reason, it is imperative that the leader of the community together with the elders of the community must have good relations with the living-dead. This speaks to the ubuntu understanding of cosmic harmony. It must be preserved and maintained by translating it into harmony in all spheres of life. Thus African Religion, politics and law are based on and suffused with the experience and concept of cosmic harmony. Religion, politics and law must be anchored upon understanding of the cosmos as the continual strife for harmony ... And this is the basis for consensus as the distinctive feature of ubuntu philosophy. Peace through the concrete realization of justice is the fundamental law of ubuntu philosophy" (Ramose, 2002{b}: 51-52).

³⁸⁰ Mbigi (2005: VI) maintains "the most pervasive and fundamental collective experience of the African people is their religious experience".

³⁸¹ Mokgoro (1998{b}: 49) laments the fact that *ubuntu* is not easily definable: "Because the African worldview is not easily and neatly categorized and defined, any definition would only be a simplification of a more expansive, flexible and philosophically accommodative idea".

concept to explain in a Western language. Bhengu (1996{a}: 10) states that “after so much has been written [on ubuntu], the concept still is an enigma. That is why we who own the word and the concept shudder when we behold: fools rush in where angels fear to tread”. Perhaps the truth about *ubuntu* lies in what Mutwa (1998: 555-556) suggests, viz. that much of *ubuntu* has been “veiled in a heavy *kaross* of mystery”; that “[t]he High Laws of the Bantu forbid [Africans] to go into too much detail”. But we *all* need to know what *ubuntu* entails³⁸², because *ubuntu* forms part of South Africa’s new rainbow jurisprudence.³⁸³

Chapter Four deconstructs the concept of *ubuntu* as the root of African philosophy. This chapter deals with the following:

- Introduction.
- Background.
- The South African Constitution and *ubuntu*.
- South African case law and *ubuntu*.
- *Ubuntu*: a definition.
- *Ubuntu*: Africa’s philosophy of life.
- *Ubuntu* as African communalism.

³⁸² Moellendorf et.al. (2004: 445) accentuate the intricate and expansive nature of the philosophy of *ubuntu*, and find it not surprising that attempts to officially incorporate it into formal jurisprudence have been only partly successful. “Rather than recognizing ubuntu as a philosophy, courts and commentators have attempted to treat it as a uni-dimensional value. According to them, it has led to commentators and courts emphasizing only those aspects of ubuntu that fit with the purpose for which it is invoked, with the result that it is often appropriated in a piecemeal and inconsistent fashion”.

³⁸³ See Cockrell’s *Rainbow Jurisprudence* (1996). “[T]he absence of a *rigorous* jurisprudence of substantive reasoning for what we have been given is a quasi-theory so lacking in substance that I propose to call it rainbow jurisprudence”. Cockrell (1996: 11) gives the following examples of this rainbow jurisprudence: In *S v Makwanyane*, Mokgoro J par. 307 says the following: “In interpreting the Bill of Fundamental Rights and Freedoms ... an all inclusive value system, or common values in South Africa, can form a basis upon which to develop a South African human rights jurisprudence”. Sachs J, *ibid* par. 362, says the following: “This evaluation must necessarily take place against the backdrop of the values of South African society as articulated in the Constitution and in other legislation, in the decisions of our courts and, generally, against our own experiences as a people”. According to Cockrell, “rainbow jurisprudence beguiles us with its lack of substance and denies the existence of deep conflict in the realm of substantive reasons, assuming as they do that constitutional adjudication is all about normative harmony rather than normative discord. My point is that substantive reasons are difficult reasons; they require hard choices to be made between moral and political values which are inherently contestable and over which rational people will disagree”.

- *Ubuntu* as African Religion.
- *Ubuntu* values.
- *Ubuntu* as justice.
- *Ubuntu* as law.
- The voices of the female other.
- Where is ubuntu?, and
- Conclusion.

The 1993 and 1996 South African Constitutions urge South African Courts to promote values that underlie South Africa's open and democratic society based on freedom, equality and human dignity. In *S v Makwanyane* the Constitutional Court contended that African law and legal thinking had to be included as part of the source of values required by the Constitution. In an attempt to deconstruct the meaning of *ubuntu*, case law of the Constitutional Court and ordinary courts were scrutinised for a definition and meaning of the word. Tutu (1999), Mokgoro (1998{a}; {b}) and Bhengu (2006) argue *ubuntu* cannot be defined in a European language. According to the courts, *ubuntu* means "humanness", "African communality" and "African morality". As courts in general do not deliberate the values of *ubuntu*, a definition of *ubuntu* was sought in extra-legal sources.

African sources, viz. Broodryk (1997{a}), Ramose (2002{b}), Turaki (1997) and others emphasise that *ubuntu* reflects Africa's unique collective philosophy of life. As ethnophilosophy, *ubuntu* reflects the shared value and belief system of Africans across the African sub-continent. As collective philosophy, *ubuntu* encapsulates concepts such as African communitarianism, the extended African family, traditional African values, African Religion and group solidarity. *Ubuntu* does not represent Western individualism as the African individual is not *ipso facto* regarded as a person. Personhood can however be obtained through different rites which shape the African individual into personhood.

Ubuntu is generally defined as “humanness” or “morality”. Oduyoye (2001), Oruka (2002{b}), Mokiti (1988), Mbiti (1991), Ramose (2002{b}), Mazrui (2002) and others acknowledge the inextricable link between *ubuntu* and African Religion. The African spirit world, which includes God, ancestral spirits, nature spirits and evil spirits, defines the African worldview.

Ubuntu's values are shared by all traditional African societies. Gyekye (1996), Oruka (2002{b}) and Mbiti (1991) state that all African values are derived from African Religion. Although the Constitutional Court argued in *S v Makwanyane* that *ubuntu* values are universal, Mbigi (2005); Broodryk (2007); Koka and Teffo (cited in Bhengu, 2006), Ngubane (2006) and others confirm the dilemma that *ubuntu* experiences with hermeneutics. Not only are *ubuntu* values perceived as more intense than Western values but also unique.

Ubuntu as justice reveals that traditional African justice is derived from the ancient Egyptian moral principles of Maat. The role of the elders as advisors, councillors, judges and mediators of justice will be discussed. It will be argued that *ubuntu*'s concept of justice differs from the Western concept of justice. According to De Tejada (1979), M'Baye (1974) and Ramose (2002{b}), traditional African systems of law are similar to one another. Ngubane (1979), Bhengu (2006) and Ramose (2002{b}) maintain *ubuntu* serves as constitutional law to African societies. Ramose (2002{b}) posits that *ubuntu* law, like *ubuntu* justice, is a continuation of African Religion. *Ubuntu* law applies to the group. *Ubuntu* law is applied according to a person's status or place in the communal hierarchy but does not apply to the stranger. As in the case of *ubuntu* justice, it will be argued that *ubuntu* law differs from the Western concept of law. With regard to the Constitution, Western philosophy and jurisprudence oppose *ubuntu* reality.

Whilst African sources generally portray *ubuntu* as an idyllic philosophy which respects equality and human dignity, African feminists bring damning evidence that *ubuntu* is not only entrenched in patriarchy but violates human rights of

females in traditional African societies. Not only is *ubuntu* not in line with international and regional human rights mechanisms but in terms of the South African Constitution, it does not uphold the Constitutional values equality and human dignity. In spite of numerous sources decrying the loss of *ubuntu*, African feminists testify that female oppression continues under *ubuntu*'s oppressive patriarchal philosophy. It will be argued that courts have to start deliberating *ubuntu* values as a source of values of South Africa's open and democratic society.

4.2 BACKGROUND

In 1999, President Mbeki urged South Africans to undergo a paradigm shift and to embrace traditional African values and in particular, *ubuntu*.³⁸⁴ President Mbeki's Vision, Mission, and Objectives of the African Renaissance³⁸⁵ demand "a shift in the consciousness to re-establish our diverse traditional values and in particular *ubuntu*, embracing the individual's responsibility to the community and the fact that he is, in community with others, the master of his own destiny". Mbeki links *ubuntu* to African communitarianism, the extended African family and traditional African values. Whilst Mbeki connects *ubuntu* with traditional African values, Broodryk (2007), Bhengu (1997; 2006), Deputy President Mlambo-Ngcuka (2006:4) of South Africa and others, define *ubuntu* as the ancient value system³⁸⁶ of traditional Africa. Nyerere (1975: 28) describes *ubuntu* as a collective philosophy propounding communal ownership, sharing and equality for all men. It can therefore be deduced that *ubuntu* is generally associated with traditional African values and a communitarianism. Bhengu (1996{a}: 1) states that since time immemorial, Africans lived by *ubuntu* philosophy – until European

³⁸⁴ Ramose (2002{b}: 7) argues that "the time has long come for Africa to abandon the path of mimetic philopraxis – the uncritical imitation of the life of non-Africans – and pursue the route of the authentic liberation of the continent".

³⁸⁵ With the wave of xenophobic attacks which have swept through South Africa the Mail & Guardian (2008, May 16-22: 30) maintains "it is clear the African Renaissance remains a pipedream when South Africans kill and rape their African brothers and sisters purely for not being South African".

³⁸⁶ Morals are values (Higgs et al., 2007{a}: 8).

colonialists became the “custodians of the Law” and eroded it. As Biko, Bhengu and many others maintain that traditional African values stand in contrast to Eurocentric values³⁸⁷, *ubuntu* seems to be part and parcel of traditional African existence. The ancient African concept of *ubuntu* confronts not only European and professional African philosophers, but also Eurocentrism with its notions of human rights, individualism, capitalism, and universal values, to embrace the Afrocentric perspective of group rights, duties and its accompanying traditional African value system.

4.3 THE SOUTH AFRICAN CONSTITUTION AND *UBUNTU*

The Postamble of the South African Interim Constitution³⁸⁸ provided that: “The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights, the transgression of humanitarian principles in the violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not for revenge, a need for *ubuntu* but not for victimisation”. Although the 1993 Constitution did not define what is meant by the “need for *ubuntu*”, it can be deduced that the concept of *ubuntu* seeks reconciliation among all South Africans. Section 35(1) of the Interim Constitution urged South African courts³⁸⁹ to promote the values which underlie South Africa’s open and democratic society based on freedom, equality and human dignity. The Constitution urged courts to promote not only Western values underlying South Africa’s open and democratic constitutional state or *rechstaat*³⁹⁰, but also traditional African values based on freedom, equality and human dignity. The Interim Constitution’s Postamble stated that there is a need in South Africa’s new dispensation for understanding, but not for revenge; a need

³⁸⁷ Chapter Two brings evidence that Eurocentric values oppose traditional African values.

³⁸⁸ Constitution of the Republic of South Africa, Act 200 of 1993.

³⁸⁹ Section 4(1) declares the Constitution the ‘supreme law of the Republic’ which binds all legislative, executive and judicial organs of the State, s 4(2).

³⁹⁰ See the Preamble of 1993 Interim Constitution.

for *ubuntu* but not for victimisation. The 1993 Postamble supposedly entrenched the values to which the South African Constitution, Act 108 of 1996³⁹¹ must adhere.

Unlike the Postamble of the 1993 Interim Constitution which referred to the concept of *ubuntu*, the 1996 Constitution makes no reference to *ubuntu*. Whether the South African 1996 Constitution deliberately omitted the concept of *ubuntu* in its preamble³⁹², or whether it assumed that the values of the Interim Constitution are entrenched in the final Constitution, sec. 39 of the 1996 Constitution imposes a duty on courts to promote the values underlying our open and democratic society based on freedom, equality and human dignity. The 1996 Preamble emphasises the establishment of a society based on democratic values, social justice and fundamental rights which should promote values that underlie an open and democratic society based on freedom, equality and human dignity.

The Bill of Rights, Chapter 2 of the 1996 Constitution, protects first, second and third generation rights.³⁹³ As the Bill of Rights is based on Western individualism, its flexibility in terms of accommodating *ubuntu* will hopefully not result in a legitimacy crisis. Vellem (1998: 129) sees the Bill of Rights as a test for the South African Constitution. He argues that the weakness of the Bill of Rights “lies in the fact that it is based on individual ethics. On the ground of its hegemonic claim of individualism, it fails as a measuring rod for human rights. Society becomes morally incidental and decision is left to the individual. [Individualism] ... runs against the belief of missions of Africans who believe that *umuntu ngumuntu ngabantu/ motho ke motho ka batho*. Ubuntu ethics does not demarcate between what is individual ethics and the welfare of the entire society”. Whilst Vellem is not optimistic that the Bill of Rights will be able to accommodate traditional

³⁹¹ Constitution of the Republic of South Africa, Act 108 of 1996.

³⁹² Moosa (2000: 131) posits “[t]he omission of *ubuntu* must therefore mean that the Constitution was de-Africanised in the re-drafting process. With that the religio-cultural values of African people are also devaluated. Thus the desire to formulate a core legal system which encapsulates the multiple value systems in South Africa was not necessarily accomplished in the final Constitution”.

³⁹³ Third generation or collective rights have been asserted by developing countries. Third generation rights feature in the African Charter on Human and People’s Rights.

African values, or *ubuntu*, Roederer et al. (2004: 439) has a more positive outlook on the South African Bill of Rights and its accommodation of traditional African jurisprudence. Roederer et al. are of the opinion that some of the values underlying the Bill of Rights reverberate with both Western and traditional African jurisprudence whilst others correspond more with one than the other. Because of the Western ideological bias towards meaningful engagement with African societies, “the content of traditional African thinking has thus far been comparatively neglected in legal academic writing” (Roederer et al., 2004: 439).

The fact is, the 1993 Interim Constitution facilitated an arranged marriage between Western and traditional African value systems. Through a process of reconciliation³⁹⁴ it fused not only Western and African philosophy, but also Western and African jurisprudence.³⁹⁵ After more than five hundred years of oppression and injustices suffered by Africans, as a direct result of the clash between the opposing scientific and pre-scientific philosophies of life, Western liberal values are confronted to fuse with traditional African values. *Ubuntu* has been injected into the mainstream of South African jurisprudence (Lemmer, 2000: 143).

Section 39(1) of the 1996 Constitution assures us that South African courts promote the values underlying our new open and democratic society based on freedom, equality and human dignity; therefore the courts have to reconcile tensions between these values. In an attempt to understand the ancient African value system of *ubuntu*, the root of African philosophy, we turn to the South African courts to enlighten us on *ubuntu*. As the learned judges of the Constitutional Court³⁹⁶, Supreme Court of Appeal and the High Courts have to

³⁹⁴ The Truth and Reconciliation Commission created a forum which addressed the atrocities committed during South Africa’s apartheid regime.

³⁹⁵ Appiah (1992: 174) describes this mutual interdependence as follows: “For us to forget Europe is to suppress the conflicts that have shaped our identities; since it is too late for us to escape each other, we might instead seek to turn to our advantage the mutual interdependencies history has thrust upon us”.

³⁹⁶ Section 166(a) – (e) of the South African Constitution sets out the structure of the South African courts as follows: s 166(a) the Constitutional Court; s 166 (b) – (d) ordinary courts and s 166(e) special courts. The Constitutional Court has its seat in Johannesburg and is the highest court with respect to constitutional

promote the values of our new democracy, they are the social engineers steering our Constitution values.

4.4 SOUTH AFRICAN CASE LAW AND UBUNTU

The 1993 Interim and the 1996 Final Constitutions of South Africa imposed the duty on South African courts to promote values which underlie a democratic society based on freedom and equality. The Constitutional Court emphasised that recognition was to be given to African law and legal thinking as part of the source of values which sec. 35 of the 1993 Constitution and sec. 39 of the 1996 Constitution required the courts to promote. The duty which was imposed on the courts to promote *ubuntu* values imposed an additional role: that of social engineer and social and legal philosopher.³⁹⁷ And as we know a philosopher is a person “whose heart is informed about these things which would be otherwise ignored, the one who is clear-sighted when he is deep into a problem, the one who is moderate in his actions, who penetrates ancient writings, whose advice is sought to unravel complications, who is really wise, who instructed his own heart, who stays awake at night as he looks for the right paths, who surpasses what he accomplished yesterday, who is wiser than a sage, who brought himself to wisdom, who asks for advice and sees to it that he is asked advice”.³⁹⁸ The court’s legal philosophers will enlighten us as to what the concept of *ubuntu* entails. Judgments of the following courts will be assessed:

- Constitutional Court.
- Supreme Court of Appeal, and
- High Courts.

matters. The Constitutional Court has jurisdiction within the whole geographical area of South Africa and its judgments bind all other courts, including the Supreme Court of Appeal. According to sec. 211(3) of the Constitution, customary law is subject to the Constitution.

³⁹⁷ See *Baloro and Others v University of Bophutatswana and Others* 1995 940 SA 197 (B).

³⁹⁸ See the *Inscription of Antef* in 2.2.

4.4.1 The Constitutional Court and *Ubuntu*

The Constitutional Court is South Africa's highest court with respect to constitutional matters. Judgments of the Constitutional Court set precedents³⁹⁹ that bind it and the ordinary courts⁴⁰⁰ with regard to constitutional matters.

4.4.1.1 *S v Makwanyane and Another*⁴⁰¹

The Constitutional Court delivered a landmark judgment in *S v Makwanyane and Another* on 6 June 1995. Not only did this case overturn the constitutionality of capital punishment in South Africa, but it also introduced traditional African jurisprudence to the South African legal system for the first time. The enactment of the Constitution of the Republic of South Africa, Act 200 of 1993, signalled a new era which was to cultivate a culture of respect for human life and dignity, based on the values reflected in the Constitution. The ethos of the new culture was expressed in the provision on National Unity and Reconciliation contained in the Constitution, which suggested a change in mental attitude from vengeance to an appreciation of the need for understanding, from retaliation to reparation and from victimisation to *ubuntu*.⁴⁰²

In *S v Makwanyane and Another*, the applicants appealed to the Constitutional Court to determine whether the death sentence, in terms of s 277(1)(a) of the Criminal Procedure Act 51 of 1977, was in conflict with the provisions of the Constitution of South Africa Act 200 of 1993 or not. To come to a judgment the court referred, *inter alia*, to international law, comparative law and judgments of courts of foreign and international tribunals. The court emphasised that recognition had to be given to African law and legal thinking as a source of

³⁹⁹ The doctrine of judicial precedents, or *stare decisis*, originates from English law and underlies the legal principle that the law that was applicable to a certain factual situation in a case must be applied to all future cases with similar factual situations. Court judgments or case law that have set precedents are regarded as a source of law in South Africa.

⁴⁰⁰ These ordinary courts include Higher (Supreme Court of Appeal and High Courts) and Lower Courts (Regional and District Courts).

⁴⁰¹ 1995(3) SA 391 (CC).

⁴⁰² *Ibid* par.223.

values, notwithstanding the fact that law reports⁴⁰³ and legal textbooks contained few references to African sources as part of South African law.⁴⁰⁴ According to the Court, it appears that indigenous African societies did not in general utilise capital punishment as punishment for murder.⁴⁰⁵ In its judgment the court issued an order which declared the provisions of s 277(1) of the Criminal Procedure Act 51 of 1977 and other legislation sanctioning capital punishment inconsistent with the Constitution and invalid,⁴⁰⁶ and declared the death penalty unconstitutional. It was argued that the death penalty was in opposition to the spirit of *ubuntu*.

In a campaign to legitimise the Constitution, Sachs J led the court “to take account of the traditions, beliefs and value of all sectors of South African society when developing South Africa’s jurisprudence”⁴⁰⁷, because “[i]n broad terms, the function given to this Court by the Constitution is to articulate the fundamental sense of jurisprudence and rights shared by the whole nation as expressed in the text of the Constitution”.⁴⁰⁸ According to Sachs J, one of the values of an open and democratic society is that the values of all sections of society must be taken into account and given due weight when matters of public import are being decided.⁴⁰⁹ Despite the fact that few law books and law reports contain “references to African sources as part of the general law of the country”⁴¹⁰, Sachs J led the court to cultivate an indigenous source of jurisprudence under the banner of *ubuntu*⁴¹¹ (English, 1996: 335). As the constitutionality of capital punishment in South Africa was determined by *inter alia* the ethos of *ubuntu*, the

⁴⁰³ *Ibid* par. 224.

⁴⁰⁴ *Ibid* par. 371.

⁴⁰⁵ *Ibid* par.377.

⁴⁰⁶ *Ibid* par. 151.

⁴⁰⁷ According to Sachs J, the “preamble, post-amble and the principles of freedom and equality espoused in ss 8, 33 and 35 of the Constitution require such an aptitude of vision. The principle of exclusivity shines through the language provisions in s 3 and underlies the provisions which led to the adoption in s 3 and underlies the provisions which led to the new flag and anthem and the selection of public holidays” (*Ibid* par. 363).

⁴⁰⁸ *Ibid* par. 262.

⁴⁰⁹ *Ibid* par. 368.

⁴¹⁰ *Ibid* par. 371.

⁴¹¹ Bekker (2006: 335) is of the opinion that the Constitutional Court only uses the concept of *ubuntu* in its reasoning process to justify its decision on non-political grounds.

question has to be asked: what is *ubuntu*? In an attempt to answer this vital question we turn to the learned judges in *S v Makwanyane*.

In *S v Makwanyane*, the separate judgments of Madala, Mohammed, Mokgoro and Langa JJ introduced the Other's jurisprudential concept of *ubuntu* to South African jurisprudence. In an effort to promote the underlying values of our democratic society in terms of sec. 39 of the Constitution, Madala, Mohammed, Mokgoro and Langa JJ emphasised the importance of *ubuntu*, an indigenous African value, whilst deliberating the constitutionality of capital punishment. Langa J concurred in the judgment of Chaskalson and emphasised that a culture of respect for life and dignity, based on the values of the Constitution, had to be engendered by the state. Langa argues that although the Constitution does not define *ubuntu*⁴¹², an outstanding feature of *ubuntu* in a community sense, is the value it puts on life and human dignity. "The dominant feature of *ubuntu* is that the life of another person is at least as valuable as one's own and that respect for the dignity of every person is integral to this concept". Langa J states that during violent conflicts and times when violent crime is rife, distraught members of society decry the loss of *ubuntu*, therefore heinous crimes are the antithesis of *ubuntu*. Treatment that is cruel, inhuman or degrading is bereft of *ubuntu*.⁴¹³

Langa J defines *ubuntu* as a cultural principle that embodies the values of communitarian societies.⁴¹⁴ According to Langa J, *ubuntu* recognises a person's status as a human being; a human being entitled to unconditional respect, dignity, value and acceptance from the members of the community he happens to be part of. *Ubuntu* also entails the converse, however, says Langa J. "The person has a corresponding duty to give the same respect, dignity, value and

⁴¹² *Ibid* par. 223.

⁴¹³ *Ibid* par. 225.

⁴¹⁴ Langa J cites the following remark made in the judgment of the Court of Appeal in *The Republic of Tanzania in DPP v Pete*: "The second important principle or characteristic to be borne in mind when interpreting our Constitution is a corollary of the reality of co-existence of the individual and society, and also the reality of co-existence of rights and duties of the individual on the one hand, and the collective of communitarian rights and duties of society on the other. In effect this co-existence by the rights and duties of society, and vice versa" (*Ibid* par. 224).

acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all". He emphasises that in communitarian societies, community members do not only have rights, but also corresponding duties towards members of the community. In spite of the fact that *ubuntu* seems to embrace a culture of communalism the court leaves one with the impression that *ubuntu* values are universal. J.W.G. van der Walt (2005{a}: 111) argues that a rigorous jurisprudence must remain dissatisfied with Langa J's definition of *ubuntu* which "has done little more than add a local indigenous and communitarian touch to the Christian, Kantian or Millsian respect for the individual" in Western jurisprudence".

Madala J concurred in the judgment of Chaskalson P but held that the death penalty rejected the possibility of rehabilitation of the convicted person and that such rejection is not in accord with the concept of *ubuntu*.⁴¹⁵ Madala J emphasised the fact that the concept of *ubuntu* permeates the Constitution generally, and more particularly, "embodies the entrenched fundamental human rights".⁴¹⁶ According to Madala J, *ubuntu* represents "humanness, social justice and fairness". Madala J further states that *ubuntu* "calls for the balancing of the interest of society against those of the individual for the maintenance of law and order, but not for dehumanising and degrading the individual".⁴¹⁷ Madala J also mentions the fact that traditional African jurisprudence and its accompanying values have not been researched for the purposes of the determination of the issue of capital punishment⁴¹⁸ and that such research should not be confined to South Africa only but should be applied to Africa in general.⁴¹⁹

Although Madala J does not clearly define *ubuntu*, he associates *ubuntu* with humanness, social justice, fairness, human rights and the interest of society.

⁴¹⁵ *Ibid* par. 241.

⁴¹⁶ *Ibid* par. 237.

⁴¹⁷ *Ibid* par. 250.

⁴¹⁸ *Ibid* par. 252.

⁴¹⁹ *Ibid* par. 259.

J.W.G. van der Walt (2005{a}: 109) finds Madala J's substantiations on *ubuntu* "jurisprudentially vague, to say the least as they say nothing more than what Christian morality has been endorsing with regard to capital punishment for 2000 years". What is of importance though, is Madala J's statement that *ubuntu* calls for "the balancing of the interest of society against those of the individual for the maintenance of law and order". In reality, Madala J emphasises the essence of *ubuntu*: group rights opposing individual rights. Madala J's request for research on the values of traditional African jurisprudence, leaves the impression that *ubuntu* is a concept known not only to South African indigenous people, but to indigenous people throughout the African continent.

Mohammed J concurred in the judgment of Chaskalson. In his judgment he defines *ubuntu* as the "expressed ethos of an instinctive capacity for the enjoyment of love towards our fellow men and women; the joy and the fulfilment involved in recognizing their innate humanity; the reciprocity this generates in interaction within the collective community; the richness of the creative emotions which it engenders and the moral energies it releases both in the givers and the society which they serve".⁴²⁰ Mohammed J's definition of *ubuntu* does not portray *ubuntu* as a unique set of African values, but one gets a glimpse of the words "collective community", "creative emotions"⁴²¹ and "moral energies" from under the *kaross*, signifying something not deliberated in court. Does Madala J refer to Ramose's "three interrelated dimensions?"⁴²²

Whereas the reciprocity of *ubuntu* and the collective community is emphasised by Mohammed J, it is not clear from either Madala J or Mohammed J how the concept of *ubuntu* serves either the individual or the community with reference to capital punishment. J.W.G van der Walt (2005{a}: 110) views Mohammed J's substantiations a "utopian rendition of *ubuntu*". Van der Walt questions the

⁴²⁰ *Ibid* par. 263.

⁴²¹ Senghor (1964: 447) said: "Emotion is completely Negro as reason is Greek... Yes, in one way, the Negro is richer in gifts than in works".

⁴²² See 4.1.

relevance of *ubuntu* to the jurisprudential question of violent crime and ceases to see how *ubuntu* “differs from Christianity so as to warrant the conclusion that the latter’s historical endorsement of capital punishment cannot be reconciled with the former”. Capital punishment was not, and is not, foreign to *ubuntu* jurisprudence.⁴²³ It is a pity the court introduced the concept of *ubuntu* in such a piecemeal manner without the necessary rigorous jurisprudential deliberation. If *ubuntu* represents the worldview of the majority of South Africans, surely it must be important enough to justify research on traditional African jurisprudence and its accompanying value system for the purposes of the determination of the issue of capital punishment. According to Madala J, this, sadly, did not happen.

Mokgoro J concurred in the judgment of Chaskalson and emphasised the importance of the courts’ recognising indigenous African values, as indigenous value systems are not irrelevant to the task of promoting the values of a democratic society based on freedom and equality.⁴²⁴ According to sec. 35 of the Constitution, indigenous African values are embodied in the Constitution and impact directly on the death penalty as a form of punishment.⁴²⁵ Mokgoro J emphasises that the Constitution makes it imperative for courts to develop the entrenched fundamental rights in terms of a cohesive set of values, ideal to an open and democratic society.⁴²⁶ Furthermore, Mokgoro J argues that South Africa’s indigenous value systems are a premise from which we need to proceed and are not wholly unrelated to our goal of a society based on freedom and equality.⁴²⁷ She describes *ubuntu* as “a shared value and ideal that runs across cultural lines”.⁴²⁸ Mokgoro J explains the concept of *ubuntu* as follows: “Generally *ubuntu* translates as ‘humanness’.⁴²⁹ In its most fundamental sense it translates as personhood and ‘morality’. Metaphorically, it expresses itself in

⁴²³ Sachs J mentions that ‘[t]here are a number of references to capital punishment and I can only repeat that it is unfortunate that their import was never canvassed in the present matter’ (*Ibid* par. 375).

⁴²⁴ *Ibid* par. 304.

⁴²⁵ *Ibid* par. 300.

⁴²⁶ *Ibid* par. 302.

⁴²⁷ *Ibid* par. 304.

⁴²⁸ *Ibid*, par. 307.

⁴²⁹ Mokgoro J translates *ubuntu* as “menswaardigheid” in Afrikaans cultural heritage (*Ibid* par. 308).

umuntu ngumuntu ngabantu, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to the basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation”.⁴³⁰

Mokgoro J notes that *ubuntu* has become “a notion of particular resonance in the rainbow nation of our new democracy”⁴³¹ and that the concept reiterates the need to develop “an all-inclusive South African jurisprudence”.⁴³² She makes reference to the Preamble of the International Covenant on Civil and Political Rights which refers to the inherent dignity of all members of the human family and concludes that human rights derived from the inherent dignity of the human person is not different from what the spirit of *ubuntu* embraces.⁴³³ But why consider the value systems of the formally marginalised sectors of society in creating a South African jurisprudence⁴³⁴ when there is no difference between the human rights of Western jurisprudence and *ubuntu*? Mokgoro (1998{a}: 17; 19; 22) states that “*ubuntu* is a prized value ... The values of *ubuntu* are an integral part of the value system established by the Interim Constitution ... African values that manifest themselves in *ubuntu* are in consonance with the values of the Constitution generally and those of the Bill of Rights in particular”. In reality however, there is a marked difference between fundamental human rights endorsed by Western jurisprudence and the spirit of *ubuntu*. ‘The spirit of *ubuntu*’ determines that the legal status of each individual depends upon his/her position within the hierarchy of his/her group, clan or tribe. According to Mbaye (1974: 139) and Mqoke (1999: 369) Africans assign no importance to the individual’s human rights.⁴³⁵

⁴³⁰ *Ibid* par. 308.

⁴³¹ Mokgoro J, *Ibid* par. 308.

⁴³² *Ibid* par. 306.

⁴³³ *Ibid* par. 309.

⁴³⁴ Mokgoro J, *ibid* par. 306.

⁴³⁵ See 4.11.1

Whereas Madala and Mokgoro JJ define *ubuntu* as “humanness”, Mokgoro J goes a step further and links *ubuntu*, the concept that envelops the key values of African group solidarity or collective community, to African morality. Mokgoro J expresses *ubuntu* in the metaphor, *umuntu ngumuntu ngabantu*, which means a person is a person through other people; emphasising the interrelatedness of *ubuntu* with community. What can be deduced from Mokgoro J’s judgment is that she and Langa J, Mbeki (1999), Broodryk (2007), Bhengu (1996{a}; 2006), Mlambo-Ngcuka (2006) and Higgs et al. (2007) are in agreement that *ubuntu* represents traditional African values and is inextricably linked to “African morality”.⁴³⁶ Mokgoro J, however, refrains from indicating the difference between Western and African morality. J.W.G. van der Walt (2005{a}: 109) finds Mokgoro J’s definition of *ubuntu* “thin and jurisprudentially vague, to say the least”, as her “sentiments of humanness, solidarity, personhood, compassion, morality, unity and conformity ... do not as such communicate anything markedly different from the Christian morality that has been endorsing capital punishment for almost 2000 years on end. Of the values listed here, ‘unity’ and ‘conformity’ would seem to echo the worst of this Christian morality’s medieval excesses”.

Sachs J concurred with the judgment of Chaskalson P and emphasised that, firstly, recognition should be given to African law and legal thinking as well as to traditional African jurisprudence⁴³⁷, as part of the source of values which the Constitution requires the courts to promote in terms of sec. 35⁴³⁸, in spite of the fact that, as Madala J inferred, neither South African law reports nor legal textbooks contain more than a few references to African sources as part of the general law of the country.⁴³⁹ Secondly, Sachs J held that members of the Court were to “pay due regard to the values of all sections of society, not to confine us to the values of one portion only”.⁴⁴⁰ Sachs J explains the concept of *ubuntu* as values that place an emphasis on communality, and the interdependence of the

⁴³⁶ Ramose (2002{b}: 50-51) affirms that the concept of *ubuntu* is of deeply religious significance.

⁴³⁷ *Ibid* par. 373.

⁴³⁸ *Ibid* par. 354.

⁴³⁹ *Ibid* par. 371.

⁴⁴⁰ *Ibid* par. 370.

members of a community. *Ubuntu* recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from members of the community such person is part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of the community. More importantly, it regulates the exercise of rights by the emphasis it places on sharing and co-responsibility and the mutual enjoyment of rights by all.⁴⁴¹

Sachs J holds that the time has come "to take into account the traditions, beliefs and values of all sectors of the South African society when developing jurisprudence".⁴⁴² He refers to the following principles of *ubuntu* to illustrate how disputes were solved and punishment meted out in traditional African societies:

- Amongst the Cape Nguni "the death penalty was practically confined to cases of suspected witchcraft⁴⁴³, and was normally spontaneously carried out after accusation by the diviners ... The *Cape Law Journal* notes that summary executions were usually inflicted for assault on the wives of chiefs⁴⁴⁴ or aggravated cases of witchcraft, but otherwise the death sentence was seldom followed⁴⁴⁵ even for murder, when committed

⁴⁴¹ *Ibid* par. 224.

⁴⁴² *Ibid* par. 361.

⁴⁴³ Mqoke (1996: 176) describes how amongst the Xhosa people capital punishment was imposed in cases of witchcraft and rebellion.

⁴⁴⁴ Mutwa (1998: 638-653) reveals how Piet Retief and his Voortrekker men were executed as a result of strict tribal Zulu laws. According to Mutwa, one of the men in Retief's party committed an "attempted offence" against the High Wives of Chief Dingaan of the Zulus. Zulu narrative has it that Halstead, the guilty party, was known to the Zulus as the "Curious Peeper" because of the way he went creeping around the Zulu kraals to gather information about Zulu customs and especially, weapons. It is alleged that one of Dingaan's wives almost miscarried as a result of Halstead who peeped over the stockade where Dingaan's concubines lived. One of the High Wives subsequently approached Dingaan and "persuaded him to believe that the White men were at his kraal with evil intent and that they were scheming at his weak spot – his wives". Greaves (2005: 76-77) narrates how the sons of Zulu Chief Sihayo ka Xongo captured two of their father's wives who have been accused of adultery, and publicly clubbed them to death in accordance with Zulu law.

⁴⁴⁵ Mutwa (1998: 632-633) narrates how many of the "Old Tribes" frowned upon the death penalty. According to Mutwa, these tribes knew that instead of the death penalty being a deterrent, it actually invited criminals to commit crimes. "When a Bantu turns criminal he does so as a direct challenge to constitutional authority or society in general". Mutwa states that one thing Africans fear more than a thousand deaths is to suffer public humiliation.

without the aid of supernatural powers; and as banishment, imprisonment and corporal punishment are all unknown in (African) jurisprudence, the property of the people constitutes the great fund out of which debts of justice are paid” .⁴⁴⁶

- King Moshoeshoe, King of the Sotho, was opposed to capital punishment even in cases of witchcraft.⁴⁴⁷
- The “relatively well-developed judicial processes of indigenous societies did not in general encompass capital punishment for murder. Executions that took place were the frenzied, extra-judicial killings of supposed witches, a spontaneous and irrational form of crowd behaviour that has unfortunately continued to this day in the form of necklacing and witch-burnings ... where judicial procedures were followed, capital punishment was in general not applied as a punishment for murder”.⁴⁴⁸ According to Sachs J the concept of *ubuntu* in *S v Makwanyane* restores “dignity to ideas that have long been suppressed or marginalised”.⁴⁴⁹

In this watershed case the Constitutional Court fulfilled the duty imposed on it by sec. 35(1) of the 1993 Constitution. The learned judges attempted to promote not only Western, but also traditional African values that underlie South Africa’s open and democratic society based on freedom, equality and human dignity. Sachs J states that “in broad terms the function given to this Court by the Constitution is to articulate the fundamental sense of justice and rights shared by the whole nation as expressed in the text of the Constitution”.⁴⁵⁰ Although some see *S v Makwanyane* as merely a politically motivated decision that was essential to protect the legitimacy of the new South African constitutional order (Bekker, 2006: 335), others feel that an attempt was made to “cultivate an indigenous

⁴⁴⁶ *Ibid* par. 377.

⁴⁴⁷ *Ibid* par. 378.

⁴⁴⁸ *Ibid* par. 381. Mutwa (1998: 630) states that the Christian principle of forgiveness does not apply to *ubuntu*. According to him, Africans live by the principle of revenge: an eye for an eye.

⁴⁴⁹ *Ibid* par. 365.

⁴⁵⁰ *Ibid* par. 362.

source of jurisprudence under the banner of *ubuntu*⁴⁵¹ (English, 1996: 642). Apart from the fact that the full bench attempted to legitimise the Constitution by establishing a South African jurisprudence, based on the values of *ubuntu*, the court failed dismally in linking *ubuntu* to the constitutionality of capital punishment. J.W.G. van der Walt (2005{a}: 109) laments the lack of jurisprudential rigour and argues that “a rigorous jurisprudence would engage with specific norms regarding capital punishment in cultures informed by the idea of *ubuntu*” (2005{a}: 111). Van der Walt criticises *S v Makwanyane*’s lack of research into the profile of capital punishment in African culture and African law and states that research might have proved that:

- Individual lives might be less worthy of protection in traditional African cultures than in Western cultures, and
- African culture often or at least sometimes exacted a fine of a number of head of cattle as punishment for murder on the one hand and capital punishment for the theft of cattle, on the other.⁴⁵²

J.W.G. van der Walt (2005{a}: 114) suggests that “if *ubuntu* continues to be used in South African jurisprudence, critical inquiry and critical thinking is needed to distil from it a different understanding of constitutionality”.

Although the Constitutional Court failed to link *ubuntu* as a constitutional value to the abolition of the death penalty in *S v Makwanyane*, the judgment indicates certain differences between Western and African jurisprudence. *Ubuntu* juxtaposes the atomistic individualism of Western jurisprudence with the

⁴⁵¹ In adapting Dworkin’s metaphor of the chain novel to the Constitution, we might say the Constitutional Court is “writing the first chapter in the great South African novel of Constitutional review” (Cockrell, 1996: 1).

⁴⁵² J.W.G. van der Walt (2005{b}: 259) reminds us that the African culture endorsed the *ius taliones* as widely as the Western culture “irrespective of how exactly the frequency rate of actual executions would compare these two cultures over the ages”. According to Van der Walt (2005{b}: 260), the following African sayings reflect its endorsement in African languages: *setopa ka setopa* (Northern Sotho), a corpse for a corpse; *legotlo le lefa ka setopo*, a mouse pays with its carcass (meaning a murderer pays with his life) and *botshelô bo tswêlwê ke botshelô, thlôgô ke thlôgô*, a life yields to a life, a head to a head.

communitarian interdependence of African jurisprudence. The arguments of the learned judges concerning *ubuntu* as an African value system did not render *ubuntu* values much different from those of Christian or Western morality. If *ubuntu* is “just another example of a universal phenomenon it is no longer a separate concept that needs to be articulated and applied” (Kroeze, 2001: 260). In *S v Makwanyane* the Constitutional Court failed to indicate the difference between the *ubuntu* value system and the Western value system which underlies our new democracy, but the court is adamant about creating “a South African jurisprudence”.⁴⁵³

4.4.1.2 Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others⁴⁵⁴

In this case the applicants appealed to the Constitutional Court to declare sec. 20 (7)⁴⁵⁵ of the Promotion of National Unity and Reconciliation Act 34 of 1995 unconstitutional on the grounds of its inconsistency with the right to have justiciable disputes settled by a court of law or independent and impartial tribunal in terms of sec. 22 of the Constitution. The applicants contended that amnesty infringed upon the fundamental right of victims to seek redress through the courts. In its judgment the court found that the limitation of powers in terms of the Constitution had not been exceeded and that the Truth and Reconciliation Act was not unconstitutional.

The Constitutional Court concurred with the judgment of Mohammed DP who emphasised that in the pursuit of national unity, South African citizens required reconciliation between all its people, as the divisions and strife of the past must be transcended.⁴⁵⁶ Mohammed DP observed that Parliament’s enactment of amnesty legislation was inspired by the philosophy of *ubuntu* which favours reconciliation over victimisation. Mohammed DP quotes the 1993 Constitution

⁴⁵³ Mokgoro J, *ibid* par. 306.

⁴⁵⁴ 1996 (4) SA 671 (CC).

⁴⁵⁵ In terms of sec. 20 (7-9) a person who had been granted amnesty in respect of an act, omission or offence, could no longer be held criminally or civilly liable for damages sustained by the victim.

⁴⁵⁶ *Ibid* par. 3.

which states that national unity can be addressed because “there is a need for understanding but not vengeance, a need for reparation but not retaliation, a need for *ubuntu* but not for victimisation”.⁴⁵⁷ Although the Deputy President of the Constitutional Court made no new contribution towards the understanding of the concept of *ubuntu* mentioned in the postamble of the 1993 Interim Constitution⁴⁵⁸, he emphasised that in order for the Constitution to evade the prospect of continuous retaliation and revenge, the Constitution built a “historic bridge”⁴⁵⁹ for victims and culprits to cross to the new society at the end of the bridge.⁴⁶⁰ “It was for this reason that those who negotiated the Constitution made a deliberate choice, preferring understanding over vengeance, reparation over retaliation, *ubuntu* over victimisation”.⁴⁶¹ Mohammed DP reiterates this phrase when he argues what the makers of the Constitution have contemplated with regard to the ordinary liability of the state in respect of damages sustained by others in consequence of the acts of servants.⁴⁶²

In *Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others* the Constitutional Court upheld the constitutionality of the Truth and Reconciliation Commission’s practice of granting amnesty to perpetrators of gross human rights violations during apartheid, in exchange for truthful accounts of these violations. This judgment underpins restorative justice⁴⁶³, a characteristic of traditional African jurisprudence. The court however made no effort to rationalise or develop the concept of *ubuntu* as a constitutional value in its ruling.

⁴⁵⁷ *Ibid* par. 3.

⁴⁵⁸ Constitution of the Republic of South Africa, Act 200 of 1993.

⁴⁵⁹ In the first paragraph of the provisions on National Unity and Reconciliation which the 1993 Constitution concluded, the Constitution made provisions for a “historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights”.

⁴⁶⁰ *Ibid* par. 18-19.

⁴⁶¹ *Ibid* par. 19.

⁴⁶² *Ibid* par. 48.

⁴⁶³ Restorative justice is generally regarded as a way of “humanizing justice, of bringing victims and offenders together in ways that provide opportunity for victims to receive explanation and reparation and for offenders to be accountable to the victim and the community”. This shifts thinking away from punitive justice and is referred to as community justice (Naude, 2006: 101).

4.4.1.3 Hoffman v SA Airways⁴⁶⁴

In an appeal to the Constitutional Court the appellant challenged the constitutionality of South African Airway's refusal to employ him as a cabin attendant on the grounds of his HIV-positive status. Sections 9(1) and (3)⁴⁶⁵ of the Constitution of the Republic of South Africa Act 108 of 1996 were applicable. The full bench concurred in the judgment of Ngcobo J and the appeal was upheld.

In his judgment, Ngcobo J made a passing remark that people living with HIV must be treated with compassion and understanding and that *ubuntu* must be shown to them.⁴⁶⁶ "PLWAs⁴⁶⁷ should not be condemned to 'economic death' by the denial of equal opportunities in employment, but should rather be treated with compassion and understanding".⁴⁶⁸ In this appeal which concerns SAA's inconsistency in terms of the provisions of the Bill of Rights, Ncobo J missed a golden opportunity with regard to the interpretation of *ubuntu* as a constitutional value. Whilst sec. 39 of the 1996 Constitution imposes a duty on courts to promote values underlying South Africa's open and democratic society, the Constitutional Court did little more than flaunt the concept of *ubuntu* as representative of traditional African jurisprudence.

It seems as if *ubuntu* has become little more than a catchphrase in judicial dicta. The concept of *ubuntu* is regularly flaunted in court but never deliberated. Perhaps *ubuntu* is, as Tutu and Mokgoro claim, a difficult concept to explain in English. The Constitutional Court yet again failed to enlighten both the higher and

⁴⁶⁴ 2001 (1) SA 1 (CC).

⁴⁶⁵ In terms of the right to equality and right not to be unfairly discriminated against.

⁴⁶⁶ Since Gugu Dlamini, from KwaMashu, Durban, died of assault in 1998 because she disclosed her HIV status PLWAs fear for their lives, face assault from members of their community and fear they might be evicted from their homes. Otive-Igbuzor (2007: 210) maintains that women infected with HIV/AIDS "faces new forms of violence – accusations, battery, being made homeless, being poisoned and killed - the list goes on". More than 62 percent of PLWAs in sub-Saharan Africa are young women between 15 and 24 years of age.

⁴⁶⁷ People Living With Aids.

⁴⁶⁸ *Ibid* par. 37.

lower courts in its dicta concerning the concept of *ubuntu*, which according to *S v Makwanyane*, represents the indigenous value system of indigenous African societies.

4.4.1.4 Port Elizabeth Municipality v Various Occupiers⁴⁶⁹

In *Port Elizabeth Municipality v Various Occupiers*, the Port Elizabeth Municipality applicants appealed to the Constitutional Court to make a ruling on whether the eviction of sixty-eight unlawful occupiers of privately owned land within the municipality of Port Elizabeth, compelled the municipality to provide the unlawful occupiers with alternative accommodation.

In the court's judgment, there is one reference to *ubuntu*. In the judgment of Sachs J, he argues that the Constitution and PIE⁴⁷⁰ confirm that we are not islands onto ourselves. Sachs J states that the spirit of *ubuntu* is part of the deep cultural heritage of the majority of the population and that *ubuntu* suffuses the whole constitutional order, combining individual rights with communitarian philosophy. According to him, "*ubuntu* is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern".⁴⁷¹

Sachs J argues that *ubuntu* filters through our entire constitutional order, a Constitution clearly premised on Western liberal values, and combines Western individual rights and African communitarian philosophy. Justice Sachs does not explain *how* the Constitution combines individual rights and group rights, which are synonymous with *ubuntu's* communitarian philosophy. The Constitution does accommodate communitarian views as is evident in the provisions of the Constitution to restore indigenous law to its legitimate status, as well as in the

⁴⁶⁹ 2005 (1) SA 217 (CC).

⁴⁷⁰ Prevention of Illegal Eviction from an Unlawful Occupation of Land Act 19 of 1998.

⁴⁷¹ *Ibid* par. 37.

provisions on equality, human dignity, transparency and openness. As *ubuntu* represents the African value or moral system, Sachs J leaves the impression that African communal values or morals are synonymous with Western values and morals.

Whilst the courts have been unable to indicate how traditional African values differ from Western values, Dibodu (1995: 22) warns about a clash between the individualistic value orientation of the West and communal values inherent to Africa. Dibodu states that “[t]he emphasis laid by the African Charter on people’s rights is often defended by African intellectuals who argue that such group rights protect the inherently communal, group-orientated African societies against the unbridled individualism which they see as characteristic of Western capitalistic society.” Sebidi (1998: 63) too stresses that as *ubuntu* is anti-individualism and pro-communalism, its collective values cannot be compromised. According to Sebidi, “[*u*]buntu is more than just an attribute of individual human acts that build a community. It is a basic humanistic orientation towards one’s fellow human beings ... one’s humanity; one’s personhood is dependent upon one’s relationship with others. Therefore *ubuntu*, however inchoate in terms of strict philosophical formulation, certainly rejects the rugged individualism that seems to be encouraged by some philosophical systems and ideological persuasions. *Ubuntu* is anti-individualism and pro-communalism. Put differently, *ubuntu* is some kind of humanism – a form of African humanism”.

Sachs J also makes no effort to explain his reference to *ubuntu*’s “human interdependence”. Bekker (2006: 337) argues that “statements like these (without any elaboration) do not take into account the inherent differences that exist between Western law and original indigenous law”. Bekker posits that there is a vast difference between how Western and indigenous societies interpret “human interdependence”. In Western societies rights are exercised with due regard to the rights of others as well as mutual respect for each other as long as the individual’s personal space is not invaded. The individual, and not the group, is

the cornerstone of Western society. Bekker contrasts the above with the position in indigenous African societies. Because the group, and not the individual, is emphasised in indigenous African societies, the group and not the individual has rights. The word “interdependence”, according to Bekker, relates to the fact that the “individual in indigenous societies cannot survive without the group”. Bekker (2006: 337) suggests that *ubuntu* is only used by some Constitutional Court judges as a catch-phrase to strengthen a certain judgment.

4.4.1.5 Dikoko v Mokhatla⁴⁷²

The applicant applied to the Constitutional Court for leave to appeal against the judgment of the High Court in regard to respondent’s award of satisfaction against the applicant for defamatory statements made by him. The appeal was against the finding of liability as well as the quantum of damages awarded by the High Court. Leave to appeal was granted. The Constitutional Court dismissed the appeal.

In a minority judgment, Mokgoro J linked the Roman Dutch remedy of *amende honorable* with the concept of *ubuntu*. Mokgoro J held that:

In our constitutional democracy the basic constitutional value of human dignity relates closely to *ubuntu* or *botho*, an idea based on deep respect for the humanity of another. Traditional law and culture have long considered one of the principle objectives of the law to be the restoration of harmonious human and social relationships where that has been ruptured by an infraction of community norms. It should be a goal of our law to emphasise, in cases of compensation for defamation, the re-establishment of harmony in the relationship between the parties, rather than to enlarge the hole in the defendant’s pocket, something more likely to increase acrimony, push the parties apart and even cause the defendant financial ruin. The primary purpose of a compensatory measure after all, is to restore the dignity of a plaintiff who has suffered the damage and not to

⁴⁷² 2006 (6) SA 235 (CC).

punish a defendant. A remedy based on the idea of *ubuntu* or *botho* could go much further in restoring human dignity than an imposed monetary award in which the size of the victory is measured by the *quantum* ordered and the parties are further estranged rather than brought together by the legal process. It could indeed give better appreciation and sensitise a defendant as to the hurtful impact of his or her unlawful actions, similar to the emerging idea of restorative justice in our sentencing laws.⁴⁷³

Mokgoro J reminds the court that two considerations should be borne in mind when it comes to defamation cases. Firstly, reparation sought by the plaintiff is essentially for injury to his/her honour, dignity and reputation and not to his/her pocket. Secondly, courts should attempt to re-establish a dignified and respectful relationship between the two parties. According to her, *ubuntu* addresses both of these considerations as follows:

Because an apology serves to recognize the human dignity of the plaintiff, thus acknowledging, in the true sense of *ubuntu*, his or her inner humanity, the resultant harmony would serve the good of both the plaintiff and the defendant. Whether the *amende honorable* is part of our law, or not, our law in this area should be developed in the light of the values of *ubuntu* emphasizing restorative rather than retributive justice. The goal should be to knit together shattered relationships in the community and encourage across-the-board respect for the basic norms of human and social interdependence. It is an area where courts should be proactive, encouraging apology and mutual understanding wherever possible.⁴⁷⁴

In a separate judgment Sachs J concurs with the minority judgment of Mokgoro J concerning the excessive awarding of damages for defamation of character. Sachs finds that monetary compensation alone is not appropriate relief for defamation and that the courts should explore *ubuntu* or *botho's* indigenous

⁴⁷³ *Ibid* par. 68.

⁴⁷⁴ *Ibid* par. 69.

values of restorative justice.⁴⁷⁵ In order to achieve the principle goals of repair rather than punishment in defamation cases, Sachs J suggests the constitutional value of *ubuntu-botho* should be acknowledged.⁴⁷⁶ Sachs J explains the constitutional value of *ubuntu* as follows:

Ubuntu-botho is more than a phrase to be invoked from time to time to add a gracious and affirmative gloss to a legal finding already arrived at. It is intrinsic to and constitutive of our constitutional culture. Historically, it was founded on the spirit of reconciliation and bridge building that enabled our deeply traumatized society to overcome and transcend the divisions of the past. In present day terms it has an enduring and creative character representing the element of human solidarity that binds together liberty and equality to create an affirmative and mutually supportive triad of central constitutional values. It feeds pervasively into and enriches the fundamental rights enshrined in the constitution.⁴⁷⁷

Sachs J finds the values of *ubuntu* to be on par with current international notions of restorative justice, based on reparative rather than purely punitive principles. Sachs J describes the key elements of *ubuntu's* restorative justice viz. encounter, reparation, reintegration and facilitation as follows:

- Encounter facilitates dialogue between victims and offenders.
- Reparation focuses not on punishment but on repairing damage done.
- Reintegration depends upon the achievement of mutual respect for and mutual commitment to one another, and
- Participation allows people close to the parties to participate in the process.

According to Sachs, J these concepts harmonise well with processes related to traditional forms of dispute resolution, processes that have long been, and

⁴⁷⁵ *Ibid* par. 86.

⁴⁷⁶ *Ibid* par. 112.

⁴⁷⁷ *Ibid* par. 113.

continue to be, underpinned by the philosophy of *ubuntu-botho*.⁴⁷⁸ Sachs J argues that although the philosophy of *ubuntu-botho* has been invoked especially with reference to child justice in criminal law, there is no reason why it should be restricted, as it has already influenced our jurisprudence with regard to capital punishment, the eviction of people unlawfully occupying land and a homicide case where the High Court combined a suspended custodial sentence in a homicide case with an apology from a senior representative of the family of the accused, as requested and acknowledged by the mother of the deceased.

Sachs J points out that although *ubuntu* and the *amende honorable* are expressed in different languages intrinsic to two separate legal cultures they share the same underlying philosophy and goal. *Ubuntu* and the *amende honorable* are directed towards the face-to face encounter between the parties to facilitate resolution of their differences in public and to restore harmony in the community. Both legal cultures strive towards creating conditions to facilitate an apology offered, and generously accepted.⁴⁷⁹ Sachs J is of the opinion that “[i]n the light of the core constitutional values of *ubuntu-botho*” courts should be encouraged to shift their emphasis from *quantum* to reparatory remedies.⁴⁸⁰ Sachs J concludes:

A good beginning for achieving greater remedial suppleness might well be to seek out the points that overlap between *ubuntu-botho* and *amende honorable*, the first providing a new spirit, the second a time-honoured legal format. Whatever renovatory modalities are employed, and however significant to the outcome the facts will have to be in each case, the fuller the range of remedial options available the more likely will justice be done between the parties. And the greater the prospect of realising the more humane society envisaged by the Constitution.⁴⁸¹

⁴⁷⁸ *Ibid* par. 114.

⁴⁷⁹ *Ibid* par. 116.

⁴⁸⁰ *Ibid* par. 118.

⁴⁸¹ *Ibid* par. 121.

Previous Constitutional Court cases were unable to define *ubuntu* as a constitutional value. In *Dikoko v Mokathla*, Mokgoro and Sachs JJ successfully linked *ubuntu* to the constitutional values of reconciliation and restoration. Not only did both these judges indicate that the principles of reconciliation and restorative justice are inherent to traditional African jurisprudence, but Sachs J also indicated that restorative justice is a “rapidly evolving international notion” in Western jurisprudence. Restorative justice is however not a new concept to the West. Restorative justice was the dominant criminal justice system in ancient Greek, Roman and Arab civilisations as well as in the indigenous communities in Canada, Australia, New Zealand and South Africa (Naude, 2006: 101). According to Naude, restorative justice was re-discovered by Western countries in the mid-seventies and by the 1990s most Western countries⁴⁸² had legalised restorative justice programmes. South African legislation provides for restorative justice programmes as is evident in The Probation Services Amendment Act 35 of 2002, the Child Justice Bill, the Sexual Offences Bill and the Sentencing Framework Bill. The 2001 United Nation’s *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century* also emphasises the importance of establishing regional, national and international plans in support of victims, such as mediation and restorative justice programmes, the development of support services and awareness campaigns on the rights of victims, and the establishment of compensation funds for victims as well as victim protection policies (Naude, 2006: 103).

As a victim-centred response to crime, restorative justice provides opportunities for those most directly affected by crime to respond to the harm caused by it. This process involves not only the victim and offender but often also their families or representatives of the community.⁴⁸³ Whilst European restorative justice predominantly explains its values through a secular emphasis on our common

⁴⁸² Britain, Ireland, United States, Australia, New Zealand, Germany, Norway, Belgium, Denmark, Sweden, Finland, Spain and France.

⁴⁸³ Bekker (2006: 342) emphasises the fact that “it is not so much the individual that is harmed when his or her rights are infringed upon, but the group as a whole. It is therefore necessary to restore harmony to the group”.

humanity, restorative justice in the African context explains the equilibrium of justice in terms of religion. For Ramose (2002{b}: 97; 2002{c}: 643), the “*ubuntu* philosophy of law is the continuation of religion”; restoring equilibrium or justice by incorporating also the forces of life, the living dead. Ramose (2002{b}: 93) cites Griaule as follows:

The altar gives something to a man, and part of what he received he passes on to others ... A small part of the sacrifice is for oneself, but the rest is for others. The forces released enter into the man, pass through him and out again, and so it is for all ... As each man gives to all the rest, so he also receives from all. A perpetual exchange goes on between men, an unceasing movement of invisible currents. And this must be so if the universal order is to endure ... for it's good to give and to receive the forces of life.

The concept of restorative justice can therefore be successfully linked to values intrinsic to both African and Western jurisprudence. As such it can play an important role as a constitutional value in the future adjudication of both public law and private law disputes (Bekker, 2006: 343).

4.4.1.6 BHE v Magistrate Khayelitsha and Others; Shibi v Sithole; South African Human Rights Commission and Another v President of the Republic of the Republic of South Africa and Another⁴⁸⁴

The applicants in all three of these cases applied to the Constitutional Court to confirm the orders of the respective divisions of the High Courts. The applicants challenged the constitutionality of sec. 23(10) of the Black Administration Act 38 of 1927; sec. 1(4)(b) of the Intestate Succession Act 81 of 1987 and the customary principle of male primogeniture.⁴⁸⁵

⁴⁸⁴ 2005 (1) BCLR 1 (CC).

⁴⁸⁵ This rule implies that only men who are related to the deceased qualify as intestate heirs. In the *BHE* case, Langa DCJ quotes (par. 76) the principle of male primogeniture as follows: “In monogamous families the eldest son of the family head is his heir, failing him the eldest son’s eldest male descendant. Where the eldest son has predeceased the family head without leaving male issue, the second son becomes heir; if he is dead leaving no male issue, the third son succeeds and so on through the sons of the family head. Where the family head dies leaving no male issue his father succeeds ... Women generally do not inherit in customary law. When the head of the family dies his heir takes his position as head of the family and

The customary rule of male primogeniture, or *subsidiariti*, prevented not only two daughters from inheriting the estate of their deceased father in the *BHE* case, but also Ms Shibi who was precluded from inheriting the estate of her deceased brother in the *Shibi* case.⁴⁸⁶ The South African Human Rights Commission and Women's Legal Trust brought the third case on behalf of all women and children prevented from inheriting as a result of the rule of male primogeniture. In this trilogy of cases concerning the application of indigenous law of succession, the Constitutional Court ordered sec. 23 of the Black Administration Act 38 of 1927 inconsistent with the Constitution and invalid; the Regulations for the Administration and Distribution of the estates of deceased Blacks to be invalid; the customary rule of male primogeniture inconsistent with the Constitution, and sec. 1(4)(b) of the Intestate Succession Act 81 of 1987 invalid.

In the court's majority judgment Langa DCJ argued that although aspects of customary law more than justify its protection by the Constitution⁴⁸⁷, customary law principles depend on its consistency with the Constitution and the Bill of Rights.⁴⁸⁸ Lang J found that the rule of male primogeniture unfairly discriminates against women, and against children born out of wedlock; that it violates their constitutional rights, primarily their rights to human dignity and equality.⁴⁸⁹ Langa J set a precedent ruling that it is inappropriate to develop the rule of male primogeniture, and that the Intestate Succession Act should govern all customary intestate deceased estates formerly governed by s 23 of the Act.⁴⁹⁰

becomes owner of all the deceased's property, movable and immovable; he becomes liable for the debts of the deceased and assumes the deceased's position as guardian of the women and minor sons in the family. He is obliged to support them and maintain them, if necessary from his own resources and not to expel them from his home".

⁴⁸⁶ In *Mthembu v Letsela* 1997 (2) SA 936 (T) the constitutionality of the rule of male primogeniture in indigenous law was tested and found not to constitute unfair discrimination.

⁴⁸⁷ *Ibid* par. 45.

⁴⁸⁸ *Ibid* par. 46.

⁴⁸⁹ *Ibid* par. 45.

⁴⁹⁰ *Ibid* par. 131.

According to Langa J, “[c]ustomary law places much store in consensus-seeking and naturally provides for family and clan meetings which offer excellent opportunities for the prevention and resolution of disputes and disagreements. Nor are these aspects useful only in the area of disputes. They provide a setting which contributes to the unity of family structures and the fostering of co-operation, a sense of responsibility in and of belonging to its members, as well as the nurturing of healthy communitarian traditions such as *ubuntu*”.⁴⁹¹ As Langa DCJ put it, *ubuntu* is a culture which “regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights”.⁴⁹²

In the minority judgment, Ngcobo J argues for the rule of male primogeniture to be developed and brought in line with the Bill of Rights,⁴⁹³ as it is a central feature of indigenous law of succession.⁴⁹⁴ Ngcobo is of the opinion that, should members of a community decide that succession of the deceased is to be governed by indigenous law, indigenous law must govern the succession. In the case of a dispute as to whether indigenous law is applicable, the matter must be resolved by a magistrate who must enquire into the most appropriate system of law. “In conducting such an enquiry, the Magistrate must have regard to what is fair, just and equitable and must have particular regard to the interests of the minor children and any other dependant of the deceased”.⁴⁹⁵

Ngcobo J links indigenous law of succession to the concept of *ubuntu*. He defines *ubuntu* as a dominant value in traditional African culture which encapsulates communality and the interdependence of members of the community on one another. “It is this system of reciprocal duties and obligations

⁴⁹¹ *Ibid* par. 45.

⁴⁹² *Ibid* par. 163.

⁴⁹³ *Ibid* par. 139.

⁴⁹⁴ *Ibid* par. 146.

⁴⁹⁵ *Ibid* par. 240.

that ensured that every family member had access to basic necessities of life such as food, clothing, shelter and healthcare”.⁴⁹⁶

The diverging approaches of Langa DCJ and Ngcobo J to the customary rule of male primogeniture reflect the familiar discourse between professional African philosophers and African traditionalists. Langa DCJ contends that the principle of male primogeniture symbolises a system deeply embedded in patriarchy which deems women to be subservient subordinates who are regarded as perpetual minors.⁴⁹⁷ Langa DCJ posits that members of modern communities are no longer structured along these traditional lines⁴⁹⁸ and that the official system of customary law of succession is incompatible with the Bill of Rights and therefore unconstitutional.⁴⁹⁹ Customary law of succession does not comply with international instruments that protect women against discrimination, viz. CEDAW⁵⁰⁰, the International Covenant on Civil and Political Rights and the African Charter on Human and People’s Rights.⁵⁰¹ It is surely not in compliance with Art. 21 of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.

Ngcobo J admits that the rule of male primogeniture is not in line with the Constitutional right to equality⁵⁰² but argues that it should be brought in line with the Bill of Rights, as it is a central feature of indigenous law of succession. He describes how the rules of indigenous law, and in particular, the law of succession, have their origin in traditional African societies of which the traditional family unit is the nucleus⁵⁰³ and in which individual interests are submerged. The law of succession guarantees the preservation of the family⁵⁰⁴,

⁴⁹⁶ *Ibid* par. 163.

⁴⁹⁷ *Ibid* par. 78.

⁴⁹⁸ *Ibid* par. 80.

⁴⁹⁹ *Ibid* par. 97.

⁵⁰⁰ Convention for the Elimination of Discrimination Against Women.

⁵⁰¹ *Ibid* par. 209.

⁵⁰² *Ibid* par. 220.

⁵⁰³ *Ibid* par. 162.

⁵⁰⁴ “[W]omen were always regarded as persons who would eventually leave their original family on marriage, after the payment of roora/lobola, to join the family of their husbands. It was reasoned that in their new situation – a member of the husband’s family – they could not be heads of their original families,

family property and the obligation to care for family members. The obligation to care is a vital and fundamental value in African social systems. This value is entrenched in the African (Banjul) Charter on Human and Peoples' Rights. The Preamble to the African Charter urges member states to take into consideration the virtues of their historical traditions and values of African civilisation which should inspire and characterise their reflection on the concept of human and peoples' rights. Article 27(1) provides that every individual shall have duties towards his family and society. Article 29(1) provides that individuals have the duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect their parents at all times, and to maintain them in case of need.⁵⁰⁵

Whilst Ncobo J links male primogeniture to *ubuntu*, Ramose (2002{b}: 40) states that *ubuntu* forms the basis of African law. Langa DCJ states that the law of succession is embedded in patriarchy and therefore views women as subservient subordinates who are regarded as perpetual minors. If African law is entrenched in patriarchy, so also is *ubuntu*, the basis of African law. According to Langa DCJ, the law of succession and therefore *ubuntu*, does not comply with international instruments that protect women against discrimination, viz. CEDAW, the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights. Therefore, *ubuntu* is also not in line with the Constitutional right to equality. Equality lies at the core of human rights and opposes patriarchy. Nyirongo (1997: 139) maintains that "equality in communitarian African societies means equality only in terms of material blessings, consensus decision making and solidarity based on blood relationships" and not in terms of equal rights. Those outside the clan or tribe are not perceived as brothers or equals. If traditional African jurisprudence, and therefore aspects of *ubuntu*, are found to be unconstitutional as suggested, how

as they were more likely to subordinate the interests of the original family to those of their new family. It was therefore reasoned that in their new situation they would not be able to look after the original family". (*Ibid* par. 168).

⁵⁰⁵ *Ibid* 166.

will the court balance “the interest of society against those of the individual for the maintenance of law and order” as called for by Madala J in *S v Makwanyane*?

In *S v Makwanyane*, the Constitutional Court highlighted the fact that there is a need to develop an all-inclusive South African jurisprudence. Mokgoro J posits that in spite of South Africa’s history of deep divisions, strife and conflict, *ubuntu* “runs across cultural lines in South Africa”.⁵⁰⁶ In order to avoid a legitimacy crisis the values of the majority of the South African society should be reflected in the country’s supreme law, the Constitution. Mokgoro J and Sachs J linked *ubuntu* to the constitutional values of reconciliation and restoration in the *Dikoko* case, and in the *Makwanyane* case capital punishment was found to be irreconcilable with *ubuntu*. The concept of *ubuntu* is not only, according to Mokgoro J, linked to African morality, but according to Langa J, to African communitarianism noted for reciprocal duties and obligations. Mokgoro J maintains that the spirit of *ubuntu* embraces the same human rights as those embodied in the Constitution. In the *PE Municipality* case Sachs J finds *ubuntu* to be a combination of Western individual rights and African communitarian philosophy with a unifying motif of the Bill of Rights. In the *Dikoko* case, Sachs emphasises that *ubuntu* creates an affirmative and mutually supportive triad of central constitutional values which feed pervasively into and enrich the fundamental rights enshrined in the Constitution. In the *BHE* case, the tables are turned when Langa DCJ claims that traditional African jurisprudence is embedded in patriarchy and regards women as perpetual minors. Not only are aspects of *ubuntu* incompatible with the Bill of Rights, but also with international human rights mechanisms that protect women against discrimination. Ncobo J admits that aspects of traditional African jurisprudence are not in line with the Constitutional right to equality.

How do the Higher Courts interpret *ubuntu* in the midst of all the above contradictions? In an attempt to ascertain the meaning of *ubuntu* we venture into

⁵⁰⁶ *S v Makwanyane*, par. 307.

the court rooms of South Africa's Higher Courts. The Higher Courts consist of the Supreme Court of Appeal and the High Courts.

4.4.2 The Supreme Court of Appeal and *Ubuntu*

As the highest ordinary court in South Africa, the Supreme Court of Appeal in Bloemfontein is bound by the precedents set by the Constitutional Court. The Supreme Court of Appeal binds not only itself by its previous judgments if they are not wrong but all subordinate courts in the country. As the Supreme Court of Appeal sets precedents for the ordinary courts to follow, the court's definition and interpretation of *ubuntu* is essential as a guide to both higher and lower courts on this matter.

4.4.2.1 Baloro and Others v University of Bophutatswana and Others⁵⁰⁷

The applicants challenged the interpretation of the Constitution of South Africa, Act 200 of 1993, concerning the horizontal application of fundamental human rights. The applicants were members of the academic staff of the first respondent with valid contracts of employment. Their applications for promotion were placed under a moratorium because they were not South African citizens. In its judgment the court stated that the conduct of the respondent was a violation of sec. 8 of the Constitution.

In his judgment, Friedman JP emphasises that the courts and specifically judges have the additional role of social engineers and social and legal philosophers, to promote values referred to in sec. 35 of the Constitution. Friedman JP reiterates sec. 35 and adds that there is a desire by the legislature to establish a new society based on the foundation of new and noble aspirations. He emphasises the court's quest to apply just laws and affirm moral values in our new and just society and to safeguard the values contained in the Constitution.⁵⁰⁸ The court affirms the importance of safeguarding the values of our new democratic society,

⁵⁰⁷ 1995 (4) SA 197 (B)

⁵⁰⁸ *Ibid* p235 E-F.

but makes no effort to interpret the concept of *ubuntu* or link it to the case in question, other than to reiterate the postamble of the Interim Constitution.

The court failed dismally in its additional role as social engineer and social and legal philosopher, to promote *ubuntu* values and to guide subordinate courts concerning the concept of *ubuntu*.

4.4.2.2 Pharmaceutical Society of South Africa and Others v Tsabalala-Msimang and Another; New Clicks South Africa (PTY) LTD v Minister of Health and Another⁵⁰⁹

The applicants applied for leave to appeal regarding the validity of the Regulations relating to a Transparent Pricing System for Medicines and Scheduled Substances as promulgated by the Minister of Health in terms of sec. 22G of the Medicines and Related Substances Act 101 of 1965. In its judgment the court upheld the appeal and declared the Regulations relating to a Transparent Pricing System for Medicines and Scheduled Substances invalid and of no force and effect.

In a concurring judgment, Harms JA referred to the conclusion of Hlope JP's judgment in the Provincial Division of the High Court with reference to "the spirit of *ubuntu* in interpreting statutes". Harms JA affirmed that the word *ubuntu* appeared in the Interim Constitution where it dealt with national unity and reconciliation⁵¹⁰, but emphasised that the word *ubuntu* did not appear in the Constitution in expressed terms. He admits that although *ubuntu* has many dimensions, its application to statutory interpretation is novel.⁵¹¹

⁵⁰⁹ 2005 (3) SA 238 (SCA)

⁵¹⁰ *Ibid* par. 38.

⁵¹¹ *Ibid* par. 39.

4.4.2.3 Wormald NO and Others V Kambule⁵¹²

Appellants appealed against the judgment of the High Court which dismissed their application firstly to evict respondent from a residential property under the provisions of PIE and, secondly to declare the customary marriage between the respondent and her husband, from which she claimed her right to occupy the property, null and void. Because the customary marriage was not registered in terms of the Transkei Marriage Act 21 of 1978, the Supreme Court of Appeal declared respondent's marriage to the deceased invalid. Respondent was therefore an unlawful occupier. The court granted the appeal.

Maya AJA argues that the court has to balance the opposing rights of a traditional real right and a person in dire need of accommodation. Maya AJA contends in his judgment that PIE requires the court to infuse elements of grace and compassion into the formal structures of law, as it is called upon to balance competing interests in a principled way and to promote the vision of a caring society based on good neighbourliness and shared concern. "The spirit of *ubuntu*, part of a deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalized and operational declaration in our evolving new society of the need for human interdependence, respect and concern".⁵¹³

Whilst South Africa's 1996 Constitution⁵¹⁴ is clearly premised on Western liberal values, *ubuntu's* communitarian philosophy accentuates the importance of group rights as represented by the African Charter on Human and People's Rights. The Preamble of the African Charter on Human and People's Rights stipulates that

⁵¹² 2006 (3) SA 562 (SCA).

⁵¹³ *Ibid par.* 36-37. In the *Port Elizabeth Municipality case* Sachs J stated that *ubuntu* is part of the deep cultural heritage of the majority of the population and that it suffuses the whole constitutional order, combining individual rights with communitarian philosophy (*Ibid par.* 37).

⁵¹⁴ Chapter Two of the Constitution, referred to as the Bill of Rights, makes provision for first-generation, second-generation and third-generation rights.

the virtues of member states' historical traditions and the values of African civilisation must be taken into consideration and convinces them of 'their duty to promote and protect human and people's rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa'. In contrast with Western liberalism which guarantees the individual's fundamental human rights, *ubuntu* "is about recognising the rights of groups, because the group precedes and supersedes the individual" (Broodryk, 2007: 104). In the Preamble of the African Charter it recognises on the one hand "that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of people's rights should necessarily guarantee human rights; considering that the enjoyment of rights and freedoms implies the performance of duties on the part of everyone".⁵¹⁵ In contrast to the South African Constitution which entrenches human rights, the African Charter emphasises the rights and duties of African society as follows:

- Art 27 states that every individual has a duty towards his family and society, state and community, and
- Art 29 stipulates that every individual has a duty to respect his parents and to serve his community.

It is evident that after more than a decade, neither the Constitutional Court nor the Supreme Court of Appeal has been able to develop the concept of *ubuntu* as a constitutional value. The concept of *ubuntu* has been raised in court but the ordinary courts and the people of South Africa are still in the dark concerning the meaning and relevance of *ubuntu* as a constitutional value of the new South Africa.

⁵¹⁵ Menkiti (1979: 167) opposes Western and African societies with one another, based on the fact that whilst African societies entertain the concept of duties, whilst Western societies propound individual rights. "In the African understanding priority is given to the duties which individuals owe to collectivity, and their rights, whatever these may be, are seen as secondary to the exercise of their duties. In the West, on the other hand, we find a construal of things in which certain specific rights of individuals are seen as antecedent to the organisation of society, with the function of government viewed, consequently, as being the protection and defence of these individual rights".

In a last effort to obtain clarity on the concept of *ubuntu*, we seek the wisdom of the High Courts of South Africa.

4.4.3 The High Courts and *Ubuntu*

Each province in South Africa has a High Court and some also have local divisions of the High Court. All High Courts are bound by the precedents set by the Constitutional Court and the Supreme Court of Appeal. If no applicable judgment exists in a specific factual situation, the High Court's judgment will set a precedent. This precedent will bind the High Court and the lower courts⁵¹⁶ of the specific province, unless it is wrong. Precedents set in one province do not bind the judgments given in other provinces. Precedents set in High Courts have only persuasive force in the Supreme Court of Appeal.

4.4.3.1 Stagnation of *Ubuntu* values

In *Qozeleni v Minister of Law and Order and Another*⁵¹⁷; *S v Williams and Five Similar Cases*⁵¹⁸; *Azanian People's Organisation and Others v Truth and Reconciliation Commission and Another*⁵¹⁹; *Ryland v Edros*⁵²⁰; *Dulabh and Another v Department of Land Affairs*⁵²¹; *Pharmaceutical Society of South Africa and Others v Tsabalala-Msimang and Another*; and *New Clicks South Africa (PTY) LTD v Minister of Health and Another*⁵²², sec. 35 of the Interim Constitution was merely reiterated without any attempt from the courts to interpret the concept of *ubuntu*.

⁵¹⁶ The judgments of lower courts do not set precedents.

⁵¹⁷ 1994 (3) SA 625 (E).

⁵¹⁸ 1994 (4) SA 126 (C).

⁵¹⁹ 1996 (4) SA 562 (C).

⁵²⁰ 1997 (2) SA 690 (C). *Ryland v Edros* overturned the Appeal Court judgment in *Ismail v Ismail* which held that a marriage by Muslim custom was polygamous and therefore void. In *Ryland v Edros* it was found that it is unconstitutional for one group to impose its values on another.

⁵²¹ 1997 (4) SA 1108 (LCC) A.

⁵²² 2005 (3) SA 231 (C)

In *Ryland v Edros*, Farlam J defines *ubuntu* in terms of Langa J's exposition in *S v Makwanyane and Another*, as "a culture which places some emphasis on communality and on the interdependence of the members of a community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such persons happens to be part of".⁵²³ In *Dulabh and Another v Department of Land Affairs*, Meer J explains *ubuntu* in terms of Mokgoro J's judgment on *S v Makwanyane* as a concept "which carries in it the ideas of humanness, social justice and fairness".⁵²⁴ In *BHE v Magistrate, Khayelitsha, and Others*⁵²⁵, Ngwenya J argues that sec. 23 of the Black Administration Act 38 of 1927 is unconstitutional and invalid as it lacks basic humanity, the hallmark of *ubuntu*.

4.4.3.2 Pharmaceutical Society of South Africa and Others v Tsabalala-Msimang and Another; New Clicks South Africa (PTY) LTD v Minister of Health and Another⁵²⁶

The applicants in the above two cases applied to the Provincial Division of the High Court for an order to set aside the Regulations relating to a Transparent Pricing System for Medicines and Scheduled Substances promulgated in the Government Gazette. The court consolidated the two cases because of the importance of the matter for both the state and the public. In a majority judgment the Provincial Division held that the Regulations relating to a Transparent Pricing System for Medicines and Scheduled Substances were invalid and of no force and effect. The court dismissed the application but granted leave to appeal.

In his judgment, Hlope JP referred to sec. 39 (1)(a) of the 1996 Constitution which provides that when the Bill of Rights is interpreted, a court, tribunal or forum must promote the values that underlie an open and democratic society, based on dignity, equality and freedom. Hlope JP emphasised that one of the values of sec. 39 (1)(a) is *ubuntu*, a value which according to Bhengu, is a way of

⁵²³ 708 H.

⁵²⁴ *Ibid* par. 54.

⁵²⁵ 2004 (2) SA 544.

⁵²⁶ 2005 (3) SA 231 (C).

life that contributes positively towards sustaining the well-being of a people, community or society. He concludes by saying; “Clearly *ubuntu* requires that medicine must be accessible to all South Africans, rich and poor”.⁵²⁷

Ten years after *S v Makwanyane*, the concept of *ubuntu* is still referred to in case law as a sec. 39(1)(a) value of the Constitution but the court in this case made no effort to define the concept nor to indicate how *ubuntu* aids in interpreting the statute. One has to concur with Bekker that *ubuntu* seems to have become a popular concept to flaunt in court; a concept which has remained jurisprudentially vague and evoked no rigorous jurisprudential engagement. Or is *ubuntu* in the words of Mokgoro (1998) and Tutu (1999: 34) just very difficult to render in a Western language?

It seems as though the courts have generally accepted *ubuntu* as a communitarian philosophy which subscribes to democratic values that underlie an open and democratic society. In spite of Langa DCJ’s arguments in the *BHE* case, which proved traditional African jurisprudence to be unconstitutional, courts have omitted (perhaps on purpose), to deliberate the concept of *ubuntu* as it is supposedly “very difficult to render in a Western language”.

4.4.3.3 City of Johannesburg v Rand Properties (PTY) LTD & Others⁵²⁸

Several applications were made by the City of Johannesburg to evict a large number of people from the inner city. The applications were based on the National Building Regulations and Building Standards Act 103 of 1977. The applicant had no housing policy in place which could address the needs of homeless people. The court directed the applicant to implement a suitable housing programme to realise the respondent’s right to housing.

⁵²⁷ 237 G-H.

⁵²⁸ 2006 JOL 16852 (W).

Jajbhay J emphasises that the constitution requires courts to weave humanity and compassion within the formal structures of law in order ‘to promote the constitutional vision of a caring society ... based on a democratic, universalistic, caring and inspirational egalitarian ethos ... and a spirit of *ubuntu*.⁵²⁹ Jajbhay J describes *ubuntu* as follows:

The culture of *ubuntu* is the capacity to express compassion, justice, reciprocity, dignity, harmony and humanity. *Ubuntu* speaks to our interconnectedness, our common humanity and the responsibility to each that flows from our connection. This in turn must be interpreted to mean that in the establishment of our constitutional values we must not allow urbanisation and the accumulation of wealth and material possessions to rob us of our warmth, hospitality and genuine interest in each other as human beings. *Ubuntu* is a culture which places some emphasis on the communality and on interdependence of the members of the community. It recognises a person’s status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community that such a person may be part of.⁵³⁰

Jajbhay J views the applicant’s suggestion that respondents be relocated to informal settlements to be against the concept of *ubuntu*. According to Jajbhay J, *ubuntu* is a “universalistic ethos” which should promote *ubuntu* equality. According to Nyirongo (1997: 139), *ubuntu* equality is fundamentally different from the right to equality as understood in Western jurisprudence. Nyirongo, M’Baye (1974: 141) and Turaki (1997: 61) maintain the right to equality does not exist in traditional African societies because every person fits into a social hierarchy. *Ubuntu*’s social hierarchy determines the rights and status awarded to such a person. African societies are not “inspirational egalitarian” as Jajbhay suggests, but rather inegalitarian. M’Baye (1974: 139) posits that traditional African jurisprudence is not, as Jajbhay J suggests, “universalistic”, but fundamentally different from Western law and its universal values.

⁵²⁹ *Ibid* par. 62.

⁵³⁰ Par. 63.

4.4.4 *Ubuntu* as Constitutional Value

Section 35(1) of the 1993 Interim Constitution gave no content to the textual concept of *ubuntu*. As a definition or meaning of the concept of *ubuntu* is not to be found in the 1993 Constitutional text or even referred to in the 1996 text, South African courts had to seek the extra-textual meaning of *ubuntu*.

Sad to say, but South Africa courts have as yet been unable to extract the values associated with the concept of *ubuntu*. Is *ubuntu* nothing more than a “universalistic ethos”⁵³¹; a “shared value and idea that runs like a golden thread across cultural lines”?⁵³² Has it just become a tool with which to legitimise the Constitution and persuade post-apartheid South Africans that it is their document? (English, 1996: 641). In *S v Makwanyane*, Mokgoro J translates *ubuntu* as “humanness, which in a fundamental sense translates to personhood or morality” and describes the significance of group solidarity. Mokgoro J lists the key values of *ubuntu* as: group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity; values reflecting a universal philosophy.⁵³³ Madala J expands this understanding of *ubuntu* by defining it as a concept containing the ideas of humanness, social justice and fairness.⁵³⁴ The majority of judges emphasise that the values underlying *ubuntu* are not unique to South Africa. According to these Justices, the concept of *ubuntu* is part and parcel of a universal phenomenon, embracing a universal value system.⁵³⁵

In *Dikoko v Mokhatla* Sachs J finds “the philosophy of *ubuntu* a philosophy which represents the element of human solidarity that binds together liberty and equality to create an affirmative and mutually supportive triad of central constitutional values which enrich the fundamental human rights enshrined in the

⁵³¹ Jajbhay J in *City of Johannesburg* par. 62.

⁵³² Mokgoro J in *Makwanyane* par. 307.

⁵³³ Jajbhay J also maintains *ubuntu* is “universalistic”. See *City of Johannesburg case*.

⁵³⁴ *Ibid* par. 237.

⁵³⁵ Walzer (Van Blerk, 2004: 200; 201) denies the existence of universal values and argues that “normative values of any community come from within, from common values, and not as liberalism claims from an overarching system of universal values”.

constitution”.⁵³⁶ In *Port Elizabeth Municipality v Various Occupiers*, Sachs J defines *ubuntu* as “a combination of individual rights with communitarian rights which unifies the motif of the Bill of Rights”. In *Wormald NO and Other v Kambule*, Maya AJA comes to the same conclusion, stating that “the spirit of *ubuntu* combines individual rights with a communitarian philosophy and serves as a unifying motif of the Bill of Rights”.

The values of *ubuntu*, it seems, subscribe to fundamental human rights and therefore to the Universal Declaration of Human Rights. This notion is affirmed by Chaskalson P in the same case when he equates the values of Western case law to the values of South Africa’s Constitution “and the new order established by it” and finds that they are consistent.⁵³⁷ The minority judgments of Mokgoro J and Sachs J in *Dikoko v Mokathla* emphasise the importance of *ubuntu* as a concept of reconciliation and restorative justice. Although restorative justice is not exclusive to African jurisprudence, it could represent a universal constitutional value familiar to both Western and African jurisprudence.

In *S v Williams*⁵³⁸ and *S v Makwanyane*, the court held that South Africa’s open and democratic society is founded on the values of comparable Western democracies. Are *ubuntu* values consistent with the American value system, subscribing to a universal philosophy, or are they culture-specific? Whilst Mokgoro (1998: 10) states that “*ubuntu botho* are in consonance with the values of the Constitution generally, and those of the Bill of Rights in particular”, Mokgoro J indicates in *S v Makwanyane* that *ubuntu* denotes African morality. Ramose too suggests there is far more to this alliance between *ubuntu* and morality or African religion, than has surfaced in South African courts. According to Ramose, the *ubuntu* philosophy of law is the continuation of African Religion. M’Baye (1974: 138) states that traditional African jurisprudence is “rarely a

⁵³⁶ According to the postamble of the 1993 Interim Constitution, it strives to build a bridge between the past of a deeply divided society and a future founded on the recognition of human rights.

⁵³⁷ *Ibid* par. 58.

⁵³⁸ 1995 3 SA 632 (CC) par. 77 states that “sentencing of offenders must conform to decency recognized throughout the civilized world”.

legitimate claim supported by a pre-established rule. It is rather and above all the opportunity given to all, to live under the protection of the community of men and spirits". Bohler-Muller (2005: 275) suggests that "[i]n their attempt to legalise the value of *ubuntu*, the Constitutional Court Justices in *Makwanyane* remained silent about indigenous spiritual wisdom, magic, mythology, legends and proverbs as these teachings do not fit easily into [Western] legal discourse". As the 1996 Constitution guarantees rights of religious freedom in ss 15 and 31, the courts surely would not entertain specific religious values⁵³⁹ over others. The *BHE* case revealed that the rule of male primogeniture or *subsidiariti*, fosters patriarchy⁵⁴⁰ and gender inequality. Such benevolent paternalism is, according to Bohler-Muller (2005: 278), "bothersome to feminist and human rights activists who seriously question the humanitarian ideals of *ubuntu*".

If *ubuntu* values are consistent with values of American liberalism, yet at the same time representative of communal values⁵⁴¹, what are *ubuntu* values? The courts have given content to certain of the values by referring to the concept of *ubuntu* in *S v Makwanyane*. In this 1995 case, the Constitutional Court identified dignity not only as a right, but as a Constitutional value. The fact that the 1993 Constitution did not mention dignity as a right but as a value is noteworthy. In *Makwanyane*, Chaskalson P argues as follows: "Respect for life and dignity, which are at the heart of s 11(2), are values of the highest order under our Constitution. The carrying out of the death penalty would destroy these and all other rights that the convicted person has".⁵⁴² Mokgoro J also seems to confuse rights with values, and says: "respect for and protection of human dignity has been a central value in South African jurisprudence".⁵⁴³ Has the court simply confused values with rights, or are values more valuable than rights? (Kroese,

⁵³⁹ In *Christian Education South Africa v Minister of Education* 200 (4) SA 757 and *Prince v President of the Law Society, Cape of Good Hope, and Others* 1998 8 BCLR 976 (C) the respective courts held that the constitutional right to freedom of religion can be infringed if the infringement is reasonable and justifiable in terms of s 36 of the Constitution.

⁵⁴⁰ Patriarchy and the right to equality are irreconcilable ideals.

⁵⁴¹ *S V Makwanyane* par. 224 (per Langa J).

⁵⁴² *Ibid* par. 111.

⁵⁴³ *Ibid* par. 310.

2001; 270). According to Kroese, the “law making” in *Makwanyane* “was not only accepted but also included in the text of the 1996 Constitution”. Kroese (2001: 270) contends that the court also held the following rights as *values* in the text of the Constitution:

- Respect for life in the context of the death penalty.⁵⁴⁴
- Values of the constitutional state, or “regstaat” as laid down in detail in s 33 of the 1993 Constitution.⁵⁴⁵
- The fact that the prosecution must prove the guilt of an accused is regarded as a “fundamental constitutional value.”⁵⁴⁶
- The prohibition of arbitrariness.⁵⁴⁷
- “The values of openness and tolerance enshrined in the Constitution”.⁵⁴⁸
- The separation of powers.⁵⁴⁹
- Public accountability, openness and democracy,⁵⁵⁰ and
- “Freedom of expression, ...freedom of conscience, religion, thought, belief and opinion are also constitutionally protected values”.⁵⁵¹

The above, according to Kroese, are in addition to the triad of values: equality,⁵⁵² freedom and dignity, which are constantly repeated as a mantra by the court.⁵⁵³ Kroese’s (2001: 271) conclusion is that the court’s formalism presumes that

⁵⁴⁴ *S v Makwanyane* par. 111 (per Chaskalson P).

⁵⁴⁵ *Ibid* par. 156 (per Ackerman J).

⁵⁴⁶ *S v Mbaal; S v Prinsloo* 1996 (2) SA 464 (CC) par. 7. See also *S v Coetzee* 1997 3 SA 527 (CC) par. 14. “The presumption of innocence is acknowledged a a fundamental value in the criminal justice system of comparable democracies”.

⁵⁴⁷ *S v Lawrence, S v Negal, S v Solberg* 1997 (4) SA 1176 (CC) par. 33 (per Chaskalson P).

⁵⁴⁸ *S v Lawrence, S v Negal, S v Solberg* 1997 (4) SA 1176 (CC) par. 164 (per Sachs J).

⁵⁴⁹ *De Lange v Smuts NO* 1998 (3) SA 785 (CC) par. 178.

⁵⁵⁰ *Pretoria City Council v Walker* 1998 (2) SA 363 (CC) par. 56.

⁵⁵¹ *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC) par. 38.

⁵⁵² Albertyn and Goldblatt (1998: 249) argue that equality as a right and equality as a value are central to the task of transformation. Whilst as a value, equality gives substance to the vision of the Constitution, it provides the mechanism for achieving substantive equality as a right. According to the authors, there is a relationship between a right and value: “The value is used to interpret and apply the right; it means that the right is infused with the substantive content of the value”.

⁵⁵³ Section 39(1) of the 1996 Constitution requires of judges interpreting the Bill of Rights in any court, tribunal or forum to promote the values that underlie an open and democratic society based on human dignity, equality and freedom.

values exist in some reified form somewhere where its meaning can be ascertained objectively: a naturalistic vision of universal American values. “And it’s really nice to think that constitutional decisions are made based on a ‘self-conscious commitment to different values’ that can be known objectively. Nice but totally unbelievable” (Kroese, 2002: 271).

To follow the court’s legal arguments on Constitutional values is to say the least, very confusing. The Constitutional Court’s lack of clarity on what South Africa’s new democratic values embody has evidently reverberated through the ordinary courts. One has to concur with English’s (1996: 646) conclusion on the concept of *ubuntu* when she says as follows: “Is *ubuntu* then, a genuinely useful jurisprudential tool, or does it simply mean all things to all men”? In deconstructing the courts’ inconsistencies surrounding the concept of *ubuntu* one has to conclude that the social engineers will have to put in more effort to reconstruct a representative South African jurisprudence.

Although the 1996 Constitution assures South Africans that values⁵⁵⁴ form the foundation of the South African state, reference to *ubuntu* was omitted in the text. According to Lenta (2001: 179), the 1996 South African Constitution is an amalgam of the written Constitutions of the United States of America and Europe, heavily influenced by constitutionalists of the first world. Although our Constitution conforms to liberalist universalism, it cannot ignore the culture-specific communitarian jurisprudence of the African community, which in itself is a source of South African law. Whilst indigenous law has been restored its legitimate status in the 1996 Constitution, individual autonomy continues to undermine communal values. African communitarianism continues to challenge the traditional Enlightenment goals of universal liberalism, represented in South Africa’s Constitution, to accommodate communitarian values in a new jurisprudence. Whilst liberalism seeks self interest, communitarianism

⁵⁵⁴ Section 7(1) of the Constitution describes the Bill of Rights as a cornerstone in the democracy of South Africa which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

subordinates self interest to the morality of the community: “two diametrically opposed types of substantive political society build upon equally polar principles of association” (Van Blerk, 2004:202). Only by deconstructing opposing truths⁵⁵⁵ can we open up oppositions to dialogue and deliberation and reconstruct pluralism and a representative rainbow jurisprudence. Mokgoro (1998{b}: 53) maintains that *ubuntu* should become central to a new South African jurisprudence and to the revival of sustainable African values as part of the broader process of the African Renaissance. Since March 2004, the *Ubuntu Project* explores the use of *ubuntu* as a justiciable project, both as a founding legal ideal and as a working legal principle (Cornell, 2005: 195).

In *Bantu Philosophy*⁵⁵⁶, Tempels presented *seriti* or *ubuntu*, as an alternative philosophy or metaphysics to Western philosophy’s idea of universal truths. The African worldview however, seems to be a well-hidden truth; a worldview not deliberated⁵⁵⁷ in court. According to Mutwa (2003: 21), the reason for this is that African people feel that “white people’s attitude, belief or disbelief regarding whether there is anything valid or important in our culture affects our soul. That is why we are sometimes very guarded or careful around white people. They mistake it for fear or reserve, but we feel the white people are not sensitive to things of the soul as we are”. According to Mutwa (1996: 9; 2003: xv), any African who discloses the secrets of traditional African societies is despised by his or her people.

In an effort to overcome this ideological bias standing in the way of meaningful legal and philosophical engagement regarding the concept of *ubuntu*, it is

⁵⁵⁵ According to Van Blerk (2004: 216), *ubuntu* values that express African humanity and fraternity have been systematically underprivileged in the past because of the dominance of Roman-Dutch law.

⁵⁵⁶ According to Tempels, *Bantu Philosophy* differs from European or Western philosophy in that it is founded on the philosophy of vital force, a group or folk philosophy, accepted by everyone as the truth for the community.

⁵⁵⁷ Mutwa (1996: 9; 2003: xv; xviii) reveals that not only he, but also Dogon Ogotomelli and Marcel Griaule felt compelled to break their vows of secrecy to open up their knowledge of tribal secrets from traditional societies. They have all seen the tragic possibility that the tradition of their people would be lost forever “through cultural death and dismemberment”.

necessary to venture into African philosophy's "exclusive territory" and deconstruct the meaning of *ubuntu*: to unveil *ubuntu* which has up to now been "veiled in a heavy *kaross* of mystery".

4.5 UBUNTU: A DEFINITION

As in the case of African philosophy, there are many definitions of *ubuntu*. *Ubuntu* is generally defined as *umuntu ngumuntu ngabantu; motho ke motho ka batho* or humanness. The concept of *ubuntu* encompasses brotherhood, culture⁵⁵⁸, African Religion, traditional African values, justice and law.

Bhengu (1996{a}: 5) defines *ubuntu* as a "humanistic experience of treating all people with respect, granting them their human dignity". According to Bhengu, the non-racial philosophy of *ubuntu* encompasses values like universal brotherhood, sharing and respect for other people as human beings. Bhengu (2006: 42) also defines *ubuntu* as a "moral philosophy" and "humanness" (1996{a}: 5). Mbigi (1997: 2) defines *ubuntu* as "a literal translation for collective personhood and morality."⁵⁵⁹ It is best described by the Xhosa proverb, *umuntu ngumuntu ngabantu*, which means I am because we are. We have to encounter the collective we, before we encounter the collective I. I am only a person through others". Mbigi (1997: 30) defines *ubuntu* as "our way of life, our collective solidarity, born out of our kinship culture and it is the heart and soul of our existence".⁵⁶⁰ Broodryk (2006: 17) defines *ubuntu* as "a comprehensive ancient

⁵⁵⁸ The different cultures in Africa are not homogenous and will not be discussed. More emphasis will be laid on shared experiences amongst all Africans.

⁵⁵⁹ In *S v Makwanyane* Mokgoro J defined *ubuntu* as follows: "Generally *ubuntu* translates as 'humanness'. In its most fundamental sense it translates as personhood and 'morality'. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to the basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation".

⁵⁶⁰ Mbigi (1997: 31) illustrates the African notion of collective solidarity with the following African proverb: "The power of the fish is in the water". Mbigi posits that it is almost impossible for the African elite to be empowered without collective solidarity and collective empowerment.

African worldview based on values of intense humanness, caring, sharing, respect, compassion and associated values, ensuring a happy and qualitative community life in the spirit family". Makhudu (cited by Broodryk, 2006: 21) defines *ubuntu* as follows: "Every facet of African life is shaped to embrace *ubuntu* as a process and philosophy which reflects the African heritage, traditions, culture, customs, beliefs, value systems and extended family structures". Khanyile (cited in Broodryk, 2005: 14) defines *ubuntu* as "the common spiritual ideal by which all Africans south of the Sahara give meaning to life and reality". In these definitions Bhengu, Mbigi and Khanyile define *ubuntu* as a moral philosophy and Broodryk and Makhudu define it as an African worldview. Broodryk and Mbigi emphasise that *ubuntu* represents African values and collective personhood. *Ubuntu* is the ancient African worldview which represents African morality and its accompanying value system of its communitarian societies.

In *S v Makwanyane* Mokgoro J states that *ubuntu* is generally translated as "humanness".⁵⁶¹ Broodryk (2007), Koka and Teffo (cited in Bhengu, 2006) and Ngubane (2006) are of the opinion that "humanness" does not convey the essence or meaning of *ubuntu* or *umuntu ngumuntu ngabantu*. Koka et al. (cited in Bhengu, 2006: 46) argue as follows on the use of "humanness" as synonym for *ubuntu*: "Asking an African philosopher for the meaning of *ubuntu*, a European will hear that *ubuntu* means 'humanness'. However, *ubuntu* has more to it than this polite and forbearing answer, an explanation of *ubuntu* needs all kinds of associations, images and experiences; *ubuntu* resists the dictate of Western logic and Western rites of argumentation with their demands for distinctive definitions". Their dissent is a clear indication that the English word "humanness" is insufficient to describe the rich concept of *ubuntu*. Ngubane too, laments the simplistic English translation of *ubuntu*, as the English translation does not encompass *ubuntu* as a moral philosophy. Ngubane (cited in Bhengu, 2006: 42) laments the superficial translation of *ubuntu* as "humanness" and says:

⁵⁶¹ *Ibid* par. 308.

“This is too simple an understanding, touching only the visible aspects of *ubuntu* in operation. More completely understood, the word refers to a moral philosophy deriving from the dictum that *umuntu ngumuntu ngabantu* - a person is a person through other people”.

The word “humanness” does not describe the concept of *ubuntu*. Like Mokgoro and Tutu, Koka et al. confirm that *ubuntu* is difficult to define as “*ubuntu* resists the dictate of Western logic and Western rites of argumentation with their demands for distinctive definitions”. Mokgoro, Tutu and Koka et al. agree that *ubuntu* represents African spirituality or Africa’s moral philosophy. Although ‘humanness’ seems to be a general English translation for the African concept of *ubuntu*, it is important to note that Africans do not regard the English translation as representative of the African meaning of *ubuntu*. *Ubuntu* seems to be inextricably linked to African morality, something never deliberated in court.

4.6 UBUNTU: AFRICA’S PHILOSOPHY OF LIFE⁵⁶²

Where does *ubuntu*⁵⁶³ fit into African philosophy?⁵⁶⁴ In Oruka’s *Four Trends*, he distinguishes between the trends in African philosophy, viz. ethnophilosophy, philosophic sagacity, nationalistic-ideological philosophy and professional philosophy. According to Broodryk (1997{a}: 33), *ubuntu* represents the “recovery of the logic of brotherhood in ethnophilosophy” for *ubuntu* represents the collective personhood and collective morality of the African people, best described by the Xhosa proverb, *umuntu, ngumuntu ngabantu* or I am a person

⁵⁶² Bhengu (1996: ix) describes *ubuntu* as follows: “Ubuntu is an African product. It is indigenous African philosophy. It is an African way of life. It was not imported from Eastern or Western Europe. It is something out of Africa”.

⁵⁶³ The Zulu refer to African collective unity or brotherhood as *ubuntu*; *ubuntu* or *umuntu* in Xhosa, *botho* in Sesotho; *bunhu* in Tsonga; *vhuthu* in Venda; *numunhu* in Shangaan; *nunhu* in Shona; *utu* in Swahili, and *abantu* in Ugandan (Broodryk, 2002: 27). Broodryk (2007: 23) translates *ubuntu* in Cape Afrikaans as “*Menslikgeit*” and in Afrikaans as “*mede-menslikheid*”. *Ubuntu* is translated as “humanness” in English.

⁵⁶⁴ Bhengu (2006: 101) views *ubuntu* as a form of African philosophy.

through other persons.⁵⁶⁵ Ethnophilosophy is the only trend which reflects the religious and collective philosophy of indigenous African people or *ubuntu* philosophy. Mbiti (1991) translates this Xhosa proverb *umuntu, ngumuntu ngabantu* as “I am because we are: and since we are, therefore I am”. The African idea of personhood “I am because we are: and since we are, therefore I am” and “I feel therefore I am”⁵⁶⁶ are vastly different from the Western idea of personhood embodied in Descartes⁵⁶⁷ “I think therefore I am” (Okolo cited in Imbo, 2002: 140).

Nkruma’s *Consciencism* represents Africa’s collective philosophy, either as the worldview of a specific African community or that of Africa as a whole. Nyerere’s *Ujamaa*⁵⁶⁸ as vision for the ideal African society based on traditional African family values also represents this collective philosophy, or ethnophilosophy. The philosophical contributions of Mbiti, Mutwa, Senghor, Gyekye, Kagame, Tempels and others are examples of ethnophilosophy. Oruka (2002{a}: 121) defines ethnophilosophy as “works or books which purport to describe a world outlook or thought system of a particular African community or the whole of Africa”. He (2002{a}: 121) finds this “folk philosophy” very different from Western philosophy’s individualistic, scientific and logic tradition. In ethnophilosophy, “communality as opposed to individuality is brought forth as the essential attribute of African philosophy” (Oruka, 2002{a}: 121). Oruka’s (1990{a}: 43) critique against ethnophilosophy lies therein that he regards it as a “communal

⁵⁶⁵ In this proverb other persons’ include the ancestors. Theron (1995: 34 -35) critiques *ubuntu* as follows: “Quite simply, if a person is a person through persons then no one is a person. The closest thing to a person seems to be a tribe. For the proverb certainly does not simply say, nor does it mean, that a person only comes to be through other persons. Rather, it says that among the appearances of human beings only those are persons, and thus possesses of the corresponding dignity, who are in a certain relation with others persons, who are not, for example, cut off from the tribe ... A sound philosophy of personality, that is, has to be biologically, not socially, still less tribally based. Then the invidious question, who is or is not a person does arise. As for the ethical implications, the proverb simply side-steps the slow Western development of the idea of personal responsibility... The proverb teaches Africans to evade responsibility, rather, to hide behind the collective decision of the tribe”.

⁵⁶⁶ Senghor (1963: 447) said: “Emotion is completely Negro as reason is Greek ... Yes, in one way, the Negro is richer in gifts than in works”.

⁵⁶⁷ The French philosopher Rene Descartes, the father of modern philosophy and best known for his thesis on dualism, “uttered perhaps the most famous sentence in the history of philosophy: ‘I think therefore I am’”, signifying the essence of Western Philosophy: “the thinking of the thinker” (Mannion, 2002: 273).

⁵⁶⁸ See Nyerere, J.K. 1979. *Ujamaa-Essays on Socialism*. Arusha: Oxford University.

consensus. It identifies with the totality of customs and common beliefs of a people. It is a folk philosophy ... it is not identified with any particular individuals ... It is at best a form of religion.” According to Oruka (2002{a}: 120), ethnophilosophy does not comply with the standards set for universal Western philosophy and does therefore not constitute philosophy in the strict sense. Oruka (2002{a}: 121) finds that the shortcoming of ethnophilosophy lies in the fact that it represents the group’s mythical, uncritical and emotive part of the African tradition. African feminists criticise ethnophilosophy for portraying the collective belief system in traditional African societies “whilst ignoring the structures in African societies that oppress and marginalize women” (Imbo, 1998: 68). African feminists, viz. Oduyoye, Ramodibe, Zoe-Obianga, agree that traditional African societies are entrenched in a patriarchal worldview that keeps African women in a state of submission. African feminists agree that the African worldview, called *ubuntu*, violates human rights and shows no respect for gender equality and human dignity of African women.

Ubuntu highlights the stark contrast between African communalism and Western individualism. Whereas a person in the West is defined as an individual, the African worldview defines a person as a member of the community. Truth, says Ramose (2002{b}: 124-125), is not embodied by individualism, but by strong communitarianism. “Thus the search for the truth about the universe must begin from the realisation that placing the ‘self’ at the centre of the universe is already to obstruct the path to truth. To place the ‘self’ at the centre of the universe is to stand at the very edge of the precipice of authoritarian absolutism and dogmatism”. According to B.J. van der Walt (2006: 28), “[t]he kind of collective action that the West calls ‘community’ fails to fulfil the communal aspect of human personhood. In the West individuality, which also belongs to personhood, is highly developed, but communality remains severely underdeveloped”. In traditional Africa *ubuntu* means African solidarity, an indivisible whole. Africans do not distinguish between spiritual and physical existence. They have a holistic

worldview which is defined by the spirit world. Turaki (1997: 54) states that “the spiritworld defines the African worldview and life”.

Every facet of traditional African life embraces *ubuntu*, the African philosophy of life.⁵⁶⁹ *Ubuntu* is a philosophy reflecting African heritage, traditions, culture, customs, beliefs, values and the extended family⁵⁷⁰ (Broodryk, 1997{a}: 30). According to Dlomo (as cited by Broodryk, 1997{a}: 33), *ubuntu*'s greatest strength is that it is “an indigenous, purely African, philosophy of life”: something novel out of Africa. Because *ubuntu* is perceived to represent the African worldview, or philosophy of life, *ubuntu* is described as the essence, crux or root of African philosophy. Ramose (2002{b}: 40) argues that *ubuntu* is the root of African philosophy; not only because it is the “being of an African in the universe inseparably anchored upon *ubuntu* but also because the African tree of knowledge which stems from *ubuntu* is connected indivisibly to it”. According to Ramose “[*u*]*ubuntu* therefore is the wellspring flowing with African ontology and epistemology. If these latter are the bases of African philosophy then African philosophy has long been established in and through *ubuntu*”. Ramose regards *ubuntu* as the basis or root of African philosophy⁵⁷¹, “the philosophical foundation of African practices among the Bantu speaking peoples of Africa” (2002{b}: 8; 43).

4.6.1 *Ubuntu*: a Shared Value and Belief System

As Africa's philosophy of life, *ubuntu* represents the African subcontinent's shared valued and belief system. Abraham (1962), De Tejada (1979), Ramose (2002{b}), Mbiti⁵⁷² (1991), Gyekye⁵⁷³ (1996), Broodryk (1997{a}; 2002), Cabral (Hallen, 2002) and others concur the indigenous people of Africa share

⁵⁶⁹ Broodryk (2007: 112) calls Africa's philosophy of life “the sacred philosophy of *ubuntu*”.

⁵⁷⁰ Senghor sees the uniqueness of the Negro's philosophy in the fact that, unlike the West which compartmentalises human experience, it does not differentiate between philosophy and culture.

⁵⁷¹ Serequeberhan (1991: 17) defines African philosophy as a philosophy incarnated in the mythical or religious conceptions, worldviews and lived practices of ethnic Africans.

⁵⁷² Mbiti (1991: 5) confirms that all African people are deeply religious.

⁵⁷³ Gyekye (1996: 55-56) maintains that certain values are shared across the board by all indigenous African societies.

fundamental beliefs and values. Ramose (2002{b}, 40-41) agrees with De Tejada that *ubuntu* philosophy extends “from the Nubian desert to the Cape of Good Hope and from Senegal to Zanzibar”; that *ubuntu* represents the worldview of all “Bantu speaking peoples of Africa” (Ramose, 2002{b}: 8; 43).

It is common knowledge that African cultures differ from one another, but Cabral maintains that despite cultural differences, Africa’s distinctive indigenous worldview stretches “from Carthage to Zimbabwe, from Meroe to Benin and Ife, from the Sahara to Timbuctoo to Kilwa, across the immensity and the diversity of the continent’s natural conditions” (cited in Hallen, 2002: 76). Phalafala (Broodryk, 2007: 19) agrees that *ubuntu* is found “all over Africa and in South Africa this ubuntu tendency is called Batho Pele”. Khanyile (cited in Broodryk, 2005; 14) states that *ubuntu* is “the common spiritual ideal by which all Africans south of the Sahara” live. *Ubuntu* represents the indigenous African worldview of all Bantu speaking people in sub-Saharan Africa. “The philosophy of ubuntu also explains the solidarity of African states and nations. The concept of ubuntu is found in all African languages in different words, but all are embracing the same values” (Broodryk, 2007: 8).

Like all religious philosophies, *ubuntu* has a place of origin. Bhengu (2006: 20) posits that *ubuntu* came from God to the Egyptian gods: “interpreted and written down by Toth Hermes; disseminated to the people by all Egyptians kings and priests and then spread throughout the whole world”.⁵⁷⁴ Bhengu describes that as people moved away from the encroaching Sahara desert, Africans migrated to the sub-Saharan region, West Africa, Central Africa, East Africa and Southern Africa.⁵⁷⁵ According to Bhengu, “ubuntu philosophy was within them, and they lived it day and night”. *Ubuntu* therefore underlies every indigenous culture in South Africa and represents “a family atmosphere, a kind of philosophical affinity and kinship among and between the different indigenous people of Africa ... the

⁵⁷⁴ See 4.10.1.

⁵⁷⁵ See *The Mfecane Aftermath; Reconstructive Debates in Southern African History.*(Ed.) Hamilton.1995. Johannesburg: Witwatersrand University Press.

blood circulating through the family members is the same in its basic sense” (M’Baye, 1974: 138). Broodryk (2002: 17) describes *ubuntu* as a universal African concept which is found amongst all African cultures and in all African languages, and although different languages have different names for *ubuntu*, its basic meaning and worth remains the same.

The notion of *ubuntu* as the African worldview, or African *weltanschauung* is confirmed by Oruka (1991), Ramose (2002), Broodryk (1997{a}), Mbigi (1997), Mutwa⁵⁷⁶ (2003) and Bhengu (2006). *Ubuntu* as a worldview is “fundamentally holistic” (Ramose, 2002{b}: 93), an indivisible whole which consists of “the construction of myths and oral traditions, and the rules of good behaviour which have been taught to our children for centuries” (Oruka, 1991: 49) and which engenders a spirit of community and caring for one another (Bhengu, 2006: 43). Most important, the African worldview or reality has a deep spiritual dimension to it. For Kgamphe-Kgamphe (cited in Bhengu, 2006: 31), the African spiritual dimension differentiates *ubuntu* from other worldviews. According to Kgamphe-Kgamphe, no worldview, be it Afrocentric, Asiocentric or Eurocentric, has such a deep involvement of the soul as *ubuntu*. In African reality social and religious systems are not compartmentalised. African Religion is so integral in the traditional African worldview that “our entire lives as blacks are based and influenced by our religious beliefs in both thought and practice, both consciously and unconsciously (Mbigi, 1997: 33).⁵⁷⁷ This deeply religious nature of African people is so central to African living that it is difficult to separate African Religion

⁵⁷⁶ Mutwa (1998: 559) states that for all races of man except Africans, religion, medicine, politics, science, military affairs, economic affairs and religion are set apart from one another. For the Black man, “everything he does, thinks, says, dreams of, hopes for, is moulded into one structure – his great belief. Things like disbelief, doubt, agnosticism, atheism, disobedience are entirely unknown, unfathomable, senseless, within the framework of the Great Belief”. Credo Mutwa is a sage, philosopher, seer, well known sangoma, *inyanga*, healer, and a psychic. He is a High *Sanusi* (‘clairvoyant and lore-master’ or pejoratively called “witch doctor”) and the leader of over 500 traditional healers; a guardian over tribal history; a keeper of traditional stories and an excellent storyteller (Muwa, 1996: 9; 2003: xv).

⁵⁷⁷ Nyirongo (1997: 2) illustrates this notion as follows: “If for example, a man wears a tooth of a lion around his neck, he has at his command the power of the lion itself; if he rubs the remains of a cobra into the skin of his arms and hands, he is bound to be as deadly as the cobra’s venom during a fight against his enemy. If, during a hunting expedition, a hunter strikes the foot marks of a buffalo with a spear, he has actually made the buffalo impotent so that it is unable to run away. If a man does anything evil to a nail or hair of his enemy he is sure of harming him”.

from African philosophy: “religion is in their whole system of being” (Mbiti, 1991: 3: 5). Justus Tsungu emphasises the inextricable link between *ubuntu* and morality as follows: “Africa’s most powerful moral way of living to others: ubuntu!” (cited in Broodryk, 2007: 3).

African philosophers, viz. Bhengu and Ramose, see *ubuntu* not only as Africa’s indigenous collective philosophy which propounds caring, sharing and respect for one another, but as a potential world philosophy that can contribute to world peace. Bhengu (2006: 101) posits “[u]buntu is a tool for transformation in a context of globalisation ... Ubuntu as a form of African philosophy thus blends in with other potential, imagined or actual gifts of Africa to the wider world”. Ramose (cited in Bhengu, 2006: 101) argues that *ubuntu* can inspire the wider world “to give a new and profound meaning to the global debate on human rights”. Ramose (2002{b}: 128) argues that *ubuntu* “can make a significant contribution to world peace by leading the way to the restoration of *botho*; the first essential step to peace with oneself as well as world communal peace”. This utopian male view of *ubuntu* is however contradicted by African theologians Nyirongo (1997), Turaki (1997) and Oduyoye (2001), as well as African feminists. Apart from the whitewashing of *ubuntu*, says Nyirongo (1997: 149), “they have said nothing at all about the violence that goes on within the tribe because of its faulty view of office, authority, power and irresponsibility. This in my view is an illusion ... the caring and sharing atmosphere we see is not as innocent as it appears!” African feminists, as will become evident, agree that *ubuntu* represents a patriarchal philosophy entrenched in gender-based violence, oppression, and human rights⁵⁷⁸ violations.

⁵⁷⁸ From an *ubuntu* point of view, Ramose (2002{b}: 145-148) describes human rights as follows: “All theories of human rights regard the fact of being human – humanness – as their starting point. Human rights theories then proceed to ascribe value to or determine the worth of the fact of being human. It is precisely at this level of valuation that disputes arise concerning the meaning of human rights. Accordingly, it is value orientation to humanness which constitutes the foundation of conflicting theories of human rights ... the west appears intent on imposing upon others in the name of democratisation, universalisation of human rights and globalisation. But the particular experience and history of the West cannot be a credible or absolute substitute for the history of the whole world. Underlying this tendency is the practice of absolutising certain values on the one hand and a dogmatic unlinear conception of human history on the other. Furthermore, the fragmentation of the human being into a pastiche of rights may be interesting from

4.7 UBUNTU AS AFRICAN COMMUNITARIANISM

Unlike the Greek idea of man as a rational animal and Western philosophy's notions of Western liberalism and humanism, traditional African societies define the African person in terms of community. This section will look at the following:

- *Ubuntu* as African communitarianism.
- *Ubuntu* as extended family.
- *Ubuntu* as solidarity, and
- *Ubuntu* and the individual.

Whilst Western philosophy propagates individualism, *ubuntu* is anti-individualistic and communitarian. Because individualistic behaviour is not encouraged and people have to adhere to group behaviour, communitarian societies are regarded as closed societies. Popper (cited in Broodryk, 1997{a}: 88) defines a closed society as a society characterised by belief in magical taboos and superstitions. Open societies give preference to reason. As the *ubuntu* worldview is “essentially spiritual” the community has a “moral obligation to conform to traditions, and conventions override any desire for change or nonconformity. The conception is that the best in life lies in the past; the world of the ancestors and the origin” (Turaki, 1997: 49).

Ubuntu communitarianism represents collective solidarity and rejects Western atomistic individuality. Western individualism ultimately results in the disintegration of *ubuntu* and the destruction of communal solidarity and

the Western philosophical point of view. However, the concept of a human being based upon this fragmentation is philosophically tenuous. It arbitrarily detracts from the fact that at any given moment in time the human being is a wholeness and not fragments to be pieced together into a theory of rights as and when the free enterprise economic system dictates ... since the domestic household is anterior both in idea and in fact to the gathering of men into a commonwealth, the former must necessarily have rights and duties which are prior to those of the latter, and which rests more immediately on nature. If the citizens of State – that is to say, families – on entering into association and fellowship, experienced at the hands of the State hindrance instead of help, and found their rights attacked instead of being protected, such associations were rather to be repudiated than sought after”.

brotherhood. *Ubuntu* only manifests through interaction with others in the community, and is best illustrated by the Shona proverb “A thumb working on its own is useless. It has to work collectively with the other fingers to get strength and be able to achieve anything”. Senghor⁵⁷⁹ (1964: 93-94) describes the African sense of community as follows: “Negro- African society puts more stress on the group than on individuals, more on solidarity than on the activity and needs of the individual, more on the communion of persons than on their autonomy. Ours is a community society”. *Ubuntu*⁵⁸⁰ can be described as a way of life that contributes to the common good of society (Bhengui, 1996: 10). *Ubuntu* is African humanism.⁵⁸¹ Whilst Western humanism propagates individual liberties and civil rights, African humanism is rooted in traditional African values (Hallen, 2002: 40), African Religion and community.⁵⁸² Senghor, Kenyatta, Nkrumah, and Nyerere with his idea of *Ujamaa*, familyhood or African socialism, believed in the unique features of African communitarianism.

4.7.1 *Ubuntu* as African Communalism

“One of the fundamental aspects of our culture is the importance we attach to man. Ours has always been a man-centred society. Westerners have on many occasions been surprised at the capacity we have for talking to each other”. Biko (1998: 26) propounds the essence of African society as African communitarianism. As Mbiti (1992: 2) posits: “To be human is to belong to the whole community, and to do so involves participating in the beliefs, ceremonies,

⁵⁷⁹ Senghor (1964: 73) describes the “Negro-African society as collectivist, or communal, because it reflects the communion of souls, rather than the aggregate of individuals”.

⁵⁸⁰ Tutu describes *ubuntu* as “the essence of being human, it is part of the gift Africa will give the world. It embraces hospitality, caring about others, being willing to go the extra mile for the sake of others. We believe a person is a person through another person, that my humanity is caught up, bound up and inextricable in yours. When I dehumanize you, I inexorably dehumanize myself. The solitary human being is a contradiction in terms and therefore, your humanity comes into its own community, in belonging” (cited by Wilkinson, 2002: 356).

⁵⁸¹ African humanism has been a current theme in discussion over the years, attempting to identify values and life-practices that distinguish indigenous African people from Westerners. The spirit of African humanism is *ubuntu*.

⁵⁸² Strong communitarianism endorses communal life and values and maintains it is a more satisfying way of life than individualism offered by liberalism. Strong communitarianism rejects the notion of universal foundations of truth; it views community as the source of truth and values (Van Blerk, 2004: 195-196).

rituals and festivals of that community”. Like Biko, Nyerere and Kaunda emphasised the importance of African communalism and its accompanying values caring, sharing and respect for one another.

Communitarianism⁵⁸³ is the cornerstone of *ubuntu*.⁵⁸⁴ The African community is *ubuntu*: there is no *ubuntu* without community. The features of African communitarianism are not only unique if compared to Western liberalism⁵⁸⁵ but are the defining characteristics of traditional African life. African communitarianism, or strong communitarianism, posits that communal life and values are more fulfilling than Western liberalism. Van Blerk (2004: 202) views strong communitarianism and Western liberalism as “two diametrically opposed types of substantive political society built upon equally polar principles of association”. According to Van Blerk, strong communitarianism does not only focus upon community as the source of value, but also upon *which* value to follow. Strong communitarianism is not concerned with the “mere presence of shared values, but the content and scope of the shared values”. Strong communitarianism does not respect the plurality of values among diverse communities, but emphasises the “cultivation of the single value of substantive community” (Van Blerk, 2002: 202-203). Strong communitarianism represents what traditionalists argue: a single or unique set of collective values. *Ubuntu’s* unique values stand in stark contrast to universal Western values.

⁵⁸³ Gyekye (2002: 306) describes African communitarianism as “radical or excessive communitarianism” Ramose, (2002{b}: 115) describes communalism as follows: “Communalism is the doctrine that the group constitutes the main focus of the lives of the individual members of that group, and that the extent of the individual’s involvement in the interests, aspirations, and welfare of the group is the measure of that individual’s worth. This philosophy is given institutional expression in the social structures of African communalism”.

⁵⁸⁴ Biko (2007:113) describes the African community as a “true man-centered society whose sacred tradition is that of sharing. We must reject, as we have been doing, the individualistic, cold approach to life that is the cornerstone of the Anglo-Boer culture”.

⁵⁸⁵ Communitarianism opposes the idea of individualism in Western liberalism. Liberalism is the epitome of individual autonomy, individual freedom and fundamental rights. Communitarianism regards community as the basis of life and opposes individual autonomy divorced from the group. “Personhood in the communitarian sense means presence and participation in the life of the community. Individual rights presume the liberal conception of the self as an independent being who joins social life only to further self-centred interests and values” (Van Blerk, 2004: 195).

Two of the cardinal principles of *ubuntu* are the principles of collective confidentiality and collective transparency. Collective sharing of relevant information is the basis of the spirit of collective trust which is the cornerstone of African communitarianism (Mbigi: 1997: 102). The unique sense of community between persons of traditional African societies is a direct consequence of their communitarian social arrangements, their religion⁵⁸⁶ and values; their unique collective philosophy of life. The African community is, according to Somé (1997: 52), based on the following characteristics: unity of spirit; absolute trust; openness; love and sharing; respect for elders;⁵⁸⁷ respect for nature and the cult of the ancestors.⁵⁸⁸ *Ubuntu* reality defines indigenous African as community and juxtaposes itself with the Western reality of society as atomistic individuals. *Ubuntu* reality or strong communitarian societies are regarded as closed societies (Nyirongo, 1997: 139; Turaki, 1997: 61) because they are characterised by belief in magical taboos and superstition on the one hand, as Popper suggests, and on the other hand because the worldview applies only to the tribe or clan. In *ubuntu* reality individualistic behaviour is not encouraged. Individuals have to adhere to group behaviour⁵⁸⁹ because “the group is the dominant determining factor prescribing values, rules and morals” (Broodryk 1997{a}: 99). According to Gyekye (2002: 298), the life of the African person “totally depends on the activities, values, projects and practices, and ends of the community; and consequently, it diminishes his/her freedom and capability to choose or question or re-evaluate the shared values of the community”. The status quo and equilibrium is maintained without much effort. The African community is however not just one homogenous group of people as Tempels suggested; the

⁵⁸⁶ The community and its traditional way of life are “closely bound up with African religion” (Mbiti, 1991: 10).

⁵⁸⁷ Elders are the pillars and collective memory of the community. They hold the wisdom and traditions which keeps the community together. They initiate the young ones, prescribe the rituals for various occasions and monitor the dynamics within the community.

⁵⁸⁸ “The ancestors live in the spirits in the community. They are reborn into the trees, the mountains, the rivers and the stones to guide and inspire the community” (Somé, 1997: 52).

⁵⁸⁹ Even ownership of land is vested in the community. The highly prized Western principle of self-actualisation is therefore not attainable in *ubuntu* reality.

homogenous group consists of a “whole maze of relationships” (Nyirongo, 1997: 103) which is organised in a social hierarchy.

Strong communitarianism results in closed communities which are characterised as hierarchical,⁵⁹⁰ status-conscious and centralised societies (Nyirongo, 1997: 149). According to Nyirongo, the chief is the symbol of the tribe’s glory and is perceived as a divine being. The chief and his ‘indunas’ are in charge of every social unit – family life, religion, economic activity, medicine and so forth. Authority in all social relations is delegated to the chief, and office bearers such as parents, priests, blacksmiths etc. are accountable to the chief as overall authority. Nyirongo (1997: 151) argues that because the chief and his governing body dominate all social units, society fails to develop normally. According to him, totalitarian rule emerges to inhibit all other legitimate authorities.

4.7.2 Ubuntu as Extended Family

In traditional African communities⁵⁹¹, the concept of family plays a crucial role, not only because it is the smallest unit in African society but also because values, religion and tradition are passed on from generation to generation. The survival of these communities is dependant on families. Unlike Western nuclear families, the African family embraces *all* those who have blood ties. Kaunda (cited in Broodryk, 1997{a}: 77) explains the extended family as follows: “I do not restrict the title ‘father’ to my male parent. I also address my father’s brothers as ‘father’. And I call my mother’s sisters ‘mother’ also. Only my father’s sisters would I address as ‘aunt’ and my mother’s brother as ‘uncle’. My ‘brothers’ would include not only the male children⁵⁹² of my father but also certain cousins and even

⁵⁹⁰ See 4.11.3.

⁵⁹¹ Mbigi (1997: 124) states that a person is “accepted, respected and given dignity simply because you are a human being and not because you are rich or highly qualified”. According to Mbigi, strangers are welcome and enjoy unconditional hospitality in African communities. They are however always perceived as strangers, as none of the tribal laws apply to them (Turaki, 1997: 61).

⁵⁹² Khapoya (1994: 49) stresses the importance of children in *ubuntu* society because they perpetuate the family name and social values and norms handed down by the ancestors. Because children belong to the parents and the community “the kind of possessiveness towards children that one finds in the Western world is rare”. It is common practice for African children to be sent to relatives in other villages to live with

members of the same clan who have no blood relations to me at all". The extended family or "inseparable trinity" (Ramose, 2002{b}: 122) stretches over many generations and includes the dead, the living and generations yet to be born. Because communitarian societies are hierarchical, the aged are respected. Old age is associated with wisdom, experience and knowledge.

Any infant born into the indigenous African community belongs to the community. The community undertakes to bring the child up "according to the ideals of the tribe" (Mutwa, 2003: 164) and to turn it into a well-humanised member of the community.⁵⁹³ In *ubuntu's* collective approach or extended family ethic, every community member becomes the mother, father, brother or sister of such a child and nurtures and cares for it as a member of the community. In *ubuntu* reality, relatives and elders have the same authority over the child as its natural parents and can therefore discipline the child.⁵⁹⁴ The reason for this is that, according to Mutwa (2006: 166), the family by itself is helpless in confronting misbehaviour. The extended family⁵⁹⁵ involves "three interrelated dimensions" (Ramose, 2002{b}: 47); not only persons who are alive, but also those who have passed away and others yet to be born.⁵⁹⁶ Because *ubuntu* reality is dualistic,⁵⁹⁷ the

them. This practice is "an illustration of the harmony and consistency in cultural values" and strengthens kinship bonds.

⁵⁹³ According to Mutwa (2003: 165), it was the duty of the grandmother to entertain children with stories and myths. Children were instructed about tribal and family history by the brother of their mother, in other words, their uncle. That is why the uncle is called *malumey*, or teacher, in Zulu. "So it is the duty of the uncle, and not the father or mother, to teach the children about sexual matters in Africa. I think this is because their parents have always hidden sexual matters from the children when they were little, and told them babies arrive on the backs of great white eagles. ... This may raise some eyebrows in modern Europe and America, but even today in Zululand, a young Zulu girl who is about to be married, first pays a ritual visit to the home of her uncle. There she is instructed in finer ways of lovemaking and caring for the husband, the children who will come, and of caring for herself". Oduyoye (2002:101) cites Wamui's report of approval of premarital sex for women as follows: "Among Akamba, a virgin is taken to her parents as she is seen as not prepared for a husband. This suggests that girls are expected to have their first ciotus with a man who is not going to be a marriage partner. In fact the report states categorically that 'Akamba make their girls have sex before marriage with a different man'".

⁵⁹⁴ "I would send my son for a few months to my brother's village to learn the law under new surroundings ... when a child who was wayward and naughty found the entire family against him, he used to toe the line immediately. This is why in Africa you found many relatives coming together to rebuke a naughty child" (Mutwa, 2003: 166).

⁵⁹⁵ *Ubuntu's* extended family juxtaposes the nuclear family of Western reality.

⁵⁹⁶ The belief in reincarnation is a very significant pillar in African religion. When someone dies, he continues to live among his relatives as an ancestral spirit who protects them from danger and attends to

communal relationship of family reaches beyond the grave. “The constant communication between the living and living dead (ancestors) speaks once again of ... the triad of the living, the living dead and the yet to be born which forms an unbroken and infinite chain of relationships which are characteristically a oneness and wholeness at the same time” (Ramosé, 2002{b}: 94). This relationship between the living and the dead is sacrosanct and unbreakable⁵⁹⁸ (Sebidi, 1998: 63).

Every facet of African communal existence is shaped to embrace Africa's philosophy of life. *Ubuntu* philosophy is reflected throughout the African heritage: traditions, culture, customs, beliefs, values and the extended family (Broodryk, 2002: 24). Ngubane (cited in Bhengu, 1996: 8-9) describes the meaning of *ubuntu* principles in traditional Africa as follows:

- my neighbour and I have the same origins; same life-experience and a common destiny;
- we are the obverse and reverse sides of one entity;
- we are unchanging equals;
- we are mutually fulfilling complements;
- we have simultaneously legitimate values;

their daily needs. In return, some spiritual sacrifices are made in honour of the Spirit. People who were influential before their death may choose a suitable host or medium to possess regularly during appropriate ceremonies and rituals. In African Religion, reincarnation is viewed as an important opportunity for the Spirit to return to its people, tribe and family (Mbigi 1997: 52).

⁵⁹⁷ “As in the Platonic tradition, reality for the African is dualistic, namely, the invisible and the visible or the experienced universe. But unlike the instantiated world in Plato’s theory of reality, for the African this world or the phenomenon is real, not a mere shadow of the invisible. In the invisible or immaterial universe, according to African ontology, dwells God, the highest being; the ancestors, or souls of the heads of clans and of the departed relatives; and nature gods, or spirits. This material real, on the other hand, contains human beings, animals, plants, and inanimate beings” (Okolo, 2002: 211).

⁵⁹⁸ “The ancestral spirit will constantly come back to look after the living relatives as an invisible energy centre. The ancestral spirit may enter and occupy people, places, animals and trees. Ancestors are always alive, without bodies, and still play a major part in our social life. We have to venerate them because they can act for either good or evil on behalf of those who are still living in bodies. The belief in the spirit and reincarnation is central in our African way of life, consciously and unconsciously. Spirit possession by ancestors is a common event and sight in our life. As blacks we live and act in a religious and spiritual world. Our social and religious systems are strongly interrelated, so that it is difficult to discuss one without the other” (Mbigi, 1997: 32-33).

- my neighbour's sorrow is my sorrow; his joy is my joy;
- he and I are mutually fulfilled when we stand by each other in moments of need; his survival is a precondition for my survival;
- no community has any right to prescribe destiny for other communities;
- never prescribe destiny for another person;
- my neighbour is myself in a different disguise;
- equals do not prescribe destiny for each other;
- to be inhumane is to be an animal [*isilwane*];
- all that one lives for is to be the best one can be;
- every moment in one's life one evolves, for perpetual evolution is one's destiny;
- every person extends himself/herself into humanity;
- humanity is the blanket that covers one's body, it is one's flesh, it is the matrix in which one grows. It is the face of the infinity which sees itself;
- wealth must be shared;
- your neighbour's poverty is your poverty;
- allow no racism in our mind;
- no race is great or small;
- one's mother is his/her Law;
- one's father is his/her Law;
- one's relatives and neighbours are the Law;
- my society's Law is my Law;
- law is my sceptre;
- knowledge is the challenge of being human so as to discover the promise of being human; and
- to know the Law is the glory of being human.

Ubuntu philosophy and its communitarian ideals oppose every facet of Western atomistic liberalism. Western liberalism juxtaposes the African communitarian view on community, law, spirituality, being a person, and equality.

4.7.3 *Ubuntu as Solidarity*

In African societies the king⁵⁹⁹ and chief⁶⁰⁰ are the respective figureheads of the tribe and the village. Although the king's kinship is hereditary, he is dependent upon the consensus of his tribal council and the *lekgotla*. The survival of traditional African communities is dependant on its collective brotherhood, collective values and consensus. If an important issue has to be addressed "every qualified male" (Ramose, 2002{b}: 113) has to attend the *lekgotla*. No one can be silenced as freedom of expression is paramount at the *lekgotla*.⁶⁰¹ Sithole (cited in Bell, 2002: 113) emphasises the importance of freedom of expression at group meetings as follows: "Those who have lived in Africa know that the African people are democratic to the point of inaction. Things are never settled until everyone has had something to say. The [tribal] council allows the free expression of all shades of opinions". Freedom of expression is tolerated within the group and is called the "law of participation and is basically emotive" (Senghor, 1964). As the well-being of the community is at stake, the individual's judgment is not cultivated as wisdom, for "wisdom is not in the head of one person".⁶⁰² When important decisions have to be made, the will of the individual is submitted to the collective. For indigenous communities to survive, the communal ethos of African culture places a great value on solidarity.

As tribal unity and solidarity lie at the heart of *ubuntu*, the solution or decision is seen as the achievement of the group as a whole. *Ubuntu* reality is grounded in communal solidarity known as consensus democracy. Consensus democracy in traditional African societies is based on the philosophy of *ubuntu*; "[u]buntu philosophy underpins democracy in African societies" (Bhengu, 1996: 23).

⁵⁹⁹ Mbiti (1992: 183) maintains kings are not mere political heads, but divine or sacral rulers who act as reflection of God's rule in the universe.

⁶⁰⁰ In the community the chief and his *indunas* take charge of religion, economic matters and justice.

⁶⁰¹ The following expression prevails for deliberations at a *lekgotla*: "*Le seke la mo tlhakola pele a fetsa go nyela* which means the unclean anus of someone defecating may not be cleaned until the person has completed the process" (Ramose, 2002{b}: 113).

⁶⁰² An Akan proverb.

“Bantocracy” or “African consensual democracy” is “based upon the inseparable trinity” of *ubuntu* (Ramose, (2002{b}: 122). *Ubuntu’s* consensus democracy⁶⁰³ differs from the concept of majority rule⁶⁰⁴, a characteristic of Western democracies. The principle of majority rule is foreign to traditional Africa’s *ubuntu* reality.

4.7.4 *Ubuntu* and the Individual

In contrast with Western liberalism which propounds atomistic individualism, *ubuntu* advocates that there is no life without community. Individualism “is a real European personality which is against African personality” (Abraham cited in Bhengu, 1996: 19); African personhood can only be defined in terms of wholeness (Ramose, 2002{b}:64). Kenyatta (cited in Gyekye, 2002: 297) has the following to say about Western individualism:

“According to the Gikuyu ways of thinking,
nobody is an isolated individual.
Or rather, his uniqueness is a secondary fact about him;
first and foremost he is several people’s
relative and several people’s contemporary”

⁶⁰³ “This was the African form of democracy. According to Kenyatta, among the Gikuyu there was a ‘spirit of collectivity’ in the council’s meetings. No one spoke in terms of the personal pronoun ‘I’. Instead each individual reverted to the ‘WE’. The ‘we’ stood also for the members of the lineage represented by the elders because ‘it was the voice of the people or public that ruled the country. Individualism and self-seeking were ruled out, for every respective elder spoke in the name of his particular group” (Mangena, 1996: 58). According to Mbigi (1997: 28), “[t]raditional African political systems and values treasured democracy, freedom of expression, consensus, grass-roots participation, consultation and institutionalization to preserve the collective solidarity of *ubuntu* above confrontation, foreign ideologies and personal cults; this ensured political stability and unity. These elements remain crucial and relevant to the task of nation building in modern Africa.

⁶⁰⁴ Mandela (1994: 21) describes how democracy is understood: “everyone who wants to speak is entitled to do so and everyone is heard whether it is chief or subject, warrior or medicine man, shopkeeper or farmer, landowner or labourer. In the African environment, people spoke without interruption and meetings lasted for hours since all men were free to voice their opinions and were equal in their value as citizens. Such meetings would continue until consensus was reached. They ended in unanimity or not at all. “Democracy meant all men were to be heard and a decision was taken together as a people. Majority rule was a foreign notion”. Mangena (1996: 56) states that, according to the oral tradition, women were not necessarily refused attendance at communal gatherings. They were however expected to listen only and not talk.

African communitarianism views the individual as secondary to the community and human rights as secondary to group rights; therefore, the welfare of the community is paramount over that of the individual. Imbo (2002: 146) states that no African is ever really independent. Imbo describes how the relational web of community begins before birth, because it is believed that constant interaction between spirits and the living persists everywhere. Imbo maintains “[p]ersonality is thus moulded through the relations with the spirits, ancestors, and the living (reincarnated ancestors) ... p’Bitek is right that people are not born free”. Imbo (2002: 149) argues that freedom is won from the chains of societal life only in slow stages,⁶⁰⁵ and then never completely. According to Imbo, freedom at the beginning of life is symbolised by the umbilical cord: “a chain that later gives way to the chains of family, relatives, clan and society. Even though individuals do not choose their chains, it is those chains that free them”. Individuals are never free to account to themselves, but remain accountable to their ancestors and blood relations (Turaki 1997: 69). Individuals are free to make ethical choices, but their choices are subordinate to *ubuntu*’s shared code of ethics and the judgment of the superiors (Ephirim-Donkor, 1998: 119-120). As the individual does not have an identity of his own, he has to wait for the group to make decisions on his behalf. According to Nyirongo (1997: 61), the maxim ‘I am because we are and since we are, therefore I am’ illustrates that “the individual is only conscious of his own being, duties, privileges and responsibilities towards himself and other people in terms of other people”. Disobedience of an individual incurs the wrath of the ancestors.

In Western liberalism, the individual defines the person he will eventually become but in African communitarian societies, the community plays a crucial role in the individual’s attaining of personhood. In Western reality the group does not determine the individual’s identity. As an autonomous person, he or she chooses his or her own identity. In contrast with Western society where man is the

⁶⁰⁵ Whilst Rousseau propounds that man is born free, but is everywhere found in chains, p’Bitek maintains that for indigenous Africans, the chains precede birth and outlasts life.

architect of his life, the African individual in a strong communitarian society is not complete without the group. In the quest to obtain personhood the African individual has to progress from one social category to the next and only the group can qualify the individual for the next social category. "Personhood is however also something at which individuals could fail" (Menkiti, 1979: 159). In traditional Africa it is the community that makes the individual; on his own the individual has no existence.⁶⁰⁶ The African view is that "a person does not exist all by himself: he exists because of the existence of other people. The philosophical formula proclaims: "I am because we are, and since we are therefore I am" (Mbiti, 1991: 108). Contrary to Western reality, the African baby is not regarded as a person at birth. Whilst Western babies acquire human rights at birth, African personhood can only be achieved after successfully completing a prescribed step by step process. According to Mutwa (1998: 568-569), a child is born without a self or *ena*⁶⁰⁷ which only "builds up slowly of the memories and thoughts and the experiences as it grows up into a man or woman". A child who dies without an *ena* cannot become an ancestor.

In order to become a person, according to traditional African thought, such an individual has to go through "various community prescribed stages, and be part of certain ceremonies and rituals. Only at the completion of all prescribed stages does the human individual acquire the status of a person" (Ramose, 2002{b}: 65). Prior to all this, according to Ramose, the individual is regarded only as an "it" to indicate that the individual is not incorporated in the body of persons. Philosophies of Presidents Senghor, Nyerere, Nkrumah, Kaunda and Kenyatta

⁶⁰⁶ Tempels (1959: 103; 108) emphasises that "[t]he Bantu cannot be a lone being. It is not a good enough synonym to say that he is a social being. No: he feels and knows himself to be a vital force, at this very time to be in intimate and personal relationship with other forces acting above him and below him in the hierarchy of forces ... The Bantu never appears as an independent entity. Every man, every individual forms a link in the chain of vital forces, a living link, active and passive, joined from above to the descending line of his ancestry and sustaining below him the line of his descendants".

⁶⁰⁷ Mutwa (1998: 568; 570) describes the *ena* as that which fools regard as a "ghost of a departed person, you do not see the soul, but that person's *ena*. The *ena* is not immortal; it lives on for some time after death of the body, and can often be seen. It is this the High Witchdoctor summons up from the lands of the spirit, and this is why we honour and consult in times of trouble to pray to the gods for us ... It is this *ena* that is known by the ignorant common people as the 'Spirit of a dead person', and which the strangers from beyond the sea falsely believe we worship".

confirm the notion that strong communitarian societies gradually shape African individuals into personhood or full humanity. In Western reality babies are regarded as persons from birth (sometimes even before) and therefore bearers of rights. Personhood in *ubuntu* reality is acquired over time. Without the prescribed incorporation of an individual into the African community, “individuals are considered to be mere danglers to whom the description ‘person’ does not apply” (Ramose, 2002{b}; 66). Any individual who shows traits of cruelty, wickedness, selfishness, ingratitude or criminality is said to be without *ubuntu*. Such a person can be declared *izilwane* or an animal. Any anti-social behaviour which jeopardises the community, works against the spirit of *ubuntu*.⁶⁰⁸

Different rites⁶⁰⁹ throughout the individual’s life progressively incorporate him or her into personhood⁶¹⁰, into becoming fully human. Personhood and identity are gained step by step through various rites. “Rites are religious ways of implementing values and beliefs of society” (Mbiti, 1991: 141). Initiation, the climax of puberty rites, is one such rite in a wider process of rites which progress the individual from childhood to adulthood and incorporates the individual into personhood⁶¹¹ in the extended family. Any individual who is not initiated, will

⁶⁰⁸ Myandu (1998:73) says the greatest compliment a person or the society can pay to an individual is to call him or her “good (*Omuntu Murungi*). This is the kind of person usually thought to possess a greater degree of the actualized *obunto* in one’s life and actions, particularly the capacity to love and share goods with the concrete neighbour and relatives. Consequently human wickedness and moral evil are mainly attributed to failure in unconditional love (*Rokundu*) for the relatives, neighbours and other members of the community and the consequent deficiency of *obuntoor* humanity. For instance, most of those people accused of witchcraft are usually those people who are anti-social or those expressing hatred for their neighbours and relatives. Conversely, its absence leads to tension, conflicts, frustration and the disintegration of these human relationships and the community”.

⁶⁰⁹ These rites include rites of birth, initiation, marriage and death.

⁶¹⁰ Personhood can only be achieved after all rites have been fulfilled. It is, according to Menkiti, something each individual has to acquire. Before the achievement of ‘personhood’, individuals are not yet recognised as ‘persons.’ These rituals include different individual rituals, different family rituals and community rituals. Every time a spirit is summoned to intervene in human affairs a ritual also has to be performed. Menkiti (1979: 176) describes personhood as “something that has to be attained in direct proportion as one participates in communal life through the discharge of the various obligations defined by one’s stations. It is the carrying out of these obligations that transform one from the it-status of early childhood ... into the person-status of later years, marked by a widened maturity of ethical sense.” In contrast with Western society, African community defines the person as a person, “not some isolated static quality of rationality, wills or memory” (Menkiti, 1979: 171).

⁶¹¹ Parenthood and ‘babyhood’ in traditional Africa is not established by the birth of a baby, but at the *imbeleko* sacrifice to the ancestors (Ramose, 2002{b}: 66). The newborn baby has to be integrated into the

remain an “it” (Ramose, 2002{b}:65), an outsider, a “half person, a nobody ... or outcast” (Nyirongo, 1997: 72; 101) for the rest of his or her life, because the “gate” for marriage and family life has not been opened. An “it” cannot fully enjoy the privileges of *ubuntu*.

In *ubuntu* reality, individuals fit into a social hierarchy. The individual can only progress from one social category to the next provided the community qualifies him or her for the next category. Initiation therefore represents far more than just physical circumcision. During the initiation period initiates are taught tribal laws, customs, values, crafts etc. “Throughout the training the members [male initiates] are forbidden to see women and to stray out of the camp. Anyone who disobeys the rule is instantly killed within the camp” (Nyirongo, 1997: 132). Myandu (1998: 75) relates how “during initiation, individuals are stripped naked before the community to impress on them that they were born naked and open to the community, and therefore, the need for them to remain humble, open and receptive to the guidance and customs of the community that seeks to clothe, nurture, nourish and enlighten them as members into the hidden mysteries (of God) and the community that are required for authentic existence and happiness”.⁶¹² In contrast with African law, Western jurisprudence views such public parades as a violation of human dignity; a violation of a person’s human rights. From an African point of view, human dignity is described as follows by Ramose (2002{b}: 127):

[T]he dignity and importance of the individual human being can best be understood in terms of relations with other human beings as well as relations with physical nature. In this sense human dignity is crucial and decisive but not absolute. Human dignity and its decisive importance in African philosophy are at best expressed by the saying, *feta kgomo otsware motho*. This means that if and

family and community through specified rites in order to be acknowledged as a member of a specific youth group (Ramose, 2002{b}: 77).

⁶¹² This ceremony demonstrates the difference between individual and group rights. In Western society this ceremony infringes upon the human rights of the individual, but in communitarian societies where group rights are paramount, the individual has no recourse to the rights to privacy and dignity.

when one is faced with a decisive choice between wealth and the preservation of life of another human being then one should choose to preserve the life of another human being. Mutual care for one another as human beings precedes concern for the accumulation and safeguarding of wealth as though such a concern were an end in itself. There is a link between the above insight and the correlative, namely, that no single human being nor any other entity is the centre of the universe.

Initiation is a prerequisite for marriage. Ramose (2002{b}: 72) describes the importance of initiation⁶¹³ as follows: During circumcision and clitoridectomy, blood is spilled on the African soil, which in African tradition symbolises a sacrifice. “By spilling the blood of females onto the soil, a sacrifice is made and the meaning of the sacrifice is that the initiated person is thenceforward bound to the land and consequently to the departed members in society”. Initiation therefore is part of the process of incorporating the individual into personhood with the living and the living dead. According to Ramose, the rite of initiation fulfils a threefold function, viz. the incorporation of personhood in the community of the living; establishing a link between the initiated and the living dead; and obtaining the qualification to get married “which is seen as the basis of the future community of the living and the community of the living dead to the community of those to be born”. Ramose (2002{b}: 72) states that, according to African Religion, an African marriage⁶¹⁴ is seen as the meeting point of three layers of the extended African family.

⁶¹³ The shedding of blood into the ground during initiation “binds the initiate with the ancestral spirits living in the ground” (Khapoya: 1994: 48). During the initiation period the customs and values of the tribe are taught to the initiated individuals. Each initiated person gets a new name because he/she is deemed a new person (Mbiti, 1991: 96-103). Khapoya narrates how, in the case of the Vusugu, “at the precise moment of the circumcision, the father of the initiate stands on top of the hut to invite the participation of the ancestral spirits and to ask for their help. Often temporary shrines are erected to honour the dead grandparents of the initiate. The rejoicing and showering of the initiate with presents of money and animals demonstrates this sense of community and the welcoming into it of the young person as a new adult”.

⁶¹⁴ It is very important to procreate in marriage as it facilitates the African “flow of life” through reincarnation. Mutwa (1998: 626) narrates the custom amongst the ‘Bantu’ “where a man leaves his bride in the ‘spirit hut’ for the *enas* of his ancestors to first kiss and mate with her”.

Initiation ensures the individual of a link with the ancestors: evolving from an “it” to becoming more of a person. The living community, living dead and the ones still to come give the individual its identity or personhood. Everything in traditional African reality has to be conducted according to relevant rites and taboos prescribed by the ancestors: adhering to the ancestors guarantees one’s well-being. “Where ritual is absent, the young ones are restless or violent, there are no real elders, and the grown-ups are bewildered. The future is dim” (Somé: 1997: 105). What matters in the individual’s life, is that his or her life must be lived in anticipation of the end. To obtain personhood⁶¹⁵ means one attains immortality and ancestorhood. According to Ephirim-Donkor (1998: 130), the end is what is really important, because the individual will be held accountable and judged by the ancestors.

Because the most pervasive and fundamental collective experience of the African people is their religious experience (Mbigi & Maree, 2005: vi), *ubuntu* can be described as indigenous Africa’s moral⁶¹⁶ philosophy (Mbigi & Maree, 2005: vi), (Bhengu, 2006: 42), (Broodryk, 2007: 3) or religious philosophy (Ramose, 2002{b): 97), (Mbiti, 1991). South African courts depict *ubuntu* as traditional Africa’s “moral philosophy”, a philosophy synonymous with “humanness” and the Xhosa proverb *umuntu, ngumuntu ngabantu*. Sub-Sahara Africa’s philosophy of life, however, encapsulates more than just a moral philosophy regulating interaction between human beings. *Ubuntu* represents the holistic worldview of sub-Sahara Africa; a religious philosophy which regulates interaction between human beings and the African spiritual universe in traditional African reality. *Ubuntu’s* is inextricably connected to African Religion.

⁶¹⁵ See 4.10.2 describes the importance of obtaining personhood.

⁶¹⁶ In *S v Makwanyane*, Mokgoro J emphasised that *ubuntu* personifies personhood and morality.

4.8 UBUNTU AS AFRICAN RELIGION

“Ask any of these wise ones from abroad what the Bantu people believe in, and they will say the Bantu worship the spirits of their dead ancestors; they will tell you the Bantu are a fetish-ridden, superstitious race sunk in the lowest levels of heathenism” (Mutwa, 1998: 552) ... “There is no aspect of African culture that has been more misunderstood and misrepresented than African Religion. Almost every word in the English language that is commonly used to describe African Religion is a term of abuse: paganism, fetishism, idol worship”⁶¹⁷ (cited in Theroux, 2004: 335). In an attempt to deconstruct the indestructible link between *ubuntu* and African Religion the following important aspects of African Religion will be discussed:

- African Religion.
- God, and
- The African spirit world.

As a result of the immense difference between African and Western worldviews, African Religion and, therefore, every aspect of traditional African life have been equated to ancestor worship, paganism, witchcraft and sorcery. Even today, very few people know how intertwined African Religion and Africa’s philosophy of life are. In Mbiti’s (1992: 4) words: “religion is in our whole system of being”⁶¹⁸... our entire lives as blacks are based and influenced by our religious beliefs” (Mbigi,

⁶¹⁷ Nyirongo (1997: 46-48) gives the following examples of idols used in African worship: “Worship of carved images representing non-human gods (nature spirits) and ancestral spirits; worship of living things, persons, spirits and lifeless natural phenomena and worship connected to charms.”

⁶¹⁸ According to Mbiti (1992: 2), African Religion is not for the individual, but for the community of which the individual is part. African Religion encompasses the life of the community and involves beliefs, ceremonies, rituals and festivals of the community. “A person cannot detach himself from the religious beliefs of the group. For to do so is to be severed from his roots, his foundation, his context of security, his kinship and the entire group of those who make him aware of his own existence. Therefore, to be without religion amounts to self-communication from the entire life of society, and African peoples do not know how to exist without religion”.

1997: 33). African Religion is central to traditional African life and determines the traditional African worldview.⁶¹⁹

Although South African courts view *ubuntu* values as values representing a universal philosophy, Oruka (2002{b}: 59) contends that the values of African culture “ceremoniously bind the [African] people together through the institutionalised moral form of life” which he describes as “a form of religion (1990{a}: 43). Oruka maintains that whilst Western culture has Christianity and parliamentary political democracy as its greatest moral achievements and colonialism and the global suppression of Others as its immoral monuments, Africa’s greatest moral achievement lies in its reverence for and communication with the dead. Oruka posits that “[i]n this sphere, morality is not just a set of rules for the living. It is a set of rules for both the living and the dead”. For “the voice of the ancestor is said to hold the key to personal and community well being” (Oduyoye (2001: 25). Oduyoye maintains that *ubuntu* is a “religious based culture”,⁶²⁰ a holistic view of life which enables persons to firstly, understand and accept their status and identity, and secondly, to pass on beliefs which explain prevailing conditions. According to Oduyoye, the traditional way of life is so closely bound up with African Religion that religion and culture are mutually interdependent. In indigenous Arica the wishes and expectations of the dead are to be advanced by the living. Through rituals, a dialogue between the two groups periodically takes place. This sort of ‘morality’, binding both the dead and living, is a multi-world morality. Wherever the African is, there is his religion; religion is the basis of everything (Mokiti, 1988: 68; Mbiti, 1991: 2; Wiredu, 2002: 20; Biko, 2007: 128).⁶²¹ The philosophy of *ubuntu* is dependent on African Religion because “umuntu cannot contain ubuntu without the intervention of the living dead” (Ramose, 2002{b}: 51). Like Ramose, Mbiti (1992) and Mazrui (2002: 14)

⁶¹⁹ Mbiti sees African philosophy as subordinate to African Religion. According to Mbiti, it is difficult to separate African Religion from philosophy in the African context.

⁶²⁰ Oduyoye (2001: 66) views *ubuntu* as religious anthropology.

⁶²¹ This notion is confirmed by sources of ethnophilosophy.

acknowledge the inextricable connection between African Religion and *ubuntu* reality.

African Religion is *ubuntu*. African Religion is not only the essence of *ubuntu* reality, but the foundation of community, tradition, values, morals, justice and law in traditional African communities. Because African Religion represents the communal beliefs and not individual beliefs of the community, “it does not matter much whether or not the individual accepts all these beliefs” (Mbiti, 1991: 15). According to Mbiti, African Religion belongs to the people, therefore, no individual of the community can reject the whole of the people’s religion. The notion of *ubuntu* jurisprudence as rules derived from African Religion is confirmed by Mbiti (1991), M’Baye (1974), Somé (1997), Mutwa (1998), Ramose (2002{b}: 97; 2002{c}: 643), Oruka (2002{b}: 59), Bhengu (1996; 2006) and many others.⁶²² It is therefore impossible to deconstruct *ubuntu* philosophy without deconstructing the all-embracing reality of African Religion.

In contrast with Christianity and Islam, which derive their scriptures from respectively the Bible and the Quran, African Religion is not derived from any holy books or sacred writings⁶²³, therefore, it is not a theology.⁶²⁴ It is an oral religion meticulously transferred by word of mouth from generation to generation. Africans following African Religion are “deeply religious people” and it is wrong to call them superstitious, pagans, or believers of magic⁶²⁵ (Mbiti, 191: 19). Mutwa

⁶²² See *ubuntu* as Law in 4.11.

⁶²³ Mbiti (1991: 16) posits that because African Religion has no founders, “there have been no reformers, preachers or missionaries to change it, improve it, or take it overseas to other continents”.

⁶²⁴ “According to *ubuntu* understanding of be-ing, the world of metaphysics is the world of *u-nkulu-nkulu*: the greatest of the great; the ineffable. The ineffable is neither male nor female. But if it must be genderised at all it is female-male ... The main point though is that *u-nkulu-nkulu* is neither definable nor describable. This preserves the essence of *u-nkulu-nkulu* as unknowable. Therefore it is best to remain quiet about the unknowable ... This, it is submitted, is a basic starting point to explain why *ubuntu* philosophy and religion have got no theology” (Ramose 2002: 53).

⁶²⁵ Mbiti (1991: 18-19) defines superstition as “a readiness to believe and fear something without proper grounds” and argues that African Religion is not a superstition. According to Mbiti, African Religion is also not animism or paganism. “Animism means the system of belief and practices based on the idea that objects and natural phenomena are inhabited by spirits and souls.” Mbiti posits that although African people “acknowledge the existence of spirits, and some of the spirits are thought to inhabit objects like trees, ponds, [animals] and rocks, it makes out only a small portion of the total beliefs held in African

(1998: 560) and Mbiti (1991: 29-30) reveal that African Religion dictates “all aspects of African life⁶²⁶ ... it is written everywhere in the life of the people”.⁶²⁷ Senghor (1964), Mbiti (1991), Mbigi (1997), Mutwa (1998) and others agree African people are intensely religious; that indigenous societies all subscribe to African Religion and that they share the same value system (Mbiti, 1991: 12; Gyekye, 1996: 55). According to Mbiti (1991: 30-33), African Religion is found throughout Africa, except for the Northern third of Africa, which is Islam, and Ethiopia “where [ancient] Christianity has been a powerful religion since about the fourth century” (1991: 30). Mbiti (1991: 32) observes that millions of Africans have accepted the Christian faith in Africa and that Christianity and African Religion are “side by side”.⁶²⁸

African Religion is said to differ from all other religions. The difference lies in the fact that other religions “are supposed to be something apart from all earthly or materialistic matters ... but with the Black man everything he does, thinks, says, dreams of, hopes for, is moulded into one structure – his Great Belief.”⁶²⁹ Things like doubt, agnosticism, atheism and disbelief are entirely unknown, unfathomable, senseless, within the framework of the great Belief” (Mutwa, 1998: 555). Mutwa (1998: 554) states that African Religion is inflexible and declares anything new as an insult to the Gods. According to him, any man or woman who

religion”. The belief in animism gives man the ability to use and control the objects the spirits inhabit. “Paganism or pagan are sometimes used as derogatory words to describe Africans who are not followers of either Christianity or Islam ... Africans who follow African Religion are deeply religious people and it is wrong and foolish, therefore, to speak of them as pagans, or to regard their religion as paganism”. Mbiti argues that it is wrong to equate African religion with witchcraft, although “magic, witchcraft and sorcery feature much in the traditional life of African peoples.” Mutwa (1998: 582) states the African people of Africa have endured sacrileges against their religion and that much of the bloodshed and trouble that has ripped Africa apart has been caused by gross ignorance of African Religion.

⁶²⁶ Mbiti (1991: 20-30) describes how African Religion embodies rituals, ceremonies, festivals, shrines, sacred places, religious objects, art, symbols, music, dance, proverbs, riddles, wise sayings, names and places of people, myths, legends, beliefs and customs.

⁶²⁷ Mutwa (1998: 560) maintains all ceremonies of African Religion, viz. ‘prayers, chants, sacrifices, summoning spirits from the Upper or Lower World, creating zombies, ‘deep talk’, hypnotism and mind power - are exactly the same from the Transkei to Mali, Dahomey and Ghana.

⁶²⁸ Christianity is translated in terms of Western philosophy as “individual salvation, but it did not change social and cultural obligations which are communal in nature. Certainly not for women” (Oduyoye, 2001: 27).

⁶²⁹ See Idowu, (1973), Setloane (1986), Mbigi (1997), Nyirongo (1997), Mutwa (1998: 555-560) and Mbiti (1991; 1992). See also Parinder’s pioneer work *African Traditional Religion* (1954).

tries to invent something new in African Religion is assuming powers only Gods possess.⁶³⁰ “This kind of religion was developed with the specific purpose of resisting or discouraging change of any description, because such changes breed impiety and irreverence for things once declared holy”.

African Religion is not only inflexible, but also inaccessible to other people who would like to become converts or join the religion. This inaccessibility of African Religion to others is confirmed by Mbiti (1967: 5), Turaki (1997: 63) and Mbigi, (1997: 56). The fact that outsiders or strangers cannot join African Religion confirms that these are closed societies. “You have to be born into the religion as it is immoral to allow other races to adopt African Religion. African Religion can also not be practised on an individual basis; it functions only on a communal basis through ceremonies, festivals, rites etc. which involve the community. Because African Religion belongs to the people, no individual member has the right to reject the whole of his people’s religion. To do so would mean to cut oneself off from the total life of the people” (Mbiti, 1991: 15).

4.8.1 African Religion

All Africans are said to be deeply religious people. The African spirit world defines the African worldview or reality from birth to death (Turaki, 1997: 54). African Religion is the belief of life after death⁶³¹ and embodies the belief that man is not the master of the universe, “only the centre, the friend, the beneficiary, the user” (Mbiti, 191: 44). Therefore, according to Mbiti, Africans have to live in harmony with the universe and obey the laws of the natural and religious order. Bhengu (2006: 139) confirms this notion that African humanity is at the centre of the universe, interacting with God, spirits⁶³² and nature. African humanity is at

⁶³⁰ “African Religion’s religious demands persist as that to which our forebears adhered in order to survive and prosper, and as that which they expect us to abide by” (Oduyoye, 2002:26).

⁶³¹ African Religion believes in reincarnation and differs from Christianity in the sense that it does not entertain Christian beliefs of afterlife as life after death in heaven or hell.

⁶³² Spirits are nonhuman entities and interpret their wishes to the community. The spirits demand harmony in the community and are feared because of their capacity to protect and inflict harm. It is essential that

one with ancestors, witches, sorcerers and everything around it. “When put into order, there is firstly God, the ancestors⁶³³, and the spirits. Secondly, there is witchcraft, sorcerers and evil and then, daily practical and social issues of man”. Parrinder (1969: 27) describes the African spirit world as one with the Supreme Being at the top; below him are the “chief divinities” as non-human spirits; then the ancestors; and at the bottom, “spiritual forces” which embody charms and amulets.

Every aspect of *ubuntu* reality is regulated by the interplay of spiritual forces of the African spiritual universe. The uniqueness of African culture⁶³⁴, philosophy, values, religion, law and justice is rooted in *ubuntu*, the root of African philosophy. Mbiti (1991: 10) states African Religion has shaped African cultures, African social life, African political organisations and economic activities. According to Mbiti, African Religion is “closely bound up with the traditional way of life”. The African worldview, or *ubuntu*, is expressed in the constant interaction of humanity with ancestral spirits, nature spirits and evil spirits. This notion of *ubuntu* as traditional Africa’s religious or “moral philosophy”, is illustrated schematically by Mbigi⁶³⁵ (1997: 54) as follows:

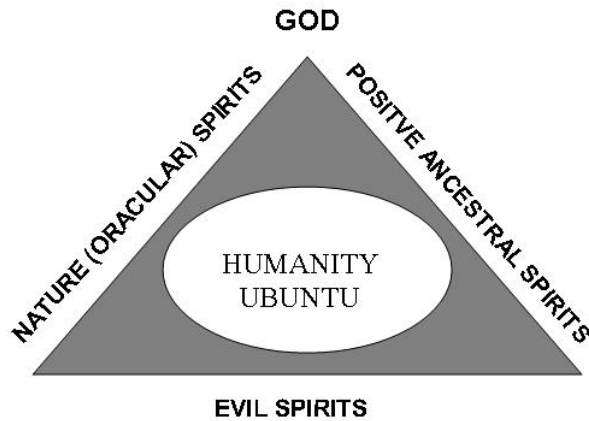
community members know the rituals and sacrifices that will gain the support of the spirits (Imbo, 2002: 144).

⁶³³ Mbigi (1997: 530) admits that “[a]ncestor worship is central to our lives. We have communion with ancestors on all aspects of our lives, such as marriage, birth, career advancement, job hunting, death, business travel and any crisis”. According to Mbigi, the “cult of the ancestors” continues to be a central influence in the African’s life. Mutwa (1998: 572) states that man lives solely to serve his ancestors; every tribe in Africa believes that they keep the spirits of the ancestors alive.

⁶³⁴ “Religion and culture are inextricably intertwined. Most of the religious rituals are appropriated into the cultural scheme of things and the cultural domain shapes and influences the religious philosophy and practices. It is in this context and against that background that any attempt to dichotomise African spirituality into the sacred and the secular; the physical and the spiritual; the individual and the corporate, results in gross distortion and misconstrual of its theology and its praxis” (Bhengu, 2006: 16).

⁶³⁵ Mbigi is a rainmaker. According to him (1997: 52), rainmakers are “spiritual divine kings” concerning themselves with morality, ecological balance, truth, conservation, justice and fairness. “Just like Jesus, these are God’s representatives on earth”. Rainmakers possess powers to make or stop rain.

THE AFRICAN SPIRITUAL UNIVERSE



According to Mbigi (1997: 53), the African spiritual universe in which *ubuntu* manifests itself, consists of God and generic spirits. On top of the triangle is God, the head of the spirit world. On the sides of the triangle are the nature spirits and the ancestors. The lower, evil forces are at the base of the triangle. Community is placed in the centre, interacting with these spiritual forces. This all encompassing religious philosophy of life is called *ubuntu*. Mbigi's triangle resembles that of Parrinder (1967: 15) who places God at the top of the triangle, gods and ancestors on the sides and witchcraft and African medicine at the base. Whilst Parrinder places man in the middle of the triangle, Mbigi places community in the middle to illustrate the continuous interaction between community and its spiritual forces. As African Religion functions only on a communal basis (Mbiti, 1991:15), Mbigi's illustration seems to be more accurate in representing African reality. Mbigi places *ubuntu* with the community, representing a collective worldview which reflects the interaction between God, man, ancestors and other spirits. Mbigi, the rainmaker, depicts *ubuntu* as Africa's religious reality of life.

Mbigi illustrates the interplay of forces between community, God and three types of generic spirits, namely:

- Positive ancestral spirits,
- Positive oracular nature spirits found in oracular animals and places (e.g. pools, mountains and trees), and
- Evil spirits.

4.8.1.1 God

The majority of Africans traditionally believe in God or the Supreme Being, as the creator of the universe.⁶³⁶ It is widely believed that God is powerful, all-knowing, good, merciful, omni-present, holy and pure.⁶³⁷ The Supreme Being can only be approached by intermediaries. Individuals can neither approach the Supreme Being, nor maintain an individual relationship with him. In contrast with Christianity, the Supreme Being did not provide Africans with spiritual laws by which to abide.⁶³⁸ Mbiti (1991: 60-68) describes how the Supreme Being's attention can be drawn: the Supreme Being can be approached through prayers⁶³⁹, intermediaries, sacrifice, rituals and offerings.⁶⁴⁰ Prayers, singing and dancing always accompany offerings and sacrifices. Sacrifices⁶⁴¹ are made to the Supreme Being to draw His attention and involve the shedding of blood of human beings, animals or birds; offerings do not involve blood, but concern the giving of things such as foodstuffs, water, milk or money. As sacrifices are not

⁶³⁶ There are a few variations in how God is perceived. Some tribes perceive God as male, others female and yet others have no specific image at all. Although most tribes believe in one God, the Ibo and Yoruba for example, believe in the Supreme Being, assisted by deities. Africans have different creation myths of how God created the world.

⁶³⁷ Animals which are to be sacrificed to God have to be of one colour only. It is a symbolic way of indicating His pureness (Mbiti, 1991: 56).

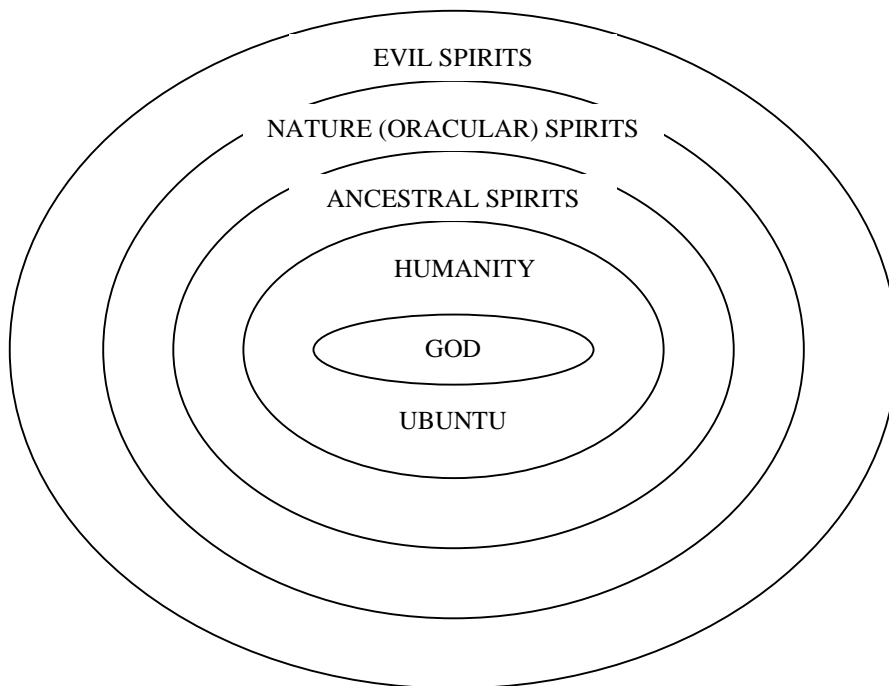
⁶³⁸ In Christianity it is perceived that God laid down the law, that the individual has a personal relationship with God and is able to petition Him in prayer.

⁶³⁹ According to Mbiti (1991: 61), priests (men and women), rainmakers, chiefs, kings, and sometimes medicine men, may pray for the general public or private individuals. Within the family praying can be done by the head of the family, the eldest member of the family, a ritual elder or local priest.

⁶⁴⁰ Mbiti (1992) distinguishes between sacrifices and offerings as follows: "sacrifices refer to cases where animal life is destroyed in order to present the animal, in part or in whole, to god, supernatural beings, spirits and the living dead. Offerings refer to the remaining cases which do not involve the killing of an animal, being chiefly the presentation of foodstuffs and other items".

⁶⁴¹ Communal sacrifices are made at shrines, sacred groves or holy places such as hills, lakes and waterfalls. Personal sacrifices are made at home, public places, or where ritual elders or diviners direct (Mbiti, 1991: 65).

always given to Him directly, sacrifices and offerings are made to lesser spiritual beings, viz. divinities, spirits and ancestors who act as intermediaries⁶⁴² between God and the community. The living dead or ancestors are also links between the Supreme Being and the living family members. Although the Supreme Being is recognised as the creator, “the ancestors are of far greater importance [in the community], being the deceased elders of the group” (Broodryk, 2007: 121). As illustrated below (Mbigi, 1997: 54), God is the head of the African spiritual universe with humanity at the centre of the spiritual realm. Sin can never be committed against God. According to Nyirongo (1997: 61), sin can only be committed “against the community – one’s family or tribe (which includes the ancestral spirits)”. It is the responsibility of the community and ancestors, not God, to punish the wrongdoer.



⁶⁴² Intermediaries can be either human or spiritual beings. Human intermediaries include priests, kings, medicine men, seers, oracles, diviners, rainmakers and ritual elders. The intermediaries are a link between God and humans. Intermediaries are used by African people to perform worship, they do not worship intermediaries.

According to the African worldview, the universe is divided into the visible and the invisible. Spirits are part of the invisible universe and have a status between God and the community. Spirits are divided in spiritual beings, nature spirits, ancestral spirits, diviners or medicine men.

4.8.1.2 The Spirit World

There is widespread belief amongst Africans that man cannot approach God alone or directly, therefore, he needs intermediation of spiritual persons or spiritual beings to approach Gods. Spiritual beings can be visible or invisible and act as intermediaries between the Supreme Being and the community. The visible intermediaries include the kings, rainmakers, chiefs, prophets, priests, medicine men, diviners, mediums and seers. Invisible spirits include semi-deities, spirits and ancestral spirits. Mbiti (1992: 68-70) describes the following as visible intermediaries: kings, chiefs, priests, seers, prophets, oracles, rainmakers and elders.

- Kings and chiefs: Not all African peoples have traditional rulers but where they exist they are looked upon as political heads, intermediaries and sacred persons who symbolise the prosperity and welfare of their nations.
- Priests: They are formally trained males or females, hereditary or otherwise whose duties include making sacrifices, offerings, prayers, public and private rights and ceremonies, giving advice, performing judicial and political functions, caring for temples and shrines and above all acting as religious intermediaries between men and God.
- Seers, prophets and oracles: Their main duties are to act as ritual elders, to give advice on religious matters, to receive messages from divinities and spirits through possession and dreams and to pass on the information to the community.

- Diviners or medicine men: Some tribes believe medicine men⁶⁴³ are God's chief representatives who receive messages from God. They function as doctors, "purifiers of age sets", predict raids and solicit rain.
- Rainmakers: It is generally held that rainmakers receive their knowledge and power from God and that God appears to them in dreams. According to Mbigi (1997: 25-26), rainmakers⁶⁴⁴ are the "most important indigenous political institution of divine kings", the representatives of God in earth, just like Jesus Christ. They are the kings of thunder, rain, wind and the skies and are interested in the maintenance of nature preservation and ecological balance. Their concern is "for the very things that today's Greenpeace movement is concerned with, viz. preserving the environment." Rainmakers are assisted in this task by nature spirits: animal and place spirits.⁶⁴⁵
- Elders: Elders have intermediary functions in traditional societies. They perform religious rituals for their homesteads, take part in regional ceremonies and assist priests with sacrifices, offerings and prayers. Elders automatically become ancestors when they die.

⁶⁴³ Mutwa (2003: xxii) distinguishes between *inyangas* and *sangomas*. *Inyangas*, or herbalists, inherit their profession from their relatives, but *sangomas* receive their professions from spirits. The *sangoma* understands and controls the same occult forces as the sorcerer, because he has to cure persons affected by the magic spells of the sorcerer. The *sangoma's* power transcends that of the sorcerer. *Sangomas* or so-called witchdoctors, are scientists, psychologists, parapsychologists, clairvoyants, artists, diviners and diagnosers of illness. According to Mutwa, *sangomas* fulfil the same role as priests and psychiatrists in Western societies. Broodryk (2005: 123) mentions that witchdoctors are regarded as bad and evil because they use parts of humans for medicine. "They are more often than not the murderers of people and young children, or the instigators of such murders, in order to obtain human parts for *muti* (medicine)".

⁶⁴⁴ "The concept of spiritual divine kings in the form of the rainmakers ... is very prominent. Just like Jesus, these are God's representatives on earth. They were not involved in the daily routine struggles of secular existence. They were concerned with universal themes of morality, ecological balance, truth, conservation, justice and fairness. The collective tribe had to provide for their secular needs. They were the spiritual saviours of their tribe. If there was a corrupt king or chief, they would sacrifice and remove him. They were the checks and balances of the African political system. They were the moral conscience of the tribe. These divine kings or beings also had the ultimate responsibility for developing and preserving the spiritual and cultural heritage of the tribe. They led the seasonal fertility and rainmaking ceremonies and would be sacrificed in times of national disasters such as a plague, war and drought, to atone for the collective sins of the tribe" (Mbigi: 1997: 52-53).

⁶⁴⁵ According to Mbigi, the most popular animal spirits were the baboon, eland and lion spirits, while oracular spirits normally resided at specific places such as mountain caves and trees.

- Nature spirits: Nature spirits are believed either to have been created by the Supreme Being or are viewed as human beings of the distant past⁶⁴⁶ who have no kinship with humans. These spirits are more powerful than men, but live in the same realm as men.⁶⁴⁷ According to Mbiti (1991: 71-74), they propagate among themselves and are the major spirits in charge of the forces in the sky⁶⁴⁸ and earth. People who believe in nature spirits in the sky believe they control the forces of nature connected to the sky. Many cultures believe lightning and thunder are caused by spiritual intervention. Nature spirits of the earth include spirits of the sea, lakes, forests, death⁶⁴⁹ and disease.⁶⁵⁰ As nature spirits are perceived to be spirits of people who have long died and are forgotten, they are generally feared.
- Ancestral spirits: The living dead or ancestors occupy the position between ordinary spirits and men and between God⁶⁵¹ and men. They constitute the largest group of intermediaries in African societies. Not everyone can become an ancestor but as a rule all elders become ancestors⁶⁵² upon death.⁶⁵³ As everyone eventually achieves the status of

⁶⁴⁶ After about five generations ancestors are forgotten by humans, become unknown and move on to the universe as ordinary spirits.

⁶⁴⁷ Mbiti (1992: 80) posits that spirits dwell in the woods, bush, forest, rivers, and mountains or around villages. This is partly the result of human self protection and partly because man may not want to imagine himself in an entirely strange environment when he becomes a spirit.

⁶⁴⁸ Mbiti (1991: 71) states that not all African people believe in nature spirits in the sky. They are generally looked on as subjects for stories, myths and legends.

⁶⁴⁹ Nyirongo (1997:171-172) and Mbiti (1991; 117-124) state that death is always associated with evil caused by a person, witchdoctor or evil spirit. According to Mbiti, “[s]omeone is often blamed for it. And in some cases the suspect may be beaten to death, fined or thrown out of the district. Relatives of the deceased may also take other types of revenge which are less open.” A spirit who had a grudge against the person or whose body has not been properly buried can also cause death. Curses, broken taboos and broken oaths also result in the death of the guilty person.

⁶⁵⁰ Smallpox, meningitis, lunacy, deaf and dumbness etc. are perceived to be associated with nature spirits.

⁶⁵¹ Mbiti (1992: 80-81) relates how, when someone among the Basuto wants to approach God, he asks his brother first. The brother, whether dead or alive, relays the request to his father, who approaches his father and so on. The message gets passed on until someone is reached who is worthy of approaching God. Spirits do not appear to human beings as often as ancestors do, but they do possess humans and can cause madness and epilepsy.

⁶⁵² Other people move on to the spirit world after death and become spirits.

⁶⁵³ Death is a joyful celebration, because the deceased elder gains more vital force as an ancestor. Death affects the entire community, because the departed belong to the community. Everyone has to attend the funeral; to keep away might invoke suspicion of witchcraft.

the living dead, they will function as intermediary sooner or later.⁶⁵⁴ The belief in ancestral spirits, also called shades, ancestors or the living dead, is widespread in Africa. Because they are not yet ordinary spirits, ancestors are regarded as people. According to Mutwa (1998: 572), one of the most deeply-rooted beliefs in the whole of Africa is the belief that a man lives solely to serve his ancestors and that tribal unity is based on this belief.⁶⁵⁵ “The tribe as a whole *must* keep the spirits of its founders alive – every tribe in Africa believes this.” Ancestors only remain ancestors as long as they are remembered by their people. According to Broodryk (2002: 127), Ramose (2002{b}) and Mbiti (1991: 77), ancestors are generally remembered by their families, friends and relatives for four to five generations.⁶⁵⁶ Once they are forgotten they become spirits. The ancestors are the most important spirits in the family and are concerned with family affairs. Mbiti (1991: 77-81) maintains ancestors live close to the homes where they used to live as humans⁶⁵⁷ and visit their relatives in dreams, visions or openly. Ancestors control the supernatural and social relationships and hold the social fabric of the community together. They preserve traditions; are a source of spiritual wisdom for the family; and seek collective interdependence in all spheres of communal life (Mbigi, 1997; 137). Bhengu (2006: 41) narrates that although ancestors have a

⁶⁵⁴ Once the ancestor is forgotten, he becomes an ordinary spirit and ceases to function as an intermediary.

⁶⁵⁵ “The ordinary Bantu, no matter how educated or ‘civilised’, are still firmly rooted to the beliefs of their forefathers. No matter how they have been subjected to Christian influences, they still have *greater* confidence in their local *nganga* (or witchdoctor) than in the local mission priest. The ordinary Bantu could not care less who rules them. They do not care what laws are laid down in the land of their birth, as *long as those laws do not offend the sacred ancestral beliefs!*” (Mutwa, 1998: 579).

⁶⁵⁶ “Even the thoughts of the living, we believe, can sustain the *enas* of our ancestors; that is why people who do what is called ‘ancestor worship’ are very serious about remembering and propitiating the *enas* of their ancestors; they also believe that the *ena* can be consulted in times of trouble or can serve as an intermediary who communicates with the gods on behalf of the people. If we forget about our ancestors, their *enas* pass into non-existence, and a valuable communication with the gods is also lost. A sacrificed animal’s *ena* goes to feed the *ena* of the ancestor in whose honour the sacrifice has been conducted. At the average person’s death, the *ena* wanders the earth for a while, but eventually dissipates. The *moya*, however, goes on into other incarnations, other forms. It can be reborn in the form of a human or animal when it takes this new form, it makes a new *ena*, and the *ena* is in human form if it is a human incarnation or animal form if it is an animal incarnation” (Mutwa, 2003: 19-20). According to Mutwa, every person has an *ena* and *moya*.

⁶⁵⁷ Most ancestors are said to live in the cattle kraal.

heightened existence, they are still the same people they were on earth. Bhengu finds paradise for Africans, not somewhere in the sky, but in the underworld⁶⁵⁸ of the ancestors. According to Bhengu, the only hope man has to be reunited with his ancestors, is to “embrace and practise Ubuntu”.

Ancestors have the power to bless and punish relatives as well as to reincarnate⁶⁵⁹ into the family they have left behind. Mbiti (1991: 79) states that the spirits of recently deceased family members are benevolent towards their families as long as they are remembered and properly treated. As long as an ancestor is remembered⁶⁶⁰ he is immortal; has a name and identity; and is able to reincarnate into the family as a newborn. According to Mbiti (1991: 126), the ancestor will be noticed in the features of the newborn. Whilst not all ancestors reincarnate, others “can be reproduced simultaneously in several children within the family”. Sickness⁶⁶¹ and misfortune in the family can be caused by magic, sorcery, witchcraft or the ancestors.⁶⁶² Misfortunes in the family which are not caused by witchcraft and magic are deemed to be punishment sent by the ancestors. Once an ancestor is forgotten or lost to human memory he becomes an ordinary spirit in the spirit world⁶⁶³ who can no more demand offerings and sacrifices from family members. There exists a unique

⁶⁵⁸ Because of the relationship between real estate and ancestors, land has a “very deep religious significance. Land is perceived as an organism that sustains the bond between the unborn, the living and the dead” (Bhengu, 2006: 41).

⁶⁵⁹ “The same ancestor can be ‘reborn’ or can ‘return’ in several living members of the same clan. People will say to the newly delivered mother: You have borne our grandfather, our aunt, our uncle, etc.’ They will say, such a spirit or such a one who has passed over has been born to us” (Tempels, 1969: 108).

⁶⁶⁰ Mbiti (1991: 129) maintains that the deceased heads of families, adults and married people are remembered much longer than babies, children and unmarried people.

⁶⁶¹ Nyirongo (1997: 170) posits that disease can be inflicted by live malevolent relatives, offended ancestors, disobedience to customs and taboos of the tribe, possession by spirits and misfortune caused by a guardian spirit.

⁶⁶² Ancestor spirits can be satisfied by the performance of rituals. Diviners or medicine men can be consulted to find out exactly what it is the spirits wish (Mbiti, 1991: 79).

⁶⁶³ According to Mbiti (1991: 127), many forgotten ancestors do not return to the spirit world and stay in trees, lakes, rivers, rocks and animals. “Some of these unknown spirits may be used by witches and other individuals who wish to do harm to their neighbours. Others are used in divination and medical practices to help in the diagnosis of diseases and problems. Some mediums and diviners call back the spirits of the dead”.

relationship between ancestors and sangomas. People can make use of sangomas to contact and interact with the ancestors. Broodryk (2007: 127-128) states that sangomas have the ability to communicate with ancestors that possess people and can, therefore, cure spirit-possessed persons. "Sangomas⁶⁶⁴ regard themselves as engaged in a war of good against evil forces in nature". Nkabinde (2006: 11) confirms that every sangoma has many dominant male ancestors who have different roles in his or her healing work.

- Evil spirits: Evil spirits can only do harm or evil. Malevolent spirits⁶⁶⁵ are thought to be the spirits of bad people who have died. The fear of witchcraft, sorcery and black magic is deeply rooted in African life.⁶⁶⁶ According to Mutwa (1998), Holland (2001) and Mbiti (1991), witches and sorcerers are a reality and among the most hated people in traditional African societies. Witches are usually women and are frequently killed by the community. Whilst witchcraft⁶⁶⁷ is regarded as mystical forces inborn in a person, sorcery is performed with spells, poisoning and injuries done secretly by the sorcerer to a person, animal or thing. The Provincial Commission of Inquiry of the Limpopo Province and a research team appointed by the Human Sciences Research Council found that "executions of witches without formal trials by members of the community increased dramatically over the past ten years" (Teffo et al., 2002: 169).

⁶⁶⁴ There is a training school for *sangomas* in Mandela Village outside Tswane (Broodryk, 2007: 127).

⁶⁶⁵ Mbigi (1997: 60-61) narrates how evil in a deceased bad person's life prevents him from becoming an ancestor. Such a bad spirit gets stuck in his spiritual journey and troubles the living as an evil spirit. When elderly people notice anything strange during the burial of such a person they will stop the burial to access what went wrong in the person's life. Once they find what went wrong in the person's life, they proceed with a cleansing spirit by projecting the negative spirit onto a goat or chicken. The cleansing has to be performed by a *sangoma*. Thereafter the dead person can embark on the journey of spiritual transformation.

⁶⁶⁶ See Holland (2001).

⁶⁶⁷ Mbiti (199: 167) describes witchcraft as "incantations, words, rituals, and objects that inflict harm on the victim. To do this she may use nails, hair, clothes, or other possessions of the victim which she burns, pricks or wishes evil to. The belief is that by inflicting harm on what once belonged to a person, that person is automatically harmed. Another method is to dig magic objects into the ground across the path where the intended victim is likely to pass, or at his gate, or in his fields. It is also believed the witch may send flies, bees, other insects and certain birds or animals, to take harm to the victim so that when they touch him or he sees them, he will fall sick or meet the intended misfortune". Magic can also turn humans in animals or birds.

The research team concluded that witchcraft is still a factor that has to be reckoned with in all regions of South Africa.

Anyone is capable of committing witchcraft⁶⁶⁸ and “if identified as a witch, is under intense pressure to accept responsibility. This is why ordinary people with no supernatural history and no guilt beyond ill-temper sometimes concede guilt when accused of witchcraft” (Holland, 2001: 9). Bewitching is reported mostly between relatives and neighbours and “occurs almost always in an existing state of tension between the accused⁶⁶⁹ and the complainant” (Holland, 2002: 16). “As an ongoing theory of causation and a system of moral philosophy, witchcraft will continue to exert its influence on Africa’s development for many years to come because of the view that the more you have the more likely you are to attract a witch’s envy. This is in antithesis of the Western parental gospel: achieve scholastically, compete relentlessly and shine individually”. According to Holland, (2002: 21-22) It is true that belief in witchcraft⁶⁷⁰ has promoted mediocrity by dampening the individual’s desire for material gain. “[A]lmost everyone in the community can be suspected of possessing some kind of witchcraft or charm. Both blessings and

⁶⁶⁸ Where witchcraft is suspected, strict procedures for accusation are to be adhered to. The family first has to consult a traditional healer who has to confirm a witch’s involvement. “But once the healer names a witch, invariably someone living in the same village as the victim, the family declares its accusation by leaving a small heap of ash or some other token in the doorway of the accused’s house during the night. When the suspect awakes and acknowledges the accusation, often amid strenuous protests, he or she goes to see the headman who arranges a trial by order”. If the accused is found guilty after various tests, she can either confess and be spared or protest and be killed in a ceremony at sunrise, or be beaten and driven away like a wild animal (Holland, 2001: 18-20). Oduyoye (2001: 26) maintains exile is deemed worse than judicial execution.

⁶⁶⁹ The accused is said to be the person who has aroused the jealousy of the complainant.

⁶⁷⁰ Hallen and Sodipo (1997: 88) see witchcraft as an explanation to be used when no other explanations are forthcoming. Witchcraft provide the type of explanation “that provides for the victims doing something concrete about their misfortunes”. According to them, witches are female. Males are seldom accused of witchcraft and are best regarded as wizards, magicians and sorcerers. Holland (2001: 17-18) describes the typical personality characteristics of witches, in different parts of Africa, as follows: Among the Lugbara a witch is stereotyped as a person whose face is grey and drawn; someone who tends to sit alone or is over-friendly. In western Sudan witches are seen as shy and furtive people. The Dinka of southern Sudan believe witchcraft can be avoided if a person is plump, has good hair, good movement, chivalry and generosity. Witches are generally perceived to be unhappy people with sullen expressions, and who rarely laugh. “There is widespread anxiety about eccentric and physically handicapped Africans, as well as those who live alone or are childless”.

misfortunes come from the same sources!” (Nyirongo, 1997: 188). According to Holland (2002: 11), African magic is powerless in an alien environment.

Mbigi (1997: 56-59) categorises eight African spirits from most powerful to least powerful as follows:

- The rainmaker spirit (*Gombwa*): This spirit is concerned with truth, morality and ecological balance. Rainmakers are the representatives of God on earth.
- The hunter spirit (*Shavi Reudzimba*): This is a spirit of entrepreneurship and creativity.
- Family or clan spirit (*Mudzimu*): This spirit has a parochial self-interest in the survival of his family group.
- Spirit of divination (*Sangoma*): This spirit knows the truth.
- War spirit (*Majukwa*): This spirit is interested in personal power and conflict.
- Wandering spirit (*Shave*): This is the spirit of a person who is not part of the family and is usually present in individuals who have a particular obsession and unique creative ability.
- Avenging spirit (*Ngozi*): This spirit is normally good, but has been wronged and as a result, harbours anger, bitterness and revenge.
- Witch spirit (*Umtakati*): This spirit is lowest in the hierarchy of African spirits. It is evil and means harm.⁶⁷¹

It is clear that a spiritual hierarchy exists within the African spiritual universe. Mbigi’s suggested spiritual hierarchy is confirmed by Turaki (1997: 57). According to Turaki (1997: 57), the hierarchy of beings consists of “higher and

⁶⁷¹ A survey conducted in July 1999 by Population Communication Africa among Kenyan adolescent Aids orphans revealed that nearly forty percent believed their parents had died of witchcraft” (Holland, 2002: 99).

lesser beings, superior and inferior beings and powerful and weaker beings". Turaki adds that this hierarchy also exists between spiritual and human beings. Turaki (1997: 57) maintains that spiritual beings are higher than human beings, but humans can obtain such status "at death with a ripe age".

African Religion is not about life after death but about the relationship between the living and the dead. No aspect of *ubuntu* existence is compartmentalised; every facet of *ubuntu* reality is inextricably linked to African Religion. *Ubuntu's* holistic worldview "manifests in their beliefs, values, response to the physical and spiritual realms" (Turaki, 1997: 40). *Ubuntu* reality is deeply rooted in the spirit world and dictates the values of *ubuntu* which will be discussed next.

4.9 UBUNTU VALUES

Justice always strives to attain fairness by doing what is right and moral. As morality is defined by the values of a community, justice can be done by using values as a moral guide (Boon, 1996: 67). Wiredu (2002: 287) argues that morality is universal to human culture: but can one argue that values are universal too?⁶⁷² Kluckhohn (cited in Turaki, 1991{b}: 168) defines values as "a conception explicit or implicit, distinctive of an individual or characteristic of a group, of a desirable, which influences the selection from available modes, means and ends of action". According to Turaki (1991{b}: 173), traditional African values are derived purely from African culture. Turaki views value judgments as appraisals of moral values. This explains why what is morally good or bad for one group, is not necessarily good or bad for another. Values and morals are however, inextricably connected to one another. Are values then universal, or as Turaki suggests, unique and characteristic of a group? Van Blerk (2004: 195)

⁶⁷² Mbiti (1991: 41) argues that "[e]ach society is able to formulate its own values because there is moral order in the universe. These values deal with relationships among people, and between people and God and other spiritual beings; and man's relationship with the world of nature".

views African values as unique and maintains that African community is the source of African values.

The existence of traditional African societies is dependent upon the shared value system of the brotherhood: the values of *ubuntu*'s ancient philosophy of life. Ngubane (1979), Kamalu (1998), Koka (2002), Broodryk (2006; 2007) and Bhengu (2007) maintain that *ubuntu*⁶⁷³ originated from ancient Egypt's holy belief of Netchar Maat. According to Broodryk (2007: 41), "Netchar Maat was associated with the seven cardinal virtues", viz. truth, justice, propriety, harmony, balance, reciprocity and order. These seven virtues plus the forty-two prescriptions or Admonitions of Maat⁶⁷⁴ were the Egyptian principles for moral behaviour and "form the basis of the sacred values of *ubuntu*" (Broodryk, 2007: 42; Koka, 2002: 10). According to Broodryk, the Admonitions of Maat were written 1500 years before the Bible's Ten Commandments.

Oruka⁶⁷⁵ (1990: 88), Gyekye (1996), Broodryk (1997{a}: 5), Deacon (2002:111) and others concur that *ubuntu* represents Africa's culture or "moral philosophy" and maintain "the moral values of various African societies are the same across the board; that most values can be said to be shared in their essentials by all

⁶⁷³ In Chapter 2 (2.3.1) it was established that African philosophy originates from ancient Egypt and that ancient Egyptian civilisations were in fact Negro-African achievements. If African philosophy originates from Egypt, so *ipsi facto* does the root of African philosophy: *ubuntu*.

⁶⁷⁴ The forty-two admonitions of Maat, are: "I have not done iniquity; I have not robbed with violence; I have not stolen; I have done no murder, I have done no harm; I have not defrauded offerings; I have not diminished obligations; I have not plundered the Netchar; I have not spoken lies; I have not snatched away food; I have not caused pain; I have not committed fornication; I have not caused the shedding of tears; I have not dealt deceitfully; I have not acted guilefully; I have not laid waste to the ploughed land; I have not set my lips in motion (against any man); I have not been angry and wrathful except for a just cause; I have not defiled the wife of any man; I have not polluted myself; I have not caused terror; I have not transgressed; I have not burned with rage; I have not stopped my ears against the words of Right and Truth; I have not worked grief; I have not acted with insolence; I have not stirred up strife; I have not judged hastily; I have not been an eavesdropper; I have not multiplied words exceedingly; I have not done neither harm nor ill; I have never cursed the king; I have never fouled the water; I have not spoken scornfully; I have never cursed the Netchar; I have not stolen; I have not defrauded the offerings of the Netchar; I have not plundered the offerings to the blessed dead; I have not filched the food of the infant, neither have I sinned against the Netchar of my native town, and I have not slaughtered with evil intent the cattle of the Netchar" (Broodryk, 2007: 41-42).

⁶⁷⁵ Oruka (2002: 69) maintains that the values of a culture bind the people together through its moral form of life.

African societies” (Gyekye,1996: 55-56). Whilst Oruka (2002{b}: 59) and Mbiti (1991) argue that all African morality and values are inextricably bound up with African Religion, Gyekye (1996: 132) states that most but not all Akan values are derived from African Religion. Mbiti (1991: 179) maintains *all* African morals and values derive from African Religion; even though Africans may convert to Islam or Christianity they retain their *ubuntu* values. Oruka, Mbiti and Gyekye agree that ubuntu values are inextricably bound up in African Religion. Gyekye (2002: 301) argues that because the African community constitutes the social and cultural context in which the group operates, the values of the community will reflect that of a closed community. In these closed communities traditional African values firstly, “enhance ethnic or group harmony” but secondly, “promote ethnic or group superiority over others, parochialism, dominance, subordination, prejudice and discrimination” (Turaki, 1991{b}: 173).

According to Gyekye (2002: 301), the values of Akan culture are kindness (generosity), faithfulness (honesty and truthfulness), peace,⁶⁷⁶ happiness, dignity and respect. Mbigi and Maree (2005: vi) identify the key values of *ubuntu* as group solidarity, conformity, compassion, respect, human dignity, hospitality (Mbigi, 1997: 11) and collective unity. The Gauteng Department of Education (cited in Broodryk, 2002: 33) identifies values of sharing, caring⁶⁷⁷, kindness, forgiveness, sympathy, tolerance, respect, love, appreciation and consideration as *ubuntu*'s key values. Broodryk (2002: 23; 2006: 28) distinguishes between core and associated values⁶⁷⁸ of *ubuntu*.⁶⁷⁹

⁶⁷⁶ When Africans meet they greet one another by asking whether they have peace. When they part they wish one another peace. According to M'baye (1974: 141), it is imperative for a society to maintain peace and avoid offending the supernatural forces watching over the group and protecting them.

⁶⁷⁷ Ramose (2002{b}: 121; 122) state that “the morality of caring and sharing is present in African religion ... as African religion rests upon selfless sharing and caring”.

⁶⁷⁸ Broodryk (2002: 31) describes values as “the assegais (weapons, spears) you use to defend, manage and construct your own personal life and influence that of the brotherhood”.

⁶⁷⁹ Sisulu (cited by Broodryk, 2002: 13) explains the concept of *ubuntu* as follows: “if you have two cows, and the milk of the first cow is enough for your consumption, Ubuntu expects you to donate the milk of the second cow to your underprivileged brother and sister”. According to Broodryk, *ubuntu* entails that assets are shared; that fruits (like the milk of the cow) are not sold, but are donated to the underprivileged.

Core values	Associated values
Humanness	Warmth, tolerance, understanding, peace, humanity
Caring	Empathy, sympathy, helpfulness, charitableness, friendliness
Sharing	Giving (unconditionally), redistribution, open-handedness
Respect	Commitment, dignity, obedience, forgiving, spontaneity
Compassion	Love, cohesion, informality, forgiving, spontaneity

At face value, *ubuntu* values of humanness, caring, sharing, respect and compassion seem the same for all humanity. Although *ubuntu* values are perceived to reflect universal values, the researcher posits that in reality *ubuntu* values encompass far more than Western values do. The values of caring, sharing, respect and compassion will briefly be discussed to illustrate the difference in content between Western and *ubuntu* values.

- Caring: Collins (2004: 245) describes caring as providing for physical needs, help or comfort; being troubled or concerned about something or someone. The *ubuntu* value of care transcends the meaning of care in Western societies as follows: Caring is a vital and fundamental value in African society; it places an obligation of care on the chief, elders, family head and the community. In Western societies children are taken care of by their parents, but in traditional Africa children are, as a rule, taken care of by their extended family and other community members. *Ubuntu* philosophy dictates that the family head has a responsibility to take care of his extended family⁶⁸⁰ by provide food, shelter, clothing and basic

⁶⁸⁰ In Western societies both parents have a duty of care towards the nuclear family.

healthcare for his dependants.⁶⁸¹ According to the *BHE* case, caring as a value is entrenched in the African (Banjul) Charter on Human and Peoples' Rights.

The Preamble to the African Charter urges member states to take "into consideration the virtues of their historical traditions and values of African civilisation which should inspire and characterise their reflection on the concept of human and peoples' rights". Article 27(1) provides that "every individual shall have duties towards his family and society". Article 29(1) provides that an individual shall have the duty "to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need".⁶⁸² Not only does the individual have a duty of care towards the needs of family and society⁶⁸³, but also a duty of care towards the property of the family. The family head in particular has a duty of care "in the sense that he assumes control and administration of the property subject to his rights and obligations as head of the family unit". The concept of *imbeleko* again, implies that village members have to assist families for free with building houses, ploughing and harvesting, as a sign of *ubuntu*. Elders also have a duty of care. Elders, as heads over respectively their families and the community, have authority not only over their own children, but over all children of the community. As figures of authority, they have the duty to discipline the community's children. The chief has many duties of care towards his community. One in particular, however, is very significant: chiefs play an important role in the application of discipline: if youths get out of hand, the chief organises *impis* to discipline them (Broodryk 1997{a}: 76). The duty of care, of especially the elders and the chief towards the youth, would not be tolerated in Western society where human rights are paramount. The *ubuntu* value of care is also illustrated

⁶⁸¹ See *BHE*-case 4.4.1.6 (Par. 165).

⁶⁸² *Ibid* par. 166.

⁶⁸³ The concept of *ukusisa* implies that cows are lent to newcomers in the African village to welcome them.

by the custom where the wife of a deceased brother or the husband of a deceased sister is inherited for purposes of producing children for the family. These examples do not prove *ubuntu* values unique, as other communitarian societies, viz. Australasian indigenous people and the 'American Indians' or First Nations, might share the same values as *ubuntu*. In *ubuntu* reality caring⁶⁸⁴ transcends Western notions of care.

- Respect: According to Collins (2004: 1381), respect means to exhibit an attitude of esteem towards something. At face value, respect seems to be a truly universal value; however in *ubuntu* reality, 'respect' also transcends the Western understanding of the word. In Western culture, children are taught to respect every human older than themselves. As in Western culture, African children are taught the value of respect. Goba (1998: 88) posits that the value of respect is central to African ethics, but it goes beyond respect for elders to include also respect for ancestors. As the *ubuntu* community includes both the living and the dead, respect in African communities includes also respect for the living dead, or the ancestors. Respect for the living dead is emphasised because ancestors continue to exert moral influence over the living in the community. Goba emphasises that disrespect for ancestors will have serious consequences for the individual and his family. According to Mduli (cited in Broodryk, 1997{a}: 57), customary rules which govern *ubuntu* relationships in traditional societies stipulate the authority of elders over younger people; parents over children; leaders over followers and men over women. Mduli emphasises the importance of showing respect not only for people one knows but even for those not known in the spirit world. It is a closed form of respect in the sense that strict adherence to these rules is demanded. Bhengu (2006: 75) states that respect for others indicates spiritual awareness. He illustrates the value of respect with the following example:

⁶⁸⁴ Mbiti (1991: 96) mentions the custom amongst breast-feeding mothers in African societies to breastfeed each other's babies, should the need arise. Although the concept of a wet nurse is known in Western societies, it is not common practice for a Western mother to feed another's baby.

When Africans greet one another they do so in the plural because it is believed that the person you are greeting is not alone, but accompanied by his ancestors.

Another difference concerning the value of respect lies in the fact that Western ethics of gender equality do not differentiate between males and females with regard to being shown respect. Goba (1998: 88) however maintains that in traditional Africa, respect is firstly determined by age, and secondly by gender. Showing respect to male elders is of cardinal importance, but “[r]espect for women who are elders is not of relevance”. The Western value of respect does not include respect towards ancestors because this is a concept foreign to Christianity. As Westerners are very conscious of discrimination, disrespect towards women violates their right to equality.

- Sharing: Collins (2003: 1495) describes sharing as dividing or apportioning equally; to receive or contribute a portion of; and to join with another or others in the use of something. The *ubuntu* value of sharing exceeds the meaning of ‘sharing’ in Western society. The concept of *ukusisa* or sharing implies that members of the African community lend their cattle to needy newcomers in the village to welcome them. The newcomer becomes the owner of all the calves to be born and eventually returns the original cattle to their owner after a few years. No paying of interest is involved. The African concept of sharing⁶⁸⁵ implies that one can borrow anything from village members without having to return it. In Western reality whatever has been borrowed must be returned. Another example of *ubuntu* sharing involves the custom where a man shares his

⁶⁸⁵ “The most common expression of Ubuntu in collective work was the practice of *nhimbe*. A family would invite other villagers to help with the accomplishment of a particular selected task such as field weeding, building and harvesting. The host family would provide free beer and food. Every family was expected to show solidarity by sending a family representative to help on that day. Inability to show up was not easily forgiven and was strongly noted. Normally the response of the family that had been let down was to retaliate in a similar manner to the absent family when they had their own *nhimbe*” (Mbigi: 1997: 110-111).

bride⁶⁸⁶ with his ancestors⁶⁸⁷ in the “bride hut”.⁶⁸⁸ In most traditional African societies, virginity⁶⁸⁹ is still held in high esteem. If the husband finds his newly-wed wife to be a virgin, the joy is shared with the relatives and neighbours. “She and her family are praised and respected by everybody, and often they are given presents” (Mbiti, 1991: 110). The unique value of sharing is evident also where a “dead son is to be married in [his] absence; arranging for the wives of impotent or long absent husbands to have children by close relatives or friends, etc.” (Mbiti, 1991: 112).

- Compassion: Collins (2004: 327) describes compassion as a feeling of distress and pity for the suffering and misfortune of another. A classic example of compassion was demonstrated throughout Western society when Amina Lawal was to be stoned in accordance with Sharia Law. Thanks to Western intervention, based on the value of compassion, her life was spared. Even though compassion seems to be a universal value, there is a difference between compassion as a value in African and Western societies. Because of compassion, a Westerner could neither justify killing twins⁶⁹⁰, triplets or their mother nor allow the suffering experienced by animals in the name of sacrifices. It is because of the Western value of compassion that the bellowing of the sacrificial bull to

⁶⁸⁶ According to African Religion, marriage is the meeting point “for three layers of human life. There are the departed, the living and those to be born. The living are the link between death and life ... Therefore marriage and childbearing are the medicines against death” (Mbiti, 1991: 104-105).

⁶⁸⁷ Through marriage the ancestors can be reincarnated or reborn into the family, “not in their total being, but by having some of their physical features and characteristics or personality traits” in the children. If marriage is childless the ancestors cannot reincarnate to their family.

⁶⁸⁸ “The Bantu say that a woman, be she one’s wife or one’s mother, exists in the past, present, and future at the same time, and she does not belong to one’s father or oneself, but to those as yet unborn, and to one’s ancestors. They say the girl one marries is not chosen by oneself, but by one’s ancestors and that she begets children, using the man only as a medium. For this reason it is a custom amongst the Bantu for a man to leave his bride for three days in the ‘spirit hut’ a special shrine where the *Enas* of his ancestors may first kiss and mate with her” (Mutwa 2003: 166).

⁶⁸⁹ Mbiti (1991: 109) states that virginity is taken so seriously in certain communities that if the girl is found not to be a virgin, the marriage would be dissolved. Such girl would bring disgrace and shame upon her relatives. According to Mbiti, girls were even killed in the past for losing their virginity.

⁶⁹⁰ In certain traditional African cultures the birth of twins is viewed with dismay. It is presumed a witch must have cursed the mother.

invoke the ancestors, creates conflict between animal rights groups and leaders of traditional African communities.

Gyekye (2002: 301) mentions truth as a value. However, not even the value of truth seems to be universal. According to Ephirim-Donkor (1998: 127), truth is indivisible and “perceived as a collective truth comprised of a body of infallible individuals”. According to Mutwa (1998: 627), an African will lie with great ease to a magistrate or judge but never to a witchdoctor in the village. Whereas truth for the Westerner applies universally, *ubuntu* truth is paramount in the closed community. Truth, as value opposes the African and Western philosophies of life with each other. Although it is generally perceived that Western reality is the only truth and therefore universal, postmodernity has dealt with this lie. There are more truths than one.

Whilst the values caring, sharing, respect and compassion seem to reflect the universal meaning of the words, it is evident that the value content of the words differs. Broodryk (2007: 40) contends that *ubuntu* values exhibit a unique character. According to Broodryk, the difference between Western and *ubuntu* values “lies in the intensity and level of living these values; in Africa these values are practised on a much deeper level. It is about an intense living of humanity”. If the intensity of *ubuntu* values is not shared by Westerners, can we then still call values universal?

4.9.1 *Ubuntu* Values: Universal or Unique?

In *S v Makwanyane* the South African Constitutional Court equated *ubuntu* values to Western values. As a result of the *Makwanyane* argument, it can now be deduced that values of African communalism are similar to the universal values of Western liberalism.⁶⁹¹ The Western worldview, based on Greek

⁶⁹¹ According to *The Living Values: A Guide Book*, 1995 (cited in Bhengu, 2006: 199), the following values are regarded as universal values: cooperation, freedom, happiness, honesty, humility, love, peace, respect, responsibility, simplicity, tolerance and unity. According to Covey these would be called principles.

philosophy and Christian religious beliefs, is grounded in science, Western humanism and the premise of man as a rational being. How equitable are Western values to values of a “mythological *Bantu philosophy*, namely the wisdom of the Bantu based on the philosophy of vital force”⁶⁹² (Tempels, 1959: 75), lobola⁶⁹³, sangomas, initiation, ancestors and African brotherhood?

Mbigi (2005: v; 1997: 2) argues that although *ubuntu* is both a uniquely African⁶⁹⁴ and a universal (Mbigi & Maree 2005: v) concept applicable to all poor communities worldwide, the assimilation of Western culture [and therefore Western values] in Africa has not been very successful (2005: ix). Mbigi argues that for Africa to reconstruct itself, the starting point should be “our own roots”, and quotes Cabral to emphasise his point: “A people who free themselves from foreign domination will not be culturally free unless, without underestimating the importance of positive contributions from the oppressor’s culture and other cultures, they return to the upward paths of their own culture ... if Africans are going to undertake the challenge of development, they need to discover their own collective self-identity. This has to be an inward journey, which should lead to a celebration of collective ‘personhood’, which we have called Ubuntu”. Is *ubuntu* a universal concept which embraces universal Western values, when Africans cry for deconstruction, reconstruction, collective brotherhood, group rights and *ubuntu*?

⁶⁹² Vital force or *seriti* has often been translated as dignity or personality, but this only describes the end result of the phenomenon. It actually means shadow or shade. *Seriti* is an aura around a person which is both inside the person and outside of the physical body. *Seriti* connects with animals, humans, animates and inanimates and can be best understood as an interplay that takes place between people when they come into contact or live with one another. “The human being is not only vital force, but more: vital force in participation. Participation is made possible by *seriti* which is ever engaged in interplay with other’s *seriti* whenever they come into contact” (Setiloane, 2000: 13-14).

⁶⁹³ Lobola or marriage gifts are seen as the legal instruments which authorise the husband and wife to live together and to bear children. Lobola constantly reminds the partners of their obligation to stay together (Mbiti, 1991: 108).

⁶⁹⁴ Mbigi (1997: 2) relates how *ubuntu* permeates every aspect of African life. “It is expressed in our collective: singing, dancing, effort in work, story telling, funerals, expression of grief and wailing, respect and acceptance, sharing and compassion, hunting, initiation and war rites, celebration, rituals, worship”.

Does the answer to *ubuntu's* universal values lie with Mazrui (cited by Mbigi, 2005: ix), when he says: "But in the final analysis the shallowness of the imported institutions is due to that culture gap between the new structures and ancient values, between alien institutions and ancestral traditions. Africa can never go back completely to its pre-colonial starting point but there may be a case for at least a partial retreat, a case for re-establishing contacts with familiar landmarks of yesteryear and restarting the journey of modernization under indigenous impetus". Mazrui laments the shallowness of imported institutions, but by implication he laments the shallowness of Western culture and its accompanying values; a shallowness not comparable with the richness of ancient *ubuntu* values. The mere fact that the "shallowness" of universal values such as brotherhood, sharing and respect is not comparable with the ancient *ubuntu* values of brotherhood, sharing and respect is indicative of a hermeneutical problem. Can "shallow" English vocabulary describe what the richer *ubuntu* values encompass?

According to legal hermeneutics, understanding of a word or text cannot be detached from its cultural context. Therefore, understanding of the African concept of *ubuntu* cannot be detached from its cultural context, as understanding of *ubuntu* is determined by the cultural context of traditional African societies. According to Van Blerk (2004: 219) a specific cultural context influences the perceptions and meanings of words as "[t]he languages unique to the societies which use them constitute unique worlds for those societies and should not be seen as interchangeable words with different names for the same things. Thus, all meaning is rendered uncertain and true and universal meanings cannot exist". If universal meanings do not exist, how can universal values exist?⁶⁹⁵

There are limits to Western rationality. Western philosophy's rational approach and dominant beliefs of Christianity cannot rationalise *ubuntu's* mystic or

⁶⁹⁵ See 4.13 for the difference between the universal meaning of hospitality and the *ubuntu* meaning of hospitality.

religious philosophy of life for “ubuntu resists the dictate of Western logic and Western rites of argumentation” (Koka et al. cited in Bhengu, 2006: 46). In fact, as Tutu (2006: 346) remarked, “the English word [humanness] fails to convey the African worldview”. Western rationality cannot rationalise that which it cannot conceptualise. According to Wittgenstein’s *Tractatus* (Soloman et al., 1996: 258), one cannot say the “unsayable. Whereof one cannot speak, one must be silent”. African mysticism and its value system lie beyond the reach of comprehension of Western philosophy and its logic. “Outside the limits of scientific rationality lie all the problems of value, the pressing question of ethics, the very nature of God and religion” (Soloman et al., 1996: 258). For Wittgenstein, “ethics, aesthetics, religion” and their accompanying values are “too important to be captured by the logical language of science” (Soloman et al., 1996: 258). The logical atomism of Western language can therefore not capture what *ubuntu* embodies. In Wittgenstein’s *Investigations* he finds that “[p]hilosophical confusion arises when we are seduced by superficial similarities between expressions into overlooking differences in use” (Law, 2007: 327).

Broodryk (2007), Koka et al. (cited in Bhengu, 2006) and Ngubane (2006) confirm the dilemma *ubuntu* experiences with hermeneutics. Broodryk describes *ubuntu* values as both unique and universal. Broodryk’s (2007: 39) problem with categorising *ubuntu* values as unique however, lies in the fact that all cultures are supposed to ascribe to universal values. As the first person to have obtained a doctoral degree on *ubuntu*, Broodryk indicates that there is a marked difference between Western and *ubuntu* values concerning “the intensity and level of living these values”. Broodryk observes that “in Africa these values are practised on a much deeper level”. Because of the inherent difference in the content of ‘universal’ values, Broodryk defines *ubuntu*⁶⁹⁶ as “a comprehensive ancient

⁶⁹⁶ “[*Ubuntu*] referred to what ultimately distinguished us from the animals – the quality of being human and also humane. The definition is almost a tautology. The person who had ubuntu was known to be compassionate and gentle, who used his strength on behalf of the weak, who did not take advantage of others – in short he cared, treating others as what they were, human beings ... Without this quality a prosperous man, even though he might be a chief, was regarded as someone deserving of pity and sometimes even contempt ... If you lacked ubuntu ... You lacked an indispensable ingredient to being

African worldview based on the values of *intense*⁶⁹⁷ humanness, caring, sharing, respect, compassion, and associated values, ensuring a happy and qualitative community life in the spirit family”.

As we know, *umuntu, ngumuntu ngabantu*, or *ubuntu* is usually translated as “humanness”. Koka et al. (cited in Bhengu, 2006: 46) argue as follows on the use of “humanness” as translation for *ubuntu*: “Asking an African philosopher for the meaning of *ubuntu*, a European will hear that *ubuntu* means ‘humanness’. However, *ubuntu* has more to it than this polite and forbearing answer, an explanation of *ubuntu* needs all kinds of associations, images and experiences; *ubuntu* resists the dictate of Western logic and Western rites of argumentation with their demands for distinctive definitions”. Does the same reasoning apply for the “shallow” English words describing ancient *ubuntu* values? Does one, in order to comprehend “intense” *ubuntu* values, also need all kinds of associations, images and experiences? If Western logic is too “shallow” to depict the true essence of “intense” *ubuntu* values, Western and African values are not intrinsically the same. Ngubane (cited in Bhengu, 2006: 42) laments the superficial translation of *ubuntu* as “humanity”, saying: “This is too simple an understanding, touching only the visible aspects of *ubuntu* in operation. More completely understood, the word refers to a moral philosophy deriving from the dictum that *umuntu ngumuntu ngabantu* – a person is a person through other people”. Bhengu (1996: 4) mentions that Africanists have done an in-depth study to find a suitable English synonym for *ubuntu*, but could find none: “there is no equivalent English word for Ubuntu”. As Collins (2004: 767) describes “humanness” as a noun characterised by kindness, sympathy, etc., the reader

human. You might have much of the world’s goods, and you might have position and authority, but if you did not have ubuntu, you did not amount to much. Even today, ubuntu is greatly admired and to be sought after or cultivated. Only someone to whom something drastic has happened could ever say that the death of a fellow human being left him cold. Blacks would recoil from anyone in their community who ever displayed such callousness. He had lost his humanity; or was well on the way to doing so” (Tutu, 2006: 347).

⁶⁹⁷ The author’s emphasis.

will agree that the English word “humanness” fails dismally at describing the Xhosa proverb, *umuntu, ngumuntu ngabantu*.⁶⁹⁸

In fact, for a Westerner entrenched in the individualism of a Western worldview, it is impossible to imagine what ‘I am because we are, or I am a person through other persons’, means. To equate values of a scientific worldview with values of a ‘mystic’ worldview is to create philosophical confusion. Abraham, Wiredu and Gyekye agree that traditional African philosophy and Western philosophy differ from each other like day from night (Hallen, 2002: 32).⁶⁹⁹ This philosophical confusion, created as a result of suggestions of a universal value system, is evident in the way African philosophers describe *ubuntu* as “both unique and universal”. As “[v]alues are closely linked with a person’s worldview and underlie the way a person approaches life” (Broodryk 2007: 48), universal values are a myth.⁷⁰⁰ If values in both Western and *ubuntu* philosophy were indeed universal, the different worldviews and therefore philosophies would reflect similarities too. In reality, however, Western philosophy has always denied and scorned *ubuntu*’s philosophy of life because in Western reality philosophy and its ‘universal’ value system dictate the standard. African philosophers, like Sogolo, maintain that philosophy is culturally relative. Sogolo (cited in Hallen, 2002: 40) is convinced that “African forms of life are unique and cannot be adequately or fairly treated or understood using the techniques [or words] of Western philosophy, that has originated from Western forms of life”.⁷⁰¹ Mokgoro (1998) too, concludes that although dignity, humanness, conformity, respect, etc. are not foreign to South

⁶⁹⁸ In Southern Sudan the Dinka call “this unifying philosophy [*ubuntu*], reflected in cultures all over Africa, *chieng*, meaning ‘morality’ or ‘living together’” (Holland, 2001: 179). The words ‘morality’ or ‘living together’ are more accurate descriptions for *ubuntu* than the translation of ‘humanness’.

⁶⁹⁹ Wiredu, (cited in Hallen, 2002: 32) states as follows: “It comes out clearly, for example, in Professor Abraham’s *Mind of Africa* that in theoretical sweep and practical bearing, traditional African philosophies concede nothing to the world views of European philosophy. Why, then, should the African philosophy student not be steeped in his own heritage of philosophy before looking elsewhere?”

⁷⁰⁰ Law should reflect the shared values of the majority of a society to avert a legitimacy crisis.

⁷⁰¹ Gyekye (2002: 55-56) maintains philosophy and its accompanying values form part of culture, and are therefore unique.

African cultural systems, *ubuntu* values are unique⁷⁰² with regard to their methods, approaches, emphasis and attitude. According to Imbo (2002: 144), African values are unique because they represent “not only the consensus of the people, but also a wider equilibrium of the society between the earth, the ancestors and spirits, and the living”.

Western values pertain only to the living. Contrary to Western values, *ubuntu* “values and norms are handed down by the ancestors” (Khapoya, 1994: 49) and pertain to the living and the dead. Although *S v Makwanyane* found *ubuntu* values to be universal, it is contended that *ubuntu* values are unique, not universal. According to Boon (1996: 84), all values are always part of individual belief systems and therefore unique. One should however distinguish clearly between values and principles, because values are not principles. Whilst values form part of individual belief systems, principles are never unique. Principles are universal and part of every religion, philosophy and ethical system (Covey, 1994: 34). Covey suggests that, for example, fairness and human dignity⁷⁰³ represent universal principles and not values. Despite Western debates over science and myth, Africa continues to celebrate its *ubuntu* Otherness. In spite of claims of the universality of values, Africans accuse the Western value system of eroding its own unique indigenous values.⁷⁰⁴ Mutwa (1998: 691) warns that Western values ultimately brought about the destruction of indigenous African values:

Oh! My indolent and gullible Africa
The superior aliens glibly talk of bringing the ‘light of civilisation’ to your shores.
And yet the only civilization they can bring

⁷⁰² The unique character of *ubuntu* is lamented by Wiredu (1980: 33), a universalist, who calls *ubuntu* values ‘outdated’.

⁷⁰³ In *S v Makwanyane* the right to human dignity was transformed to the value of human dignity.

⁷⁰⁴ Biko (2007: 17; 23) rejects the myth of universal values as follows: “Our adherence to values that we set for ourselves can also not be reversed because it will always be a lie to accept white values as necessarily the best ... ‘Black Consciousness’ seeks to show black people the value of their own standards and outlook ... In rejecting Western values, therefore, we are rejecting those things that are not only foreign to us but that seek to destroy the most cherished of our beliefs that the corner-stone of society is man himself not just his welfare, not his material wellbeing but man himself with all his ramifications”.

is one infected with physical, moral and spiritual decay.

The 'light' they hold forth is the violent flare of the hydrogen bomb.

To add fuel to the fire, Oduyoye (2001: 97; 99) argues that in modern Africa the extended family "is gradually being replaced by the nuclear family and the social phenomenon of individualism ... fundamental African values are becoming visible with their absence". *Ubuntu* does not only represent "African morality", but also embodies justice. *Ubuntu* as justice will be discussed next.

4.10 UBUNTU AS JUSTICE

Ubuntu embodies not only values and morals, but also justice. Justice is perceived as *ubuntu* fairness; doing what is right and moral in the indigenous African society. The essence of *ubuntu* lies in its ability to constitute order and restore balance and peace within the African cosmology; to maintain the balance between conflict and harmony within traditional African communities. The following will be discussed in this section:

- *Ubuntu* justice and Maat.
- Justice and the Elders, and
- *Ubuntu* Justice versus Western justice.

Peace through justice is the "fundamental law" of *ubuntu* philosophy (Ramose, 2002{b}: 52). According to Ramose, justice without peace "is the negation of the strife towards cosmic harmony. But peace without justice is the dislocation of *umuntu* from the cosmic order". Justice in traditional Africa is achieved in accordance with "the will of the Gods and the wishes of the ancestors" (M'Baye, 1974: 148). This notion of *ubuntu* as justice is confirmed and explained by Ramose (2002{b}: 93) when he says: "Justice as equilibrium in *ubuntu* legal

philosophy means the perpetual exchange and sharing of the forces of life”.⁷⁰⁵ A community without *ubuntu* justice has no peace, harmony or balance and is destined for chaos. “The harmony and stability of the African’s mode of life in political, social, religious, and economic organisations, was based on the land⁷⁰⁶ which was, and still is, the soul of the people” (Bhengu, 2006: 34).

The concept of *ubuntu* as justice does not equate the concept of justice in Western legal terms, “but [justice] in terms of the proper relationship between a human person and the universe, between the person and nature, between the person and another person ... it regulates the relationship of the universe” (Bhengu, 2006: 30). Bhengu relates that just as Maat⁷⁰⁷, the Egyptian goddess of ancient Africa, personified truth, justice and righteousness in ancient Egypt, so *ubuntu* personifies truth, justice and righteousness in indigenous Africa. Ngubane (1979), Kamalu (1998), Koka (2002), Broodryk (2006; 2007) and Bhengu (2007) maintain that *ubuntu*⁷⁰⁸ originated from ancient Egypt’s holy belief of Netchar Maat.

4.10.1 *Ubuntu* Justice and Maat

Anthologies of Egyptian and African literature frequently refer to “The Moral Teachings of Ptah-hotep”. Ptah-hotep was an official in the Fifth Dynasy, 2400 B.C. Ptah-Hotep’s manuscript justifies certain kinds of behaviour as moral or

⁷⁰⁵Ramose (2002{b}: 94) confirms that the African worldview is holistic and critical of Western fragmentive thinking.

⁷⁰⁶In *ubuntu* reality land belongs to the ancestors.

⁷⁰⁷According to Kamula (1998: 89), truth, justice and righteousness in ancient Africa are personified by the ancient Egyptian goddess Maat. “She is the embodiment of natural law and represents the principle on which the society and cosmos are founded. To live a virtuous life, to cling to the truth and to conduct harmonious relationships with oneself, one’s family and one’s neighbours, is to live in accordance with Ma’at. Ma’at therefore represents a principle or philosophy rather than a static conception of mind. Maat is the same principle of reciprocation that we find in traditional Africa. It ensures that cosmic and human justice is always done. The person who mistreats his fellow man/woman will experience his own action coming back to him in some form or other ... The notion of Ma’at as truth, justice and righteousness and as expounded by Khun Anup is akin to notions of truth and justice in traditional Africa (*ubuntu*)”.

⁷⁰⁸In Chapter 2 (2.3.1) it was established that African philosophy originates from ancient Egypt and that ancient Egyptian civilisations were in fact Negro-African achievements. If African philosophy originates from Egypt, so *ipsi facto* does the root of African philosophy: *ubuntu*.

Maat.⁷⁰⁹ The goddess Ma'at or Maat personified harmony in the universe. Maat represented order, truthfulness and justice, and all human beings sought to live by her ethical rule. As an approach to life, Maat's prescriptions of truth, justice and righteousness is said to form the basis not only of *ubuntu* truth, justice and righteousness, but also of "the sacred values of *ubuntu*" (Broodryk, 2007: 41).

It is believed that the values of *ubuntu* originated in ancient Egypt and that the Maat beliefs were transferred by word of mouth throughout Africa during the migration periods. *Ubuntu* philosophy was consequently transplanted to West Africa, Central Africa, East Africa and the Sub-Saharan region. Bauval (1999: 94-96) describes Netchar Maat as follows: During the golden age of the gods, Osiris established a cosmic law, called Maat. Maat was personified by a winged goddess on whose head was affixed a large plume or Maat feather which symbolised 'Truth' or a truthful and righteous heart, representing justice and discipline. The goddess Maat is described as "the personification of law, order, rule, truth, right, righteousness, canon, justice, straightness, integrity, uprightness and the highest conception of physical and moral law known to Egyptians" Bhengu (2006: 19). All these ethics are encapsulated in the principle of 'Truth'. According to Bhengu, Maat is a "code of practice of the gods to which a person must adhere in his earthly existence in order to progress towards a godlike state". Maat guides a person through life in accordance with the Divine Will.

Maat was an essential prerequisite to gain the right of entry into the heavenly kingdom of Osiris⁷¹⁰, but was in itself not sufficient to achieve immortality of the soul. Bauval (1999: 94-96) narrates that apart from Maat, a person also needed

⁷⁰⁹ T'Shaka (cited in Reed, 2001: 173) describes Maat as "the cosmic, earthly and social law that invisibly guides the heavens and the earth. The ancients of Kemet (Egypt) who conceived the law of Maat, defined it as 'the rudder of heaven and the beam of earth.' Since the rudder provides direction to the ship, Maat provides invisible direction to the universe. Since the beam is the central foundation of a house, Maat is the foundation of the earth. Maat is the way of harmony, truth, justice, balance and right order. Human beings were expected to think Maat, speak Maat and live Maat".

⁷¹⁰ Osiris was the Egyptian god of the underworld, presented as a man wearing the Atef crown and holding the symbols of governing in his hands. It was thought that all who was virtuous in life would be granted entry by him to the afterlife.

Heka, a system of magical knowledge of Thoth⁷¹¹, to ensure entrance into the heavenly kingdom of Osiris. To achieve immortality, Maat and Heka provided respectively “quality of character and knowledge”. “The apotheosis of the soul’s journey through life and death is reached in the so-called Hall of Judgment of Osiris” (Bauval, 1999: 96) where the deceased heart had to be judged. The judgment comprised of the weighing of the deceased person’s heart on the large set of scales⁷¹² of Osiris. Whilst Osiris sat on his throne in the Hall of Judgment, flanked by the goddesses Isis and Nephthys, the heart of the deceased was weighted on the scales against the feather of Maat. The scales were checked by Anubis and the result recorded by Toth. Whilst weighing the deceased’s heart the deceased had to make a “Negative Confession” which declared that he was innocent of specific crimes. If the balance of Osiris’s scales tipped towards the heart, the soul was perceived heavy with sin and redemption was lost⁷¹³; if it should tip the other way, the soul was saved. Forty-two assessor gods or judges assisted Osiris in his final verdict of who was and who was not worthy of entering the underworld or heavenly realm. If a deceased person was not worthy of immortality, he had to be reincarnated or reborn. To live according to Maat, means to cling to truth and justice and to live in cosmic harmony with friends, family, relatives and the spirit world.

Ubuntu, like Maat, represents cosmic justice. As in the case of the Egyptian assessor gods or judges, the living dead or ancestors in *ubuntu* reality play a central role in administering justice during life and death of the African person. *Ubuntu* reality seems to have similarities with the principles of Maat. When death in Africa occurs, the corpse is ritually prepared and buried. Ephirim-Donkor (1998: 9) explains how, forty days after burial in the Akan tradition, the spirit of

⁷¹¹ According to Bauval (1999: 95), “the goddess Maat is said to be the companion or wife of Thoth”. Thoth was the Egyptian god of Knowledge, and wisdom or intelligence.

⁷¹² “The scales symbolise Maat ... In one tray lies the feather of ‘Truth’ and in the other tray the heart of the deceased ... The god Thoth records the reading on the large set of scales (Bauval, 1999: 96).

⁷¹³ Ammut, the monster which had the head of a dog or crocodile, the forelegs of a lion and the hindquarters of a hippopotamus devoured the heart of the deceased filled with wrongdoing.

the deceased person departs to the world of the ancestors.⁷¹⁴ In the world of the ancestors the deceased person is put to trial and if found worthy, admitted into the company of the ancestors. If the deceased person is found to have led an unworthy life, he is pronounced guilty and excluded from ancestorhood.⁷¹⁵ In order to undo his evils the deceased person is reincarnated. The African belief in reincarnation⁷¹⁶ is confirmed by Mbigi (1997) Ephirim-Donkor (1998), (Ramose 2002{b}) and Mutwa⁷¹⁷ (1998; 2003). Ephirim-Donkor (1998: 4) explains that if an African individual dies⁷¹⁸ without fulfilling his or her purpose of being, the deceased is reincarnated as many times as necessary in order to fulfil the God-given purpose of being.

The belief in reincarnation is central to the African way of life, as reincarnation creates an opportunity for the spirit to return to its people, clan or tribe. It is believed that the African soul goes through many incarnations in its quest to reach spiritual maturity (Mbigi, 1997: 33; 52). Traditional African reality has no hell, no heaven and no resurrection because they believe in immortality. Immortality can be obtained by living a good life or acquiring as much life force as possible. “Children and women are generally considered to have less life force

⁷¹⁴ Ephirim-Donkor (1998: 61) reveals that some spirits do not go on to the ancestors immediately. This happens in the case where the deceased person is felt to have died prematurely without his completing his mission in life.

⁷¹⁵ “It is not everyone who qualifies to become an *idlozi* [ancestor]. If I was a very bad person and I stole goats and was cruel to my wife or if I was ill-treating the cattle and the children, then I would not qualify to be *idlozi*. That spirit will not be honoured. Rather, I will be called *isamfumfu* – a lost, evil spirit. That spirit will not be honoured. Although this *isamfumfu* is evil, we must never allow it to fade away from us because then it may curse us. So we must do ceremonies for the *isamfumfu*. But we must not say why we are killing the goat or for whom we are making the beer. And when we place the beer for the *isamfumfu*, we must back out backwards” (Mutwa, cited in Boon, 1996: 20).

⁷¹⁶ See Mutwa’s *Indaba my Children* (1998) and *Zulu Shaman* (2003).

⁷¹⁷ Mutwa (2003: 201; 207) explains reincarnation as a process where people “die and are born again either as animals or as trees, even bushes, or even types of insects and some one can be lucky enough to be reborn as a human being once again”. According to Mutwa (1998: 590), the baobab is the most sacred tree because it is associated with the souls of future witchdoctors, wise women, midwives and those who will care for and control the lives of others. The Shonas are regarded as a good tribe because the baobabs occur mostly in their land. The baobab is according to Mutwa, regarded as a direct descendant of the Tree of Life. Ephirim-Donkor (1998: 36) mentions that although ancestors can reincarnate anywhere in the world in any race, they mostly reincarnate into their own families. Whilst in some cultures people reincarnate into lesser creatures, other cultures people are always reincarnated as human beings. See Mutwa (1998: 590-610).

⁷¹⁸ Mutwa (2003:20) describes how, at a person’s death, the *ena* wanders the earth for a while and eventually dissipates. The deceased’s *moya* goes on to reincarnate in other forms. When the *moya* takes a new form, be it human or animal, it makes a new *ena*.

than men” (Nyirongo, 1997: 80). According to Nyirongo (1997: 104), the souls of women and daughters do not qualify as ancestors, except in a few matrilineal tribes where inheritance falls in female lines. Depending on a deceased person’s life, he can obtain immortality by becoming an ancestral spirit. The ancestral spirit experiences immortality for as long as he is remembered by his people. The ancestor spirit loses immortality and becomes an ordinary malevolent spirit as soon as future generations forget his name.

4.10.2 Justice and the Elders

Elders are individuals who have achieved ‘personhood’.⁷¹⁹ An elder is a person who has achieved full immortality; he has acquired as much life force as he can. A male elder, as head of the family, has the power to bless or withhold blessings. According to Somé (1994: 23), “this ability comes from the ancestors, to whom he is very close, and he follows their wisdom and counselling for his large family”. Certain elders are elected by older members of the tribe or community to sit on the village or tribal council where they take part in decision making concerning the community. Elders are perceived as having lived an “altruistic ethical life and having achieved a name worthy of remembrance and evocation” (Ephirim-Donkor, 1998: 121). They are regarded as sages and consulted for their unprejudiced advice and counsel. According to Ephirim-Donkor, the elders, lineage heads and sub-kings of the village constitute the king’s⁷²⁰ council. Because the king represents tribal unity and personifies the law, the decisions of the collective body of elders are regarded as legal and binding. Mangena (1996: 59) maintains that the ultimate authority remains with the elders. According to her, the “elders have reached the stage in life which accord them the position of

⁷¹⁹ The concept of ‘personhood’ indicates that the individual is whole. Personhood is a state which can only be achieved after having gone through all *ubuntu* rites and living an ‘ultruistic and ethical life’. “Wholeness is the starting point of the African concept of a person. Consequently the human person in African thought is not definable in terms of a single physical or psychological characteristic to the exclusion of everything else” (Ramose, 2002{b}: 64). To become an ancestor, the deceased had to be an elder. “Ancestors are therefore a distinct group of eternal saints, apart from other spiritual personalities who are also endowed with immortality, but are not ancestors” (Ephirim-Donkor, 1996: 129).

⁷²⁰ The king is perceived as a divine being, worthy of praise, worship and sacrifice (Ephirim-Donkor, 1996: 119).

and role of running the juridical system in the lineage and beyond to the last communal level of a particular territory". The position of elder is the highest existential office; therefore, elders fulfil the tasks of intercessors, mediators, councillors, judges and preservers of tradition in the community. Elders represent truth in the community. According to Ephirim-Donkor (1998: 127), truth is indivisible and "perceived as a collective truth comprised of a body of infallible individuals".⁷²¹

In case of a dispute or other important issue, the community turns to the elders for unprejudiced advice and counsel. In order to settle the dispute or find a solution, a meeting or tribal court is called.⁷²² All adult males have a right to participate in legal proceedings of the tribal court. According to Ephirim-Donkor, (1998: 124), ancestors have to be invoked prior to the meeting or court, as they affirm the infallibility of the elders and serve as witnesses. During the deliberations everyone present is given a chance to speak, as everyone present has a right to express themselves within the group. Court cases and meetings often drag on for a lengthy period of time as all sides of the case have to be heard as freedom of expression is paramount. The goal of lengthy deliberations is for the elders to achieve consensus. The elders must reach consensus on the judgment or solution before the final judgment is given. The elders' judgment is legal and binding on the community. Ephirim-Donkor (1998: 124-25) emphasises the importance of not dismissing the ancestors before the end of the meeting. On their departure "the ancestors take with them the verdicts of their earthly counterparts. This ensures that what is legal on earth is also binding in the ancestral world. When finally the deceased appear before the ancestors for

⁷²¹ According to Ephirim-Donkor (1996: 126), elders have already attained immortality and ancestorhood in the flesh and are awaiting the final transformation through death. "Elders take their responsibilities seriously, for they are being watched by the omniscient ancestors before whom they must appear and be judges upon their deaths". Should elders fail their duties, they are removed from their duties, firstly for having been rejected by the ancestors and secondly, for failing the community.

⁷²² Ephirim Donkor (1998: 121) states that the king, sub-kings, linguists, orators, militia leaders, and heads of lineages may attend such meetings. "These people may form the privy council of the king and therefore constitute a government". Deliberations in court are indicative to the king of where public opinion lay among those who attended the trial. The king usually acts as judge. He ensures order in the court but does not take part in court discussions. The king's verdict is given in accordance with the consensus of the court.

accountability and judgment, there would be no room for error". Traditional African justice does not exist in isolation, but stands in relation to the community,⁷²³ the ancestors and God. The goal of justice in *ubuntu* legal philosophy is to maintain equilibrium in the African flow of life. In the case of minor offences which are "not considered aggravation of the ancestral spirits of the family" (Mutwa, 1998: 632), the chief will pass judgment on behalf of the complainant and restore peace within the community.

All mediation in traditional African societies is conducted by the elders. If mediation with ancestors is required, the community or person has to consult with elders. According to Ephirim-Donkor (1998: 127), elders are archetypes of mediation and stand between the ancestors and humanity. "No one goes or speaks to the ancestors or God without first going through the elders. The elders intercede [or mediate] on behalf of communities in order to ensure the continued blessings of the ancestors and of God". If a man has to be removed or transferred from a kraal by the chief, the chief calls a gathering of elders to consult with the man's ancestors.⁷²⁴ Mutwa (1998: 571) describes the process whereby the leader of the elders has to stand over the "Sacred Burial Ground" of the man to acquire permission from the man's ancestors for his removal or transfer from the kraal. If an entire community has to be moved the move has to be mediated with the ancestors beforehand, as the ancestors have to grant permission for the move. Any person's will is subjected to that of the living dead. Normally the ancestors will move with the community⁷²⁵ if they have to be relocated.

⁷²³ According to Mangena (1996: 59), the community knows the various forms of punishment for different forms of misbehaviour. "This in itself shows that there is no separation between the theory and practice in these systems. Sex groups consulted with each other when one of their lot had to be judged and punished for misconduct. For instance, a young man could be punished by being ostracised by his group for a defined period. The young women of that particular age group would be consulted in the judgment of the case and they would participate in carrying out the punishment against the culprit. The young man would therefore be ostracised also by the women of his age group".

⁷²⁴ "A tribe that does not uphold this tradition is doomed in the same way as the individual who turns his back on the *enas* of his ancestors" (Mutwa, 1998: 571-572).

⁷²⁵ The trauma related to forced removals of African people during the apartheid era in South Africa, has eroded African culture and dislocated many communities.

The authority of the living dead or ancestors over the living is evident in all walks of life in indigenous Africa. If for example, two tribes fight to a draw, the elders of both tribes have to mediate justice by means of a “Peace Ceremony” before the feud is considered closed (Mutwa, 1998: 629). *Ubuntu* justice prescribes that equilibrium must be restored, even if it takes generations. “A debt or a feud is never extinguished till the equilibrium has been restored, even if several generations elapse ... to the African there is nothing so unjust in our system of law as the Statute of Limitations, and they always resent a refusal on our part to arbitrate in a suit on the grounds that it is too old” (Driberg, cited in Ramose, 2002{b}: 95-96).

4.10.3 *Ubuntu* Justice versus Western Justice

Ubuntu justice strives towards perpetuating balance, peace and harmony within its cosmic universe. “The golden rule is the golden mean; to live in moderation, harmony and balance. The world of nature, spirit and human beings are to live in interdependence; each fulfilling its complementary role in helping to maintain the balance and the golden mean” (Turaki, 1997: 59). Whilst justice in *ubuntu* reality is regulated by the African cosmic universe, Western justice is regulated by humans only.

In contrast with the Western concept of retributive justice, the African concept of restorative justice⁷²⁶ and compensation is paramount in African law. Tutu describes restorative justice as a strongpoint of traditional African culture. According to Tutu (1999: 51-52),

Retributive justice, in which an impersonal state hands down punishment with little consideration for victims and hardly any for the perpetrator, is not the only form of justice. I contend that there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central

⁷²⁶ See 4.4.1.5 the Court contends that restorative justice is a value of *ubuntu*.

concern is not retribution or punishment, but in the spirit of *ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence. This is a far more personal approach, which sees the offence as something that has happened to people and whose consequence is a rupture in relationships. Thus we would claim that justice or restorative justice is being served when efforts are being made to work for healing, for forgiveness and for reconciliation.

Because traditional African societies are based upon consensus and not democracy, reconciliation plays an important role. Group solidarity requires the restoration of peace and a win-win situation between parties. It is a “fundamental law of *ubuntu*” that peace must be attained by justice (Ramose, 2002{b}: 52). *Ubuntu* justice does, however, not always apply to outsiders. Naude (2006: 102) points out that reconciliation is not always sought in cases where disputes involved strangers or outsiders.⁷²⁷

Compensation plays an important role in obtaining justice. According to M'Baye (1974: 144), “[t]here must be compensation for every advantage ... The sacrifice of a chattel, an animal or even a human being, so often practised in traditional Africa, is nothing but a manifestation of the necessity for compensation” (M'Baye, 1974: 147). But compensation alone is not sufficient. M'baye posits that over and above compensation, a sacrifice must also be made to ward off divine anger aroused by a crime. Whether damages will be compensated to an afflicted party depends largely upon the legal status of the person.⁷²⁸ The more influential the person offended, the greater the injustice. According to Mbiti (1992: 208), the more influential the person is against whom the sin is committed, the more serious the injustice. This notion of *ubuntu* justice is confirmed by Nyirongo

⁷²⁷ African law did not apply to outsiders. See 4.11.4.

⁷²⁸ Among certain tribes adultery is only considered a crime when committed with a chief's wife (M'Baye, 1974: 144). In 1878 the sons of chief Sihayo kaXongo captured two of their father's wives accused of adultery. The wives were clubbed to death in accordance with Zulu tradition (Greaves, 2005: 76-77).

(1997: 63) who posits that a wrong against a chief is a more serious offence than the same sin committed against a man of lesser status. "This is so because the greater the person, the closer he is to the ancestors". According to Nyirongo, to offend an elder is more severe than to offend a child with less vital force, and "if a person of influence and status commits an offence against a poor man, it is not as serious as when the poor man commits the same sin against him. Similarly, a teenager is expected to feel less concerned if he is antagonised by a fellow teenager than by an elder. This is because the older you get the more potent your words or dispositions are".

In Western civilisation these examples would constitute discrimination against the individual, but in traditional Africa, rights and justice are awarded in correlation with status and hierarchy. Bhengu (2006: 129) summarises the essence of *ubuntu* justice as justice assigned on the basis of communal membership, family, status or achievement. *Ubuntu* justice is incomprehensible in Western jurisprudence with its notions of human rights and equality. *Ubuntu* justice is awarded according to its yardstick of equality, based on status. Although Africans profess that *ubuntu* honours the value of equality and human dignity, equality in a communal sense cannot be equated to the value of equality in a Western sense. Any form of justice meted out in accordance with a person's status, hierarchical position or achievement will constitute unfair discrimination in Western jurisprudence. Equality in Western jurisprudence guarantees equal rights irrespective of status or gender.

Revenge is also looked upon as part of *ubuntu* justice. Mutwa (1998: 630) maintains that "the Black man is the most ardent of grudge bearers and revenge-lovers ... the black man of Africa has not learnt the meaning of the word forgiveness. His mind cannot fathom that there are other races that can fight today and be friends tomorrow". The reality of retribution is viewed as the collective responsibility and right of the community, as the community reserves

itself a right to avenge offences against any member of the clan⁷²⁹ (M'Baye, 1974: 146). Truth is a cherished value in *ubuntu* justice. Mutwa (1998: 627) narrates how Africans “can lie with the greatest ease to any missionary, chief, magistrate or judge” without blinking an eye, but never to a ‘witchdoctor’. “The witchdoctor will merely ask the man to say: *Angikwenzanga loku, ngingalala noma* which means: ‘I have not done it and I am prepared to sleep with my mother to prove it’. According to Mutwa, a person who has the courage to say this to a “witchdoctor” is immediately found not guilty. If he lies, “the *enas* of his ancestors will descend upon, not only his person, but also his *ena*, and destroy both”.

In *ubuntu* reality justice must be done, not only when laws are breached but also when taboos are broken. Taboos “strengthen the keeping of religious order” and cover aspects of African life, viz. words, foods, dress, relations among people, marriage, burial, work etc. (Mbiti, 1991: 41). Mbiti emphasises that the breaking of a taboo entails punishment in the form of social ostracism, misfortune or death. Justice and punishment is left to the community and the “invisible world” or ancestors. Nyirongo (1997: 71) maintains that the violation of morals and the taboos⁷³⁰ of the tribe will be punished by sickness, death, poor harvest or poverty. Breaking taboos disturbs the cosmic harmony of the community and the peace of the spirits. Tribes can have several such taboos. Nyirongo (1997: 62; 29) cites the following examples of taboos:

- It is taboo for a woman to climb upon the roof of a hut as this would be interpreted as an expression of her desire to kill her husband.
- It is a taboo for a person to ride on the back of an ox or cow after he has been circumcised.

⁷²⁹ According to Mutwa (1998: 632), “Bantu execution is not merely punishment; it is a sacrifice to appease the ancestral spirits of the family, who cry out for revenge”.

⁷³⁰ According to Nyirongo (1997: 62), the following taboos make a person ritually unclean: “it is taboo for an infant to cut its upper teeth first; it is taboo if a beard grows on a woman’s chin; it is taboo if a bull-calf jumps on the back of a person; and it is taboo if a man grows breasts. Such events make a person ritually unclean and a ceremony must be performed to prevent certain disasters to befall him and the family”.

- It is taboo to touch a widow's objects (e.g. utensils) unless she is cleansed; should you touch them before she is cleansed, you will become pale.
- It is taboo for a man to sleep on or step over the bedspread of his child; it is feared that he will beget no other children or his daughter or son will die.
- It is taboo for a man to kill a python – even in self defence; if he did so, he will suffer from impotence.
- It is taboo for an unmarried woman to drink milk; if she did so, her father would not be able to marry her off, but she will elope with a boy;
- A pregnant or menstruating woman may not cross fire or put salt in the relish to avoid bringing a misfortune to the family.
- One may not point a finger at the graveyard or one of your relatives will die or fall sick.

The offender's punishment or calamities will perpetuate until he appeases the community and ancestors by either making a sacrifice or an offering. "Depending on the offence, proof of acceptance [of the sacrifice or offering] may include recovery from sickness, a message in a dream or a diviner's reassurance" (Nyirongo, 1997: 64).

An interesting characteristic of *ubuntu* justice is the fact that traditional African communities have no need for a police force. As these communities operate on the principle of consensus "there is no crooked-looking onlooker with a gun, creating an atmosphere of unrest" (Somé, 1997: 50). Somé describes how village houses have no doors that can be locked, because the open door symbolises the open mind and heart of the community. He sees "the presence of a law enforcement system as an indication of something not working". The police force in the traditional African community is the spirits who oversee everybody and everything. "To do wrong is to insult the spirit realm. Whoever does this is punished by the spirits". Somé (1997: 53) accentuates the dire need for the

community to invoke spirits, as spirit intervention creates safety for the community. Somé (1997: 10) posits that all homes in the village are protected by spiritual ancestors. It is easy to comprehend what Somé (1997: 14) means when he says that “[f]or an African who comes to America, there are no words to describe the shock he encounters”. Western reality has become synonymous with burglar bars, electric fences, police, retributive justice and imprisonment in its effort to combat criminals. In *ubuntu* reality ancestors protect indigenous communities.

It is evident that Western justice juxtaposes *ubuntu* justice. Justice in Western jurisprudence is equated with rationality, the doctrine of precedent, fundamental human rights, retribution and punishment. Western justice is an alien concept to indigenous African people who mete out restorative justice in accordance with African spirituality and strive towards cosmic peace with the ancestors and spirits. As Mutwa (1996: 632) says: “The Bantu consider it utterly ridiculous for a judge to punish a person who had done them no wrong”.

Ubuntu is not only the basis of traditional African justice, but also the basis of African law (Ramose, 2002{b}: 81). *Ubuntu* as law will be discussed next.

4.11 UBUNTU AS LAW

Ubuntu is a holistic worldview which does not compartmentalise concepts. Like African justice, African law is inseparable from the African spiritual universe. As “this worldview is essentially spiritual” (Turaki, 1997: 45) it formulates “concepts of good and evil, morality, ethics, and justice. Its moral duties, customs, superstitions, social laws, regulations and taboos define the general order of existence” in traditional African societies. As *ubuntu* justice is inextricably intertwined with African Religion, so too is African law. The following will be discussed in this section:

- *Ubuntu* as Africa's Constitution.
- *Ubuntu*, status and hierarchy.
- *Ubuntu* and the Other.
- Law and community.
- *Ubuntu* and the Constitution, and
- Moral values and the Constitution.

Mutwa (1998: 625) maintains that although all races are supposed to be equal, their laws differ fundamentally from each other. He states:

“All races may be equal in ‘race, colour and creed’
 But they differ fundamentally in the law that governs their lives.
 The white man's creed is based on his ‘Ten Commandments’
 The Black man has more than a hundred such commandments
 Called the High Laws of the Bantu”.⁷³¹

4.11.1 *Ubuntu* as Africa's Constitution

As Law, *ubuntu* regulates traditional African societies by way of customs, laws⁷³² taboos and traditions that must be observed. Justice can only be done if *ubuntu*

⁷³¹ Mutwa (1998: 621-635) shares the following “laws of the Bantu”: “The killing of one woman is so great a crime that it needs a thousand men to die in battle of vengeance ... The separation of a man from his wife by an external influence is listed as one of the Three High Crimes and calls for a war of vengeance and punishment ... if you touch a man's wife, mother, sister, or daughter, call them names, or refer insultingly to their womanhood, he is bound by law to kill you. If he fails he will make his children's children take oaths to kill your children's children ... There are only three grounds for divorce: frigidity (a refusal to carry on the ancestral name); adultery (excreting in the spirit hut); and sexual perversity (the madness to let outsider bulls graze in the green pastures of our ancestors) ... if one man of another race killed a member of your race, tribe or family, do not rest until you, or a descendant of yours, have killed a member of his race, tribe or family ... The African motto is ‘an eye for an eye’ and the Zulus have a saying; ‘once you poke me in the eye, I must not rest until I have gouged out one of yours’ ... a wizard shall die that particular kind of death set aside for wizards ... adulterers, perverts and rapists were given the ant death ... In the land of the Xhosa all witches were thrown from a high cliff and in Central Africa all adulteresses were fed to the crocodiles. Adulterers were castrated. In Lesotho and also in Zululand, witches were imprisoned in their own huts and burnt to death. Witchdoctors who broke the law were killed ... A thief caught stealing oxen was given an appropriate death [killed] ... when a man commits rape he is arrested and executed; a man must keep away [sexually] from his wife for at least a year whilst she is breast-feeding” etc. These laws are according to Mutwa, currently not “in full force” in South Africa.

⁷³² According to Ngubane (cited in Bhengu, 2006: 24), “the person was created according to the Law; he was conceived according to the Law; he was born, fed and clothed according to the Law; all he did; all his

laws are based upon *ubuntu* values. African law follows the oral tradition, but the lack of writing does not imply that Africans lack logic. Both Western and African law are commands, but whereas Western law gives negative commands to its subordinates by commanding: 'thou shalt not', African law gives positive commands: 'thou shalt' (Ramose, 2002{b}: 93).

In contrast with the Western concept of law which protects rights and liberties of the individual, African law protects rights of the group, not the individual. *Ubuntu* law differs from Western law as *ubuntu* philosophy of law, in contrast with Western jurisprudence, consists of a body of rules which regulate Africa's holistic flow of life. De Tejada, (1979), M'Baye (1974: 139) and Ramose (2002{b}: 81) emphasise that traditional African systems of law are "unquestionably similar to one another". Ngubane (1979), Ramose (2002{b}) and Bhengu (2006) confirm that *ubuntu* regulates traditional African societies. According to them, *ubuntu* is not only perceived as the Constitution of indigenous African communities but also functions as such. According to Ngubane (1979: 78), the function of *ubuntu*, as Africa's Constitution, is to "create and regulate the social order in which a person can realise the promise of becoming human". This Constitution structures society by means of customs, laws and traditions (Bhengu, 2006: 33). Ramose (2002{b}: 97) maintains *ubuntu* law is well-known in Africa and functions as constitutional law to African societies; it commands obedience and protects the community. Mutwa (1994: 625-635) cites some of the African Constitution's "High Laws of the Bantu, common among all Bantu races in Southern, Central and East Africa". The "High Law of Life" (Mutwa, 1994: 625) states:

Man, know your life is not your own. You live merely to link your ancestors with your descendants. Your duty is to beget children even while you keep the Spirits of

thinking and behaviour; all his hopes, victories, fears and defeats translated the Law into action. He could not violate the Law because he incarnated it. Nothing could oppose the Law because everything in the cosmic order conformed to the Law. Conflict itself was a translation into action of the Law. The person grew up and thrived in terms of the Law; he matured, aged and died according to it; he evolved perpetually into eternity according to Law".

your Ancestors alive through regular sacrifices. When your ancestors command you to die, do so with no regrets.

As the oral tradition of law is common to indigenous Africans, *ubuntu* law is unwritten, flexible and passed on by word of mouth from generation to generation. According to Tempels (1959: 123), Kamala (1998: 89), Bhengu (2006: 13) and others, ancient African justice was founded on natural law⁷³³ principles. “These laws of nature are regarded as being controlled by God directly, or through his servants” (Mbiti, 1991: 41). Contrary to Western law, African law is not merely legal rules enforced by the state. African law is, according to Koyana (1980), in the first place concerned about “the philosophical atmosphere prevailing among the indigenous people of Africa”⁷³⁴ and only secondly, concerned about legal rules applicable to a particular African group in a specific time. M’Baye (1974: 141) posits *ubuntu* or African law is a “combination of rules of behaviour which are contained in the flow of life” which aims at “construction of communal life and resort to protection by supernatural forces as the basis of African law ... equilibrium, justice, harmony and peace are the implicit aims of African law”. These moral rules are handed down from generation to generation “under the supervision of the initiated” (M’Baye, 1974: 149) or elders. African law is, therefore, anchored in African religion.

The foundation and authority of traditional African law is based upon the fact that “*ubuntu* philosophy of law”⁷³⁵ is the continuation of religion – but not theology – by political means ... another way of saying that the political is always the arena of ongoing dialogue with the metaphysical” (Ramosé, 2002{b}: 97; 2002{c}: 643). Because *ubuntu* metaphysics underlies the philosophy of law, African law is

⁷³³ Natural law implies law has a moral dimension. The characteristic feature of natural law is that a moral code exists irrespective of human interaction or positive law. Natural law contrasts positive law, law separated from morality and laid down in statutes, rules and court decisions.

⁷³⁴ Law in Africa is aimed at the preservation of the group and maintaining peace in the group (M’Baye, 1974: 141).

⁷³⁵ Rhoederer et al. (2004: 442) argues that attempts to incorporate *ubuntu* into formal jurisprudence have been relatively unsuccessful and met with relative scepticism from courts and commentators who tend to ignore *ubuntu* as a philosophical doctrine. They argue *ubuntu*’s greatest contribution towards South African jurisprudence lies in the theoretical values it embraces.

inextricably linked to African Religion (Ramose (2002{b}: 92). This notion of *ubuntu* law as Africa's religious law, is confirmed by Oruka (2002{b}: 59), ethnophilosophers and M'Baye (1974: 141; 149).⁷³⁶ Whether or not, according to Ramose, the law will be able to facilitate harmony or peace between individuals or the group depends on whether the living dead give their approval of the law in question.

The elders and the living dead, *abaphansi* or ancestors⁷³⁷ of the tribe are respectively the creators and custodians of African laws and customs.⁷³⁸ According to M'Baye (1974: 141), Khapoya (1994: 49), Turaki (1997: 66) and Mutwa⁷³⁹ (1998: 78) the living dead or ancestors are the legislators who lay down the laws of the community. Khapoya (1994: 49) confirms that norms and values are handed down by the ancestors. Ramose (2002{b}: 96-97), however, are of the opinion that the living are the legislators who lay down norms and rules. According to him, all norms and rules have to be authorised by the ancestors. As all laws have to be communicated to the ancestors for their approval, the ancestors are perceived as "the basis for the authority of law in *ubuntu* philosophy" (Ramose, 2002{b}: 97). Rules can therefore only come into force once the living dead have authorised it. "Because the living dead must always be honoured and obeyed, law justified in their name also deserves respect and obedience" (Ramose, 2002{b}: 97). Although an African king has the power to make rules with the consent of his tribal council, such rules have to be communicated and authorised by the living dead before they can come into force as law. Breaking *ubuntu* laws "is an offence against the departed members of the family and against god and the spirits, even if it is the people themselves who

⁷³⁶ See 4.11.6.

⁷³⁷ M'Baye (1974) describes ancestors as those "corporally dead but still living" to keep watch and keep things the way they are.

⁷³⁸ According to M'Baye (1974: 141-142), African "Gods, Genii [spirits] and Ancestors' act as African legislatures; they lay down the laws and guide man to survival. He describes genii as spirits superior to men. "They have rights which must be scrupulously respected ... Genii intervene continually in daily life, and wisdom dictates a sacrifice to them either before or after every event in life of however little importance".

⁷³⁹ Mutwa maintains the law comes from the forefathers or ancestors.

may suffer from such a breach and who may take action to punish the offender” (Mbiti, 1991: 41). Apart from laws, there are also many taboos which serve the purpose of keeping moral and religious order.

4.11.2 Ubuntu, Status and Hierarchy

African law is applicable to the traditional community and not the individual as the individual plays a subordinate role in community. According to M'baye (1974: 141), “everyone in the community has an assigned place and must do what he must do without any demands; everyone must obey the elders according to strict rules”. Despite claims of equality or egalitarianism, traditional Africa is undoubtedly hierarchical. Any challenge to this hierarchy disturbs the balance and peace in the community. Anyone moving out of this hierarchy is in severe danger. The concept of *uMona* is used to control individuals in the hierarchy (Boon, 1996: 107-108). Boon states that if an individual suddenly acquires material wealth, it is deemed to be a result of magic and dealt with accordingly. The concept of egalitarianism, or equality in communitarian societies in Africa, differs profoundly from Western notions of equality.⁷⁴⁰ Whereas Western humanism guarantees the individual the right to equality, communitarianism and group rights entrench hierarchy and status. Notwithstanding *ubuntu's* preoccupation with hierarchy and status, Africans constantly emphasise the importance of equality and human dignity in the community. The words equality and human dignity in African reality do not equate to the Western meaning of

⁷⁴⁰ Muendane (2006: 91) describes *ubuntu* equality as follows: “[E]veryone in the group complies with the dictates and standards set by the particular group; everyone in the group is simply expected to do that. When an individual belonging to the group deviates from the cultural standard or norm, everyone else becomes disturbed and that can result in isolation, ostracism, condemnation, criticism or censure of the deviating individual. At any rate, that individual will forfeit something of benefit, as members of the group with whom the particular cultural behaviour is associated, withdraw different forms of cooperation and other benefits from him or her. This response to the deviating person by the group is normal within all groups as it is intended to protect group cohesion. Group cultural practices have the function of helping members of the group to easily identify one another because individuals in any group use the properties of the custom or culture as *reference* for action within the group to ensure cooperation and harmony. Without the cooperation of others, one can never accomplish anything in life. The groups we belong to are the first port of call in our endeavour to seek cooperation to achieve our goals. This is as things should be, and is applicable universally” throughout Africa.

these words.⁷⁴¹ Broodryk (1997{a}: 61) posits that where *ubuntu* is, there is brotherhood and caring and all people are treated as equals. This notion of equality is propounded also in the spirit world, where the spirits of animals are equated to those of people.⁷⁴²

The importance of authority and seniority in traditional African societies become evident when one studies traditional African hierarchies. The hierarchies of African societies, from top to bottom, are as follows: ancestors, the chief, elders, father, elder brother, younger brother ... women, children, slaves and the mentally ill. The legal status of the person depends upon the person's hierarchical position within the community.⁷⁴³ M'Baye (1974: 143-145), Turaki (1997: 57), Broodryk (1997{a}: 97) and Bhengu (2006: 129) affirm that rights are assigned on the basis of communal membership, family and status or achievement. The following example of *ubuntu* equality is given by Broodryk: "A witchdoctor, *sangoma*, chief and elderly people are treated on different levels of status and in some cases it appears as if the families of these figures are also respected and treated differently. The formation of classes therefore, is a known phenomenon in Africa and African societies". Holland (2001: 195) maintains that in traditional Africa "no individual or group [is] permitted to acquire undue control over the lives of others".⁷⁴⁴

⁷⁴¹ See 4.13.

⁷⁴² According to Mutwa (1998: 565), man does not possess a special soul, exclusive to himself. "All souls are the same, and Man is but one of the many forms, or re-incarnations that a soul must pass through. The soul of the impala that you have seen disappearing into a thick bush while walking in the forest may have been a tenant in the body of someone you knew. The crocodile that nearly ate you while you were crossing the river may have been carrying the soul of one of your ancestors, or one of the enemies of your family".

⁷⁴³ M'Baye (1974: 144) states that women, strangers, children, sick men and slaves have very low legal status, if any, in traditional African societies.

⁷⁴⁴ Holland (2001: 195) cites the following Igbo proverb to demonstrate the communitarian concept of equality: 'a leader only wins support for as long as he does not govern too much.' The Igbo grant a leader minimal power which can be rescinded, and judge him on his egalitarian ability. "As leadership constraints, these community ideals form an ideological barrier to strong central authority".

African societies do not consist only of the material or visible world, therefore, the hierarchies in these societies include the spiritual dimension, animals⁷⁴⁵, plants and material things. According to M'Baye (1974: 143-145), the hierarchy and status⁷⁴⁶ within African communities are categorized as follows:

- At the top of the societal hierarchy is the spirit world. The community is represented and guided by gods, spirits and ancestors.
- The king or chief holds all religious, political, judicial and military powers in the community.
- Elders act as sages and judges of the community.
- As traditional African societies are patriarchal, adult males are held in high esteem. As they are of much higher status than women, gender equality in these societies is a myth.
- The position of women is considered inferior to men.⁷⁴⁷ As consent is usually not necessary for the validity of her marriage, and as polygamy is “the rule in Africa”, the wife has no say.

⁷⁴⁵ Mutwa (2003: 15) describes how he and his grandfather came to a fig tree, planted by his grandfather, which was bearing plenty of fruit. “In old Africa, in the land of the ancient Zulus, in the time when I was young, we never called trees ‘trees’ but rather ‘growing people’. This is a person. Mutwa saw his grandfather touching the trunk of the tree, taking snuff out of his snuff horn and pouring it at the foot of the tree. Grandfather: “I *was* worshipping the tree, I *was* talking to the tree. I was sharing my snuff with the tree, and I often share any good news that I happen to have with the tree”.

⁷⁴⁶ What Western culture explains as a lack of initiative by Africans is in fact a result of the latter’s view that a person should not aspire to more status or power than that accorded to him by the specific position of seniority he occupies, and accordingly ambition is traditionally not viewed as a virtue (Broodryk, 1997{a}: 42).

⁷⁴⁷ “Traditionally, the husband is the head of the household and the wife realises that she is not equal to the husband. She addresses the husband as ‘father’ and by doing this the children are given an example of how to behave. A woman does not cross words with a man and should she do this it reflects a bad image of her – a poor development sense of Ubuntu” (Broodryk, 1997{a}: 24). Idowu (1975: 77) says the following: “Where she behaves herself according to prescription and accepts an inferior position, benevolence, which becomes her ‘poverty’, is assured, and for this she shows herself deeply and humbly grateful. If for any reason she takes it into her head to be self-assertive and claims footing of equality, then she brings upon herself a frown; she is called names; she is persecuted openly or by indirect means; she is helped to be divided against herself ... a victim who somehow is developing unexpected power and resilience which might be a threat to the erstwhile strong”. Women in Africa are perceived inferior to men. African feminist, El Sawaadi (cited in Syewart, 2005: 205), writes: “Women are the rock bottom of society, of the family unit, of the home, the connective tissue of society, the mainstay of economic life, the producers and reproducers. They shoulder 90% of all work but own only 10% of what is owned”.

- Strangers are rarely assimilated in the group and are therefore situated at the outer edge of the village.
- Children⁷⁴⁸ under age are completely dependent on the chief of the group as he holds every right over them. The age of majority is not fixed. Should a girl marry, she finds herself under the authority of a new patriarch, the head of the husband's family. Notwithstanding a man's circumcision and initiation he only reaches true majority once he either becomes the head of a family by succession, or sets up his own "family house".
- Slaves and their descendents are not subjects of law.
- Mentally ill persons have no legal status.

Human beings are not created equal in traditional African reality. Turaki (1997: 57) confirms the existence of the following "typical hierarchy of human beings" as "at the top, the ancestors, the aged, heads and leaders, adults, men, women, children and the unborn". Turaki adds that "[w]e do not only have a hierarchy of human beings but also that of people groups. Human beings at times assume themselves or their ethnic or racial or tribal group to be higher or superior to others". According to Turaki (1997: 45), ethnicity, racism and tribalism are deeply rooted in the community's values, morality and ethics.

Traditional African communities are hierarchical societies; therefore status and hierarchy are justifiable under African law. The legal status of each person depends upon his position within the hierarchy. According to Turaki (1997: 55), "[e]very individual or group have their own destiny decreed for them by the Creator ... Destiny is meant to be in gratitude. It is one's lot. Thus one's place in human society has been determined and fixed". As all individuals are subordinate to the group or community, the law of kinship defines that "[t]he individual self does not exist in itself and has no social life of itself nor determines its course of life on its own. The individual takes his/her life and entire existence from the

⁷⁴⁸ Menkiti (cited in Gyekye, 2002: 302) argues that "the absence of ritualised grief over the death of a child in African societies contrasts with the elaborate burial ceremony and ritualised grief of deceased older persons". This also illustrates the importance the community attaches to personhood and status.

kinship foundations he/she belongs to in the community of kinships and of common ancestry. He/she is owned by his/her bloodgroup" (Turaki, 1997: 61).

In contrast to Western reality, African children are perceived as "its" without souls. Because children have little or no life force they become nothing when they die (Nyirongo, 1997: 103). According to Nyirongo, "[a] child's worth is judged by his potential to live an adult life rather than by the mere fact that he too is a full person. In other words, because a man's soul is worth much more when he qualifies as an ancestor, it follows that unless he grows up he is worth less than an adult". Nyirongo states that a person's worth depends on where he fits in the hierarchy. According to him, respect for adults is very important because seniority determines a person's worth and authority.

Apart from age, seniority in birth also determines the African's place in the hierarchy. It is a fact that circumcised males and females are more senior and privileged than their uninitiated peers. Therefore, the younger brother, for example, has to carry the weapons of an elder brother and cannot marry before his older brother does. Nyirongo (1997: 104) explains that "to do so is not only a sign of disrespect, but a sin against the community and ancestors and I may require to offer a sacrifice to appease him". According to Nyirongo, children of the most senior wife of a polygamous marriage are regarded as more senior than those of junior wives. Not only are husbands superior to their wives, but "daughters are worth less than sons". African men who belong to secret societies are perceived to be closest to the ancestors and can therefore punish or reward ordinary community members (Nyirongo, 1997: 105). Nyirongo's (1997: 151) conclusion on the hierarchical nature of *ubuntu* is that it signifies oppression. Nyirongo posits that "[o]ppression is not always overt, physical violence⁷⁴⁹ ...

⁷⁴⁹ According to Liking (cited in Stewart, 2005: 196), "Africa has a repressed memory. Why is there so much silence in Africa? If African women started remembering all of the violence that they experienced, well, it would be an explosion. Is this really a good thing? I believe that they succeed in killing the event by silence, and perhaps in our case it is for the better".

oppression is anything that limits the freedom or development of the individual or community”.

4.11.3 *Ubuntu* and the Other

Although African systems of law are “unquestionably similar”, African law does not guarantee equality, nor does it imply tolerance towards strangers, because African law, like African Religion, does not apply to strangers or outsiders. *Ubuntu*’s laws pertain only to the community or group. M’Baye (1974: 142) assures us that African law applies only in micro-societies, viz. families, lineages, clans, tribes and ethnic groups. According to M’Baye, African law functions “in a ‘closed circuit’ [closed society], often with hardly any contact with other groups. It is also a group system because it is essentially applicable to the group”.

Turaki (1997: 61) maintains that of all *ubuntu*’s laws, the law of kinship is the most powerful and pervasive. According to Turaki, the law of kinship creates two types of morality and ethics: firstly, morality and ethics for the community, and secondly, morality and ethics for strangers. Turaki (1997: 61) describes the “law of kinship” ‘which regulates these closed societies as follows:

The law of kinship defines in unequivocal terms those who are ‘insiders’ and ‘outsiders’. Outsiders and strangers do not belong, for this reason they are not entitled to (1) equal treatment; (2) ownership; (3) affinity, loyalty and obligation; (4) community rights and protection and (5) they are not people, they are outside of the commonwealth, they are strangers.

Turaki (1997: 61) states that “[t]hose who belong are to be treated equally and preferentially as against outsiders and strangers”. It must be noted that in *ubuntu* reality all people are not equal before the law. Regarding the outside world, “[a]nything outside the kinship system is labelled ‘outside world’ ... In this sort of place, kinship or tribal rules do not apply. In fact there is no set of rules to govern

its operation or control". In such a place 'might is right'; 'the end justifies the means'; 'it is a war zone'" (Turaki, 1997: 63).

Ubuntu's attitude towards outsiders or strangers is confirmed by Nyirongo (1997: 139) who posits that outsiders are not looked upon as equals or brothers. According to Nyirongo, African law permits discrimination and oppression of strangers or outsiders. *Ubuntu*, therefore, manifests as a creator of Otherness in the following ways: firstly, African Religion is inaccessible to outsiders as confirmed by Mbiti (1967: 5), Turaki (1997: 63) and Mbigi, (1997: 56); secondly, *ubuntu's* laws do not apply to outsiders (M'Baye, 1974: 142; Turaki, 1997: 61; 139); thirdly, *ubuntu* justice does not apply to outsiders (Naude, 2006: 102); and fourthly, sacred knowledge is never revealed to outsiders (Mutwa, 1998: 555-556). Current debates on who is and who isn't an African, African feminist⁷⁵⁰ or African philosopher confirm that *ubuntu* creates an Otherness. The attitudes of traditional African societies towards one another in the group and towards outsiders are closely related to value systems of closed societies⁷⁵¹. Not only do traditional African values "enhance ethnic or group harmony" but "traditional African values [also] promote ethnic or group superiority over others, parochialism, dominance, subordination, prejudice and discrimination" (Turaki, 1991{b}: 173).

M'Baye (1974), Mutwa (1998), Turaki (1997), Nyirongo (1997), Teffo and Abraham (2002: 138-139) and others confirm that *ubuntu* does not comply with characteristics of a universal philosophy. *Ubuntu* is characteristic of a closed society. In closed societies all people who are not community members are perceived as outsiders or strangers. Oduyoye (2001: 95) defines the stranger or Other, in *ubuntu* reality, as follows: "A stranger is the one who comes in from outside; another continent, another race, another civilisation, another worldview.

⁷⁵⁰ See 4.12.

⁷⁵¹ Biakolo (2002: 17) states that the model of traditional African thought "is a closed system because unlike the open scientific culture neither understands nor tolerates alternative thought ... In the event, traditional African thought turns out to be lacking in logic". Biakolo maintains that all traditional African thought [is] religious.

Strangers are people with other values, other perspectives, other objectives, other principles of life. Openness vis-à-vis ‘the other’, however you define the other, is offering of hospitality”. Whilst *ubuntu* reality perceives itself as an Other in Western reality, *ubuntu* is also a creator of Otherness.

There is a stark contrast between how Western and African law perceive outsiders. Whereas outsiders are not protected under African law, Western law (ideally) protects the fundamental human rights of all individuals. In Western law human rights apply also to aliens. A similarity between Western and *ubuntu* philosophy seems to be its paranoia with the Other. Like Western philosophy, *ubuntu* philosophy declares its hospitality and friendliness, but when it comes to the core or essence of this philosophy, the Other have no right of way.

4.11.4 Law and Community

The community has the responsibility to see that tribal laws, taboos, values and customs are adhered to. M’Baye (1974: 141) confirms that if a member of the community disobeys the law and commits a serious crime such a member can be punished or even expelled from the community. “If it happens that the man inhabited by a [incarnated] soul becomes evil – he becomes a thief, a murderer, and even worse, the laws of our fathers say we must kill such a man, kill him so that the soul also may be destroyed”⁷⁵² (Mutwa, 1998: 567). Any community members who “observe non-compliance with the law” must either stop the crime, or report it to the community. This collective responsibility to abide by the law implies that anyone who does not prevent or report a crime incurs responsibility for another who breaks the law. The most common offences in the tribe are the breaking of taboos and ritual impurities (Nyirongo, 1997: 61). Ritual impurities or taboos include, for example, a case where a baby cuts his front teeth first, a

⁷⁵² Fire and murder destroy the *ena*. Mutwa (1998: 629; 632) discloses that “the soul of a murdered man does not re-incarnate and proceed with following stages of development, but roams the land of Forever-Night, weeping for revenge. It is believed the *ena* of a murdered man dies, and this is really fatal. As the strength of a tribe lies in the strength of its *enas* ... But destroying even criminals by fire is greatly frowned upon by most tribes, because it is believed that burning a person to death not only destroys the body, but also the *ena* and the soul – fire itself being a ‘spirit’ and capable of dissolving other kinds of spirits”.

women grows a beard, etc. According to Nyirongo, the breaking of taboos disturbs the peace between the community and ancestors. The punishment for either breaking laws or ritual impurities includes growing thin, sickness, childlessness, an accident, sudden death or other misfortunes (Nyirongo, 1997: 61). Unless the guilty person makes an offering or sacrifice to the ancestors the misfortunes will continue.

Because philosophy of law and therefore law itself is part of philosophy, the concept of law in traditional African societies differs from the concept of law in Western societies. Whereas Western legal systems recognise and protect the rights and liberties of individuals, African law recognises neither individual rights nor liberties. African law recognises primarily group rights of the community. The idea of individual rights is foreign to *ubuntu*.⁷⁵³ In M'baye's (1974: 138) words: "the individual plays a relatively subordinate role. Very often the members of the groups, as individuals, are only users of collective rights belonging to the family, lineage, clan, tribe or ethnic group as a whole". Whether African law would only consider a person's rights is solely dependent upon his position within the group (M'Baye, 1974: 143). Individual rights in the African community can only be justified in terms of the rights of the community. The idea of "law as rights and liberties of each individual, as opposed to the group, and insofar as in Africa the individual, absorbed by the archetype of the totem, the common ancestor or the protecting genie, is indistinguishable from the group, the natural conclusion is that the rules governing social behaviour in traditional African societies are the very negation of law" (M'Baye, 1974: 138). Contrary to Western rights and liberties, African law gives priority to duties. "In the African understanding priority is given to duties which individuals owe to collectivity, and their rights, whatever these may be, are seen as secondary to the exercise of their duties. In the West on the other hand, we find a construal of things in which certain specific rights of individuals are seen as antecedent to the organisation of society, with the

⁷⁵³ M'Baye (1974: 138-139) states that Africans in traditional societies are not aware of their individual rights. "[T]hey are unaware of law as a weapon placed in the individual's hand to defend himself". According to M'Baye, traditional people fail to understand European justice.

function of government viewed, consequently, as being the protection and defence of these individual rights” (Menkiti, 1979: 167).

In contrast with South Africa’s Western legal system, *ubuntu* law is community-oriented, based on traditions and customs, and resolves disputes through mediation. The ultimate goal of *ubuntu* justice is to restore win-win situations of peace between individuals in the community. According to Ramose (2002{b}: 95), a debt or feud in the African community is never extinguished until the equilibrium has been restored, even if several generations elapse. “*Molato ga o bole* is, therefore, an *ubuntu* legal philosophical principle seeking the restoration of disturbed equilibrium regardless of the time when the disturbance occurred” (Ramose, 2002{b}: 95). Our Western legal system⁷⁵⁴ is individualistically oriented and settles disputes with litigation. Western justice results in win-lose situations for litigants and may even result in imprisonment.⁷⁵⁵ Because rights in Africa belong to the group and not the individual, duties are devolved to the individual to uphold the interests of the community. Chapter Two of the African (Banjul) Charter on Human and People’s Rights, 1986, specifies the African individual’s duties to the family, society and African international community in art 27(1). Articles 28-29 spell out and emphasise the individual’s duty: to respect his fellow beings; to work for the cohesion of the family; to respect parents at all times and maintain them in case of need; to place their physical and intellectual abilities at the service of the community; to preserve social and national solidarity; to pay taxes and to preserve and strengthen positive African cultural values. Because

⁷⁵⁴ The Western rule ‘ignorance of the law is no excuse’ does not find application in African law (M’Baye, 1974: 148). According to Ramose (2002{b}: 95), Africans do not view judicial decisions as authoritative. “They must always be able to be called into question”.

⁷⁵⁵ According to Bhengu (2006: 133), prison is not a good place for Africans for “when you have been imprisoned, you are seen as taboo and you need to be cleansed. To us Africans, a prison ... is regarded as a taboo, and once you go there, you are regarded as someone without Ubuntu, and that is why if someone comes out of prison, we say: *Zigeze ukuze ukhiphe ubumnyama* (traditionally cleanse yourself of the dark seriti (shadow). When this has happened, the community would then re-accept you as one of them, other than that, the community would discard you as an outcast”.

African law mainly regulates relationships between individuals and not between individuals and the state, it functions as family law and law of succession.⁷⁵⁶

As seen in Chapters Two and Three, traditional African philosophy, or *ubuntu*, is internationally regarded as a pre-scientific, mystic philosophy. *Ubuntu* law is summed up by M'Baye (1974: 138) as follows: "the natural conclusion is that the rules governing social behaviour in traditional African societies are the very negation of [Western] law". For example, whilst virginity testing⁷⁵⁷ of young girls (and boys) is viewed as essential in traditional African reality, it is viewed as a violation of the individual's human rights to privacy and dignity in Western jurisprudence. Western law, based on fundamental human rights, equality and human dignity seems to clash with traditional Africa's philosophy of *ubuntu*.

4.11.5 Ubuntu and the Constitution

South Africa's post-apartheid Constitution obtained international political legitimacy because it is founded on Western jurisprudence and its accompanying value system and because the Bill of Rights underpins its democracy. The 1996 Constitution functions as South Africa's supreme law. Because the Constitution includes the Bill of Rights it provides a general norm which influences all sources of South African law. As a source of law, African customary law or indigenous law has to be in line with the South African Constitution. Furthermore, section 39(2) of the Constitution stipulates that, in the interpretation of any legislation and the development of the common law and customary law, the court must promote the spirit, purport and objectives of the Bill of Rights.

⁷⁵⁶ Land can never be inherited in traditional African communities as it is seen as the abode of the ancestors. "The most important agricultural ritual celebration of all is the marking of the first fruits of the harvest and the New Year. The festival celebrating the first fruits lasts from one to two weeks and offerings of yams, poultry, meat and drink are made to the ancestors and divinities. This is a time of ritual, purification from any defilement of the land and community by evil spirits" (Bhengu, 2006: 12).

⁷⁵⁷ Virginity testing is widespread in Africa. Mutwa (1998: 634) emphasises the importance of virginity testing in Zulu culture. "It was the custom that every year, in every district, all the girls not yet allowed to marry and who belong to the 'Virgin regiment', were taken to a panel of the eldest women of the tribe, or to the wives of the chief, to have their virginity confirmed".

But how does one get *ubuntu* law in line with the Constitution?⁷⁵⁸ How flexible are *ubuntu's* “immemorial rules born of an uninterruptedly followed practice ... if its African legislature is invisible?” (M'Baye, 1974: 140-141). How does one align norms and values derived from the ancestors (Khapoya, 1994: 49) with Western legal norms and universal values derived from international Human Rights mechanisms? More perplexing is the fact that both M'Baye (1974: 139) and Bhengu (2006: 129) maintain that *ubuntu* law accords no importance to individual rights⁷⁵⁹, as the concept of human rights is foreign to Africa and its indigenous cultures. Bhengu (2006: 129) posits that “[t]he concept of human rights⁷⁶⁰ as natural, inherent, inalienable rights held by virtue of the fact that one is born a human being, remains a creation of Western civilisation and is foreign to indigenous law. In indigenous society rights are assigned on the basis of communal membership, family, status or achievement. Ubuntu philosophy comes in here”.

Bhengu argues that the Bill of Rights was framed from a distinct Western perspective and that this foreign culture has now been thrust upon indigenous African cultures through the process of colonisation. According to Bhengu, the Bill of Rights has given new impetus to the debate surrounding the compatibility of indigenous law with Western perceptions of human rights. In his argument,

⁷⁵⁸ According to Bhengu (2006: 138), *ubuntu* ethics prohibit abortion and passive euthanasia. In *Clarke v Hurst* 1992 (4) SA 630 (D), Judge Thirion created a precedent by allowing passive euthanasia. In 1997 the Law Commission recommended that this position should be confirmed in legislation. Ramose (2002{b}: 80) argues that the right to life is paramount to both the traditional African doctor and his patient. According to Ramose, in African law, neither the doctor nor the relatives have the right to give permission to end the patient's life. Twins and witches however do not seem to have a right to life. In certain African cultures one or both twins will be killed, whilst in other cultures both the mother and twins will be killed because witchcraft is suspected (Mbiti, 1991: 95). In cultures such as that of Benin, twins are considered sacred. Witches, generally women, are hunted and killed by the community (Holland, 2001).

⁷⁵⁹ Bhengu (2006: 130) posits that “if the indigenous spirit of Ubuntu was to temper the Western concept of absolute individual freedom, protection of human rights in Western society might move away from the formal technical weighing of individual claims and the objectification of human beings; and Western individuals might no longer experience the radical isolation they often do, despite the conscientious protection of human rights in their society”.

⁷⁶⁰ African human rights “do not exist as an integral part of human nature. They arise from a person's destiny of living in a relationship with family, friends, ethno-linguistic groups, and nation. They are incidental, unavoidable, and necessary, but not an attribute of human being. No rights can be exercised apart from one's relationship with another” (Zvobgo cited in Ramose, 2002{b}: 112).

Bhengu (2006: 131) draws a clear distinction between “indigenous law *for* indigenous people and indigenous law *of* indigenous people.”⁷⁶¹ Indigenous law as incorporated in legislation and applied by the state courts is valid, irrespective of the support of the indigenous people from whom it supposedly originated”. In spite of the fact that the Constitution is supposed to bring justice to traditional African people in South Africa, neither the Constitution nor “indigenous law *for* the people” necessarily reflects African jurisprudence. The unpopular questions then are: Does South Africa’s Western Constitution embody law and justice for the majority of South Africans living according to *ubuntu* principles, and how does one fuse human rights with group rights?

In an effort to balance Western and African jurisprudence, Judges Hlope and Mokgoro are looking for a new approach to South African jurisprudence. Hlope (cited in Bhengu, 2006: 129-130) is currently working on a project to Africanise South African law⁷⁶², and states his approach to law as follows:

Everyone has the right to use the language and participate in the cultural life of their choice ... In section 38 the Constitution provides that anyone can approach the court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant relief, including a declaration of rights ... despite this Constitutional provision, however, very little has been done by the courts in this country to develop African law in line with the Constitutional imperative. Section 39(2) of the Constitution also provides that “[w]hen interpreting any legislation, and when developing the common or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

It became evident in Chapter Two that Western philosophy discriminates against African values in conflict with its own. “The colonisers persecuted indigenous

⁷⁶¹ Indigenous law *for* the people signifies the codified version of indigenous law as documented by Europeans, whilst indigenous law *of* the people represents the oral and true version of the law of the indigenous people of Africa.

⁷⁶² According to Hlope (cited in Bhengu, 2006: 124-130), the judiciary system in South Africa has to be reformed to achieve the objectives and aspirations of the African renaissance. Currently 90% of people who appear in the lower courts are black, yet the judiciary is 66% white and 34% black.

African people for practising their own culture, for instance, they advocated that the African custom of *ilibola*⁷⁶³ and the practice of polygamy, which had been practised for centuries, should be abolished” (Hlope, cited in Bhengu, 2006: 128). According to Hlope (cited in Bhengu, 2006: 128), “Africans had no choice but to obey the White man, because Europeans did not tolerate any values in conflict with their own. *Ubuntu* laws and values were and are regarded as backward and “irreconcilable with civilisation”. This superior-inferior relationship is not just based on racial prejudice, as suggested, but on two diverging worldviews.

Western and African notions of values, law and justice juxtapose each other. Ramose (2002{b): 81) argues that the contrasting views of Western and African law originated because the “legal subject is ineliminable from the vocabulary of law”. Ramose maintains that, whilst the legal subject in Western jurisprudence represents an abstract concept, African jurisprudence comprehends the legal subject as a concrete living and lived experience. As in the case of values, “language in law is indispensable to the indelible inscription of the legal subject into the vocabulary of law” (Ramose, 2002{b): 81). Ramose compares the opposing meanings of the term “legal subject” to both Western and African jurisprudence and concludes that “whereas the Western legal subject is obliged to live *in* or *within* the law, the African legal subject by contrast, submits to the imperative *to live the law*” (Ramose, 2002{b); 93).

Western legal subjects living within Western law are guaranteed fundamental human rights. In contrast, African legal subjects living under *ubuntu* law are not guaranteed fundamental human rights, but group rights. Whilst Western jurisprudence guarantees *all* individual rights and liberties, Turaki (1997: 68) posits that *ubuntu* group rights pertain to the group only and that *ubuntu* jurisprudence does not protect individual rights outside of the group. Because human rights are not paramount in African reality the community tolerates

⁷⁶³ Lobola is the African custom whereby the bridegroom and his family give a bridesgift to the bride’s family. Traditionally the bridesgift was paid in cattle, but nowadays money is permitted. The size of the bridesgift is influenced by many factors, such as the status of the bride as well as her level of education.

violation of human rights (Mqoke, 1996: 365), for example the killing of witches, twins, strangers or outsiders. According to Turaki (1997: 68),

What is right and wrong can only be committed against a member of the own ethnic group, race or tribe, but not against a stranger or an outsider. An outsider has no rights or protection and anything done to him has no moral or ethical value. It is an insider who has rights, privileges and protection under racial and tribal laws. Thus killing or discriminating against an outsider is not a crime.

Bhengu, Hlope, Mokgoro and others lobby for the protection, preservation and nurturing of indigenous or *ubuntu* law so as to preserve the sacred African heritage, beliefs and values. Whilst the Constitution dictates that indigenous law must be in line with the Constitution, Bhengu (2006: 131) maintains that the time has come for our legal system [Constitution] to be in line with indigenous values: to “embrace Ubuntu values”. “If the humanity, if the quality of life, is to advance further, the natural law basis for human society must change once again – to a social order where instead of proceeding from the presupposition of the sovereignty of the individual, we proceed from one concerning the value of social solidarity” (Bhengu, 2006: 132).

4.11.6 Religious Philosophies and the Constitution

The South African Constitution guarantees freedom of religion, belief and opinion. Whilst section 15(1) of the Constitution guarantees everyone the right to freedom of conscience, religion, thought, belief and opinion, section 15(3)(b) states that recognition in terms of paragraph 15(3)(a) must be consistent with this section and the other provisions of the Constitution.

African sources confirm that it is impossible to separate *ubuntu* from African Religion. “[U]muntu cannot attain ubuntu without the intervention of the living dead” (Ramose, 2002{b}: 51). There is no *ubuntu* without the intervention of the African spirit world, as illustrated by Mbigi in 4.8.1. Without the “three interrelated

dimensions” (Ramose, 2002{b}: 50-51) or “inseparable trinity” (Ramose, 2002{b}: 122) *Ubuntu*’s ancient philosophy of life cannot be sustained.

Ubuntu is the common spiritual ideal by which all sub-Sahara Africans live in indigenous societies (Khanyile cited in Broodryk, 2005: 14). Khapoya (1994: 49) and Mbiti (1991: 179) maintain *ubuntu*’s values and norms are derived from African Religion and handed down by the ancestors. According to M’Baye (1974: 141), Khapoya (1994: 49), Turaki (1997: 66) and Mutwa (1998: 78) the living dead or ancestors are the legislators who lay down the laws in *ubuntu* reality. The living dead are also closely involved with the administration of *ubuntu* justice. Ramose (2002{b}: 93) argues that “[j]ustice as equilibrium in *ubuntu* legal philosophy means the perpetual exchange and sharing of the forces of life”. The ancestors play an essential role in tribal courts, dispute resolution, divorces, mediation and the punishment of offenders.⁷⁶⁴ Whilst Mbiti (1991), M’baye (1974), Somé (1997), Mutwa (1998), Ramose (2002{b}: 97; 2002{c}: 643) and Mazrui (2002: 14) maintain that African Religion defines the collective African worldview, Mbiti (1991: 29-30) and Mutwa (1998: 560) confirm that African Religion dictates all aspects of traditional African life. Mbiti (1991: 2-3; 5), Wiredu (2002: 20) and Mokititi (1998: 68) maintain *ubuntu* and African Religion are inseparable.

Is *ubuntu* a moral or religious philosophy? Oruka (2002{b}: 59) defines African morality as “a set of rules for the living and the dead” and Oduyoye (2002: 25) states that “morality binds the living and the dead”. Oduyoye (2001: 250) maintains: “We are dealing with a religious based culture ... The traditional way of life is closely bound up with religion and religious beliefs ... African Religion provides a holistic view on life”. These sources confirm the words of Kenyatta (1968: 316) when he states that African Religion integrates every aspect of African life in indigenous societies. Ethophilosophers⁷⁶⁵ too maintain that *ubuntu*

⁷⁶⁴ See 4.10.

⁷⁶⁵ See 3.3.1.

represents a religious philosophy. It is evident that “the distinction between the natural and supernatural does not exist ... the distinction between the material and the spiritual has no place in African thinking” (Teffo et al., 2002: 167-168).

Ubuntu is not a “moral philosophy” as suggested by South African courts but a religious philosophy (M’Baye, 1974: 141; 149). Whilst a moral philosophy regulates the horizontal relationships between “being and being” or human beings only, a religious philosophy regulates the vertical relationship between “beings and Being” or human beings and spiritual Beings. Teffo et al. (2002: 168) states:

[T]he deceased [ancestors] assist the living sections of their families, and provide and exercise moral leadership among them. The ancestors thus have to do with group solidarity and tradition and in this way help to guarantee moral consistency.

As *ubuntu* philosophy serves as a blueprint to the extended family or “inseparable trinity”, it regulates the relationships between the living, the living dead and the yet to come in indigenous African societies. Every facet of African reality is regulated by *ubuntu*’s religious philosophy of life of which “ancestors form the core” (Ramose, 2002{b}: 122). There is no *ubuntu* without the intervention of the living dead (Ramose, 2002{b}: 51).

The fact that *ubuntu* is not a moral philosophy but a religious philosophy, poses a dilemma to South African courts. In *Christian Education South Africa v Minister of Education* an appeal was lodged from a Local Division of the High Court. The court had to answer the question whether the South African Schools Act 84 of 1996, wherein corporal punishment in schools was prohibited, violated the rights of parents of children at independent Christian schools. The appellant contended that corporal correction was an integral part of the Christian ethos and that the blanket prohibition of corporal punishment invaded individual, parental and

community rights to practise religion freely.⁷⁶⁶ The Constitutional Court held that inasmuch as the outlawing of corporal punishment limited the Christian right to religious freedom, the limitation was reasonable and justifiable in an open and democratic society.

In *Prince v President of the Law Society, Cape of Good Hope and Others*⁷⁶⁷ the Law Society refused to admit Prince, a Rastafarian, as an attorney, because Prince had twice been found guilty of using dagga. The Law Society refused Prince's application because they did not regard him as a fit and proper person in terms of the Attorney's Act 53 of 1979. Although the use and possession of dagga is a criminal offence in terms of sec. 4(b) of the Drugs and Trafficking Act 140 of 1992, the use of dagga is central to the Rastafarian religion. The Court's judgment emphasised that although Prince's constitutional right to freedom of religion was infringed, the infringement was reasonable and justifiable in terms of sec. 36 of the Constitution.

Like *ubuntu*, Christianity, Rastafarianism, Islam and other religions represent religious philosophies, each characterised by its unique value system. In both these judgments, as in numerous others, the courts contended that although the Constitution guarantees the right to religious freedom, these rights may be limited in terms of sec. 36 of the Constitution, provided the limitation is reasonable and justifiable. Whilst the Bill of Rights limits Christian, Rastafarian and other religions and their accompanying value systems *ubuntu* gets the right of way whilst being disguised by the "heavy *kaross* of mystery" (Mutwa, 1998) as a "moral philosophy". What is, however, evident from under the *kaross* is that *ubuntu* is inseparable from African Religion. Whilst the Constitution proclaims all religions equal, it must be noted that *ubuntu's* religious philosophy is treated more equal than others.

⁷⁶⁶ 2000 (4) SA 757 (CC).

⁷⁶⁷ 1998 (8) BCLR 976 (C).

Before we end up like the old symbol of time and life, depicted in Africa as a mamba or python biting its tail, let's leave the male voices of Africa, as represented in Chapters Two, Three and Four. There have been many allegations that *ubuntu* oppresses and marginalises African women. Imbo (1998: 68), to name but one, alleges that African women suffer from *ubuntu's* patriarchal and male dominated society.⁷⁶⁸ It is postmodernity: it is time to hear the voices of the female Other. African feminists are in revolt: there is a rebellion stirring under the *kaross*.

4.12 THE VOICES OF THE FEMALE OTHER⁷⁶⁹

Bhengu (2006: 38) stresses that if a nation lives by the principles of *ubuntu*, there is no discrimination. African feminists, however, oppose this male view of *ubuntu* and reveal that *ubuntu* represents an oppressive reality: a philosophy entrenched in inequality and disregard for the dignity of African women. *Ubuntu* has two sides to its reality: a male view that endeavours to perpetuate *ubuntu's* ancient hierarchical, patriarchal values at all costs, and a female truth that aspires to bring *ubuntu's* patriarchal values in line with international notions of equality and human dignity.

African feminism, like Western feminism, is wrongly stereotyped as a philosophy propounding "the hatred of men, penis envy, the non-acceptance of African traditions, the fundamental rejection of marriage and motherhood, the favouring of lesbian love and the endeavour to invert the relationship of the genders"⁷⁷⁰

⁷⁶⁸Feminists generally critique ethnophilosophy and its accompanying traditional belief system of oppressing and marginalising women.

⁷⁶⁹ This synopsis of African feminism does not do justice to the volumes of texts by African women who cry out against the violation of African women's human rights under the oppressive philosophy of *ubuntu*. The purpose of 4.12 is merely to sensitise the reader to the truth.

⁷⁷⁰ Chinweizu (cited in Arndt, 2002: 28), a well known male African scholar and theorist of decolonisation says the following about African feminism: "Feminism is a movement of bored matriarchs, frustrated tomboys and natural termagants; each of these types has its reason for being discontented in the matriarchist paradise that is women's traditional world ... feminism is a revolt in paradise; and the feminist rebels jeopardize the ancient matriarchist privileges of women".

(Arndt, 2002 : 27). African feminists are criticised for enhancing Western values, equality and human rights.⁷⁷¹ They are perceived as Westernised African women, cultural traitors corrupted by Western values who work against African culture and traditions. In African reality, African feminism is a “positive, movement-based term, with which I am happy to be identified”, says Mama (2001: 59). “It signals refusal of oppression, and a commitment to struggling for women’s liberation from all forms of oppression – internal, external, psychological and emotional, socio-economic, political and philosophical”.

African feminism is also known as Womanism (Walker), Africana Womanism (Hudson-Weems), Motherism (Acholonu), Stiwanism (Ogundipe-Leslie) and Negofeminism (Nnaemake).⁷⁷² Ogunyemi (Arndt, 2002: 39) describes African womanism as “a belief in the freedom and independence of women like [Western] feminism”. Ogunyemi (Arndt, 2002: 39) posits that whilst Western feminism and African womanism share common goals of eradicating patriarchy, womanism “recognize[s] that, along with their consciousness of sexual issues, she must incorporate racial, cultural, national, economic and political considerations into her philosophy”.⁷⁷³ Unlike Western feminism, African feminists⁷⁷⁴ do not regard African men as the enemy. African feminists

⁷⁷¹ In African societies women have many duties but few rights. Whilst African feminists are concerned about women’s rights to equality and self-determination, the administration of justice, discrimination and oppression of women in FGM, marriage of girls at a young age, polygyny, lobola, or the bride price and inheritance laws, they distance themselves from lesbianism. In contrast to Western feminism, Kolawole (cited in Arndt, 2002: 52) says: “African lesbianism is a non-existent issue because it is a mode of self expression that is completely strange to our worldview”.

⁷⁷² Womanism, see Walker A. 1983. *In Search of Our Mothers’ Gardens: Womanist Prose*. New York: Harcourt Brace Jovanovich; Kolawale, M.M. 1997. *Womanism and African Consciousness*. Trenton, NJ: African World Press; Ogunyemi, C’O. 1985/1986. *Womanism: The Dymanis of the Contemporary Black Female Novel in English*. *Signs*: (11): 63-80 ; Africana Womanism see Hudson-Weems, C. 1993. *Africana Womanism*. MI: Bedford Publishers; Motherism see Acholonu, C O. 1995. *Motherism: the Afrocentric Alternative to Feminism*. Nigeria: Afa Publications; Stiwanism see Ogundipe-Leslie, M. 1994. *Re-Creating Ourselves. African Women and Critical Transformations*. NJ: African World Press; Negofeminism see Nnaemeka, O. 1995. *Feminism, Rebellious Women and Cultural Boundaries; Rereading Flora Nwapa and Her Compatriots*. In *Research in African Literatures* 26(2) 80-113 (Arndt 2002: 14-15). See also Reed (2001).

⁷⁷³ See Wilkinson (2002: 343-360) who claims feminist sisterhood is a myth. Wilkinson highlights the difference and conflicts between Western feminism and African feminism. See also Oyewumi’s *African Women & Feminism: Reflecting on the Politics of Sisterhood*.

⁷⁷⁴ Radical African feminists single African men out as the prime oppressors of women.

experience traditional Africa's entrenched patriarchal philosophy as the oppressor.

African women are not only victims of gender inequality and gender based violence against women⁷⁷⁵ in patriarchal social structures but also of colonialism, neo-colonialism, apartheid and religious fundamentalism. African feminism incorporates all of the above factors in its feminist philosophy. African feminism is "the proclamation that women's experiences should become an integral part of what goes into the definition of 'being human' " (Oduyoye, 1982: 193). African feminists distinguish themselves from Western feminists⁷⁷⁶ and African American feminists. With regard to Africa, "feminist scholarship in the main has not provided any serious departures from the 'Othering' of Africa which has characterised writings on Africa" (Oyewumi, 2003: 26). Like African philosophers, African feminists exclude all women, except African women, from African feminism.

Universal feminism, or sisterhood, is a myth. African feminists are adamant that they are not powerless; they can articulate their needs; they are able to determine the changes needed in their societies and they possess the means to construct these changes (Okome, 2003: 67). Okome states that African feminists do not need Western feminism to "replicate the missionary evangelism exhibited by the seventeenth-, eighteenth-and nineteenth-century colonialists, missionaries, anthropologists, and sundry adventurers when they explored, brutally pacified, Christianised, and colonised Africa". According to Okome, "it

⁷⁷⁵ The UN defines violence against women broadly as "any act of gender based-violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life". It includes FMG and rape. See www.un.org/womenwatch/daw/beijing/platform/violence.htm. UNICEF describes violence against women as "one of the most pervasive of human rights violations, denying women and girls equality, security, dignity, self-worth and their right to enjoy fundamental freedoms". See Domestic violence against Women and Girls. *Innocenti Digest*. UNICEF. 2000, 6: 2.

⁷⁷⁶ Taiwo (2003: 53) argues: "Western feminists stand in a relation to women and men of Africa in exactly the same manner as their male counterparts do. There is no doubt that at the worst of times, feminism is an aspect of the imperialism of culture. In exactly the same way as Christian missionaries defined our foreparents as pagans before forcing them to become children of God, feminists demonise African men in the name of saving African women".

was the Westerner who portrayed Africa as a dark continent and Africans as the exotic antithesis of the enlightened Westerner, which remains pervasive in contemporary Western thought". She posits (2003: 72) it is not the duty of the enlightened European to help these poor Africans to help themselves.

African feminism is not only defined in terms of gender, but predominately in terms of African women's struggle against cultural inequality and oppression. Kolawole (cited in Arndt, 2002: 51-52) defines African feminism as follows: "Any African woman who has the consciousness to situate the struggle within African cultural realities by working for a total and robust self-retrieval of the African woman is an African feminist⁷⁷⁷ or Africana womanist". Steady (cited in Reed, 2001: 170) defines African feminism as follows: "African feminism combines racial, sexual, class and cultural dimensions of oppression to produce a more inclusive brand of feminism through which women are viewed first and foremost as human, rather than sexual beings. It can be defined as that ideology which encompasses freedom from oppression based on the political, economic, social and cultural manifestations of racial, cultural, sexual and class biases". Steady perceives African feminism as a humanistic feminism which can be perceived as a moral and political statement for human survival and well-being. Steady distinguishes between mainstream feminism and African feminism and asserts that "any woman who rejects the label 'feminist' is weak, mindless and attempting to curry favour with men".

African feminism, in contrast with Western feminism, is not reactive and based on sexual identity, but proactive and based on a lived experience of the African worldview. In contrast with Western feminism, African feminism firstly does not emphasise individual female autonomy, but strives for public participation and

⁷⁷⁷ The womanist, Emecheta (cited in Arndt, 2002: 66), says: "I will not be called a feminist *here*, because it is European. It is as simple as that, I just resent that. Otherwise, if you look at everything I do, it is what feminists do, too: but it is just that it comes from Europe, or European women and I don't like being defined by them. But in almost everything, except perhaps the question of family, my books have the same ideas as they do. It is just that it comes from outside, and I don't like people dictating to me". Wicomb, El Saadawi, Adimora-Ezeigbo, Busia, Aidoo, Mutoni, Head and others do not mind being labelled feminists.

joint decision-making by women. Secondly, African women do not view the African male as the Other, but as part of the African whole. African feminism is categorised as either reformist, transformative or radical African feminism.⁷⁷⁸

African feminists from all over Africa speak out against *ubuntu's* oppressive⁷⁷⁹ patriarchal⁷⁸⁰ tradition. So deep-seated is patriarchy in African societies that women, according to Imbo (1999: 138), are not even allowed to be considered philosophical. African feminists attest to women's experience of oppression by men in their societies. Women play a central but inferior role in these societies.⁷⁸¹ Dolphyne (cited in Oduyoye, 2001: 14) explains that African women in Dakar have had enough of the discriminating practices of this ancient religious philosophy. They initiated the Dakar Declaration which states the following: "[A]spects of our culture which discriminate, restrict and devalue women's physical, psychological and political development must be eliminated".⁷⁸² The Circle of Concerned African Women Theologians was inaugurated in 1989 to facilitate research and publications by the pan-African network of women who are concerned about the impact of African Religion and culture on African women (Oduyoye, 2001: 10).

Patriarchy is the institutionalised social hierarchy in traditional African societies whereby the extended family grants males authority and power over women. Akatsa-Bukati (2005: 6) defines patriarchy as "the organisation of social life and institutional structures in which men have ultimate control over most aspects of

⁷⁷⁸ Reformatist feminism negotiates with patriarchal societies to eradicate discrimination against women and suggest alternatives to bring about change. Transformative feminism puts forward a fundamental critique of patriarchal social structures and sharply criticises discriminatory behaviour by men. Radical African feminism argues that men discriminate, oppress and mistreat women on principle (Arndt, 2002: 83-85).

⁷⁷⁹ Dangarembga (cited in Stewart, 2005: 173) "The victimisation, I saw, was universal. It didn't depend on poverty, on lack of education or on tradition. It didn't depend on any of the things I had thought it depended on. Men took it everywhere with them ... Femaleness as opposed and inferior to maleness".

⁷⁸⁰ According to Ramodibe (1990: 44), these patriarchal systems "existed even before whites came with their Western capitalistic culture".

⁷⁸¹ Okome (2003: 85) posits that the codification of native law and custom also privileged male over female sources of knowledge.

⁷⁸² The following African feminist writers depict the typical lives of African women: Ama Ata Aidoo; Mariama Ba; Awa Thiam; Flora Nwapa; Buchi Emecheta; Nawal El Saadawi and Felicia Eke Juiba.

women's lives and actions". Ogundipe-leslie (1994: 125-129) posits that it is through marriage that African women become the property of the man's lineage and loses all rights and human dignity.

For married women, gender-based violence such as marital rape⁷⁸³, wife beating⁷⁸⁴ (also called "correction"), and polygamy or polygyny, is the order of the day (Aidoo, 1991). Hegemonic masculinity utilises violence to control female behaviour to ensure chastity, abstinence or copulation (Makinwa-Adebusoye & Tiemoko, 2007: 13). Makinwa-Adebusoye & Tiemoko (2007: 7) maintain the denial of sexual violence in Africa "is part of patriarchal power and socio-cultural norms reinforced by religious beliefs and injunctions to suppress, in particular, girls and women from the free expression of their sexuality. This is why we still see forms of their repression in such practices as virginity testing for girls, female genital mutilation, widowhood rites and wife inheritance, still practiced in African communities". Women's safety from violence is, however, not a privilege, it is a human right. Head (cited in Arndt, 2002: 138) criticises Africa's social structures sharply and laments that African women have to comply with and obey rules, without thought. She criticises the laws of the ancestors as follows:

[W]hen the laws of the ancestors are examined, they appear on the whole to be vast, external disciplines for the good of the society as a whole, with little attention given to individual preferences and needs. The ancestors made so many errors and one of the most bitter-makings was that they relegated to men a superior position in the tribe, while women were regarded, in a congenital sense, as being an inferior form of human life. To this day, women still suffer from all the calamities that befall an inferior form of human life".

⁷⁸³ Section 5 of the Prevention of Family Violence Act 113 of 1993, South Africa, provides that a man can be found guilty of raping his spouse.

⁷⁸⁴ Chigudu (cited in Stewart, 2005: 197) says as follows: "Wife battering and circumcision are violations of human rights but very few people want to declare them violations of human rights; if you are beaten you are both physically and psychologically abused, yet it is not considered an abuse of human rights! These issues should be looked at as political issues not cultural issues. If we continue viewing them as cultural issues people will say they cannot intervene in our culture and we will continue being oppressed".

The social status of women, as well as their culturally prescribed roles, affects their economic participation. Oduyoye (1989: 443) states that all socio-political and economic participation are governed by religious beliefs embedded in Africa Religion and that the way society structures women's sexuality has a direct impact on economic injustice⁷⁸⁵ against women. Oduyoye advocates for rights to inheritance⁷⁸⁶ and social power to enable women to enter into economic activities rather than making pots, weaving and producing food for the family. Terry (2007: 116) finds traditional African women in sub-Saharan Africa "amongst the most disadvantaged social groups on earth". African feminists in general lament the focus of Western feminists on only the religious oppression of African women, polygamy and FGM⁷⁸⁷ without paying equal attention to their immense suffering under *ubuntu's* economic injustices.

In the name of *ubuntu*, young girls are regularly married off to older men. According to Malera (2007: 134), polygamy encourages and reinforces early marriage of girls to older men.⁷⁸⁸ Akatsa-Bukachi (2005: 11) relates it to the fact that these girls lack formal education and fall into a category whose sexuality is used as a tool of oppression. According to Akatsa-Bukachi, these girls dutifully

⁷⁸⁵ Whilst the African Charter on Human and People's Rights protects civil and political, and socio-economic rights, there is a low rate of ratification by African states of the Covenant of Economic Social and Cultural Rights. The Charter unfortunately also has weak enforcement mechanisms.

⁷⁸⁶ The *BHE* case set a precedent which allows traditional African women in South Africa to inherit.

⁷⁸⁷ Oduyoye (2002: 14) refers to the "sensitive issue of female genital mutilation. Vibila Vuadi (Democratic Republic of the Congo) and Nyambura Njoroge (Kenya) have attested to the practice of female genital operations, or surgery, which by their stance should be called 'female genital mutilation'. This latter, abbreviated as FGM, would be the general stance of the women of The Circle, as they include the practice in their lists of "Violence against Women". African feminists viz. Okome (2003: 68) object to the name FGM because of "its overt assumption that African societies which practise these procedures deliberately set out to disfigure their women". Okome argues that if the intent of African feminists is to eliminate these practices, they must move away from sensationalism. Female genital mutilation is a deep-rooted cultural tradition which currently occurs in 25 African countries. It is practised as a coming-of-age ritual marking a girl's transition to womanhood. "Uncircumcised women are seen as undesirable and a threat to the social order. There is social pressure on girls' mothers and other female relatives to get girls circumcised. The practice violates women's sexual rights and can cause serious health complications, threatening their right to life". Despite the women's rights supplementary Protocol to the African Charter on Human and People's Rights which requires signatory governments to prohibit FGM, it is widespread. FGM is widely practised in Kenya despite Kenya's Children's Act of 2001 which prohibits FGM and the fact that Kenya signed the women's protocol to the African Charter (Terry, 2007: 48-50).

⁷⁸⁸ Packer (cited in Malera, 2007: 134) states that "for young girls the physiological risk of contracting HIV/AIDS is compounded by the fact that their underdeveloped bodies are easily damaged by sex owing to an immature cervix and low mucus production".

submit to fulfilling their traditional duties of sex, giving birth, washing, cleaning, cooking and obeying their husbands. The girls experience gender-based violence and are regularly “disciplined to get them in line for the submissive role carved out for traditional African women”. Akatsa-Bukachi emphasises that speaking out against these practices⁷⁸⁹ is perceived as “interference with age-old African practices”. Women who dare speak out against oppressive practices are labelled as radical feminists.

The goal of marriage in traditional Africa is to produce children. Children are essential to keep the “three interrelated dimensions” (Ramose, 2002{b}: 50-51) or African cycle of life unbroken. Reed (2002: 172-173) maintains that polygamy⁷⁹⁰ in Africa is grounded in *ubuntu*, which is derived from the ancient timeless, divine principle of Maat. The marriage system in traditional Africa assured that its people would live by the principle of Maat. “I am of the mindset that there must be some reasoning behind the practice of this form of marriage by our ancestors”. Sofala (cited in Reed, 2001: 173) believes that in the case of polygamy “the more man becomes an openly shared commodity, the less central he becomes in the woman’s life and the mother/child dynamic becomes the primary one”. African feminists who oppose polygamy include Muthone, Ogunyemi, Tiam, Ransome, Kuti and many, many others. African feminists such as Sofala, Chukukere, Wa Karanja and others view polygamy as a “concept of shared resources”. According to Malera (2007: 134), polygamy threatens women’s reproductive rights because it fuels the spread of STIs, including HIV/AIDS. “For women in these concurrent sexual networks, their vulnerability is further exacerbated due to their inability to negotiate and engage in safer sexual practices”.

⁷⁸⁹ Boof (cited in Stewart, 2005: 170) posits: “I continue to find black men, in general, to be hostile and non-supporting of any black woman who deems to stand up for herself and for other women and to be public with her politics and her life. Of course, they support these qualities in the white man’s mother, and will stand beside her and support her in everything she does ... but not me, an African woman”.

⁷⁹⁰ The word polygamy is generally substituted for the word polygyny in African feminist texts. Reed (2002: 172-173) argues that because polygamy represents a Greek word which has been imposed on African culture without African input, it should be replaced with the word “composite conjugality”.

Most values in traditional Africa are taught by means of narratives. In 3.3.1.4 Unigwe⁷⁹¹ argues that a different set of rules applies to women than to men. It seems, however, that a dual system of values also applies to the sexes regarding fidelity. In oral traditions values are taught by storytelling. According to Savory (cited by Broodryk, 2005: 17), the Matabele narrate the following story of the male trumpeter hornbill to teach the value of fidelity to girls. After the hornbill hen has laid her eggs the cock seals the entrance of the nest. “The male hornbill leaves only a small slit open through which he can pass food. The hen is imprisoned inside until the young birds are old enough to be fed from outside by both parents. The reason for the imprisonment of the hen is her previous unfaithfulness to her husband when she flirted with a young, handsome male, leaving the eggs all on their own. The objective of the story is to teach faithfulness to the woman”. Whilst women are taught the value of fidelity, an African expression (BBC: 2002) says: “African males are allowed to graze away from home”. In the 2002 BBC documentary, *The Dying Game*, Aids activist Lucky Mazibuko states that young African males are encouraged to “sow their royal oats as far as they can”. Whilst faithfulness is regarded as a prerequisite for a good woman⁷⁹², the same value seems not to apply to the African male⁷⁹³.

Oduyoye (2001: 93) maintains Africans are unanimous that hospitality⁷⁹⁴ is a “fundamental African value”. Hospitality is generally associated with reciprocity, openness and acceptance of others, but hospitality as a “fundamental African value” embodies far more than the Western value of hospitality. According to Oduyoye (2001: 101), *ubuntu* hospitality regulates female-male relationships,

⁷⁹¹ See footnote 306.

⁷⁹² See footnote 444 for an account of the killings of Zulu wives guilty of adultery.

⁷⁹³ Terry (2007: 137; 149) maintains there is a strong connection between women’s rights abuses and the HIV virus’s rapid spread in the sub-Saharan region where young women are the the worst-affected group. “[O]lder men believe they are entitled to have sex with dependent girls, with or without their consent, in the same way that they might ‘eat a groundnut from their farm’. Husbands also believe they are entitled to sex with their wives at any time, and to have sex outside marriage. For their part, girls are taught at puberty to acquiesce to men’s sexual demands.” Terry argues that this male viewpoint “runs counter to Zambian [and South African] legislation and government policies on women’s rights”.

⁷⁹⁴ Mbiti (1991: 176) states that there are morals concerned with hospitality to relatives, friends and strangers. According to him, it is a moral evil to deny these categories hospitality.

ignores the welfare of women and exploits their sexuality. The fundamental value of hospitality encompasses the following in *ubuntu* reality (Lala cited in Oduyoye, 2001: 101-102):

- Men who went to the same school of initiation can exchange wives.⁷⁹⁵
- Absent husbands may be replaced by friends appointed by them.
- Brothers, especially twins, can share the duties of being husband and wife.
- Sterile husbands may appoint surrogates to have children, and
- A healer may have sexual relations with his patient.

Moyo (cited in Oduyoye, 2001: 202) maintains that African chiefs offer male visitors women of honour to keep them company for the duration of their visit⁷⁹⁶, or to be taken away as wives. Oduyoye (2001: 103) argues that *ubuntu* hospitality is “incompatible with the dignity of women”. Oduyoye (2001: 104) maintains that African males “highly educated in the Western tradition, revert to African traditional norms when dealing with women”. She accuses “African male models of manhood” and “leaders of public opinion in African societies” of being the guilty ones who erode the human dignity of women. The *ubuntu* value of hospitality is unique and embodies much more than the universal Western value of *ubuntu*. As human dignity and equality are the basis of human rights, fundamental human rights in traditional Africa societies will not be respected whilst *ubuntu*’s philosophy of life permits the violations of women’s human dignity and rights to equality.

⁷⁹⁵ Lala (cited in Oduyoye, 2001: 103) states that in many villages there is a *femme du village*, a collective wife of a known group of men. This practice is called polyandry and not prostitution. “The men are not clients and do not remain anonymous. They are known and the relationship is approved. She [Lala] reminds us that both prostitution and celibacy as modes of expressing sexuality were unknown in Africa”.

⁷⁹⁶ Wamue (cited in Oduyoye, 2001: 102) reports that “among the Agikuyu this practice is euphemistically associated with making a bed for a guest ... the women, wife or daughter can refuse to make the bed and the guest can also decline the honour”.

African feminists criticise FGM and virginity testing as outdated and representative of traditional Africa's patriarchal religious nature. FMG is the partial or total removal of girls' external genitalia of which some forms of FMG are more severe than others. It is a widespread practice in Africa, of which the most radical form of FGM is called *infibulation* or pharaonic circumcision. *Infibulation* was practiced in ancient Egypt and was used to prevent women from having extramarital sex (Shell-Duncan and Hernlund, 2001: 4).⁷⁹⁷ This procedure leaves only a minimal opening for the passage of urine and menstrual blood. As indicated in 2.5.4.6.2, FMG is still a prerequisite for the transfer of bridewealth or *lobola* in certain traditional African societies. The supplementary protocol to the African Charter on Human and people's Rights prohibit this practice. Signatory governments to this protocol, viz. Kenya, have reverted to alternative rites of passage to combat FGM.

Feminists lay the blame on African traditionalists who want to retain patriarchal privileges by controlling women. Leclerc-Madlala (2000) and Rankhotha (2004: 87) outlaw virginity testing as weapons men use to enforce patriarchal masculinity over women.⁷⁹⁸ In the *City Press* (September, 2000: 2) Leclerc-Madlala found virginity testing consistent with patriarchal cultures' way of dealing with problems in South Africa: blaming the victim. Rankhotha (2004: 84) describes the importance of virginity testing in Zululand as follows: "Virginity until marriage was highly regarded in Zulu tradition. Virginity testing not only ensured that the groom and his family were satisfied with the bride but also that the girl's parents received the required head of cattle as *lobola*". A girl's genitals were according to Rankhota, referred to as *inkomo kamama ingquthu* or *umqholiso*; the eleventh cow. If the girl was "deflowered" or not a virgin, she brought shame on her family name and her parents would not receive the eleventh cow. "The revival of long-dormant rituals and virginity testing associated with them is seen,

⁷⁹⁷ See Shell-Duncan et al.'s *Female Circumcision in Africa* (2001).

⁷⁹⁸ Patriarchal masculinity is forced on women through physical violence and rape (Rankhotha, 2004: 87).

especially by African intellectuals⁷⁹⁹, as a feature of the African Renaissance, which broadly refers to the philosophy of reawakening and developing all that is essentially African⁸⁰⁰ (Rankhotha, 2004: 85). Rankhotha views virginity testing as the object of patriarchal irresponsibility and views it as a form of mental rape of African women. Virginity testing has been fiercely contested in South African public discourse. Virginity testing is said to curb teenage pregnancies, stem the rising tide of female HIV infections, and encourage pride in African heritage and indigenous cultural knowledge. African feminists are adamant that virginity testing⁸⁰¹ violates women's rights to privacy and bodily integrity. The struggles of African feminists to reclaim the bodies of women "from virginity-testers, rapists and abusers indicate that cracks in the structures of patriarchal femininity have begun to appear" (Rankhota, 2004: 85).

Whilst African feminists all over the continent criticise *ubuntu's* ancient philosophy of life for its oppression of women, its entrenched inequality, and violation of women's rights, Madala⁸⁰² and Mokgoro (1998{a}: 22) maintains: "These African values which manifest themselves in *ubuntu* are in consonance with the values of the Constitution generally and those of the Bill of Rights⁸⁰³ in particular". Madala, Mokgoro, Bhengu, Broodryk and Mbigi, propound *ubuntu* as

⁷⁹⁹ Although Africa has a long and unique tradition of female leaders as queens, chiefs and religious leaders, female leaders did not bring about an egalitarian or feminist society. Maerten (2004: 4) states that female African leaders gained their position because of their status as a member of a dynasty or clan and that the existence of female leaders did not imply equal rights for ordinary women. Ordinary women could only obtain equal rights and power once their productive years were over, or by obtaining leadership positions within their family units. According to Maerten, many female leaders guided African states, but once they bore children their husbands and sons overshadowed them.

⁸⁰⁰ In 1997 Andile Gumede revived the Zulu custom of public virginity testing as a practical way of reclaiming Africa's cultural practices.

⁸⁰¹ Although virginity testing was prohibited in Clause 12 of the Children's Bill of 2005, Chapter 12 (Social, cultural and religious practices) which deals with virginity testing is outstanding in the Children's Act of 38 of 2005.

⁸⁰² See *S v Makwanyane*.

⁸⁰³ See Muholi (2004: 116-124) for an account of hate crimes against African lesbians by African males. "Rape of black lesbians is a weapon used to discipline our erotic and sexual autonomy". Lesbians are murdered and gang raped to punish undisciplined lesbian behaviour and to reinforce male control over women. The Mail & Guardian (2008, May16-22: 32) reports that "the International Lesbian and Gay Association (ILGA) reports that 38 African countries still criminalise consensual same-sex activity between adults". The presidents of Zambia, Namibia, Zimbabwe, Uganda, Swaziland and Kenya has publicly discriminated against homosexuals and lesbians (Reddy, 2001: 83-87).

“Africa’s key to freedom and equality for all” ... universal values embodying “the spirit of human dignity, justice and equality. This is Ubuntu” (Bhengu, 2006: 8; 206).⁸⁰⁴ The Constitutional Court admits that the concept of *ubuntu* is deliberated in court without having research available at their disposal. It is imperative for the Court not only to research traditional African jurisprudence, but also to research *ubuntu* from a female point of view.

4.12.1 African Women call for Human Rights

Since 1948, The Universal Declaration of Human Rights affirms that every human being is entitled to fundamental human rights. Article 1 of the United Nations Charter states its purpose as the promotion and encouragement of human rights.⁸⁰⁵ The UN Charter has however, no enforcement machinery against the violation of female human rights unless human rights violations constitute a threat to international peace under Chapter VII. Whilst the Universal Declaration of Human Rights defines human rights as indivisible and inalienable, the oppression and exploitation of African women’s sexuality continues under the banner of *ubuntu*. It seems as if gender equality in Africa is nothing more than lip service on the part of policy makers.

In 1979 the United Nations adopted the Convention for the Elimination of Discrimination Against Women to eradicate discrimination against women. CEDAW came in force in 1981 and since then more than 170 countries have ratified it.⁸⁰⁶ States that ratified CEDAW committed themselves to the ending of discrimination against women. African countries ratified CEDAW, but made reservations with regard to the rights of women in marriage and the family. Article 16 of CEDAW addresses the private sphere and insists on equality within families; it also contains a provision against the private oppression of women.

⁸⁰⁴ Bhengu (1996{a}: 18) proclaims that “personal dignity is the most important principle of *ubuntu*”.

⁸⁰⁵ Human rights are underpinned by a framework of international treaties. Human rights are “part of a tradition that is often said to have its roots in the Enlightenment of eighteenth century Europe” (Terry, 2007: 26).

⁸⁰⁶ South Africa ratified CEDAW in 1995.

Because CEDAW allows for reservations, Art. 16 is heavily reserved. Reservations by African states uphold its entrenched patriarchy in African states and render CEDAW ineffective. Article 18 makes provision for CEDAW's monitoring Committee. State Parties can report human rights violations to CEDAW, but recommendations are unenforceable. In 1999 the General Assembly adopted the Optional Protocol to CEDAW which allows groups, NGOs or individual victims to challenge discriminatory state practices. Although the Optional Protocol allows no reservations, complainants must exhaust domestic remedies before the Committee will consider complaints.

Whilst the African Charter on Human and People's Rights protects civil and political and socio-economic rights, very few African states have ratified the Covenant on Economic and Cultural Rights.⁸⁰⁷ African women are primarily disadvantaged by social, cultural and religious rules which limit their access to economic resources and account for women's lack of human rights. "Gender inequality is one of the most pressing problems in contemporary Africa, because it is one of the major causes of the low status of women⁸⁰⁸ and the poverty characteristic of the majority of women" (Osei-Hwedie cited in Jacques & Lesetedi 2005: 154). The African Charter enshrines the principle of non-discrimination in art. 2 and calls on State Parties in art. 18 to eliminate all discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions. The African Charter does not only enforce certain duties towards family, parents, the state and the community but also infringes certain individual rights. The enforcement mechanisms of the African Charter are weak. Although the African Commission

⁸⁰⁷ Africa has the lowest adult female literacy rate in the world with 65% of the women over the age of 15 being illiterate compared to 40% of males (Osei-Hwedie cited in Jacques et al., 2005: 155).

⁸⁰⁸ "The low status of women is due to unequal access to power in the political, economic and legal realms, which is explained by a combination of factors including patriarchy, lack of economic resources, low political participation and lack of education. Of these, patriarchy remains the overarching obstacle to women's advancement and equality with males" (Osei-Hwedie cited in Jacques et al., 2005: 155).

on Human and People's Rights considers state reports and individual or NGO complaints, the African Court on Human and People's Rights⁸⁰⁹ is not yet sitting.

In 2005 the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa came into force. It is a concern of the Protocol that despite international mechanisms to eradicate discrimination against women, "women in Africa still continue to be victims of discrimination and harmful practices". Article 1(f) of the Protocol distinguishes between direct and indirect discrimination. Art. 1(j) defines violence against women as all acts which cause physical, sexual, psychological and economic harm. Art. 2 obliges State Parties⁸¹⁰ to include gender equality in their constitutions and other legislative instruments and to adopt gender mainstreaming approaches to address gender inequality. Whilst art. 3 protects women's right to human dignity, art. 4 protects women's rights to life, integrity and security of the person. Arts. 1(g) and 5(b) define and call for the elimination of harmful practices against women which affect their fundamental human rights and prohibits FGM. Art. 6(b) stipulates the minimum age of marriage for women as 18 years and encourages monogamy as the preferred form of marriage in 6(c). Although polygamy was outlawed in the draft protocol, Art. 6 (c) of the Protocol has not done so. Art. 12 places the obligation on State Parties to provide women with the right to education and training whilst art. 14 obliges State Parties to ensure that the right to health and reproductive rights of women be promoted. Art. 21 states that women have a right to an equitable share in the inheritance of the property of her husband.

The Protocol pays particular attention to the rights of women in terms of gender inequality, gender based violence, FMG, abortion, land and environmental resources. In Art. 15, women's right to land is linked to food security. Article 19 exhorts State Parties to promote women's access to and control over productive

⁸⁰⁹ In 2005 the assembly of Heads of State and Government of the African Union decided to merge the African Court on Human and People's Justice with the African Court of Justice of the African Union.

⁸¹⁰ South Africa and fifty- two other state parties have signed The Protocol to the African Charter on Human and People's Rights on Human and People's Rights on the Rights of Women in Africa.

resources, such as land, and guarantees the right to property. This legal mechanism enshrines the rights of African women and deals with issues such as inheritance laws and FGM. Unlike CEDAW's Optional protocol this protocol does not provide individual complainants direct access to the African Court. In short, legal instruments are available to eradicate the violation of African women's human rights but no effective enforcement machinery is in place. Many African countries were also signatories to the Millennium Declaration in 2000⁸¹¹ which targeted eight Millennium Development Goals, of which three of the eight goals deal with women and girls.

Art. 17 of the Protocol assures women of their right to live in a positive cultural content and to participate at all levels in the determination of cultural policies. The protocol views women as equal partners at all levels of development and implementation of state policies and development programmes and outlaws *ubuntu's* patriarchal philosophy, as legalised by the ancestors.

This study highlights not only the injustices against the African Other, but also the injustices and oppressive practices African women in general suffer in patriarchal societies under the ancient philosophy of *ubuntu*. As the South African Constitution protects human rights and perceives sexism to be on a par with racism, the unconstitutional and dehumanising evils of South Africa's existing patriarchies must be exposed and eradicated. Government's commitment to gender rights is evident as South Africa has ratified CEDAW, the Protocol to the African Charter, appointed a Commission for Gender Equality and coordinates South Africa's national gender programme in the Deputy President's Office on the Status of Women. As judges have the additional role of social engineers and social and legal philosophers to promote values referred to in sec. 39 of the Constitution, they have to exhibit the moral courage to expose the imbalances of

⁸¹¹ The eight UN Millennium Development Goals aspire to eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental stability; and develop a global partnership for development. (see <http://www.un.org/millenniumgoals/>).

power, injustices, oppression and the marginalisation of women which are perpetuated in patriarchal societies. As early as 1990, Winnie Mandela (cited in Malherbe et al., 2000: 2) awakened South Africans to the much-needed change of attitude of every member of society when she said:

“While the ANC accords women equal status, it is highly improbable that under an ANC government, women will, in fact, enjoy equality of status with men, for equal relations emanate from a state of mind and not from laws ... Presently, neither sex sees the other as equal ... both men and women in our society see women as subordinate to men. Until these status differences are redefined, and the redefinition becomes a reality in the hearts and minds of our two genders, women will continue to be subordinated”.

4.13 WHERE IS *UBUNTU*?

Ubuntu is part of South Africa's jurisprudence. *Ubuntu* has been described as “Africa's greatest gift to the global world of thought ... a new concern for the human person” (Bhengu: 101-102). But does *ubuntu* still exist? *Ubuntu's* “concern for the human person” is nowhere to be seen in South Africa, Uganda, Zambia, Zimbabwe, Democratic Republic of the Congo, Kenya, Darfur, Rwanda⁸¹², Algeria, Liberia and Sierra Leone. Could it have survived the onslaught on African values portrayed in Chapter Two?

In the *BHE* case⁸¹³ the court emphasised the following:

⁸¹² Khan (2001: 2) states that the Hutu and Tutsi share the same religion, language, customs, food, dress, culture and names and that there has been a fair amount of intermarriage. Their only difference is of physical appearance or ethnicity. “There is no anthropological proof that Tutsis are outsiders, but Hutu extremists have propagated the line that Tutsis were foreign invaders”. Because of intermarriage only their identity cards (introduced by the Belgians before independence) provided proof of their ethnicity; thousands of Tutsis were consequently murdered because of their identity cards that proved their ethnicity when fleeing the country.

⁸¹³ 2005 (1) BCLR 1 (CC)

In the modern economy women fend for themselves and help their husbands accumulate property during the course of their marriage. In essence, they have outgrown the status assigned to them in traditional society. Tribal law has lagged behind these economic and social changes. As more and more women begin working outside the home, earning money and acquiring property, the gap between their legal status under customary law and their economic status in society widens ... But as we have seen, the joint family is in a state of decline and Africans are now enmeshed in an exchange economy. Development and industrialisation have caused an irreversible breakdown in the traditional African social order. The society is now highly individualistic, competitive and acquisitive.⁸¹⁴

The court found that the role modern day women play in urban communities has transformed to such an extent that the African law or *ubuntu* jurisprudence of male primogeniture can no longer be justified in the present day and age. So, whereas *S v Makwanyane* injected *ubuntu* into the main artery of South African jurisprudence, the *BHE* case declared an important aspect of *ubuntu*, a dying dinosaur. Marital rape has also been outlawed by the Court. In *S v Ncanywa*⁸¹⁵, Heath J found *Ncanywa* guilty of raping his spouse. Although the Ciskei Appeal Court⁸¹⁶ overturned Heath J's judgment on marital rape, the Prevention of Family Violence Act 113 of 1993 declare marital rape a crime.

Biko (2007), Turaki (1991), Mutwa (1998), Tutu (1999), Mandela (1994), Mazrui (1997), Bhengu (2006) and others agree that *ubuntu* has been shattered⁸¹⁷ by a

⁸¹⁴ Par. 189.

⁸¹⁵ 1992 91) SACR 209 Ck.

⁸¹⁶ 1993 (1) SACR 297 (CkA).

⁸¹⁷ Irele (cited in Oyewumi, 2002: 403) argues that the goal of African philosophy "in modern African thought has been to define the identity (African id, located in traditional culture). The intellectual reaction to our humiliation under the colonial system and to our devaluation has consisted in affirming our difference from the white man, the European. The conscious effort of differentiation has produced the well-known ideologies of African personality and negritude. In Senghor's formulation of the latter, the idea of African identity takes the form of an irreducible essence of the race whose objective correlative is the traditional culture. This essence is held to confer an estimable value upon our past and to justify our claim to a separate existence. The whole movement of mind in Black cultural nationalism, from Blyden to Senghor, leads to a mystique of traditional forms of life". Irele suggests that African intellectuals are

myriad of factors. *Ubuntu* has been eroded but is not extinct. The reality of *ubuntu* as sub-Saharan Africa's ancient collective worldview, or root of African philosophy can no longer be disputed. Its entrenched patriarchy, however, discredits this ancient religious philosophy as a relevant global philosophy for the twenty-first century. Tutu (1999: 36) questions the moral decay of Africa and asks:

Where was *ubuntu* in the Belgian Congo in the early 1960s? Why did the Rwandans forget *ubuntu* in 1994 and instead destroy one another in the most awful genocide? I don't really know except to say that honouring *ubuntu* is clearly not a mechanical, automatic and inevitable process and that we in South Africa have been blessed.

In South Africa, slavery, colonialism, Christianity, apartheid and many other factors contributed to the erosion of indigenous African values. In his autobiography Mandela (1994: 22) discusses how, when the *abelungu* (white people) arrived from across the sea with fire-breathing weapons, they "shattered the abantu, the fellowship of the various tribes. The white man was hungry and greedy for land, and the black man shared the land with him as they shared the air and water; land was not for one man to possess. But the white man took the land as you might seize another man's horse". It did however not stop there. Slavery, colonisation, Christianity, apartheid⁸¹⁸ and neo-colonisation disturbed the peace of Africa, contributed to the erosion of the extended family, undermined *ubuntu* and resulted in the moral vacuum we find ourselves in. Mutwa (2003: 166; 1998: 164) laments the fact that the extended family has been destroyed and infers that "because of the destruction of the extended family, all hell has broken loose". The destruction of the extended family resulted in the mutation of unknown horrors described by Mutwa. Mutwa (1998: 164) says as

unduly holding on to their culture and that time has come for them to accept Africa's defeat and alienation and embrace Europe in all its grandeur and scientific capacity".

⁸¹⁸ "During this period, materialism and self enrichment at the expense of the majority prevailed. Under the apartheid system our society became morally bankrupt ... Ubuntu can be used as a starting point to rebuild our society" (Bhengu, 2006: 214).

follows: "Today throughout Southern Africa, we see the rising of young men and women who think nothing of burning human beings alive – a thing that was unknown in old Africa, even in the most barbaric eras of my country ... they all come from weakened or completely broken families". Necklacing is, according to Mutwa, a sign of the collapse of traditional African values. The collapse of traditional African values or *ubuntu* seems to be confirmed by Mbiti (1992: 224) when he posits that the African individual has increasingly ceased to be a communal member and that modernity has spawned individualism inconceivable in indigenous African societies.

Mazrui confirms Mutwa's notion that the demise of the extended family resulted in the demise of Africa. Mazrui (cited in Somé, 1997: 17) points out that "the ills suffered by the continent of Africa nowadays are the result of the anger of the ancestors in the face of the general desecration brought about by modernism". Mazrui indicates that to throw away one's culture for another is an insult to the ancestors and resulted in Africa's demise. He laments the fact that the worship of ancestors has been replaced by modernity. Oduyoye (cited in Mudimbe 1988: 59) posits that "[t]he identity crisis in Africa, especially among the urbanised, the Western educated and the Christians, maybe attributed to the loss of a dynamic perspective on life, which comes from knowing and living one's religio-cultural history. We cannot expect those who cannot tell their story, who do not know where they come from, to hear God's call to his future". As possible remedy Mudimbe (1988: 59) suggests the reconstruction of an African theology of incarnation ... "the Africanization of Christianity insofar as it would permit a divorce between Christianity and Western history and culture and would introduce African features into the Church".

With the collapse of traditional African values, problems with social justice and the crisis of social life in Africa started to increase. Turaki (1991{b}: 179) maintains that Africa inherited unjust social structures and Western values during the colonial era which resulted in the modification of tribal myths or legends in

modern Africa. According to Turaki, these “modifications” have been left uncorrected by postcolonial programmes of nation building in Africa. Turaki(1991{b}: 179) states that “the presence of the structures of inequality, incompatibility, insecurity and a variety of conflicting values, make it even more difficult for the development of a national consensus on the norms and values of national politics and ethics”. One of the many challenges we need to address concerns values. According to Goba (1998: 81),

There is a current perception that South Africans on the whole are extremely Western, and therefore tend to denigrate anything that relates to African traditional way of thinking. There is an element of truth in this, because African cultural values have been eroded with the despised system of Bantustan. Apart from that there is a tendency amongst those who come from urban areas to regard or associate African values with backwardness.

In contrast to Goba, Mokgoro (1998{a}: 17) argues that although the cohesion in traditional African societies has been largely eroded, and “the social field for an *ubuntu* legal system is not particularly fertile”, the values of *ubuntu* can be harnessed and enhanced to create the envisaged value system of the “new and contemporary South African jurisprudence”.

In an effort to instil *ubuntu* values and the *ubuntu* worldview in South Africa’s moral vacuum⁸¹⁹, South Africa’s Moral Regeneration Movement was established in 2002 by representatives of the private sector and religious institutions. Besides the Moral Regeneration Movement, an *Ubuntu Pledge* was compiled by the National Religious Forum to instil *ubuntu* values. According to Broodryk (2007: 48), all the main societal role players and political parties in parliament subscribed to the contents of the Pledge. The Heartlines Project, initiated by the Nelson Mandela Foundation and other role players, highlight the consequences

⁸¹⁹ Bhengu (2006: 101-102) maintains “ubuntu advocates a renewed concern for the human person ... A new and profound meaning to the debate on human rights ...recommends the same spiritual resources as remedy for the ills of the wider world ...the majority of the population of Southern Africa today cannot be properly said to know and live Ubuntu by virtue of any continuity with village life”.

when people do not practise *ubuntu* values they profess to live by. Eroded cultural practices such as public virginity testing, the Festival of the First Fruits and others have been revived in accordance with the goals of the African Renaissance.

In *S v Makwanyane*: Langa J stated: “It was against a background of the loss of respect for human life and the inherent dignity which attaches to every person that a spontaneous call has arisen among sections of the community for a return to *ubuntu*”.⁸²⁰ Whilst *ubuntu* is generally presented as a “humanistic experience of treating all people with respect, granting them human dignity, encompassing values like universal brotherhood, sharing and respecting other people as human beings” (Bhengu, 2006: 42), it is also known to be a closed system which discriminates against the individual, especially females.⁸²¹ Another fact to consider, according to Imbo (1999: 71), is that *ubuntu* no longer exists, because “[c]ontemporary Africa is not the Africa of our ancestors”. But despite all of the above, African feminists take a firm stance against *ubuntu* and its accompanying value system. They perceive *ubuntu* as the root of female oppression, the creator of gender inequality and violator of female dignity. African feminists bring testimony that *ubuntu* is not something of the distant past. Oduyoye, Broodryk, Bhengu, Mbiti, Ramose and others confirm *ubuntu* exists in indigenous African societies and that “[t]he being of an African in the universe is inseparably anchored upon ubuntu” (Ramose, (2002{b}):40).

The Protocol to the African Charter prohibits all discriminating aspects associated with the philosophy of *ubuntu*. Rankhotha (2004: 80) argues that the reintroduction of “outdated cultural practices is not only unfounded, but that traditionalists want to cling to patriarchal privileges in the context of the new

⁸²⁰ *Ibid* par. 227.

⁸²¹ In Bhengu’s words: “Here is the limit of individualism. Not the community forces itself on an unyielding individual, rather the individual, through socialization and the love and concern which the household and the community have extended to him/her, cannot now see himself or herself as anything apart from his/her community. Interest in his/her success is shown by members of the extended family who regard him/her as their ‘blood’, and the community are also able to trace their origin to a common, even mythical ancestor”.

culture of human rights and gender equality seems tilted against them and self interest". Rankhotha maintains that if the Moral Regeneration Programme is genuine, all South Africans should espouse the culture of human rights and gender equality.⁸²² According to Bhengu (2006: 102), Africans "have to be educated to pursue (under the name of Ubuntu) a global and urban reformation of village values ... ignoring the ubiquitous conflicts and contradictions, the oppressive immanence of the [ubuntu] worldview, the witchcraft beliefs and accusations, the constraint oscillation between trust and distrust, and merely appropriating and presenting the bright side".

Whilst Rousseau romanticised the original, innocent state of nature of the noble savage, modern Africans and African feminists bring evidence that Africa's unique philosophy of *ubuntu*, represents oppression and inequality. *Ubuntu* might be somewhat eroded but the African Renaissance, the Moral Regeneration Programme and other government programmes is adamant to breathe life into Africa's ancient patriarchal value system. The judiciary of South African Courts though, have a social obligation as philosophers and change agents to bring *ubuntu* into line with international and regional human rights mechanisms.

South Africa has created a new order, a constitutional state. The 1996 Constitution imposed a duty on courts to promote values that underlie an open and democratic society based on freedom, equality and human dignity.⁸²³ It is time for the courts to deliberate this philosophy under the "heavy *kaross* of mystery", because it does not underlie either equality or human dignity.

4.14 CONCLUSION

⁸²² Rankhotha (2004: 84) argues that if South Africa is "serious about instilling values of kindness and respect for others, especially women and girls, as well as eradicating violence among men and boys and against women and girls, it is illogical that violent methods that show little appreciation for these values are used in initiation schools. It is argued that traditional values be revisited to address the context of the 21st century".

⁸²³ See section 39 of the Constitution of South Africa, 1996.

In an attempt to understand what the concept of ubuntu entails, traditional Africa's communal philosophy had to be deconstructed. The 1993 Interim Constitution mentioned "the need for *ubuntu*" in its Postamble, but did not define the concept. Although the 1996 Constitution does not make reference to *ubuntu*, sec. 39 of the Constitution urges courts to promote values underlying our open and democratic society, based on freedom, equality and human dignity. In *S v Makwanyane* the Constitutional Court argued that sec. 39 of the Constitution does not only include Western values, but also traditional African law and legal thinking as part of South Africa's source of values. Despite the fact that few law books and law reports contain references to African sources as part of the general law of the country, the court concluded without rigorous jurisprudential deliberation that because *ubuntu* values life and human dignity, capital punishment opposes the spirit of *ubuntu*. Apart from the general translation of *ubuntu* as "humanness" and "a moral philosophy", the court stated that *ubuntu* calls for the balancing of the interest of society against that of the individual; balancing Western liberalism with African communitarianism. The court stated that "ubuntu is not unrelated" to the goal of a society based on freedom and equality and that the spirit of *ubuntu* embraces human rights.

In the *Port Elizabeth Municipality* case the court states that *ubuntu* suffuses the whole constitutional order and that *ubuntu*, as communitarian philosophy, is a unifying motif of the Bill of Rights. In *Dikoko v Mokhatla*, *ubuntu* was successfully linked to the constitutional values of reconciliation and restoration. In the *BHE* case the court argued that the rule of male primogeniture in patriarchal African societies unfairly discriminates against women and that the law of succession was not in line with the Constitutional right to equality. In the court's deliberations it was mentioned that women in communitarian African societies are regarded as subservient subordinates who are seen as perpetual minors. Neither the Supreme Court of Appeal, nor the High Courts added to the Constitutional Court's understanding of *ubuntu*. The Constitutional Court has been unable to

illuminate ordinary courts on either the concept of *ubuntu* or the constitutional values *ubuntu* represents.

Apart from the fact that Tutu, Mokgoro and Bhengu claim that *ubuntu* is difficult to describe in a European language and that a definition is difficult to render because *ubuntu* resists Western logic and argumentation, definitions seem to indicate that *ubuntu* represents the traditional African worldview, collective spirituality and collective personhood of traditional African societies. Ngubane and Bhengu confirm that the word “humanness” does not describe *ubuntu* because in reality, every facet of traditional African life embraces *ubuntu*, Africa’s philosophy of life. Turaki, Ramose, Mbiti and others argue that *ubuntu* is defined by and rooted in African Religion. According to Ramose, Cabral and Phahafala, the *ubuntu* worldview and its accompanying religion, values and laws are shared by all African peoples in sub-Saharan Africa.

Traditional African societies consist of extended families which represent collective solidarity and consensus. *Ubuntu* communitarianism opposes Western liberalism and individualism. In traditional Africa the individual is perceived as “it” unless various community-prescribed stages, ceremonies and rituals have been completed to obtain personhood. Popper, Turaki, Nyirongo and Teffo et al. describe traditional African societies as closed societies because *ubuntu* reality exists only within the community, tribe or clan. Boon maintains all values derived from belief systems in closed societies are unique. African Religion provides African communitarian societies with a holistic view of life or *ubuntu* reality. Not only is African Religion a set of rules for the living and the dead, but *ubuntu* jurisprudence, laws, values and beliefs are derived from it. No stranger can convert to African Religion and no individual of the community can reject the religion, because by doing so, the individual will be cut off from his people.

Whilst the Constitutional Court suggested that *ubuntu* values are universal, it is argued that values derived from closed communitarian societies are unique. Van

Blerk, Mokgoro, Broodryk, and others suggest that *ubuntu* values are unique because they are practiced on a much deeper level than Western values. Abraham Wiredu and Gyekye agree that Western philosophy and African philosophy oppose one another and that because values are closely linked to worldviews, universal values are a myth.

Justice in *ubuntu* legal philosophy involves the perpetual exchange and sharing of the forces of life to restore peace, harmony and balance within the community. Ngubane, Kamalu, Koka, Broodryk and Bhengu maintain that the *ubuntu* concept of justice is derived from the ancient holy belief of Netchar Maat. Justice according to Maat, is based on the ancient Egyptian code of the gods to which all living had to adhere in order to progress towards a godlike state. Ancestors and elders play a key role in achieving cosmic justice. Elders fulfil their roles as sages, advisors, judges and mediators between the living, and the living and the dead. Justice is meted out in accordance with a person's status or place in the hierarchy within these patriarchal societies.

Justice in *ubuntu* legal philosophy differs from the notion of justice in Western jurisprudence. Not only *ubuntu* justice but also *ubuntu's* philosophy of law contrasts the concept of law in Western legal systems. Ngubane, Ramose and Bhengu, maintains *ubuntu* is the Constitution of traditional African communities. Whilst the aim of law in *ubuntu* reality is the regulation of community to secure protection by supernatural forces, the aims of law are equilibrium, justice, peace and harmony. M'Baye, Turaki and Mutwa posit that ancestors are the legislatures in *ubuntu* reality, however, Ramose maintains that the living lay down the norms which have to be authorised by the ancestors. Rules and norms become law once ancestors approve of it. Whoever breaks the law incurs the wrath of the ancestors. Although Africans constantly equate *ubuntu* with equality and human dignity, status and hierarchy within traditional African societies determine how the law will be applied. Nyirongo, Broodryk and Bhengu affirm that rights are assigned according to a person's communal membership, family

and status. The laws of *ubuntu* legal philosophy do not apply to strangers: for the stranger the end justifies the means. M'Baye, posits that *ubuntu* legal philosophy negates Western law.

African feminists discredit *ubuntu* legal philosophy as a philosophy which violates human rights, equality and human dignity of females in indigenous African societies. African feminists perceive *ubuntu* as a patriarchal social structure which serves as a tool of female oppression. In these societies married women experience gender based violence, marital rape, domestic violence and polygamy. In *ubuntu* reality, its male-dominated societies suppress women's participation in socio-political and economic participation.

Whilst young girls are married off to older males, women in general are exploited sexually through the "fundamental African value of hospitality". This degradation of female humanity in the name of hospitality negates all notions of human rights, gender equality and human dignity. FMG and virginity testing is also not in line with either international or regional human rights mechanisms. African feminists perceive *ubuntu* as an oppressive philosophy which violates the human rights of African females. Whilst many African males ponder whether *ubuntu* is alive and well, African feminists assure the world that their fate has not changed under *ubuntu's* ancient philosophy of life. The African Renaissance, the Moral Regeneration Programme and other government programmes aspire to revive age-old African traditions such as the Festival of the First Fruits, public virginity testing and others. Only rigorous deliberation in the Constitutional Court will expose *ubuntu* as a patriarchal philosophy which assents to human rights violations. The values of *ubuntu* do not comply with sec. 39(1) of the Constitution as *ubuntu* values do not guarantee equality and human dignity to traditional African women in South Africa's new democratic society.

Ubuntu is ancient Africa's collective philosophy. Though its values are unique the Constitution requires it to comply with universal values. *Ubuntu's* patriarchal

philosophy, gender inequality, “fundamental African value” of hospitality and other factors contrast statements that *ubuntu* is “in consonance with the values of the Constitution generally, and those of the Bill of Rights in particular”.

CHAPTER FIVE

CONCLUSION

In *S v Makwanyane*, the Constitutional Court made a paradigm shift.⁸²⁴ The Court contended in 1995 that it would no longer entertain only Western thought and legal thinking but also African law and legal thinking as the values of all sections of society must be taken into account in South Africa's open and democratic society. By acknowledging *ubuntu* as part of South Africa's jurisprudence, the Court fused African philosophy and jurisprudence with Western philosophy and jurisprudence into and created a new South African rainbow jurisprudence. But beneath this fusion lies a history of two opposing realities in both thought and legal thinking. Although the struggle against apartheid might be something of the past, the struggle of African communitarianism versus the dominant philosophy of the West continues. Two ancient patriarchal philosophies oppose one another within the "seamless text" of constitutional theory. The one philosophy, a known villain, has ravished the Other. The Other, ancient *ubuntu* philosophy, is relatively unknown among Europeans because it is apparently too difficult to define in any European language.⁸²⁵ What we do know is that these two philosophies have been intertwined with one another for centuries. The complexity of this fusion, however, only surfaces once history itself is deconstructed.

African scholars bring evidence that pre-colonial Africa was far from being the Lost Dark Continent portrayed by Westerners.⁸²⁶ Ancient Egypt was in fact a colony of Ethiopia, which according to Homer's *Iliad*, hosted an annual banquet with Zeus and other Greek gods as guests. Herodotus, Diodorus of Sicily and Greek historians affirm the fact that Pharaonic cultures were derived from inner Africa. Classical Greek philosophers acknowledged the cultural primacy of Egypt

⁸²⁴ See 4.4.1.1.

⁸²⁵ See 4.1.

⁸²⁶ See 3.2.1.3.

and sent *inter alia* Thales and Pythagoras to receive Egyptian wisdom, guidance and inspiration. Not only was Egypt a Negro-African achievement, but also the cradle of mathematics, science, cosmology and medical knowledge. Ancient Africa was the seat of philosophical rationality. Egyptian texts confirm that the ancient Egyptian moral teachings of Ptah-hotep, in 2400 B.C., contain the moral principles for moral behaviour called Maat. The admonitions of Maat were written 1500 years before the Bible's Ten Commandments. These Egyptian moral principles were dispersed throughout Africa and form the basis of traditional African values. Maat's prescriptions of truth, justice and righteousness are contained in Africa's sacred values of *ubuntu*. *Ubuntu* represents the African subcontinent's shared value and belief system which, like Maat, advocates cosmic justice and the belief in reincarnation.⁸²⁷

Like its classical Greek ancestor, the Western philosophical tradition has always been plagued by philosophical prejudice.⁸²⁸ In classical Greek style, Western philosophy branded categories of humanity as deficient in rational thought and automatically disqualified them from Western philosophy. All European women, Africans, American Indian, Aborigines and Maoris of Australasia in the Western theory of ideas, were historically branded as illogical and deemed unfit for philosophy.⁸²⁹ All Other were and still are being regulated in "pass law categories" which sustain "philosophical apartheid" In the West. The Other are regarded as inferior categories of humanity. Since the establishment of Plato's Academy in 387 B.C., Western males have been schooled in critical thinking skills. Philosophy was transformed into an academic discipline characterised by rational epistemology; a methodology which advocates individual, critical, reflective and logical enquiry. Plato stated clearly that only individuals can philosophise; the multitudes cannot philosophise. Despite the fact that Aristotle declared all men rational animals capable of philosophy, Western philosophy's right of way belongs to the epitome of full humanity: the privileged European

⁸²⁷ See 4.10.1.

⁸²⁸ See 2.3.

⁸²⁹ See 2.4.

male. The paradox, however, lies in the fact that Western philosophy boasts about its universality.

Racial prejudice only entered the equation of Western philosophy when the West had to justify the droves of African chattel slaves which arrived in Europe and America from Africa in the seventeenth century.⁸³⁰ Not only Europeans but also Arabs and African rulers enriched themselves at the expense of these West African slaves.⁸³¹ Slavery was nothing new to Europeans as they had always been trading in East European, Mediterranean and Muslim slaves from North Africa, but racial prejudice towards these slaves was unknown. To justify the abhorrent slave trade in twenty million African men, women and children, however, their mass enslavement had to be justified and legitimised. Westerners deployed their master plan against Africans: the justification of *anything* in the name of Christianity. During a time when the enslavement of Europeans was deplored as an act of barbarism, European philosophers, viz. Hegel and Montesquieu, politicians and clergy succeeded in justifying African slavery as “a phase of education”. Christianity was portrayed as the only means of salvation available to these pagan African slaves. African slaves were depicted as pagan people of an inferior humanity; “sinful, bestial savages destined for hell”.

Slavery was justified as the African’s only hope of being saved from the eternal fires of hell. As a result of Western philosophy’s successful brainwashing of European and American societies, chattel slavery was legalised. Henceforth African humanity was held in contempt. The European justification of African chattel slavery birthed the “older racism” which was conveniently utilised to reduce Africans to a mere tradable commodity to be sold off at a profit to the New World. In an act of mercy African culture, religion, tradition and values were forcefully substituted with Christianity, Western culture, and Western values. Although European countries abolished slavery since 1807, it must be noted that

⁸³⁰ See 2.5.1 and 2.5.2.

⁸³¹ See 2.5.2.2.

Article 7(1) (c) of the Rome Statute of 1998 declared slavery a crime against humanity.⁸³²

In the eighteenth century, Western philosophy entered the age of Enlightenment.⁸³³ In this Age of Reason, Enlightenment philosophers challenged religious superstition, the tyranny of feudal societies, and proclaimed rationality, human equality and individual liberties. Although the Enlightenment aspired to eradicate all forms of misery and injustice,⁸³⁴ it was clearly not meant to bring freedom or justice to the African Other. The ethnocentric philosophies of Hume, Kant, Hegel, Voltaire, Montesquieu and many others⁸³⁵ fuelled a “new racism” against Africans. This “new racism” stereotyped Africans as inferior beings without history or philosophy and effected the cultural and intellectual ascendancy of Europeans over Africans.

Whilst the Enlightenment proclaimed human equality and individual liberties, Sarah Baartman, South Africa’s female African icon, was exploited, paraded and degraded in Europe as an example of African Otherness, savagery and barbarism.⁸³⁶ The Age of Reason resulted in Western scientific racism, which assigned Hottentots, like Sarah Baartman, the lowest rank in the human hierarchy. Throughout the Enlightenment and thereafter, Western liberalism rationalised Western racial superiority and racial domination over the African Other; to such an extent that it became institutionalised thinking throughout the West. The Enlightenment’s commitment to equality signalled the reality of racial prejudice, class, gender and racial restrictions for the African Other. Not only did the United States Supreme Court rule in favour of racial segregation in the United States in 1883 but philosophical rprejudice became instrumental in justifying the colonisation of the “Dark Continent”.

⁸³² See 2.5.2.4.

⁸³³ See 2.5.3.

⁸³⁴ See 2.5.3.1.

⁸³⁵ See 2.5.3.2.

⁸³⁶ See 2.5.3.3.

The Berlin Act of 1885 regulated the division of Africa amongst the European signatories who undertook not only to colonise Africa but also to improve the moral and material well-being of Africa's native tribal systems.⁸³⁷ Without any input from Africans, the Dark Continent was divided between the European signatories; with a stroke of the pen the scramble for Africa commenced. Before Europe's artificial geographical division of Africa, indigenous people of the African continent knew no borders, European traditions, values, languages, colonial laws or customary law.⁸³⁸ The Berlin Act did not only destroy African tribal systems but also African trade patterns, ancestral lands, self government, belief systems, values and African law.

Christian missionaries⁸³⁹ were to fulfil an indispensable role in civilising and evangelising Africans. Missionaries were to lift Africans out of their pagan beliefs and primitive savagery. They established churches, schools and medical clinics throughout Africa and replaced African Religion and African values with Christianity and Western values. Not only did local African languages have to make place for European languages, but African traditions viz. circumcision, polygamy, rituals and values were eroded in favour of civilised Western values. African sources confirm that African thought, culture and values were substituted during colonisation with Western thought, culture and values. African social structures were replaced with the European nation state and Africans found themselves being regulated by European laws. Colonialism dislocated the traditional African way of life and destroyed every value dear to the African.

Direct and indirect colonial rule resulted in the "European cannibalization of Africa". British indirect colonial rule⁸⁴⁰ resulted in ethnic tension among the Africans, undermined indigenous social structures and manipulated socio-economic differentiation in traditional African societies. In colonial Kenya the

⁸³⁷ See 2.5.4.

⁸³⁸ See 2.5.4.1.

⁸³⁹ See 2.5.4.6.

⁸⁴⁰ See 2.5.4.2.

Kikuyu led the Mau Mau mass rebellion against the British colonial government between 1952-1956 for the return of their land; to put a stop to the erosion of their values and to demand freedom from colonial oppression. The British colonial government responded by detaining one and a half million Kikuyu men, women and children in concentration camps in the Kikuyu districts of Kenya. More than a hundred thousand Kikuyu died of exhaustion, disease, starvation and physical abuse in these concentration camps.

Belgian colonial rule⁸⁴¹ was as paternalistic as the British and eroded African culture and values in the Congo. Between 1888 and 1908 the Belgian king, King Leopold II, exploited and killed millions of Africans in the Free State Congo in his twenty-year reign of terror. After World War 1, Rwanda was transferred from Germany to Belgium. Like the Germans, the Belgians favoured the Tutsis in Rwanda. When the Hutu peasants rose against the Tutsis and murdered 50 000 of them in 1959, the Belgian colonial government merely looked on. This uprising was a contributing factor which sparked the Hutu-Tutsi genocide or ethnic cleansing in Rwanda in 1994. In 2006, British Parliament recognised the mass killings of Africans in the Congo Free State by Leopold II, King of Belgium, as genocide. The British Parliament called upon the Belgian government to apologise to the Congolese people for this genocide.

French colonial rule⁸⁴², or assimilation, resulted in a three-stage process whereby firstly, Africans had to denounce their culture and values; secondly, they had to convert to French culture and values; and thirdly, Africans would be rewarded with French citizenship. The French created an African elite and destroyed African culture and values wherever they went. The French exploited not only African culture and values but also African life. Between 1921 and 1932, 14 000 African men died whilst working on the French colonial Congo-Océan railway.

⁸⁴¹ See 2.5.4.3.

⁸⁴² See 2.5.4.4.

During German colonial rule⁸⁴³ in German South-West Africa, German settlers confiscated Herero cattle and land. The Herero responded with an uprising against German colonial rule in their land. This uprising resulted in the Colonial War of 1904 -1908. General Von Trotha and his *schutztruppe* sought to eradicate these rebellious tribes and relentlessly drove 80 000 Herero and 20 000 Nama into the Omaheke desert where they were left to die. Half the population of Herero and Nama men, women and children perished. The other half surrendered and were sent to concentration camps where another 15 000 died. It is estimated that General Von Trotha killed 75 000 Herero and Nama between 1904 and 1911. After this genocide the colonial government transferred the Herero's land to German settlers. In 2001 the Herero of Namibia instituted a claim for reparation against Germany for the genocide of 65 000 of their people during the colonial war of 1904 -1908.

European colonial rule established a dual system of law⁸⁴⁴ throughout Africa. African law⁸⁴⁵ was replaced with European law in the urban areas, and customary law in the rural areas. In contrast with the oral pre-colonial "High Laws of the Bantu" customary law⁸⁴⁶ was a European-made law, documented by Western anthropologists and academics. Customary law set Africans and their customary practices apart from the colonial laws of civilised society and played an inferior role to it. Traditional African modes of dispute resolution, consultation with the extended African family as part of law, and restorative justice were replaced with Western jurisprudence's punitive justice system and imprisonment.⁸⁴⁷ In law, Western philosophy and jurisprudence highlighted the contrast between itself and African philosophy and jurisprudence. Western individualism opposed African communitarianism; civil society opposed the indigenous African society and Western rights and liberties opposed group rights and duties in African jurisprudence. In "native courts" the judges knew very little

⁸⁴³ See 2.5.4.5.

⁸⁴⁴ See 2.6.

⁸⁴⁵ See 2.6.1.

⁸⁴⁶ See 2.6.2

⁸⁴⁷ See 2.6.3.

about African law and the assessor would not disclose, even though he knew perfectly well, how African law should be applied in court. As African law holds the seeds of African values and community morality, the erosion of African law, therefore, resulted in the erosion of African values and community morality.

After centuries of oppression and injustices suffered as a direct result of the ideology of Western philosophy, the Africans in South Africa had to endure more prejudice under the ideology of apartheid⁸⁴⁸ from 1948-1994. Not only did apartheid resemble “full-fledged indirect rule”⁸⁴⁹ but it repressed Africans by means of restrictive, oppressive legislation. As in the colonial heyday, politicians and the clergy who supported apartheid utilised Christianity to justify South Africa’s crime against humanity. As judges proved not to be politically neutral, the Courts of the apartheid regime justified South Africa’s unjust laws.⁸⁵⁰ Apartheid separated African families and communities and further eroded what was left of African values. In 1974 apartheid was declared a crime against humanity in Art. 1 of the International Convention on the Suppression and Punishment of the Crime of Apartheid.⁸⁵¹

Neither money nor words can undo the innumerable injustices Africans have suffered at the hands of their European masters. It was however not the injustices against Africans that left them with a scarred collective consciousness, but the biggest weapon the West wielded, viz. the cultural bomb.⁸⁵² Western civilisation’s cultural bomb eroded African culture and values to such an extent that it is said Africans live in a state of despair and despondency. The cultural bomb’s erosion of African beliefs, values, law and culture culminated in a collective death wish of the continent’s people. Western philosophy’s unaccommodating worldview resulted in unspeakable injustices, suffering, humiliation, degradation and denial of African humanity. Five hundred years of

⁸⁴⁸ See 2.7.

⁸⁴⁹ See 2.7.1.

⁸⁵⁰ See 2.7.2.

⁸⁵¹ See footnote 198.

⁸⁵² See 2.8.

slavery, colonisation, Christianity, customary law, apartheid and neo-colonialism, however, gave rise to African solidarity and Afrocentrism which sparked the reconstruction of African reality.

In both philosophy and jurisprudence the difference between Western and African reality is stark.⁸⁵³ Notwithstanding the volatile philosophical relationship between Europe and the African Other the Constitutional Court fused Western thought and legal thinking with African thought and jurisprudence into a new South African rainbow jurisprudence. Despite the historically unbridged divide between Western liberalism and African communitarianism; between the Western and African worldview; between Western and African jurisprudence and between Christianity and African Religion, Art. 1 of the Universal Declaration of Human Rights, 1948, declares that all human beings are born free and equal in dignity and rights – despite opposing worldviews.

Deconstruction of the volatile relationship between Western philosophy and jurisprudence and traditional African thought and jurisprudence reveals slavery, prejudice of Western philosophers, colonialism, Christianity, Western law and customary law, apartheid and neo-colonialism resulted in the erosion of African values, African law, and African humanity. Western philosophy and Christianity were primarily responsible for the “cultural bomb” which resulted in the erosion of traditional African values and left the African people with a scarred collective consciousness.

In spite of the fact that Western philosophy and history proclaimed African humanity as inferior and incapable of philosophical thought, Father Tempels turned the tables when he published his *Bantu Philosophy* in 1945.⁸⁵⁴ In *Bantu Philosophy*, Tempels revealed that the Baluba of the lower Congo shared a collective oral philosophy, based on reason. The aim of Tempel's book was to

⁸⁵³ See 2.9.

⁸⁵⁴ See 3.1 and 3.3.1.1.

assist Christian European missionaries with insight into traditional African thought: a necessary tool which aided Europeans in converting Africans to Christianity. Tempels, the Belgian priest, heeded that the superficial Europeanisation of the African masses would erode African culture and values. Tempels confirmed what Senghor maintained in his Negritude: Africans are human and capable of reason. *Bantu Philosophy* sparked a heated philosophical debate⁸⁵⁵ firstly amongst Westerners and secondly between Westerners and African philosophers. The debate centred on the question whether Africa had a tradition of philosophy; whether Africans have the capability to philosophise and if so, what is African philosophy?

Despite the outright rejection of the ancient history of African philosophy by the Western philosophical tradition, evidence confirms that African philosophy had its origins in ancient Egypt.⁸⁵⁶ Philosophy north of the Sahara⁸⁵⁷ is characterised by a long tradition of written philosophy which predates the modern era. As a Negro-African civilisation, ancient Egypt brought enlightenment to the Greeks. It is suggested that the ancient Egyptian moral principles of Maat, evident also in Yoruba moral epistemology, form the basis of the moral values of *ubuntu*. Philosophy in Africa south of the Sahara⁸⁵⁸ is based on a meticulously preserved oral tradition of philosophy. African sources confirm the existence of a unique collective African philosophy which is firmly embedded in traditional African societies.

Whilst Westerners and question the ability of Africans to philosophise, it becomes evident that reality on the African continent is comprehended in different ways.⁸⁵⁹ Professional African philosophers claim that despite the fact that Africans have been labelled as emotive, mythical and illogical beings, it is wrong to assume that certain races are superior to others. They concur that rational thinking is present

⁸⁵⁵ See 3.2.

⁸⁵⁶ See 3.2.1.

⁸⁵⁷ See 3.2.1.3 and 3.2.1.4.

⁸⁵⁸ See 3.2.1.2.

⁸⁵⁹ See 3.2.2.

in all humans and that rational and critical thought prevail in Africa.⁸⁶⁰ African professional philosophers maintain that the African's struggle for reason is based in the inherent bias of Westerners against Africans. In contrast to professional African philosophers, African traditionalists maintain traditional Africans possess a distinct method of comprehending reality which does not involve analytical, critical and reflective methodology.⁸⁶¹ They argue Africans comprehend reality through their senses and not their intellect and that Africans utilise emotion, intuition and the wisdom of the ancestors in their reasoning. African traditionalists attest that they utilise a different methodology to reason than the Westerners' rational epistemology.⁸⁶²

Professional African philosophers and African traditionalists do not only differ in the methodology they employ to reason but also in their view on philosophy. Whilst professional African philosophers⁸⁶³ define⁸⁶⁴ African philosophy as a universal enterprise which should comply with Western criteria for philosophy in the strict sense, African traditionalists⁸⁶⁵ view philosophy from a culture-specific view and maintain that its oral tradition of philosophy is embedded in the tradition, customs, religion, rituals, myths, songs, dances, proverbs, stories and art of traditional African communities. Professional African philosophers define⁸⁶⁶ African philosophy as written texts which employ the methodology of Western philosophy. They define the African philosopher as an African individual of geographically African origin who has a lived experience of African culture and customs. African feminists maintain women are not deemed philosophical in African reality. The narrow and bias definition⁸⁶⁷ of the person of an African philosopher is characteristic of closed communities and excludes Europeans on the African continent and African-Americans from African philosophy. This view

⁸⁶⁰ See 3.2.2.1.

⁸⁶¹ See 3.2.2.2.

⁸⁶² See 3.2.2.4.

⁸⁶³ See 3.2.3.1.

⁸⁶⁴ See 3.2.3.4.

⁸⁶⁵ See 3.2.3.2.

⁸⁶⁶ See 3.2.3.3.

⁸⁶⁷ See 3.2.3.3.1.

has forced American academics of philosophy to produce Africana Philosophy which allows others to philosophise on Africa.

Deconstruction of the debate on African philosophy reveals traditional African thought (or ubuntu philosophy) are not deemed philosophical by either Western philosophers or professional African philosophers.

The Kenyan philosopher, Oruka, structured the discourse on African philosophy with his template *Four Trends in Current African Philosophy* and later added two more trends to his initial four trends in African philosophy.⁸⁶⁸ These trends consist of ethnophilosophy, philosophical sagacity (sage philosophy), nationalist-ideological philosophy (political philosophy), professional philosophy, the hermeneutical and the literary trend.

The trend ethnophilosophy⁸⁶⁹ represents the communal philosophy of traditional African societies. Ethnophilosophy is a synonym for the collective philosophy or *ubuntu* of either a particular African community or philosophy of indigenous Africa as a whole. The sources of ethnophilosophy are traditions, customs, religion, law rituals, myth, proverbs, songs, dances and stories of traditional African people. The works of Tempels, Kagame, Senghor, Mbiti, Horton, Ruch, Onyewuenyi Gyekye, Mutwa, Somé and Anyanwu⁸⁷⁰ are perceived as examples of ethnophilosophy and clearly illustrate the intertwined relationship of this trend with African Religion. Whilst Western and professional African philosophers deny ethnophilosophy the status of philosophy⁸⁷¹, African traditionalists are convinced of the existence of their unique collective oral philosophy. African feminists⁸⁷² object to the patriarchal nature of ethnophilosophy which not only submits women to gender inequality but also to oppressive African customs,

⁸⁶⁸ See 3.3.

⁸⁶⁹ See 3.3.1.

⁸⁷⁰ See 3.3.1.2.

⁸⁷¹ See 3.3.1.3.

⁸⁷² See 3.3.1.4.

rituals, taboos and traditions. Despite fierce criticism, ethnophilosophy confirms the existence of a single unique collective philosophy known as *ubuntu*.⁸⁷³

Orika defines sage philosophy⁸⁷⁴ as the expressed thoughts of wise persons in traditional African societies.⁸⁷⁵ Whilst a sage is generally regarded as a person revered for his wisdom, counselling and guidance, one has to make a distinction between folk and philosophical sages.⁸⁷⁶ Whilst a folk sage is perceived as a master of didactic wisdom, a philosophical sage is known to be an expert in didactic wisdom. In contrast with philosophical sages who apply rational thinking, folk sages do not reflect critically on their traditional culture and worldview. Although professional African philosophers deny oral philosophy the status of philosophy⁸⁷⁷, Orika recognises the oral contributions of philosophical sages as philosophy. Sage philosophy brings proof that rational thought prevails even in traditional African societies.⁸⁷⁸

Political philosophy⁸⁷⁹ represents the liberation philosophies of Africa's philosopher kings, viz. Nkrumah, Toure, Nyerere, Senghor and Kaunda.⁸⁸⁰ The philosophies of these philosopher kings affirm the systematic erosion of traditional African values due to colonialism, the importance of African values to sustain existence in indigenous societies, and inspired the African people towards the struggle against colonialism. Nkrumah's *Consciencism* and Nyerere's *Ujamaa* were based on African communitarianism and confirm the existence of a coherent collective philosophy in traditional Africa. Both of these African leaders rekindled *ubuntu* and its accompanying values. Whereas Nyerere's *Ujamaa* was rooted in the restoration of the African collective consciousness and communal values of his people, Nkrumah's *Consciencism*

⁸⁷³ See 3.3.1.5.

⁸⁷⁴ See 3.3.2.

⁸⁷⁵ See 3.3.2.2.

⁸⁷⁶ See 3.3.2.3.

⁸⁷⁷ See 3.3.2.4.

⁸⁷⁸ See 3.3.2.5.

⁸⁷⁹ See 3.2.3.

⁸⁸⁰ See 3.3.3.1. and 3.3.3.2.

had a vision for the renewal of Africa, based on the collective philosophy of traditional African societies. Like ethnophilosophy, political philosophy affirms the existence of a collective African philosophy.

The Negritude movement⁸⁸¹ was spearheaded by Senghor as a reactionary philosophy against Eurocentrism in France in the 1930s. Senghor's *Negritude* represents "the sum total of African cultural values". The constant European denial of African humanity resulted in Senghor's revolt against slavery and colonial rule. Senghor aspired to demonstrate to Europeans that African philosophy, culture, tradition and values existed.⁸⁸² In his *Negritude*, Senghor portrayed the existence of traditional African values which underlie communitarian African existence. Senghor portrays Negritude philosophy as an intuitive, emotional philosophy which is grounded in the "mystical conceptions of Africa". He links traditional African philosophy, traditional African values and African Religion with one another. Senghor's *Negritude* is proof of the inextricable link between traditional Africa's communal philosophy, African Religion and African values. Professional African philosophers criticise this trend for suggesting that all Africans perceive reality in a pre-scientific way. Despite criticism,⁸⁸³ Negritude, like ethnophilosophy, confirms the existence of a collective African philosophy based on the collective value and beliefs of traditional African societies.

Oruka views professional African philosophy⁸⁸⁴ as written philosophy produced in the strict sense by African philosophers. Because professional African philosophers employ a critical methodology they deny the existence of a unique collective philosophy in traditional Africa. Professional African philosophers are hostile to the idea that African philosophy could be based upon the values and

⁸⁸¹ See 3.3.4. and 3.3.4.1.

⁸⁸² See 3.3.4.2.

⁸⁸³ See 3.3.4.3.

⁸⁸⁴ See 3.3.5. and 3.3.5.1.

beliefs of traditional African people.⁸⁸⁵ In contrast with ethnophilosophy, which perceives philosophy as culture-specific, professional African philosophers view philosophy as a universal enterprise. Professional African philosophers are generally perceived as African academics schooled in the Western tradition of philosophy. As this trend mostly critiques and opposes the collective thought of ethnophilosophy as pre-scientific myth, professional African philosophy is criticised⁸⁸⁶ for lacking subject matter of its own. Houtondji, Wiredu, Towa and others represent African philosophers in this trend.

The hermeneutical trend⁸⁸⁷ affirms that the African philosopher and his text cannot be detached from its cultural content. Hermeneutical African philosophers attempt to come to terms with the total damage suffered by Africans as a result of the hegemony of Western liberalism. As part of postmodernity this trend deconstructs and reconstructs African reality. Hermeneutics affirms African humanity, communal values, morality, culture and traditions. Fanon, Serequeberhan, Outlaw, Towa, Okere, Okolo, Gordon and Bernasconi are perceived as hermeneutic philosophers of the African tradition.

The literary trend⁸⁸⁸ refers to the narrative element in African philosophy. The narrative reflects Africa's struggle to rid itself of Western domination. This trend emphasises the devastating effect of Western subjugation of the African Other which resulted in the erosion of African values, culture, customs, law and traditions. This trend confirms the existence of a collective African philosophy. Oruka cites Achebe, Soyinka, Wa thiongo, p'Bitek and Lo Lo Liyong as examples of philosophers of the literary trend.

Like Western philosophy, African philosophy represents the voices of African males. African feminists perceive the existence of an inherent bias in the

⁸⁸⁵ See 3.3.5.2.

⁸⁸⁶ See 3.3.5.3.

⁸⁸⁷ See 3.3.6,

⁸⁸⁸ See 3.3.7.

definition of African philosophy.⁸⁸⁹ According to African feminists, the patriarchal reality of traditional Africa places many restrictions on women. They demand the examination of the African philosophical tradition stretching from Tempels to modern professional African philosophers. Professional African philosophers promote a universal philosophy⁸⁹⁰ and therefore deny the existence of a unique collective philosophy in traditional African societies. It is, however, impossible for the unique collective philosophy of traditional Africa to dissolve into the universal individualistic philosophy of the Western tradition. Postmodernist philosophy maintains that there is no universal philosophy or single truth, just philosophies. Despite the fact that these realities exist within African philosophy, current African students of philosophy are still taught a decontextualised Western philosophy.

Orika's trends illustrate clearly that there is no homogenous African way of thinking. African thinking consists not only of traditional African thinking, which affirms traditional African values, culture and African Religion, but also of thoughts of modern Africans who disassociate themselves passionately from the pre-scientific, mystic perceptions of *ubuntu* reality. Professional African philosophers juxtapose the pre-scientific modes of thought of traditional Africans with their Western modes of thought. Like professional African philosophers, African feminists and African theologians reject traditional African modes of thought personified in *ubuntu* philosophy. Whilst the Constitutional Court notes the importance of entertaining African thought and legal thinking it must be noted that African thought and legal thinking represent diverging modes of thought. Professional African philosophers, African feminists, African theologians and African modernists oppose traditional African modes of thought. There exists no homogenous "African thought and legal thinking".

⁸⁸⁹ See 3.3.9.

⁸⁹⁰ See 3.4.

Deconstruction of African philosophical values in terms of Oruka's six trends in African philosophy reveals that ethnophilosophy, political philosophy, Negritude and the narrative trend confirm the existence of a collective African philosophy, its communal values and communal belief system in traditional African societies. As only ethnophilosophy represents collective African thought in Oruka's trends, ethnophilosophy represents ubuntu's collective philosophy. Deconstruction of African values in terms of African philosophy reveals that professional African philosophers and African feminists oppose ethnophilosophy (or ubuntu). African feminists maintain ethnophilosophy or ubuntu subjugate and oppress African women.

Prominent African leaders, viz. Biko, Mandela, Tutu and others decry the loss of *ubuntu* in African societies.⁸⁹¹ Despite the fact that the word *ubuntu* is commonly used, its humanness, brotherhood and ethic of care seems to be absent in South Africa, Zimbabwe, Uganda, Zambia, Democratic Republic of Congo, Kenya, Darfur, Algeria, Liberia and Sierra Leone. It is, however, posited that the loss of *ubuntu* can be attributed to centuries of slavery, colonialism, apartheid, neo colonialism, modernity and a myriad other factors which contributed to the erosion of traditional African values and *ubuntu*.

Throughout SADC, and especially South Africa, effort is made to revive traditional African values in an effort to fill South Africa's moral vacuum. The African Renaissance, Moral Regeneration Programme, *Ubuntu* Pledge, Heartlines Project and other programmes aspire to revive ancient *ubuntu* values. As the revival of traditional African values is high on South Africa's political agenda, the Constitutional Court followed suit to avert a legitimacy crisis. In 1995 the Constitutional Court⁸⁹² introduced the concept of *ubuntu* in *S v Makwanyane* and embarked on entertaining not only Western thought and legal thinking but

⁸⁹¹ See 4.13.

⁸⁹² See 4.4.1.

also African thought and legal thinking as part of the source of values represented by South Africa's rainbow nation.

In spite of a lack of research on African jurisprudence, the Constitutional Court found in *S v Makwanyane*⁸⁹³ that *ubuntu* embodies the shared value system of traditional African societies and represents humanness, personhood, social justice, fairness, collectivity, morality and the richness of emotions in these societies. In contrast with Western jurisprudence, members of traditional African societies in *ubuntu* reality do not only enjoy group rights but also corresponding duties towards members of their community. Justice in these communitarian African societies is maintained by balancing the interest of society against that of the individual. The Court contended that *ubuntu* recognises a person's status as human being and demands unconditional respect, value, dignity and acceptance of the person towards other members of the community. Whilst *umuntu, ngumuntu ngabantu* is said to describe the importance of group solidarity for the survival of these communities, the Court maintained that the spirit of *ubuntu* embraces human rights. Despite the fact that traditional African jurisprudence had not been researched for purposes of determining the issue of capital punishment the Court contended that capital punishment is foreign to *ubuntu* and that the death penalty was confined to cases of witchcraft. Although the court indicated that *ubuntu* represents the African value system, the Court failed to indicate how this value system differs from the Western one.

In the *AZAPO case*⁸⁹⁴ the Constitutional Court found that the enactment of amnesty legislation was inspired by the philosophy of *ubuntu* which favours reconciliation over victimisation. In the *Hoffman case*⁸⁹⁵ the Constitutional Court made a passing remark that *ubuntu* had to be shown to PLWAs. The Court refrained from explaining what was meant by the statement. In the *Port Elizabeth*

⁸⁹³ See 4.4.1.1.

⁸⁹⁴ See 4.4.1.2.

⁸⁹⁵ See 4.4.1.3.

*Municipality case*⁸⁹⁶ the Constitutional Court stated that the spirit of *ubuntu* is part of the cultural heritage of the majority of South African people and that it suffuses the entire constitutional order. The Court conceded that *ubuntu* does not only combine individual rights with communitarian philosophy, but it is also a unifying motif of the Bill of Rights. The judge, however, refrained from indicating how the Constitution combines individual rights and communitarian rights in a constitution clearly premised on Western liberal values.

In the *Dikoko case*⁸⁹⁷ the Constitutional Court conceded that the constitutional value of human dignity relates closely to *ubuntu*. The Court linked *ubuntu* to the constitutional values of reconciliation and restorative justice and urged that courts should be encouraged to make a paradigm shift from *quantum* to reparatory remedies. According to the Court, the concept of *ubuntu* enriches the fundamental rights of the Constitution. Restorative justice is however not unique to African jurisprudence as it was the dominant criminal justice system in ancient Greek, Roman and Arab civilisations as well as indigenous cultures of Australasia and Canada. Restorative justice can play an important role as constitutional value as it is linked to values of both African and Western jurisprudence.

In the *BHE case*⁸⁹⁸ the Constitutional Court contended that the rule of male primogeniture, of customary law of succession, discriminates unfairly against women and children born out of wedlock. The Court argued that this rule is embedded in a patriarchal system which views women as subordinate subservients and perpetual minors. According to the Court, this rule violates the rights of children as well as women's rights to equality and human dignity. The Court held that the rule of male primogeniture is unconstitutional and incompatible with the Bill of Rights. The *BHE case* has been the only case to date where the Court has linked a rule in African jurisprudence to patriarchy and

⁸⁹⁶ See 4.4.1.4.

⁸⁹⁷ See 1.4.1.5.

⁸⁹⁸ See 1.4.1.6.

the suppression of African females. The Court found that *ubuntu* emphasises sharing, co-responsibility and the mutual enjoyment of rights.

Judgments of the Supreme Court of Appeal did not contribute substantially to broadening the understanding of the concept of *ubuntu*.⁸⁹⁹ The High Courts too were unable to apply *ubuntu* as a constitutional value.⁹⁰⁰ In the *City of Johannesburg* case⁹⁰¹ the High Court described the concept of *ubuntu* as the capacity to express compassion, justice, reciprocity, dignity, harmony, and humanity. The court maintained that *ubuntu* is a universalistic ethos which should promote *ubuntu* equality. In the absence of rigorous jurisprudential deliberation concerning the constitutional value of *ubuntu*, South African courts assume that *ubuntu* subscribes to the democratic values, freedom, human dignity and equality.

Ubuntu is not, however, just a moral philosophy which propounds humanness, loving, caring and respect. It is Africa's philosophy of life⁹⁰²; a shared value and belief system of African people in sub-Saharan Africa. This holistic philosophy includes the collective African worldview on culture, community, religion, values, justice and the law. African sources confirm that *ubuntu* is not a moral philosophy, but a holistic religious philosophy. Whereas a moral philosophy regulates the relationship between beings on a horizontal level, a religious philosophy regulates the relationship between "being and (spiritual) Being" on a vertical level.⁹⁰³

Extra-legal sources define *ubuntu*⁹⁰⁴ as an ancient African worldview based on "morality" and values found in traditional African societies south of the Sahara. *Ubuntu* philosophy originated from the ancient Egyptian gods and was dispersed

⁸⁹⁹ See 4.4.2.

⁹⁰⁰ See 4.4.3.

⁹⁰¹ See 4.4.3.3.

⁹⁰² See 4.6.

⁹⁰³ See 4.11.16.

⁹⁰⁴ See 4.5.

throughout Africa when African people migrated to sub-Saharan Africa, West Africa, East Africa and South Africa. African sources agree that the word humanness does not convey the meaning of *ubuntu*, as *ubuntu* resists the dictatics of Western logic.

Orika's *Four Trends* typify *ubuntu* as ethnophilosophy. *Ubuntu* represents the collective philosophy of traditional African people best described as *umuntu*, *ngumuntu ngabantu*: "I am a person through other persons". As ethnophilosophy, or *ubuntu*, it is impossible to discern between *ubuntu* philosophy and African Religion. Orika defines this indigenous collective philosophy as a form of religion. *Ubuntu* is described as the essence, crux or root of African philosophy and is reflected in African traditions, culture, customs, beliefs, values, justice and laws. It is generally perceived as the shared value and belief system of traditional African societies.

Ubuntu is rooted in traditional African values, African Religion and community as suggested by Senghor, Kenyatta, Nkrumah and Nyerere. As a closed society the defining characteristic of *ubuntu* is strong communitarianism.⁹⁰⁵ Strong communitarianism views the African community as the source of its unique values. *Ubuntu's* unique community⁹⁰⁶ is based upon unity of spirit, trust, openness, caring, sharing, respect and the "cult of the ancestors". The concept of extended family⁹⁰⁷ plays a crucial role in *ubuntu* reality. Unlike Western nuclear families, the African extended family includes the living dead (ancestors), the living and the yet to be born.

Ubuntu reality is dependent upon solidarity⁹⁰⁸ and consensus in the community. Freedom of expression is paramount at meetings as those attending all have the opportunity to say their say. *Ubuntu* relies on consensus democracy and

⁹⁰⁵ See 4.7.

⁹⁰⁶ See 4.7.1.

⁹⁰⁷ See 4.7.2.

⁹⁰⁸ See 4.7.3.

contrasts with Western democracy and majority rule. In contrast with Western liberalism, the welfare of the group in *ubuntu* reality is paramount over that of the individual; human rights are therefore secondary to group rights. African individuals are free to make ethical choices, but their choices are subordinate to the judgment of the ancestors. In contrast to Western liberalism which perceives even a baby as a person with rights, personhood is not attained at birth in *ubuntu* reality. Individuals⁹⁰⁹ in *ubuntu* reality are gradually shaped into human beings or personhood by participating in various prescribed rites throughout their lives. Everything in *ubuntu* reality has to be conducted according to rules, rites and taboos prescribed by ancestors.

African Religion⁹¹⁰ is central to traditional African life and underlies the *ubuntu* worldview. As a religiously-based philosophy, *ubuntu* is a set of rules for the living and the dead. The centrality of African Religion in this philosophy dictates all aspects of *ubuntu* reality. *Ubuntu* is regulated by the interplay of spiritual forces of the African spiritual universe.⁹¹¹ Strangers cannot join African Religion and no individual member has the right to reject African Religion; to do so would cut the individual off from traditional African society. The African spiritual universe consists of God, positive ancestral spirits, positive oracular nature spirits and evil spirits.

It is believed that the values⁹¹² of *ubuntu* originated in Ancient Egypt and that the Maat beliefs and values were transferred by word of mouth throughout Africa. Sources confirm that the values of African societies are the same across the board and that these values are based upon African Religion. Although it is generally perceived that values are universal⁹¹³, *ubuntu's* core values, viz. caring, sharing, respect and compassion, have a different value content from universal values. African intellectuals confirm the hermeneutical dilemma they experience

⁹⁰⁹ See 4.7.4.

⁹¹⁰ See 4.8.

⁹¹¹ See 4.8.1.

⁹¹² See 4.9.

⁹¹³ See 4.9.1.

when having to describe *ubuntu* values as both universal and unique. According to them, all values are supposed to be universal, but they perceive a marked difference between Western and *ubuntu* values. *Ubuntu* values are practised on a much deeper level than universal Western values. In contrast also with Western values which pertain only to the living, *ubuntu* values are handed down by the living dead, or ancestors.

The concept of *ubuntu* as justice⁹¹⁴ contrasts with the Western concept of justice. In contrast with Western justice, *ubuntu* justice is meted out by humans and ancestral spirits. *Ubuntu* justice is derived from ancient Egypt's Maat prescriptions of truth, justice and righteousness. Maat is a code of practice of the ancient Egyptian gods to which a person must adhere. Maat,⁹¹⁵ like *ubuntu*, represents cosmic justice and upholds the belief in reincarnation. It is believed that a person who lives according to Maat's prescribed moral laws will receive justice by becoming an ancestor and receiving the opportunity to reincarnate into the tribe, community and family.

Justice in *ubuntu* reality is meted out by the tribal court, ancestors and elders. Elders⁹¹⁶ represent truth in the family and live in close proximity with the ancestors. Elders are responsible for giving advice and counsel, for conducting mediations and handling disputes in tribal courts. The central concern of *ubuntu* justice is to restore equilibrium, peace and harmony within the extended family of the community as soon as possible, to appease the ancestors. In contrast with Western justice⁹¹⁷, *ubuntu* justice is not concerned with retribution or imprisonment, but seeks reconciliation and restoration between parties. Reconciliation is not always sought where disputes involve strangers as *ubuntu* justice does not apply to strangers. Compensation for damages is paramount;

⁹¹⁴ See 4.10.

⁹¹⁵ See 4.10.1.

⁹¹⁶ See 4.10.2.

⁹¹⁷ See 4.10.3.

however, it is dependent upon the legal status of the person affected. *Ubuntu* justice does not rely on a police force and accommodates revenge and killing.

Ubuntu regulates traditional African societies by means of customs, laws, taboos and traditions which community members have to observe.⁹¹⁸ In contrast with Western law, *ubuntu* protects the rights of the group and not the individual. Sources confirm that *ubuntu* is so central to life in traditional African societies that it functions as the Constitution⁹¹⁹ of traditional societies throughout Africa. African law consists of religious rules handed down from generation to generation under supervision of the ancestors. African sources perceive *ubuntu* philosophy of law as the continuation of religion as African law is inextricably bound to African Religion. Although the living can lay down laws, ancestors have to authorise these laws. It is an offence against God and the spirits to break African laws and taboos. As the individual plays a subordinate role to community, African law applies firstly to the community, and secondly to the individual. Numerous African sources confirm it is impossible to separate *ubuntu* from African Religion. The fact that *ubuntu* represents a religious philosophy and not a moral philosophy poses a dilemma to South African Courts. As section 15(1) of the South African Constitution guarantees freedom of religion, belief and opinion Courts should take care not to favour a particular religious philosophy over others.

The concept of equality in *ubuntu* reality differs profoundly from the Western notion of equality. In contrast with fundamental human rights which award each individual equal rights, *ubuntu* equality is meted out in accordance with the person's status and hierarchy⁹²⁰ within the African community. Whilst ancestors, elders and males are at the top of *ubuntu* hierarchy, females, children and slaves feature at the bottom of this hierarchy. Mentally ill persons have no legal status. African law, like African Religion and African justice, does not apply to strangers.

⁹¹⁸ See 4.11.

⁹¹⁹ See 4.11.1.

⁹²⁰ See 4.11.2.

Strangers⁹²¹ are not looked upon as equals or brothers in strong communitarian societies but will be shown hospitality as hospitality is a “fundamental African value” of *ubuntu*. Because African law primarily recognises group rights of the community⁹²², individual rights can only be justified in terms of the rights of the community. As African law gives priority to duties and not rights, African law is said to be “the negation of Western law”. Whereas the Bill of Rights guarantees fundamental human rights to all individuals, African law provides group rights and perceives fundamental human rights as secondary to group rights. It must be noted that African intellectuals and current judges lobby for the protection of African law in order to preserve African beliefs and values.⁹²³ Whilst the Constitution dictates that indigenous law must be in line with Constitution, sources maintain that the Constitution must be in line with African law.

African feminists⁹²⁴ speak out against *ubuntu*'s oppressive patriarchal worldview. The social hierarchy permitted in *ubuntu* reality grants males power over females. African feminists allege that through marriage African women become the property of African males and consequently suffer gender based violence, viz. marital rape and domestic violence. African feminists posit that women suffer oppression because the ancestors placed men in a superior position over women. They posit the social status of African women and their culturally prescribed roles affect their economic participation. African feminists maintain that, notwithstanding the fact that polygamy is derived from the ancient Egyptian principles of Maat, it threatens the reproductive rights of African women and contributes to the rampant spread of STIs and HIV/AIDS. African feminists contend that hospitality, a “fundamental African value” exploits female sexuality and violates women's rights to human dignity and that virginity testing violates women's rights to privacy and bodily integrity. As *ubuntu* does not advocate gender equality, it is clear that *ubuntu* does not subscribe to either regional or

⁹²¹ See 4.11.3.

⁹²² See 4.11.4.

⁹²³ See 4.11.5.

⁹²⁴ See 4.12.

international human rights mechanisms. With the support of South African Courts, the Protocol to the African Charter on Human and People's Rights of Women in Africa⁹²⁵ will hopefully aid African women in their struggle against *ubuntu's* patriarchal oppression of African women.

The voices of the African Other stand testimony to the fact that *ubuntu* does not represent all modes of African thought and legal thinking. *Ubuntu* represents traditional African thought, African law and African legal thinking. The thoughts of modern Africans, African feminists and African theologians do also not *ipso facto* represent Western thought and legal thinking. As universal Western philosophy is currently still being regulated in "pass law categories" it is comprehensible why professional African philosophers and African feminists maintain their "philosophical apartheid". African feminism confirms that *ubuntu's* unique collective philosophy has prevailed in traditional African societies. The philosophies of the marginalised Other, viz. *ubuntu* and African feminism, bring testimony of the existence of indigenous Africa's ancient unique collective philosophy. Although *ubuntu* has been eroded by a myriad of factors it is not extinct. As a marginalised philosophy *ubuntu* stands testimony to the fact that philosophy is not a universal enterprise.

The Constitutional Court set a precedent by fusing Western law and legal thinking with African thought and legal thinking. However, by including the concept of *ubuntu* in South Africa's jurisprudence the Court has opposed South Africa's Western Constitution with its universal values and fundamental human rights with Africa's Constitution. Africa's Constitution represents a patriarchy, unique values and is embedded in African Religion. Whereas the South African Constitution originates from human legislatures, the African Constitution originates from spiritual legislatures. Whilst South Africa's 1996 Constitution, Act 108 of 1996, complies with all international and regional human rights mechanisms, the same cannot be said of Africa's Constitution. South Africa's Bill

⁹²⁵ See 4.12.1.

of Rights enshrines the rights of all people in South Africa and affirms their democratic rights (and values) of human dignity, equality and freedom.

African sources confirm that South Africa's democratic values of equality and human dignity are not paramount in *ubuntu* reality where patriarchy, hierarchy and status prevail. According to these sources the African Constitution erodes *inter alia* sections 9 and 10, the equality and human dignity clauses of South Africa's Constitution as no females, homosexuals, lesbians, children or slaves are viewed as equals in *ubuntu* reality. Sources confirm Africa's Constitution does not comply with International human rights mechanisms or the regional gender mechanism viz. the Protocol to the African Charter on Human and People's Rights of Women in Africa. Despite the fact that it has been suggested that the South African Constitution must come in line with African values⁹²⁶, such a suggestion is not practical. *Ubuntu*, Africa's ancient philosophy of life, is forced to come in line with the Protocol to the African Charter on Human and People's Rights of Women in Africa as well as international human rights mechanisms.

The Constitutional Court has to be lauded for its judgment in the *BHE* case.⁹²⁷ In its judgment the Court contended that the rule of male primogeniture is unconstitutional and incompatible with the Bill of Rights. This case, however, depicts only the tip of the iceberg. There is not only one rule in African jurisprudence which can be linked to patriarchy and the suppression of African females, but an entire philosophy. It is very sad but true: *ubuntu* is unconstitutional and incompatible with the Bill of Rights. As in the case of other patriarchal religious philosophies, *ubuntu* values do not necessarily comply with the Constitution in general and certainly not the Bill of Rights in particular. *Ubuntu* does not comply with the values prescribed for a democratic society in sec. 39(1) (a) of the Constitution. It is important to note that whilst sec. 15(1) of the Constitution guarantees freedom of religion and perceives all religions equal, this

⁹²⁶ See 4.11.5.

⁹²⁷ See 4.4.1.6.

study stands testimony to the fact that the Court privileges values of *ubuntu's* religious philosophy of life above values of other religious philosophies. If the Court considers values of *ubuntu*, why not also consider religious values of Christianity, Rastafarianism, Islam and other religions?

In the *Baloro* case⁹²⁸ the Court maintained that judges have the additional role of social engineers and social and legal philosophers to promote values referred to in sec. 39 of the Constitution. As the history of jurisprudence is proof of the fact that judges are not politically neutral, judges have to weigh their allegiance to either fundamental human rights or patriarchy. To those who aspire to uphold fundamental human rights, as required by the South African Constitution, the following quote is addressed to you as the social engineers of our time:

“It seems to me there is always the silencing of the African women’s voice. And as I get older, I am very sad to see that there is no one to protect us or fight for us. We are very alone” (The activist Boof cited in Stewart, 2005: ix).

Postmodernism advocates every philosophical view is equally significant. *Ubuntu's* ancient philosophy of life is, therefore, as significant as the philosophy of the West. In line with this postmodernist notion, the Constitutional Court, African Renaissance, the Moral Regeneration Movement, the *Ubuntu* Pledge, the Heartlines Project and other programmes throughout South Africa are currently aspiring to revive *ubuntu's* ancient philosophy of life and accompanying values. Whilst national and regional efforts are made to revive *ubuntu*, African feminists, African theologians and modern Africans heed that *ubuntu* does not guarantee fundamental human rights. African sources maintain *ubuntu* creates hierarchies, inequalities, an Other and its values fuel *inter alia* ethno chauvinism⁹²⁹: inequality⁹³⁰, sexism⁹³¹ and xenophobia.⁹³²

⁹²⁸ See 4.4.2.1.

⁹²⁹ See 4.5.

⁹³⁰ See 4.11.2.

⁹³¹ See 4.12.

⁹³² See 4.11.3.

International and regional human rights and gender mechanisms, viz. the Protocol to the African Charter on Human and People's Rights of Women in Africa, and South Africa's Western Constitution require compliance with universal values. As in the case of other patriarchal religious philosophies in South Africa, viz. Christianity, Islam and Judaism, *ubuntu* and its unique religious values has to come in line with the South African Constitution.

Deconstruction of African philosophical values in terms of ubuntu confirms that ubuntu represents the ancient collective philosophy of traditional African societies in sub-Sahara Africa. It has been established that ubuntu values have been eroded but are not extinct and that ubuntu represents a religious and not a moral philosophy of life. This aspect poses a dilemma to South African courts as sec. 15(1) of the Constitution guarantees freedom of religion; therefore, South African courts should not give preference to certain religious values in its deliberations.

Ubuntu is perceived as traditional Africa's Constitution and is inseparable from the "inseparable trinity" and African Religion. It has to be noted that African feminists, professional African philosophers, African theologians and modern Africans oppose the ancient patriarchal worldview of ubuntu. They perceive ubuntu as "outmoded and irrelevant in modern day Africa".

African Philosophical Values and Constitutionalism: A Feminist Perspective on Ubuntu as a Constitutional Value achieved the following main goals: firstly, it demonstrated that ubuntu exists as the collective religious philosophy in indigenous African societies; secondly, ubuntu's unique values do not promote universal Western values that underlie South Africa's open and democratic society based on human dignity, equality and freedom as referred to in sec. 39(1) of South Africa's Constitution. Ubuntu is not in line with international or regional human rights or gender mechanisms, viz the Protocol to the African Charter on Human and People's Rights. Ubuntu botho's unique "fundamental African value"

of hospitality, its entrenched gender inequality and patriarchal hierarchy are not “in consonance with the values of the Constitution generally, and those of the Bill of Rights in particular”.

South Africa’s “seamless text” of constitutional theory is a myth. Beneath this “seamless text” of constitutional theory lies the dissonance between Western philosophy and jurisprudence and ubuntu: a dichotomy between fundamental human rights and its rights-based jurisprudence and group rights and duties with its jurisprudence of community; between universal values and unique religious values of traditional African societies.

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Prince v President of the Law Society, Cape of Good Hope, and Others 1998 8 BCLR 976.

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Black Administration Act 38 of 1927

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INTERNATIONAL AND REGIONAL LEGAL MECHANISMS

African Charter on Human and People's Rights of 1986

Convention for the Elimination of Discrimination Against Women of 1981

International Convention on the Elimination of all Forms of Racial Discrimination of 1969

International Convention on the Suppression and Punishment of the Crime of Apartheid of 1974

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Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of 2005

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ABSTRACT

Since 1995 the South African Constitutional Court has contended that it would no longer entertain only Western thought and legal thinking but also African law and legal thinking as the values of all sections of society must be taken into account in South Africa's open and democratic society. The Court acknowledged *ubuntu* as part of South Africa's jurisprudence and fused Western and African jurisprudence into a new South African "rainbow" jurisprudence. But beneath this miraculous fusion lies a volatile philosophical relationship of two ancient patriarchal philosophies which resulted in the erosion of African values and innumerable injustices against the African Other.

Like Greek philosophy, Western philosophy has always been plagued by philosophical prejudice towards women, slaves and barbarians. Racism, however, only entered the equation of Western philosophy when the West had to justify their trade in twenty million African men, women and children as African chattel slaves in the seventeenth century. This crime against humanity was justified in the name of Christianity by philosophers and clergy alike. Whilst the Enlightenment philosophers proclaimed human equality and individual liberties in the eighteenth century they also fuelled a "new racism" which stereotyped Africans as inferior and subhuman. Not only did the Otherness of Africans result in racial segregation in the United States of America in 1883, it also legitimised Western colonisation of the "Dark Continent". Under the banner of the cross, Western colonial powers embarked on their Christian civilising mission of the African continent: destroying African trade patterns, ancestral lands, self government, tribal systems, African law, cultures, belief systems and values. It was, however, not these factors, the colonial genocides in Congo Free State and German South-West Africa or Apartheid South Africa's crime against humanity which resulted in the lingering inferiority complex Africans experience on the African continent, but the most destructive weapon wielded by the West: the "cultural bomb", which eroded African values.

The publication of Temple's *Bantu Philosophy* in 1945 did not only bring proof that traditional Africans have a collective philosophy but also sparked a heated international and national philosophical debate. In an attempt to structure the discourse on African philosophy Oruka introduced his six trends in African philosophy. According to Oruka, ethnophilosophy (or *ubuntu*) represents the collective philosophy, or *ubuntu*, of either an African community or Africa as a whole; sage philosophy illustrates that rational thought prevails in philosophical sages; political philosophy contains the liberation philosophies of African leaders who envisaged the rekindling of eroded traditional African values; Negritude is described as the "sum total of African values"; professional African philosophy is African philosophy in the strict sense produced by African philosophers; the hermeneutical approach attempts to reconstruct African reality in post-colonial Africa; and the literary trend illustrates the devastating effect of Western subjugation of the African Other. The debate on African philosophy illustrates that there is no homogenous way of African thinking and that professional African philosophers, modern Africans, African theologians and African feminists reject traditional African modes of thought.

The Constitutional Court claims *ubuntu* values are in line with the Constitution in general and the Bill of Rights in particular but this study brings evidence to the contrary. Not only are *ubuntu* values represented in traditional Africa's closed, strong communitarian societies unique and not universal, but *ubuntu* "moral philosophy" proves to be a religious philosophy. Whilst sec. 15(1) of the Constitution guarantees freedom of religion one has to question why the Court entertains a religious philosophy such as *ubuntu* in its deliberations and not other religious philosophies.

The Constitutional Court, African Renaissance, the Moral Regeneration Movement, the *Ubuntu* Pledge, the Heartlines Project and other programmes throughout South Africa aspire to revive *ubuntu*'s eroded traditional African values. African feminists, African theologians and modern Africans reveal that

ubuntu fuels inequalities, sexism and xenophobia and that *ubuntu* does not comply with sec. 39(1) of the Constitution. *Ubuntu* is neither in line with international or regional human rights and gender mechanisms nor “the Constitution in general and the Bill of Rights in particular”.

OPSOMMING

Die Konstitusionele Hof het in 1995 besluit om die waardes van alle sektore van Suid-Afrika se oop en demokratiese samelewing in ag te neem; nie slegs Westerse denke en regsfilosofie nie maar ook Afrika reg en regsfilosofie. Met die erkenning van *ubuntu* as deel van Suid-Afrika se regsfilosofie, het die Hof Westerse en *ubuntu* versmelt in 'n nuwe Suid-Afrikaanse “reënboog” regsfilosofie. Maar onder hierdie oënskynlike samesmelting word 'n plofbare filosofiese verhouding tussen twee oeroue patriargale filosofieë verskans wat die erodering van Afrika waardes en ontelbare ongeregtighede teenoor die Afrika Ander tot gevolg gehad het.

Soos Griekse filosofie, het Westerse filosofie vooroordele teenoor vroue, slawe en barbare gehandhaaf. Rassisme het egter eers in die sewentiende eeu deel van Westerse filosofie geword toe dit die handel in twintig miljoen Afrika slawe moes wettig. Hierdie misdaad teen die mensdom was gewettig in die naam van Christus deur filosowe en die Christen kerk. Terwyl die filosowe van die Verligting gelykheid en vryheid verkondig het in die agtiende eeu, het hulle 'n “nuwe rassisme” aangevuur wat Afrikane as minderwaardig voorgestel het. Nie alleen het hul andersheid aanleiding gegee tot 'n beleid van rasse segregasie in die Verenigde State van Amerika in 1883 nie, maar dit het ook gelei tot die wettiging van kolonialisasie van die Afrika vasteland. Onder die vaandel van die kruis het Westerlinge hul kerstening en beskawing van die Afrika vasteland onderneem en gevestigde Afrika handelsnetwerke, die gronde van die voorvaders, selfregering, stamstelsels, Afrika reg, kulture, geloofstelsels en tradisionele waardes erodeer. Dit was egter nie bogenoemde faktore, die volksmoorde in die Kongo Vrystaat en Duits Suidwes-Afrika, of apartheid Suid-Afrika se misdaad teen die mensdom wat Afrikane se voortslepende minderwaardigheidsgevoel tot gevolg gehad het nie, maar die mees verwoestende wapen wat die Weste op Afrika gewerp het: die “kultuur bom”, wat Afrika waardes erodeer het.

Met die publikasie van sy *Bantu Philosophy* het Tempels nie alleen bewys dat Afrika oor 'n kollektiewe filosofie beskik nie, maar ook 'n hewige filosofiese debat internasionaal en nasionaal ontketen. In 'n poging om die debat oor Afrika filosofie te struktureer het Orika sy ses indelings van Afrika filosofie bekendgestel. Sy indeling is as volg: etnofilosofie stel die kollektiewe filosofie, of *ubuntu*, van die hele Afrika of 'n tradisionele Afrika gemeenskap voor; “*sage philosophy*”, of die filosofie van tradisionele wyses, bewys dat rasionele denke tog in Afrika bestaan; politieke filosofie verkondig die bevrydingsfilosofieë van Afrika leiers wat Afrika sosialisme, -humanisme en -waardes bevorder; *Negritude* beskryf die totaal van Afrika waardes en verdedig die feit dat Afrika wel n geskiedenis en unieke filosofie beskik; die hermeunitiese benadering reconstrueer Afrika realiteit na die koloniale era; en letterkundige filosofie illustreer die verwoestende effek wat Westerse liberalisme op Afrika en sy waardes gehad het. Die debat oor Afrika filosofie bewys dat Afrikane nie eensgesind is in hul denkwyses nie. Professionele Afrika filosowe, Afrika teoloë, moderne Afrikane en Afrika feministe verwerp die tradisionele denkwyses wat kenmerkend is van tradisionele gemeenskappe in Afrika.

Die Konstitusionele Hof beweer dat *ubuntu* waardes die Grondwet in die algemeen en die Handves van Menseregte in die besonder onderskryf. Hierdie studie bring egter bewyse tot die teendeel. Nie alleen is *ubuntu* waardes in sterk kommunitariese gemeenskappe uniek en nie universeel nie, maar *ubuntu* “morele” filosofie blyk in werklikheid n godsdienstige filosofie te wees. Die vraag word gereg gevra waarom die Grondwet slegs godsdienstige waardes van *ubuntu* in ag neem tydens beredenerings maar nie ander godsdienstige waardes nie. Dit is in stryd met art 15(1) van die Handves van Menseregte.

Terwyl die Afrika Renaissance, die Morele Heropbou Beweging, *Ubuntu* Belofte, die Heartlines Projek en talle programme oor Suid-Afrika heen poog om *ubuntu* waardes te laat herleef, beweer Afrika feministe, Afrika teoloë en moderne Afrikane dat *ubuntu* ongelykheid, seksisme en vreemdelingehaat

aanvuur en nie voldoen aan art. 39(1) van die Grondwet nie. *Ubuntu* is nie alleen nie in lyn met internasionale en regionale menseregte instrumente nie maar ook nie met “die grondwet in die algemeen en die handves van menseregte in die besonder” nie.

KEY WORDS

- African Feminism
- African Jurisprudence
- African Philosophy
- Deconstruction
- Postmodernism
- *S v Makwanyane*
- *Ubuntu*
- Values
- Western Feminism
- Western Philosophy