

A HISTORICAL SOCIOLINGUISTIC STUDY ON THE
CONCEPTUALISATION AND APPLICATION OF JUSTICE AND LAW
KWISIZWE SAMAXHOSA AS DOCUMENTED IN AND EXTRACTED FROM
SEK MQHAYI AND W.W. GQOBA'S SELECTED WRITINGS

By

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Declaration

I, the undersigned, Sanele Ntshingana, declare that this thesis is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references. This work has not been submitted previously in its entirety, or in any part, at any other higher education institution for degree purposes.

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Sanele Ntshingana

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Date

Dedication

This thesis is dedicated to all black people, the living and the ones who occupy the highest place *enyangweni*, who dared to speak, write and live their truth even when it was not fashionable to do so. Anga umoya wenu aphaile ngonaphakade *madela-kufa!*

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Abstract

This study seeks to investigate the original meanings contained in lexical terms relating to law (*umthetho*) and justice (*ubulungisa*) and their application in the precolonial Xhosa social society as they make appearance in SEK Mqhayi's novel *Ityala lamawele* (1914) and WW Gqoba's *Isizwe esinembali*, (1873-188/2015). Both of these works were written and initially published at the early point of contact of amaXhosa with the art of writing, and so are set in a 'traditional' setting (in the case of Mqhayi) and at early contact with European societies in Eastern Nguni region.

This academic endeavour is undertaken by employing critical discourse theoretical framework. The purpose is to investigate the conceptualisation of law and justice amongst amaXhosa, and the extent to which this conceptualisation reflects the philosophical worldview of amaXhosa, as embedded in their language. The paper makes inferences about conceptualisation of law and justice in precolonial Xhosa social settings, and offers proposals on what this conceptual understanding could mean if its potential contribution to the contemporary understanding and application of law and justice in South Africa could be tapped into.

The motivation for this study emanates from the current intellectual contestations in higher education that today's curricula present western knowledge systems as universal while marginalising indigenous epistemologies in teaching, learning and research practices. At the centre of these debates is how research, social and scientific thinking in humanities, is profoundly shaped by imported, racist, western "canonical" texts and theories.

The arguments presented by various scholars argue that this enterprise firmly roots the collective imagination of students about the past and present in racist Eurocentric schematic frames, thus creating a problem of identity loss, and an intentional distortion of historical truths. The space for knowledge systems and experiences reflecting African memory and imagination is not only neglected, but distorted too. In this context, the study seeks to delve deeper into how African languages can be used to reconstruct knowledge systems that reflect African ways of understanding society as part of creating a curriculum that depicts "multiversal" ways of knowing (Tisani 2000; Santos, 2014).

This study makes several findings, chief amongst which is that the legal and justice systems of the precolonial Xhosa society was both corrective as opposed to today's punitive court system that

South Africa inherited, largely from the West. It seeks to prove that AmaXhosa's precolonial legal and justice system was focused more on reintegrating the offender back into society. The study further will show how the precolonial amaXhosa justice system was embedded in the concepts of *ubulungisa* (correct and re-intergrate) and *isohlwayo* (that which brings one to basics). Through discourse analysis of the early literary isiXhosa texts, the thesis discovers that the application of *ubulungisa* amongst amaXhosa back then was consistent with the philosophies embedded in the concepts. By exposing the collaboration networks between the white missionaries and the colonial administrators of the nineteenth century, the thesis will show how conspiracies were directed at erasing and displacing these indigenous epistemologies and to replacing them with colonial memories. To this end, missionary accounts, explorer diary entries and reports and early lexicographic material were produced and archived.

Furthermore, this study makes a proposition that early written Xhosa texts be entrenched in the today's curricula in order inform the process of making sense of the social experiences and knowledge systems of the indigenous people of South Africa, from the precolonial-past to the present. Throughout the study, the thesis presents a proposition these early Xhosa texts be studied in relation to their intellectual contributions. This, it is hoped, will boldly challenge the canonised knowledge and racist assumptions about the African knowledge systems and experiences.

Isishwankathelo

Olu phando luphonononga intsusa yamagama aziziyelanelani *kumthetho* (umthetho olawula uluNtu) kunye *nobulungisa* (inkqubo yokusombulula impikiswano kuluNtu). Luphonononga indlela iinkqubo zobulungisa nomthetho bezisebenza ngayo kwisizwe samaXhosa phambi kobuKoloniyali, njengoko zibonakaliswa nguMqhayi kumdlalo *iTyala Lamawele*(1914) kunye noGqoba kwi-*Isizwe Esinembali* (1873-1888/2015). Le mibhalo ibhalwe ngethuba lokuqala amaXhosa adibana nosiba, futhi isekelwe kwisiNtu (le kaMqhayi) kunye nakwixesha lokuqala lokudibana nezizwe zaseYorophu kwingingqi yamaNguni, kwi-Afrika esezantsi. Lo mxakatho ke uyokuphunyezwa ngokucubungula nokuphica le mibhalo phantsi kwethiyori *icritical discourse* eyokuba liphahla lolu phando. Injongo yolu phando kukuphanda nzulu ngengqiqo yomthetho kunye nobulungisa kwisizwe samaXhosa nokukhangela ukuba ulwimi luyibonisa ukuyokutsho kweliphi na inqanaba le ngcingane. Olu phandolucubungula ingqiqo yomthetho kunye nobulungisa kwixesha lakudala, ze lwenze iziphakamiso ukuba olu phononongo lungathetha ntoni na kwindlela esicinga ngayo ngomthetho nobulungisa eMzantsi Afrika.

Iingxoxo ezitshisa ibunzi kumaZiko eMfundo ePhakamileyo namhlanje ezigxile kwimicimbi yekharithyulamu eyenza ulwazi lwaseNtshona ulwazi leZwe-lonke ibe olomgqubo lona kujongelwa phantsi ekufundiseni, ekufundeni, nakuphando. Ngezo ngxoxo ke ezikhokhelele kolu phando. Unqontsonqa weezingxoxo kukuba uphando, iingcingane eziphathiselene nezoluNtu kunye nenzulu lwazi kwiFakhalithi yezifundo zoLuNtu (Humanities and social sciences faculty) igcwele ubuhlanga obuphuma kwiizibhalo ezingundoqo kwizifundo (canonical texts) nakwiThiyori. Amaqela ngamaqela eenkcuba-buchopho zithi ukuba oku ke kwenza ukuba iingcingane yabafundi mayelana nexesha lakudala nangeli silimiyo imile, ide ifuna ukufana ncamashi, nengcingane yaseNtshona. Zithi ke lento idala ukungazazi ubuni nobuntu bakhe ubani. Ziqhuba zisithi indawo yolwazi namava achaza indlela zokwenza izinto e-Afrika azinakanwanga. Ngenxa yoko ke, olu phando luphanda ukuba iilwimi zesiNtu zingasetyenziswa njani ukwakha ulwazi lwase-Afrika oluchaza iindlela zokuqonda uluNtu. Lonto ke iyokuba yinxalenye yemigushuzo yokwenza ikharithyulamu ebonisa iindlela ezohlukeneyo zokwazi (Tisani 2000, Santos 2014).

Olu phando lube neziphumo eziliqela, ezinqenqeza phambili kukuba ubulungisa kwisiZwe samaXhosa bebunjonge ekulungiseni izinto kunokuphindisela ububi. Bebjonge ekuhlambululeni umoni, nokumgenisa kuluNtu kwakhona. Le ngingane ibonakala kumagama afana no-*ubulungisa* (ukulungisa into nokuyingciba kwakhona) . Olu phando luye lwafumana, ngokusebenzisa uphahla *idiscourse analysis*, ukuba ukusetyenziswa kobulungisa kwakuhambisana nengcingana equlathwe kumagama ebhekise kubulungisa nomthetho.

Iintsebenziswayo ephakathi kwabafundisi abamhlophe (iimishinari) kunye nabacwangcisi benkqubo yobuKoloniyali kwikhulu lweminyana elishumi nesithoba (nineteenth century) yayijonge ukukhucula nokususa le ngqiqo yabantu bomgquba ize ifake iingcingane yobuKoloniyali. Oku kwenziwe ngoko kubhalwe kumaxwebhu ebhalwe ngabafundisi (iimishinari) ngoko bakubonileyo kwisizwe samaXhosa, iingxelo kunye nemiqulu yokuqala yeezichazi magama abayekulunqayo.

Olu phando ke lwenza isiphakamiso sokuba imibhalo yokuqala ebhalwe ngesiNtu ibe yinxalenye yezifundo (ikharithyula) kumaZiko eMfundo ePhakamileyo ukwenzele ukuba iinkcuba-buchopho zanamhla zibe nolwazi namava abantu bomgquba phambi kwexesha lobuKoloniyali. Kuyaphakanyiswa kwesi sifundo ukuba le mibhalo ifundwe ngokwengcingane equlathwe kule mibhalo. Oku kuzokunika umgeni ulwazi “olingundoqo” kunye nengcingane ezinobuhlanga ngoko lwazi kunye namava ase-Afrika.

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Chapter one: Introduction

1.1 Background and context

This study is concerned with semantic analysis of concepts related to *umthetho* [law] and *ubulungisa* [justice] as they appear in Mqhayi's *Ityala lamawele* (1914) and Gqoba's *Isizwe esinembali* (1873-1888/2015). These works were written at the early point of contact of amaXhosa with writing, and they are set in a 'traditional' setting (in the case of Mqhayi) and at early contact with European societies in Eastern Nguni region. The purpose is to investigate conceptualisation of law and justice amongst amaXhosa, and the extent to which this reflects the philosophical worldview of amaXhosa, as embedded in their language.

This study is motivated by the current contestations in higher education that revolve around curricula, arguing that it presents western knowledge as universal while marginalising indigenous epistemologies in its teaching, learning and research practices (Msila and Gumbo 2016, Hoppers 2001, Mbembe 2001, 2015, 2016; Heleta 2016, Zeleza 2009). The current higher education curriculum still largely reflects the colonial and apartheid worldviews (Ramoupi 2014:271) and is disconnected from African realities, including the lived experiences of the majority of black South Africans. Heleta (2016:4) argues that such a curricula does not develop students' critical and analytical skills to understand and move the African continent forward. Secondly, Coetzee and Nuttall (1998) argue that this curriculum firmly roots the collective imagination of the student about the past and present in Eurocentric and racist schematic frames, thus creating a problem of identity loss. Knowledge about Africa produced by African academics is largely ignored.

At the height of decolonization and nationalism in many African countries, like Ghana, Kenya and Nigeria after 1950's, scholars, poets, philosophers and artists started engaging, researching and writing extensively about the history of Africa before colonialism (Delius and Marks, 2012). These writers and researchers, according to Delius and Marks, sought to re-write the history of Africa; a history that has been tainted, devalued and distorted by the colonialists and missionaries. According to Wa Thiongo (1981) "transformation required looking at the curriculum in terms of the 'relevance to our situation ... contribution towards understanding ourselves. Ultimately the goal was to establish the 'centrality of Africa' in the curriculum" (1981:94). According to Badat (2010) the new democratic government in South Africa committed itself in 1994 to transform

higher education as well as inherited apartheid social and economic structure and institutionalizing new order. He recounts:

Post-1994, there has been a wide array of transformation-oriented initiatives seeking to effect institutional change. These have included the definition of the purposes and goals of higher education; extensive policy research, policy formulation, adoption, and implementation in the areas of governance, funding, academic structure and programmes and quality assurance; the enactment of new laws and regulations; and major restructuring and reconfiguration of the higher education institutional landscape and of institutions. These initiatives have often tested the capacities and capabilities of the state and higher education institutions and have affected the pace, nature and outcomes of change (Badat 2010: 4)

The #RhodesMustFall campaign in 2015 amongst other things critiqued the absence of locally produced knowledge in the academy despite these government interventions. The campaign, challenged and re-ignited the debate about Africanisation of the academy, decolonization of knowledge in humanities and social sciences. Amongst some of the demands from the movement was that the academy should unearth social experiences of the pre-colonial Africans through languages. The students' political and intellectual work thus brought to the limelight the extent to which South African higher education invisibilized African knowledge and continues privileging and highlighting the Global north and how this ought to change through decolonization.

Heleta (2016) cautions us that when we talk about and engage in re-conceptualisation and decolonisation of the curriculum in South Africa "we need to consider the two approaches discussed by Garuba (2015). The first approach is to 'add new items to an existing curriculum'. The second approach is to 'rethink how the object of study itself is constituted' and then reconstruct it and bring about fundamental change" (Garuba 2015 quoted in Heleta 2016: 5). Heleta (2016) argues that the first approach is promoted at South African universities by those who want to maintain the status quo. He argues that this group wants to keep Eurocentric worldviews in the curriculum but add to it 'bits and pieces of Africa' and 'the other' previously colonised places and peoples. This approach allows for ticking of the boxes and saying 'we are busy reforming and transforming'. The end result would be the continued dominance of Eurocentric worldviews (Heleta 2016: 5). This study moves on from the second approach. In this context, this research

seeks to investigate how African languages can be used to construct knowledge that reflects African ways of understanding society as part of creating a curriculum that depicts “multiversal” ways of knowing (Tisani 2000; Santos, 2014) while critiquing the existing canon.

This study’s point of departure is that language is a documentation of the history of the people who have spoken it in the past (Sapir 1916, Wa Thiong’o 2013, Campbell 2015). It argues that from the words of the language, one can deduce the knowledge, experiences and cultural practices of the members of the society who speak that language (Sapir 1916, Wa Thiong’o 2013). Language is therefore a social institution that affects social behaviour, and from it, we are able to understand a people’s patterns of social interaction, lines of status, their values, obsessions and things they vilify. The Nigerian Sociologist Oyèrónké Oyěwùní (1997) eloquently encapsulates this:

Language is pre-eminently a social institution, and as such it constitutes and is constituted by culture. Because of the pervasiveness of language, it is legitimate to ask what a particular language tells us about the culture from which it derives. Language carries cultural values within it (Oyewumi 1997: 40)

Linguistic evidence as a source of inferences and assumptions about people’s conceptualisation of their lived experience has been thoroughly studied in Indo-European languages (see Sapir 1916, Whorf 1956, Fishman 1982). However, the contribution of African languages in humanities and social science studies, as a source to make inferences about their speakers’ past has not been sufficiently explored (Oyewumi 1997), with the exception of historical linguistics studies (see Theal 1886, Oliver 1966, Bailey 1995, Fleisch & Stephens 2016), which have accounted for the language change in African languages in the continent. Moreover, the indigenous languages of African continent as well as its oral traditions by the indigenous people, as sources of information of their word-sense and interpretation of their social structure have been not thoroughly explored (Maseko 2018). Making an argument of indigenous people’s literature as a possible contributor in exposing African experiences and knowledge, Shepherd argues:

And when it is remembered that in Bantu speech, striking in its beauty of language, full of imagery and picturesqueness, there is much that tells of natural poetry, we grasp that when the outlet is afforded mankind will be enriched with wealth that only the true artist can give. Already the few creative writers in Southern Bantu

languages have proved that in the African mind, in African views of life and living, we have something that is new to Europeans, something on which the world should more and more seek to draw. (Shepherd, 1945: 93)

It could be argued then that literature written by the Africans can offer the world the wisdom of the society that spoke it. Therefore, studying words that were used by that society can give us insights about the social relations in those earliest societies, how they conceptualized their reality, through how they named things. The literary works of Mqhayi (1914) and Gqoba (1873-1888/2015) written in isiXhosa, provide valuable data for purposes of this research. The value in these texts lies on the fact that they were written at the earliest acquisition of isiXhosa writing. Therefore, they are the earliest documents written in isiXhosa by the indigenous isiXhosa speaking people on matters of law and justice. They are thus a reliable source that contain the earliest memory, closer to the precolonial period.

This chapter therefore sets out to provide an overview of the study premised on this background. The first section of this chapter will briefly explore some studies done in the African continent, using linguistic evidence to make sense and inferences of the pre-colonial experiences of the African people. Section two of this chapter locates the experiences of the researcher within the research. Section three to section six gives motivation, objectives of the study, research questions and the structure of the thesis consecutively.

1.2. Studies on understanding the precolonial social experience through linguistic evidence

Research on how different facets of language can be used to make sense of social practises and epistemologies of African societies over time has not been explored to the extent it deserves (Oyewumi 1997, Maseko 2018). The works of Amadiume (1986), Oyewumi (1997), Maseko (2018) are some key works, yet marginal , that have done the task of unearthing indigenous knowledge embedded in the language and making links to how these epistemologies influenced the precolonial African society and continue to influence social organizations of various indigenous societies over time (diachronically).

Amadiume (1987) study for example investigates precolonial women's power in Nnobi, an Igbo community in south-eastern Nigeria, through the colonial and postcolonial periods (Hoppe 2016). It presents women's institutional and ideological power in the precolonial nineteenth century by

using indigenous literature as well as missionary records. This is a diachronic study that systematically traces women's economic, political and ideological power through colonial and post-colonial period. It also uses linguistic evidence to support the historical sources. The central claim in Amadiume (1987)'s study is that precolonial African women were not an exploited and powerless group as they are portrayed by the "liberal western feminist" scholarship. Instead, Amadiume (1987) argues, women were empowered and assumed positions of power in the pre-colonial Africa. Their disempowerment, she claims, was a result of colonial domination and ways of organizing society (Amadiume 1987). As mentioned earlier, Amadiume uses historical texts written in the nineteenth century, as part of her methodology, since writing was introduced then to the Igbo society. Amadiume makes inferences about the precolonial social experiences of women the Nnobi society through linguistics inferences. Amadiume also uses oral traditions and more importantly and relevant to this research, social concepts of Igbo language. The English translated concepts such as "female-husbands" and "male-daughters" for example, denotes a different organization of power which gave power to women in different institutions. These categories are English words that "translate" African sense, and they are peculiar to the Western orientated reader. Translating African sense, using English language was thus a deliberate act for Amadiume. The Indigenous concepts are centred as well in this study. Ten years after this research was published, Amadiume (1997) explained why it is a deliberate act not to depend on European concepts:

One of the dangers of having our feet stuck in Western-produced literature is the tendency to use European terms and expressions uncritically when addressing non-European cultures and experiences. The history of European imperialism and racism means that the language which aided that project is loaded with generalized terms which do not necessarily have a general meaning, but serve a particularistic interest. (Amadiume 1997)

According to Amadiume (1987), the conceptualization of daughters as male was in ritual matters and politically, in relation to wives. She argues that it did not imply that daughters should be seen as "man-like" or were "female-husbands expected to behave like men" (Amadiume 1987: 185). Furthermore, the looseness of gender association, Amadiume (1987) argues, is the fact that in Igbo grammatical construction of gender, a neuter particle is used in Igbo subject or object pronouns,

so that no gender distinction is made. There is, therefore, no linguistic or mental adjustment or confusion in references to a woman in a typical male role (Amadiume 1987:186).

Oyewumi (1997)'s study carries on from the similar tradition as Amadiume (1987). Similar to Amadiume (1987), Oyewumi (1997) challenges the Western gender categories on Yoruba culture through exhaustively analysing different social institutions from historical texts written in the nineteenth century, including the texts of Samuel Johnson, who was a Yoruba historian. Through this, Oyewumi (1997) makes inferences of the social organization of the Yoruba society in the precolonial era. She traces the manner in which the Yoruba society was constituted and whether gender was the factor in organizing it. Through exhaustive analysis of different texts and oral literature, Oyewumi (1997) concludes that gender was not the factor in organizing the Yoruba society. Instead, Oyewumi argues that it is *seniority* not *gender* that orders and divides Yoruba society. For Oyewumi (1997), seniority refers primarily to chronological age difference. However, it also refers to an agent's positioning within the kinship structure which is always negotiated.

AmaXhosa hold the similar worldview. In the Xhosa culture, the concept *-ikrwala* refers to a newly initiated/circumcised "boy" after he is integrated back to the general society. The concept *ikrwala* can also be used to refer to a younger "anatomic-male" person by his seniors. *Ikrwala* could be what the researcher may consider as *utata* (father), but to his seniors he remains *ikrwala* (junior man). *Ikrwala* occupies a status of being *indoda* (circumcised male) in the general society yet remains *umntwana* (child) to his mother and any older person. To his peers that he went to the initiation school with, he is *usaluka* (initiation-school mate) because *saluka kunye* (we were both initiated at the same time) or *untanga* (same-age group mate). *Ikrwala* is *umkhuluwa* (senior kin) generally to younger people than him in terms of age and social status. *Ikrwala* can also be *umninawa* (young brother) to his *sbali* (brother-in-law) if the brother of his wife is older than the sister *krwala* is married to, even if *ikrwala* is older than the brother-in-law by age. In other words, in a family setting where there are elders, marriage is privileged. In a different setting, say, in all men's setting *umcimbi wamadoda* seniority may change between these two interlocutors depending on factors like the circumcision year and social achievements.

Similar to Yoruba culture then, in isiXhosa world, "no one is permanently in a senior or junior position; it all depends on who is present in any given situation" (Oyewumi 1997: 42). Similar to Yoruba world-view, isiXhosa culture thus renders anatomy irrelevant, it "seals-off the biologically

deterministic paternity claim” (Orleyn 2019) of the west and privileges seniority. In the Yoruba culture, Oyewumi (1997) argues that an outsider marrying into the lineage, their seniority rank depends on how many children (including blood relations) is already part of the lineage. Seniority is therefore always *relative* and context dependent.

Oyewumi (1997)’s claim for the absence of gender in Yoruba culture and the centrality of seniority as an organizing principle is also based on the fact that there is no marker of gender in the Yoruba language and that Yoruba social institutions and practices do not make social distinctions in terms of anatomical difference (Bakare-Yusuf, n.a). For Oyewumi, the word

obinrin, erroneously translated as "female/woman", does not derive etymologically from *okunrin*, as "wo-man" does from "man". *Rin*, the common suffix of *okunrin* and *obinrin*, suggests a common humanity; the prefixes *obin* and *okun* specify which variety of anatomy. There is no conception here of an original human type against which the other variety had to be measured. *Eniyan* is the non-gender-specific word for humans (Oyewumi 1997: 33).

Against a western mindset, anatomy does not determine position or status in the Yoruba language (Oyewumi 1997). Similarly, Maseko’s work looks at the notion of ‘gender’ in Xhosa society through studying concepts that depict social relations, such as “*umfazi*” [a great mortal] whose contemporary translation is “woman” and *umlingane* [an equal], translated as “friend”, in texts written by early Xhosa literates like WW Gqoba and AC Jordan. Through this, Maseko 2018, reconstructs the experiences of pre-colonial isiXhosa-speaking Nguni society and examines whether ‘gender’ was a key factor in organizing relationships and roles. Similar to Yoruba and Igbo societies, Maseko (2018) argues that social organization and hierarchies were not based on ‘gender’ or ‘sex’ but on seniority, rank and status among other things. Maseko (2018) studied the etymology of words to elicit original meanings and their evolution in form and meaning, [and] also made correspondence of such meanings to the thoughts of society as early as present memory can recall. For example, a term like *umlingane* whose contemporary translation is “friend” is derived from the verb, *lingana*, to be equal. In the 19th century texts, this term, *umlingane* was also used in the context of “wife-husband” relationship (Maseko 2018). An assumption can then be

drawn that historically, amaXhosa recognized equality between spouses in marriage, which contradicts dominant views on women in African society in gender studies. This work sheds insight on how the early isiXhosa speaking society conceptualized their social reality and organized their society and how that manifests in their naming practices. This lexical evidence shows that *abafazi* occupied higher social status among amaXhosa than is portrayed through the western feminist discourse.

De Wet (*forthcoming*) looks at '*imfundo*' [education] and other words related to education to make a comparative historical analysis of meanings of *imfundo* in isiXhosa. He does this by trawling texts written by four early Xhosa 'literate': SEK Mqhayi (1914), WB Rubusana (1906), WW Gqoba (1873-1888/2015) and AC Jordan (1945). *Imfundo* is isiXhosa word for education and related words with the root *-fund* (*ukufunda*, *imfundiso*, *umfundi*, *mfundisi*, *ukufundisa*). De Wet's research sheds light to the changes and continuities of the meanings embedded in these terms. Through this diachronical sociological study, we are able to see some aspects of the world-view of amaXhosa and how these are influenced by the change in society. This study in this regard, differs from the above mentioned study in respect of the fact that it does not at the word level analyse the cognitive meanings of *imfundo*. It analyses the contexts in relation to the meanings given to the concepts.

Similar to the scholarship outlined above, my work seeks to study concepts related to *ubulungisa* (justice) and *umthetho* (law) using Gqoba's (1873-1888) texts written at the earliest acquisition of writing skills and S.E.K Mqhayi's *Ityala Lamawele* (1914). The purpose of this study is to do a contextual analysis of the meanings of these concepts, and as indicated above, to give insight into how isiXhosa-speaking society conceptualized and applied justice. For example, if a term like *ubulungisa*, derived from the verb *-lungisa* which means to "correct and re-integrate", would it be wrong to assume that, instead of being punitive, justice in African society was was corrective and focused on reintegrating the offender back into society? Using linguistic evidence from literary archives written in the nineteenth century and early twentieth by early isiXhosa intellectuals who used newspapers to tell an African experience from an indigenous perspective, this contribution seeks to show how the processes of justice and law were conceptualized in the precolonial times.

This should provide counter arguments to contemporary dominant narratives in various disciplines in the academy.

A language centred approach in isiXhosa worldview, which emphasizes what lexical items can tell us about the speakers' precolonial past is much needed. Much of the existing historical sociolinguistics work (e.g. Theal 1886, Oliver 1966, Bailey 1995, and Fleisch & Stephens 2016) does not account for the intellectual thought of amaXhosa about the world that surrounded them. Much of this work, for example, Fleisch and Stephens 2016, takes into account the diachronical shifts of concepts like *umsebenzi* (work) and the social experiences which determine these shifts. It does not study the cognitive meaning of these terms in relation to the precolonial social experiences of amaXhosa. Drawing a relationship between language and people's knowledge and philosophy, Wa Thiong'o (2013: 160) argues that one would have to learn how to *listen* (my emphasis) to what African tongues are saying if they want to understand African knowledge and philosophy. According Githiora (quoted in Wa Thiong'o 2013: 158), people's tongues are "the keepers of their traditions, the mirror of their knowledge and skills."

1.3. Biographical notes

In my undergraduate degree at Rhodes University, nearly all my modules were largely based on the canonical texts and theories by Global North scholars with the exception of one or two courses like isiXhosa for Journalism. In courses like Sociology and Political Studies, the prescribed, taught and recommended material included the works of philosophers and theorists like John Rawls who theorised about "justice" from the Western worldview, John Locke, Stuart Mills, August Comte, Karl Marx, and Ferdinand de Saussure among other Global North theorists. These theorists were writing about the themes of Justice, Freedom, Law, Human rights and were largely white and males and who were writing in European societies from their lived experiences, which was fundamentally influenced by what was happening globally. The universality of their experiences was taken for granted in the courses I took. There were no African theories and writers; the only time when Africa was visible was when it was used as case study.

Most of the ideas of these philosophers and theorists were presented and packaged in a manner that made it seem like their ideas and ideals are free, uninformed and unaffected by the four hundred years presence of Africans in the West, race relations and slavery. For example, Pithouse

(2018) argues that the great “liberal philosophers” such as John Locke and John Stuart Mill were explicitly committed to a conception of rights that excluded most of humanity. Pithouse (2018) further argues that “Despotism,” Mill wrote, “is a legitimate form of government in dealing with barbarians.” Magubane (2016), whose research is on decolonizing the sociology discipline illustrated in her work that the “father” of Sociology August Comte was deeply implicated in the slave trade relations and these deeply influenced his work but in sociology he is taught as if his theories were unfettered by the colonial enterprise and slavery. The academic departments that were teaching the work of these thinkers were engaged on what Buck-Moss (2000) calls the “overreliance of silence” and sometimes “epistemic ignorance and racial privilege” (Mills 1998) never mind the inclusion of African theories.

The other courses I took, especially in my third year gave me an understanding of how colonization and coloniality played an important role in making possible the knowledge, the pedagogy and academic research in South African universities and abroad. I consider this period critical in opening my eyes to the reality or “problem” of the academy generally from a theoretical point of view. I could finally articulate what it meant to be a “problem” as a Black African in the South African academy. I got to understand how (coloniality) tainted the family structure, the social organization, the way in which people relate to each other, the spirituality of Africans and their institutions. This was indeed a “turning point” in my academic career. However, I learnt very little about African epistemologies on justice and freedom amongst other things, using African languages as point of departure. I had seen how at home power was negotiated between me, my older siblings, nephews, uncles and senior mothers. The words reflected the way of organizing hierarchies, power and status. Most of this experience was not engaged with in the readings we were subscribed. In the readings, there were claims that “women” were submissive to “men” and that “Africans were savage”. These claims were universalising the western experience and I did not see evidence for them. Okome (2008) argues that African women have been presented as if they cannot think and unable to reflect upon their problems. She problematizes, especially the assumptions that Westerners, whether feminists or otherwise, are better able to interpret reality of Africans. Okome (2008) argues that this is problematic because “like any other group, African women are able to articulate their needs, they think about devices they can apply to resolve their problems, and “mobilize for collective action where necessary” (Okome, 2008: 140). Okome emphasises the significance for scholars to understand how people see and reflect their own

experiences. Her other point is that western writers write as if women's bodies are treated well in the west, as if they participate in decision in whatever contexts. Okome (2008) reminds us that African women do not need to be liberated by western feminism discourse. She asserts that it is important and necessary to hear people's reflections in order to understand their reality - just because one is poor, doesn't mean that they are not reflecting on their experiences (Okome, 2008).

In my post-grad studies, I took African languages, where I did translation studies as a module under the supervision of Prof Maseko. This course, along with other African languages courses like "Language, Diversity and Access in Education", critically engaged with my lived experiences in the knowledge I was learning and equally challenged my world-view. I learned about isiXhosa concepts and the knowledge embedded in them. Among the other things I learnt was that isiXhosa was not a "gendered" language and that all social categories marked seniority and not gender.

I could for the first time, link my lived experiences with the theories in class. My experiences were affirmed and assumptions challenged by the linguistic evidence of my own language. More importantly, this phase made me realize that the concepts and theories that informed my engagement on social issues were largely imported from the Western experience. While this was an emotional issue to me, I have had to deal with it by asking difficult intellectual questions. This background influenced my thinking about the relationship between ontology and epistemology.

1.4. Problem Statement

The purpose of the missionaries, in their invasion of the African continent, was driven by the ‘desire to serve humanity and enable social change’. This was accompanied by the notion of moral self-righteousness that led to their high-handedness in dealing with the local knowledge and sociocultural practices. Consequently, the missionary work which include their journal accounts about the indigenous people, dictionaries and historiography sought to systematically displace indigenous memory with colonial memory and paint the African practices, particularly those related to justice and law as primitive and barbaric. This displacement, and deficiency or non-existence of reminders/indigenous memory perpetuates the myth that the African society was ‘barbaric’ in its sociocultural practices, and Europe successfully ‘saved the dark continent’. The higher education through its research, teaching and learning practices perpetuates these myths and European hegemony. It does so through its dependency on the missionary, colonial and apartheid theories and writers. The kind of student that is then produced by this African university lacks a sense of identity and critical thinking about the Africa’s pre-colonial past and imagination of the future.

1.5. Research Aims

This study aims to unearth amaXhosa’s conceptualization of umthetho and ubulungisa in the pre-colonial time, during the colonial and post-colonial era by analysing the meaning of lexical items related to umthetho [law], ubulungisa [justice] such as inkundla [court], intlawulo [payment] and Ityala [trial] as they appear in S.E.K Mqhayi’s *Ityala Lamawele* (1931) and W.W. Gqoba’s *Isizwe esinembali* (1873-1888/2015). The goal here is to make inferences about amaXhosa’s practices that relate to justice and law and to make propositions to how South African higher education can integrate these indigenous knowledges in its teaching, research and learning practises.

1.6. Research Questions

In furthering the objectives of the study, this research seeks to respond to the following question:

- What can isiXhosa lexical items tell us about the conceptions and application of justice in the early Xhosa speaking society?

- What knowledge can be derived from this about amaXhosa and their conceptualization about law and justice?
- How can we use these epistemologies in the academy today?

1.6 Structure of the thesis

This thesis is divided into six chapters. The present structure of this chapter has been outline in the introduction above. In order to achieve the aim of this research, it will be necessary to deal with various aspects of this study according to the following scheme.

Chapter 2: is a literature review chapter. It gives a background of the writers selected for this study, taking into account their social context and ideological baggage. It takes into account the history of early newspapers introduced by the missionaries and the orality.

Chapter 3: is a methodology chapter. It outlines the methods that were used to collect process and analyse data for this study. It will explain the steps the research took in converting the texts and the experiences encountered in the process.

Chapter 4: is a theoretical framework chapter. It gives a breakdown of the diachronical lexico-semantic theoretical framework in which the analysis of this study is founded on.

Chapter 5: This chapter presents and analyses key words selected in the data in relation to how the *indigenous inkundla* “court” processes of *umthetho* (the law that governs the society) and ushering *ubulungisa* (the process for resolving the societal disputes) were conceptualized in the precolonial Xhosa society.

Chapter 6: is a conclusion chapter. It draws together the views presented in various chapters of the thesis. In doing so, it draws a general conclusion by drawing on key argument this thesis makes in each chapter and makes recommendations.

1.7. Summary

The purpose of this chapter was to give an overview of what to expect in this study by providing a general introduction to the thesis as well as the context and background of the study. Furthermore, this chapter stated the research problem, outlined research questions, and provided motivation behind this study and an overview of the structure of the thesis. The following chapter is devoted to literature review.

Chapter two: literature review

2.1 Introduction

The purpose of this chapter is to give a socio-political background of William Wellington Gqoba and SEK Mqhayi, the two writers whose work are selected for this study. This background takes into account these writers social context and the ideological baggage they carried and how this influenced their thinking and writing. It is important to note that this thesis is not a biographical account of the selected writers. It is rather about the critical appraisal of their intellectual work in relation to the objectives of this thesis. The social background of these authors is thus meant to illuminate the environment from which the writer's ideas emerge. Saule (1996) says the writer is part of the larger society and their ideas and idiom reflects their society. Wa Thiong'o (2013: 158) captures this succinctly in the following manner: our struggle with nature and nurture, our lives, is the fertile ground from which ideas spring. As this thesis will be engaging with the contexts where the lexical items related to *ubulungisa* and *umthetho* appear, in order to elicit how amaXhosa conceptualized them, it will be important to lay out to the reader the social and ideological 'baggage' the writer carries in order to better contextualize the text. The ideological background is important to factor because as Adebani (2014: 406) notes, writers are not just intellectuals whose work mirror social thought, but writers are also social thinkers who engage with nature of existence and questions of knowledge using their imagination and originality. The first section of this chapter, examines William Wellington Gqoba's social context that precedes his birth and the one he lived in order to locate his environment and how his thoughts are influenced by it. The second section looks at Samuel Edward Krune Mqhayi's brief biographical as well as his social context, and how they influenced his work and imagination. The purpose here, like it is with Gqoba, is to locate how social and ideological processes influenced his work. The third (last) section gives a brief account on how scholars in social sciences, particularly in African languages have engaged with the works of these intellectuals, and how my contribution differs and shares similarities with the existing body of scholarship.

2.2 William Wellington Gqoba

2.2.1 Brief biographical background

William Wellington Gqoba was birthed by Gqoba, who is birthed by Peyi, *umCirha omkhulu* (Great man of the Cirha clan) who was a loyal discipline of Ntsikana (Gqoba 1873-1888/2015: 518). William was born in August 1840 *kwaGaga*, one of the many villages surrounding *eDikeni* (Alice) in the deep eastern region of Southern Africa, an area dominated by Xhosa speaking people and other groups such as *Imidange*, *imidushane* and *amaGqunukwebe* (Tisani 2000). When he was a little boy, Gqoba was educated in the Mission School at Tyhume located not too far from the village he was born. Gqoba later moved to Lovedale Junior classes in 1856 to further his education. Opland, in the introduction of *Isizwe esinembali: Xhosa histories and poetry*, a compilation and translation of Gqoba's writings that are identifiable, notes that Gqoba was birthed a year before the commencement of Lovedale Institution (Gqoba 1873-1888/2015: 3). This institution would become a centre stage of isiXhosa literary development in South Africa and in Gqoba's writing career. Gqoba's career spans from being a wagon-maker, an essayist, a historian, poet, teacher and a "missionary" agent (Jordan 1973, Opland 1983, Gqoba 1873-1888/2015). Before this chapter begins to discuss some of Gqoba's works and his ideology, it will first contextualize his environment, particularly the literary and well as social events that were enveloping before he was born and during his life-time.

2.2.2 Mission Stations and the legacy of Ntsikana

Forty years before Gqoba was born, the lives as well as the cosmologies of amaXhosa were going through dramatic changes and turbulences as a result of colonial encroachment (Peires 1981, Mostert 1992). This encounter coincided with the missionary "enlightenment" movement of the nineteenth century (Comaroff and Comaroff 1986, 1991, 1994, Prah 2009). The first missionaries to arrive in South Africa were accommodated by, and settled among amaRharhabe under *iNkosi uNgqika* (Maseko 2011, Tisani 1992, Opland 1986). The purpose of these missionary societies was to spread the gospel and to "enlighten" the "dark continent" based on the idea that all the "heathens" should be saved (Makalima 1985, Gqoba 1873-1888/2015, Webster 2013). In order to

evangelise successfully, these missionaries needed to learn indigenous languages as it was their goal to commit the new language into writing and therefore to teach the gospel to prospective converts in their own languages (Miti 2009, Makalima 1985).

The pioneer missionary among amaXhosa was Dr Van der Kemp of the London Missionary Society (Jordan 1973, Makalima 1981, Gqoba 1873-1888/2015). He was permitted by *iNkosi uNgqika* in 1799 to settle in but abandoned the mission eighteen months later under pressing political circumstance (see more on Jordan 1973). In 1820, an exodus of missionary societies such as the Wesleyan Missionary Society and Glasgow Missionary Society entered the shores of Southern Africa. In their quest to evangelize the indigenous, these societies started missionary schools for the children of the Christian converts (Tisani 1992, Jordan 1973, Gqoba 1873-1888/2015). John Brownlee of the Glasgow Missionary Society (GMS) established a mission school in 1820 in the banks of Tyhume River where William Wellington Gqoba and many other sons of the missionary converts studied (Gqoba 1873-1888/2015: 1). Twenty-one years later, the Lovedale Missionary Institution opened its doors to black and white students in 1841 and William Wellington Gqoba would be one of its students in the second half of the nineteenth century (Gqoba 1873-1888/2015: 1). Lovedale was one of the most influential institutions in the development of the early Xhosa writers of the early nineteenth century (Webster 2013).

It is important at this stage to note the enduring influence of the Xhosa prophet Ntsikana kaGaba in the early Xhosa “intellectuals” including William Wellington Gqoba. Opland in Gqoba (1873-1888/2015) notes that sometime before the coming in of Glasgow Mission in the Ndlambeland (*Kwandlembe*), Ntsikana had experienced the “spirit of Christianity”. Jordan (1973) as well as Opland in Gqoba (1873-1888/2015) posit that it was the spirit of the “Christian religion” from the teachings of Dr Van de Kemp that influenced Ntsikana. Agreeing with Jordan (1973) and Opland’s account in Gqoba (1873-1888/2015), Booii (2008) argues that indeed, Dr Van der Kemp had formative influence on the young Ntsikana to go and teach all nations about the word of God.

Tisani (1987)’s interpretation differs from the above accounts. He argues that it was in fact the spirit of ‘ukuthwasa’ that got into Ntsikana, not the Christian spirit. His first encounter includes having ‘hallucination’ next to his kraal (ebuhlanti). As Ntsikana was a traditional umXhosa who took great pride in his cattle, he would get up and admire them early in the morning (Jordan 1973). It was as Ntsikana indulged in that kind of behavior that one morning he had hallucinations (Jordan

1973, Tisani 1987, Booii 2008). A ray of light seemed to strike the side of his favourite ox, Hulushe (Jordan 1973) and that could not be observed by anyone else besides him. Later that day while involved in *umdudo* (the wedding dance) he felt restrained by some spirit (Jordan 1973, Tisani 1987). It is reported that on this day Ntsikana was reluctant to participate in this occasion although he was a skilled and keen dancer. Every time he stood up to dance Ntsikana felt forced to sit down. Then something unexpected happened- a gale force wind began to blow, accompanied by lightning and clapping thunder (Jordan 1973, Booii 2008). This shocked everyone and brought Ntsikana to sudden halt. Ntsikana started dancing again when the phenomenon disappeared. Eventually, he decided to “leave” his family, and amongst them, his would have been right-hand wife, Nomonto. On the way and without warning to the rest of the party, Ntsikana stepped aside and washed off red ochre (*imbola*) from his body. In this manner, Tisani (1987) argues that symbolized his departure from all that was traditional about him, something he himself did not realize at the time. Agreeing with Peires (1981), Tisani argues that there was nothing Christian about all that was happening to Ntsikana at that stage. Rather the best that could be said is that at that time Ntsikana was being divinized (*wayethwasa*).

This was happening at a time when missionary influence and presence was a reality in Ngqika's land, according to Tisani (1987) this meant that Ntsikana would be prepared for his work by those Christian missionaries. Ntsikana founded his own church but refused to be baptized by the missionaries. Opland in Gqoba (1877-1888/2015) argues that it was Ntsikana's philosophy to adopt Christianity only on African terms. He composed hymns that spoke of cultural and traditional experiences of Africans and idiom, established various congregations in the Transkei, Fort Beaufort, Mankazana Valley, Somerset East, Debe Nek, King William's Town and at Mgwali (Booi 2008: 11). Ntsikana was thus influential among amaXhosa and inspired many generations of African early literates. These included his son, William Kobe Ntsikana, Dukwana and his followers Zaze Soga, Makapela Noyi, and Peyi who is the grandfather of William Wellington Gqoba. According to Opland in Gqoba (1873-1888/2015: 4) Ntsikana made a dying wish to his followers to join John Brownlee at the Tyhume mission with their families, where they continued to hold their own services, which always included singing Ntsikana's hymns.

Tyhume mission station existed among many other mission stations that signalled new evangelical era (Tisani 1992). They were multi-racial centres where the dominant culture and knowledge was

imported from Europe (Tisani 1992: 66). In addition, Tisani (1992) recounts, there were sub-cultures comprising escaped and, after 1838, liberated slaves and the Khoi people. Mission stations were thus, in a way, melting pots in which new cultural alloys were being fashioned (Tisani 1992: 65). This is where the followers of Ntsikana like Dukwana, Kobe and Noyi found themselves. They found themselves there partly because of Ntsikana's dying wish and because of the wars of dispossession which was changing their world (see section 2.2.3 for more discussion). These Ntsikana disciples helped translate the bible in the mission and helped with interpretation for the missionaries amongst other things. Ntsikana's disciples were armed with Ntsikana's teachings, to receive the Bible (*umqulu omlomo ubomvu*) from the people from abroad and analyse it using the indigenous knowledge and wisdom. This tradition of engagement with the bible and western knowledge in this fashion would be passed by this generation to the next generations. It was very likely for the children of the elders who went to 'serve' at the mission stations to also serve in various capacities. William Wellington Gqoba was the third generation to also serve at the Tyhume mission station, as a teacher, after the invitation from Tiyo Soga (Gqoba 1873-1888/2015).

2.2.3 The development of the early newspapers

Some of Ntsikana's followers who joined the missionary stations at Tyhume, assisted the missionaries in printing their early publications, including *Ikwezi* (the morning star. This newspaper transmitted Christian related content (Jordan 1973, Opland 1998, Shepherd 1945). This newspaper was founded by the Glasgow Missionary Society and the Wesleyan Methodist Missionary (Jordan 1973). Other newspapers like *umshumayeli* (the preacher), *Isibuto samava* (a Wesleyan publication on January 1843), *Isitunywa Senyanga* (The Monthly Messenger), a Wesleyan publication that first appeared in August 1850, would also serve as platforms to transmit Christian content. This phase is considered as an epoch was symbolized by Christian epistemology and Christian ways of being (Opland 1983). Although indigenous writers who contributed in these newspapers were Christian converts, they still contested the colonial discourses of the time. According to Tisani (2000: 76)

.... writings by Xhosa converts, even if couched in missionary language, carried elements of African thinking. In studying these early works by African writers it is important not to overlook the way they contested as

well as accommodated features of the missionary order. The indigenous writers adopted the thinking and language of the missionaries. At the same time they infused their own ideas and experiences. The elasticity of the African worldview allowed converts to adopt new ideas and integrate them into existing belief systems. (Tisani 2000: 76)

There were power struggles that existed in the mission stations where these journals and newspapers were written (Opland 1998, Mtuze 2008). These include censorship and high handedness in editorship by the missionaries. These newspapers, journals and outlets did not last for too long. According to Masilela (n.a) only four issues of *Ikwezi* appeared between 1844 and December 1845. Their role in the development of isiXhosa literature cannot be ignored (Shepherd 1945).

It was only *Indaba* (The news) monthly for African teachers and students that made a lasting impact on the isiXhosa literary heritage and intellectual culture (Masilela n.a). It is Tiyo Soga, u*Jwarha*, who is particularly noted to have played an immense role in this newspaper (Jordan 1975: 39). Through this newspaper, Soga would make the major contributions of isiXhosa oral histories. Soga was the son of the old Soga u*Jotelo*, Ntsikana's most trusted friend and convert. He went to Scotland in 1846 with the sons of the missionaries Ross and Thomson for further education and he returned to South Africa in 1857 and upon his arrival in his ancestral land composed the song *Lizalis'idinga lakho* (Jordan 1973: 39). Tiyo Soga (1829-1871) himself, published in this newspaper; African fables, legends, proverbs, ancient habits and customs of the Xhosa people, as well as the genealogy of Xhosa chiefs. According to Tisani (2000), this was happening at an apex of colonialism and missionary discourse. The political systems of amaXhosa had been swayed by the colonial military encroachment and the missionary discourse was facilitating myths about the Xhosa society (Tisani 2000). Reacting to this in 1862, Soga writes that all Xhosa people must submit writings about their history, stories, etc. In his own words, Soga writes:

*Kwelopepa Lendaba ngati ndibona isitya esihle sokulondoloza imbali,
nendaba, namavo asekaya. Izenzzo zohlanga zingaphezu kwenkomo,
nemali nokudhla.... Ingwevu zakowetu nezaSembo mazizityande izisu*

ihlandzelwe pandle yonke into ... Besingenazizwena kudala? Ipina imbali yazo ... Besingenazi-Nkosina kudala? Bekungeko zidumileyona? ... Bekungeko zimbongina kudala? Bezibonga obani? Apina lomagora? .. Ipina imbali yamaGora ebetwala esosivato esihle kunene? Mabavuswe o-Ngconde, no-Togu, no-Tshiwo, no-Palo, no Rarabe, no-Mlawu, no-Ngqika, noNdlambe.

...I envisage in this newspaper a beautiful vessel for preserving the stories, fables, legends, customs, anecdotes and history of the tribes. The activities of a nation are more than cattle money or food. .. All is well today. Our veterans of the Xhosa and Embo people must disgorge all they know. Everything must be imparted to the nation as a whole. Fables must be retold; what was history or legend should be recounted. What has been preserved as tradition should be retold. Whatever was seen or or heard or done under the requirements of custom should be brought to light and placed on the national table to be sifted for preservation. Were there not several tribes before? Where is the record of their history and customs good or bad? Had we no chiefs in days gone by? Where are the anecdotes of their periods? Were these things buried with them in their graves? Let us revive the anecdotes of Ngconde, Togu, Tshiwo, Palo, Rarabe, Mlawu, Ngqika, and Ndlambe.

For Masilela (n.a), Soga recognizes that the oral form would be of historical necessity being reduced to written and be negotiate in the ‘modern’ world. Seeing the power of the newspaper in the face of colonial expansion and the distortion of the history of amaXhosa by the missionaries, Soga was effectively appropriating the medium of the newspaper as a site to preserve the histories of the indigenous communities (Tisani 2000, Masilela n.a). This was a bold step of assuming the medium of ‘power’ to insert the indigenous communities’ histories. The newspaper was thus a space of contesting missionary and colonial discourses while also preserving oral traditions.

2.2.4 Mission Schools

By 1841, the Glasgow missionary society had established a seminary at Lovedale for the training of teachers and priests (*abefundisi*). Webster (2013: 26) characterizes the Euro-colleges as the “double edged-sword” to the indigenous people. They were means to spread the “good news” through reading and writing (Makalima 1981, Opland 1988; Tisani 1992, 2000). The children were taught manners and cultures exported from Britain (Webster 2013). Some students imbibed these cultures uncritically, and were alienated from the indigenous education and ways of being they were taught from their homes (Webster 2013). This caused a generational shifts and rifts in the Xhosa society (Webster 2013: 26). The aim was to create a black intelligentsia “black Englishmen” (Saunders and Derricourt 1974).

Tisani (2018) argues that some students did not imbibe the missionary education. She argues that some of the indigenous Xhosa children who were sent to these schools grafted through the Christian epistemology with their own epistemology. Making example of Tiyo Soga, Tisani (2000, 2018) argues before Soga was sent to the missionary school, his mother Nosuthu and his elder brother Festiri had built a school to teach Tiyo Soga Africanist education. In other words, Festiri was the first teacher of Soga, he received his primary education at home. Tisani (2018) recounts that at home Soga was instructed not to sing missionary hymns but the hymns composed by Ntsikana, who represented African religious outlook. For Tisani (2018), Soga was therefore was grafted into the African system which opened the way into another epistemological paradigm, Tisani (2018) claims this is because African epistemological paradigm is elastic, and therefore accommodates other world views. It is not disputed that some children assimilated to the Christian education and epistemology, but others had their African epistemology intact while remaining open to engage other knowledges and ways of knowing the world.

The repeated wars waged by the British to the Africans claiming the land and seizing wealth of Africans had psychological effects and traumas to the indigenous people- being vulnerable in the face of colonial dispossession (Mostert 1992, Tisani 2000, 2018, Peires 1981). The mission stations, and later, the educational institutions of the missionary societies were thus a refuge to many indigenous people- places of hope in the face of colonial adversity. The judiciary institutions of amaXhosa were swayed as well as the authority of the chiefs (Tisani 2000).

There were times when the chiefs and amaXhosa were reluctant to go to war with the British. Tisani (1987) notes that because *imfazwe* [death of the nation] translated as “war” was not taken lightly by amaXhosa. Mqhayi (1914) for example narrates how uMaqoma in 1847 pretended like he was mad when the British wanted to cause some trouble. Mqhayi (1914) notes that it Maqoma’s plan to pretend as if he is sick in order to get away from the troubles that were constantly being caused by the European authorities. Sir Harry Smith had summoned *nkosi* uMaqoma but Maqoma was not keen to have troubles yet again with the British colonial authorities, hence he pretended to be ‘mad’. Maqoma was however not successful to dodge this trouble, he was taken to Port Elizabeth by the colonial authorities where he confronted Sir Harry Smith. According to Mqhayi (1914) Smith publicly humiliated Maqoma by putting his feet on Maqoma’s neck. Maqoma commented:

*Kuba uyinja wenza umsebenzi wobunja, akuthunywanga loo nto nguVitoliya,
kuba endazi yena ukuba ndiyinkosi nje ngaye. (Mqhayi 1914: 100)*

Because you are a dog, you are doing what dogs do. You are not sent here by Victoria to do this, because she knows that I am *inkosi* [chief] just like she is.

According to Tisani (2000) Smith's public humiliation of Maqoma on his arrival in Port Elizabeth did not bode well for amaXhosa. In great haste Smith declared the country between the Keiskamma and the Kei Rivers as British Kaffraria (Tisani 2000; 161). He appointed himself as *Inkosi Enkulu*, the Supreme Chief, and made *iinkosi* swear to abide by eleven rules that he presented to them. For Tisani (2000) in declaring himself *Inkosi Enkulu*, Smith was not only making a caricature of an important Xhosa institution, he was also colonising it. This was the environment in which amaXhosa negotiated. War could be started at any point- their lives were destabilized in great ways.

This period is also marked by missionaries writing the history of amaXhosa. In collaboration with the colonial authorities some missionaries were constructing narratives about Africans that painted an image of a “dark” continent (Mudimbe 1988). The European writers perceived the African past

as dark and gloomy. In the South African context, Tisani (2000) notes that missionaries who were collaborating with colonial authorities represented history accounting to their own socialization. She notes that there were many ambiguities and complexities in this record of history, which included the excision of women from royal genealogies from other writers and in some instances women were included and in others there was recognition of their role. What is clear at this point is that colonial and missionary historical accounts about amaXhosa as well as many other African societies was clouded with ambiguities, silences, foreclosures and distortions. These accounts would in turn serve to justify colonialism as a “right” form of governance because the indigenous people were “savage” and “barbaric”.

Initially, under the principal-ship of William Govan, Lovedale offered its students, both black and white, a non-discriminatory academic education that included the study of Latin and Greek, Geometry and mathematics. Later on, James Steward introduced a differentiated education in 1870 based on the colour line. As mentioned earlier, many of the children of Ntsikana’s followers as well as the children of other missionary converts studied at Lovedale, and others later on, taught there. William Wellington Gqoba taught at Lovedale for a year, and at the end of 1858 returned to Mgwali (Gqoba 1873-1888/2015). In October 1870 he moved to King Williamstown to teach, before transferring to Rabula in January 1873 as a preacher. He returned to Lovedale as a teacher after his brief stint in 1880 where he left under strange circumstances, of being accused by Stewart of dereliction of duty (Gqoba 1873- 1888/2015). He succeeded John Tengo Jabavu as an editor of the Lovedale newspaper *Isigidimi sama-Xosa*.

2.2.5 Gqoba emerges as a writer.

As we have narrated above, Gqoba was born into a society that was undergoing enormous social change. Gqoba’s parents would have likely told him, around a fire gathering at night, of the difficult circumstances his people went through and were continually going through, as it is the tradition in many African homes. Oral history is passed through *iintsomi* and *amabali* from the older generation (See Tisani 2000). This would have highly influenced his thinking and shaping his ideas about his identity was that constantly being constructed. As noted above, Gqoba went into the wagon-making trade in 1856 in King William’s Town before accepting a job as a teacher at Lovedale institution in 1880. Gqoba had been contributing to the *Isigidimi samaXosa* (The

messenger of the Xhosa people) newspaper that was under Steward's eagle eye since 1873 as a writer (Gqoba 1873-1888/2015). When he was appointed back at Lovedale in 1883 as an English teacher, he assumed the position of being Lovedale's newspaper editor from November 1884 until his untimely death in April 1888.

This newspaper broke off from the heavy missionary control and censorship when the first African intellectual, Mr Jabavu edited it (Gqoba 1873-1888/2015, Masilela n.a, Jordan 1973). As it has been discussed above, it was the norm under missionary presses, which were designed to spread the gospel news, to exercise power over what was written and published. But during Gqoba's editorial years this press had become independent. Amongst other things, Gqoba's writings reflect the intellectual thought of the isiXhosa-speaking Nguni people of the Eastern Cape and their African ways of knowing (Tisani 2000, Maseko 2017). Gqoba's writings span different literary genres that do not necessarily conform to the western conceptions of "genres" (Opland 2004) and also historical expositions that he penned as early as 1873. Written in isiXhosa, most of Gqoba's writings are profoundly provocative and unapologetic. They speak against the injustices endured by amaXhosa in the 19th century and the colonial laws subjected to his people. He comments on religious and educational matters and most importantly, his favorite subject- the history of amaXhosa. He was a serious writer who was deeply concerned about his society and his people. Ngara (1978: 28) says that:

A serious writer must be concerned about humanity and his society; a serious African writer must address himself to the human predicament in general and to the African situation in particular. In short we expect moral earnestness from the writer, we expect to be informed about man and life.

Gqoba's most outstanding work is arguably the long poem he serialized from January 1885 to 1888 "Ingxoxo Enkulu NgeMfundo" (A Great Debate on Education). This poem was divided into seven parts, which totaled 1 150 lines. As the title suggest, the poem is about Education. The discussion includes many things which include the harsh treatment of the Africans by white people despite being educated, the missionary work that made the establishment of the missionary schools that brought light to the Africans who were living in the "darkness" and bemoaned the loss of land and freedom which Africans were suffering in the land of their birth. Gqoba also contributed to historical expositions of amaXhosa, speaking to the prevailing missionary and colonial

constructions of the history of amaXhosa. His contributions place him as a historian in the stage of history.

In 1854 Sir George Grey, an experienced colonial administrator arrived at the Cape as an experienced colonial administrator (Tisani 2000: 122). He assumed the position of governor general in the Cape colony on his arrival. Grey had masterminded a plan to “civilize” the indigenous people. Part of Grey’s “civilizing” policy was to collect the histories and practises of the Xhosa custom and law. Some of the missionaries collaborated with the colonial officials to write the accounts. According to Tisani (2000) such individuals brought along knowledge of isiXhosa, and a supposed understanding of Xhosa culture.

It is important to note that these missionaries enjoyed moral authority from the belief in the absolute and exclusive truth of the religion they preached (Tisani 2000). This belief, coupled with a strong faith in the superiority of European culture, placed missionaries on a high pedestal as they began to write about Africans. Their accounts were not all reflective of the laws of amaXhosa, although some missionaries provided reliable information with regards to the Xhosa law and custom. J.C Warner is one missionary who had an incorrect representation of *iinkosi* (Tisani 2000). He presented *iinkosi* as the sole beneficiary of cattle fines paid in cases of homicide, assault and other crimes (Tisani 2000: 170). This was interpreted as meaning that the people “belonged to their chief”. According to this account, all persons who were members of the ‘tribe’ are regarded as the absolute property of the chief. Such a negative portrayal of African law and custom corresponded to Grey's belief that the judicial system was enriching *iinkosi* (Tisani 2000). That view was the basis of Grey's policy which sought to undermine the authority of *iinkosi* by forbidding them to exact fines.

Such claims irked many members of the African writers. Gqoba responded back to the colonial historiography and denounced some of the claims. Gqoba’s responses to the social issues through the medium of newspapers echoed the spirit of a “socially responsible” writer that is described by Chomsky (1996: 56) as moral agent who brings truth “about matters of human significance to an audience that can do something about them”. In his account about the position of the *iinkosi* in the Xhosa legal system, Gqoba says that:

... [*iinkosi*] were held responsible and under command for the good behavior of their people, but possessed the right of ruling them after their own manner, according to the native laws and custom. (Gqoba 1873-1888/2015: 215)

And he went on

It appears that although the chiefs have at times exercised despotic power to such an extent, as to induce many to conclude that the will of the chief was law to his tribe, the power of making laws did not in reality, rest absolutely in the chief. The chief himself was subject to the law in force, when he assumed chieftainship, and the natives are great conservative about their laws. (Gqoba 1873-1888/2015: 216).

The idea of being a socially responsible thinker was well expressed by Gqoba in his articles in *Isigidimi samaXhosa*. Expressing the need for the archival of African history in newspapers, Gqoba urges his audience in his capacity as an editor, to contribute to the newspaper any historical and contemporary knowledge about African history.

“My fervent desire is that our history should be well known and brought into print because all nations who possess a history, even if they are scattered far and wide, continue to live and do not die”

“Imbali yakowetu asikuko nokuba ndinga ingaziwa kakuhle ishicilelwe kuba zonke izizwe ezinembali ziba zihleli azifile noko sukuba zezicitakele”

In here, Gqoba sees the need for Africans to write down the history and knowledge in a medium of power. That which was passed down orally from one generation to another was now being written down in newspapers that were least censored. The royalty's authority was swayed by colonial encroachment and missionary discourse and it is in this context that Gqoba saw the press as a powerful medium in which oral literature- poetry, folktales, history, biographies, etc. to be written down. He links this with the survival of the nation.

The value of Gqoba's work lies not only in this works potential to speak in new ways to the present but it also has a quality of provoking new thought that meaningfully adds to the looming debates in the South African academy about what it means to think differently about the past (Maseko 2016). Gqoba believed that African history should come from Africans themselves; the plea was

directed at the community sages whose knowledge had been neglected. Gqoba's confidence in amaxhego (sages) suggests his respect for African culture (Tisani 2000). Moreover the African history that Gqoba and the committee were working on should be broad-based, bringing in various sectors of the community. (Tisani 2000: 251) Gqoba died in 1888 at the age of forty-eight. Published in 2015, *Isizwe Esinembali Xhosa Histories And Poetry (1873 – 1888)* is an assemblage of all William Wellington Gqoba's clearly identifiable writings. These writings were copied and collected by Prof Jeffrey Opland mostly from *Isigidimi samaXhosa* (The messenger of amaXhosa), a newspaper platform Gqoba contributed immensely in. This work was then translated and co-edited by Opland, Maseko and Kuse. amongst other things, these writings reflect intellectual thought of amaXhosa and their african ways of knowing.

2.3 Samuel Edward Krune Mqhayi

2.3.1 Brief background

Towards the end of the nineteenth century, a much younger and prolific writer began to draw attention when Imvo and Izwi flourished (Mqhayi 2009). He was born on the 1st of December, 1875, in the house of Ziwani (Mqhayi's father), the son of Krune. This writer would later be given a title of "*Imbongi yesizwe*" (The poet of the nation). His name is Samuel Edward Krune Mqhayi. He was born in Gqumashe, a village at the banks of the Tyhume River. Mqhayi's family were originally Thembu, members of the Zima clan (Mqhayi 2009). Sinxo (1935) narrates that before Samuel's birth his parents had not had a boy-child and they wished so much to have one; that special prayers were made to Heaven for a baby boy. They already had four girls, hence they prayed for a boy. When their prayers were answered, they named the boy "Samuel" which means "Asked of God" and with the same words used by the parents of one of Israel's greatest prophets, Samuel, dedicated the child to God. One day, after a successful school celebration, a teacher awarded all the pupils new names; Samuel was given the name Edward by his teacher Joseph Fondini (Scott, 1976). It was a norm during those times to change the indigenous name and "baptize" the children who attended missionary schools with English Christian names. Samuel started school at the age of seven, at Evergreen, eDikeni (Alice) , he then moved to Lovedale to do his secondary education. It is during the three years at this school that he met three men who

could be credited for shaping his life and career. They were Rev. Elijah Makiwane, Mpambani Jeremiah Mzimba and John Tengo Jabavu. These three men were leading isiXhosa personalities and writers, something they rubbed off to Mqhayi. Because of his encounter with these men, it is not surprising that Mqhayi had become an unquestionable leader and writer (Mazwi 2017: 51)

2.3.2 S.E.K Mqhayi and his social context

Mqhayi didn't stay long inschool because at the age of nine his family moved to Centane near Butterworth (Scott 1976). The six years he spent at Centane could be regarded as the best years of his life considering that it is where he listened to the old warriors' tales and to the discussions and debates of the meetings where his great uncle, Chief Nzanzana, held court. During his stay there he learned a lot about amaXhosa life, customs, and culture, he also acquired an incredible knowledge of his people's language, something he treasured and cherished his whole life through his writings and valuing of indigenous ways of life. This is reflected in his own words when he says, "I thank my father for taking me to Kentane, for it was the means of getting an insight into the national life of my people." (Scott, 1976: 19 – 20 quoted in Mazwi 2017: 51). This is the experience that elucidated a very fascinating characteristic of Mqhayi's life and writings. According to Saule (1996: 7) Mqhayi was making these observations in the early 20th century at the height of colonial expansion which was accompanied by formulas of memory erasure and banalization. Needless to say, it was these events that gave him inspiration to compile the research material for his famous novel *Ityala Lamawele*. Saule (1996: 7) makes an observation that at Gcaleka (*KwaGcaleka*) region in the Cape Nguni society, where Mqhayi was initiated into the life and customs of traditional Xhosa people, was one of the places which made an impact on Mqhayi to write this novel. In Mqhayi's own words:

Ndaqala apho ukuyibonela imidudo, neentanjane, ukuxhentsa nemiyezelo yabakhwetha; amagqirha okuvumisa; iinkonzo zozeko nolwendiso, umquqo; ukutyis'amasu nokutshata. Kanti kuzo zonke ezi nkonzo, nala matile-tile, akukho nto ibingena emxhelweni wam njengokuzathuza kwamaphakathi enkundleni mhla ngomthetho okanye mhla ngetyala.

It was there that I began to observe traditional marriage dances, custom in preparation of young women for marriage, dances and celebratory functions of the boy initiates; witch-doctors; preparations for marriage ceremonies; marriage dances; acceptance of the bride ceremony; and modern marriages. Of all these services and the manner in which they were done, I was mostly impressed by the way royal advisors used to discuss traditional law of how court cases were conducted.

In this way, Mqhayi was engaged in an act to deliberately preserve what he saw as valuable and central in the Xhosa society- the manner in which law and justice was practiced, the role of the chiefs and advisors in the case. He was doing this when the memory of the social practices was deliberately erased from the indigenous people. He did this job excellently, carrying the rich idiom of isiXhosa in his writings (Jordan 1973).

2.3.3 Mqhayi as a socially responsible writer.

Mqhayi had an illustrious career as a teacher, preacher, councillor, social activist, journalist, bard, author and a linguist. But it was with his career as a poet that he distinguished himself from everyone else. His writings are couched in isiXhosa idiom and grammar and reflected his society's fears and aspirations (Kuse 1977, Qangule 1979). Saule (1996) places Mqhayi on a stage of being a social leader who had a duty to perform in his society. Mqhayi performed this duty through art, and directed towards the hope of success and the possibility of society's failure. Describing the intention of a writer in a society, Saule says:

The intentions of some writers, however, might be to entertain, to amuse, to satirise and yet in some deep-seated and subtle way, this might involve a desire to make a positive contribution to society. The question of the success and failure of a society, although not necessarily an inevitability, revolves around the writer's criticism of that society's inability to utilise resources that would generate strength to support its nationhood. Ultimately, a writer, especially in this case Mqhayi, necessarily uses his creativity and physical endeavours as tools to try to mould society and shape attitudes (Saule, 1996: 23).

Mqhayi's copious of literary works- ranging from essays, novels, poems and historical expositions, he places the aspirations of his people at the forefront. His portrays the contradictions that constitute his society , the internal and external conflicts, his people's attitudes and ideas about the world and does not shy away from also echoing his own voice. Kuse (1977: 1) corroborates this by saying that "Mqhayi projects his image of men and women of culture who propagated the best ideas of their time. His heroes and heroines encompassed the representatives of tradition as well as men and women educated in the ways of the west." Mqhayi himself, a product of colonial times where certain dominant ideas from Europe were dominating, from the school to the general society, he also imbibed them, while in some instances critiqued them harshly. Mqhayi was, like many of the contemporary writers, interpolated with contradictions that constituted the possibility of human existence itself. A very strong character of his work however, reverberated the spirit of critical nationalism and patriotism. He was deeply engaged with the past, immersed himself with his people's struggles and was constantly imagining a different tomorrow. In his preamble to *Ityala lamawele* Mqhayi writes that the intention of the story is:

Kweli balana ndizama ukubonisa imigudu, nenkxamleko, nexesha elithatyathwayo ngamaXhosa xa alanda umthetho, kuba kaloku kuzanyelwa ukuba uzekelwe kwisibakala esakhe sakho. Ndizama nokubonisa ukuba inkosi asinguyena mgqibi wezinto yedwa, nje ngoko izizwe ziba zona kunjalo kuthi.

In this short story I am trying to show the struggles, vain efforts and time that amaXhosa follow the law to some event that took place in the past. I am also trying to show that the *chief* is not the sole decision-maker, contrary to the way the nations [Europeans] perceive it to be so..

He continues:

Intetho nemikhwa yesiXhosa iya itshona ngokutshona ngenxa yeIiZwi nokhanyo olukhoyo, oluze nezizwe zaseNtshona-langa, oonyana BakaGogi noMagogi. Yindawo yomlisela nomthinjana wasemaXhoseni, ukuba ukhangele ngokucokisekileyo ukuba iya kuthi, yakutshonela iphele le ntetho nale mikhwa inesidima yakowawo, kutshonele

nto ni na emveni koko. La ke ngoko ngamazwembe-zwembe okuzama ukuxhathalaza kuloo msinga uza kutshayela isizwe siphela. Zamani ukuwaxhasa nani ngelenu icala.
(Mqhayi 1914: v)

IsiXhosa speech and habits are disappearing because of the contemporary Christian civilization that came with the Western societies, the sons of Gogi and Magogi. It is everyone's place in the Xhosa society, to thoroughly search for what will disappear when our speech and dignified habits disappear. These are therefore highlights of trying to resist the wave [of colonialism] that will wipe the whole nation. Make efforts from your corners as well! (Mqhayi 1914: v)

Mqhayi is stating explicitly here that he is at pains with colonial influence that is erasing the memory of the indigenous Xhosa people. Here, Mqhayi is referring to the dominant modes of thought and social practices that promoted the Western legal system over the indigenous legal system. He is therefore engaged in a “nationalist effort” to counter the hegemonic thinking that portrays the *chiefs* of amaXhosa as sole decision-makers. Most importantly, Mqhayi is struggling to recall how the law and justice system was applied and conceptualized in the precolonial time.

In this novel, SEK Mqhayi reconstructs how law and justice were applied in the precolonial Xhosa society. The story is partly fiction and partly non-fiction. It is set in the 18th century in the time of the historical King Hintska kaKhawuta (1789-1835) and concerns a dispute between fictional twins Wele and Babini over seniority. As they are born on the same day, there is a dispute as to who should take their father's place. This is resolved through a traditional Xhosa legal trial held at the gathering place (*enkundleni*) of *uKumkani* uHintska who presides over the trial. Although told in a fiction medium, Mqhayi shows, brilliantly so, how the socio-political experiences of the people can be weaved beautifully in a literary piece of work. This places Mqhayi at the highest place in Xhosa literature. For Jordan (1973) Mqhayi was a soul of his people and to understand his writings is to understand his people's hopes and aspiration.

2.3 Academic interests in Mqhayi and Gqoba

In humanities and social sciences, particularly in African language field, there have been a number of scholars who have undertaken research on the works of these two intellectuals discussed above. Much work has been done on Mqhayi and to a very less extent, on Gqoba, especially in the African languages. Gqoba though, is much studied by scholars in historical studies such as Peires (1981), Odendaal (1983 and 1984), Tisani (2000) and Bradford 2008, and more recently Mkhize 2018. These scholars have used Gqoba as well as Mqhayi's texts as historical texts to speak to colonial historiography on certain subjects. These scholars have also used particularly Gqoba's texts to unearth the indigenous writer's renditions of the how precolonial Xhosa society was constituted. Recently, Maseko (2017) has looked at Gqoba's work in relation to the manner in which he uses grammar rules. Maseko argues that Gqoba's grammar reflected the way in which amaXhosa spoke and this defied the missionary linguists' prescribed grammar rules. .

In African languages, scholars such as Kuse (1977), Dikeni (1992), Saule (1996), Kaschula (2002), and Mona (2015) have done some work on Mqhayi focusing on literary and pragmatic analysis. In his study, Kuse (1978) provides linguistic and structural analysis of the works of Mqhayi such as *Umhlekazi uHintsisa*, *uDon Jadu* and *Ityala lamawele*. He explores these works in terms of morphological, syntactical, phonetic configuration. Qangule's (1979) study is a literary analysis on themes and techniques of Mqhayi's selected creative texts. In the text *Ityala lamawele*, he looks at the procedure of law as depicted by Mqhayi in the Xhosa society, and how justice was applied in comparison to the Western law and justice that that marks South Africa. In other creative works, Qangule focuses on the techniques Mqhayi employs when depicting patriotic action. He makes mention of literary devices like symbolism, personification, euphemism, metaphor and grammatical units like morphemes for special semantic purposes and also clan names.

Similarly, Saule's (1996) thesis evaluates some of S.E.K Mqhayi's literary works in terms of literary and linguistic qualities, including his essays and poetry. Dikeni (1992) is also a literary analysis of *Ityala lamawele*. It looks at the use of language (pragmatics) such as metaphorical device in order to avoid heavy censorship from the missionaries. This dissertation also examines the socio-political undercurrents in his novel, *Ityala Lamawele*. This study has been motivated, primarily, by the arguments and discussions that are currently topical in literary circles. These

theoretical frameworks used in the above studies do not study the meaning in Mqhayi's works in relation to the pre-colonial socio-cultural experiences of amaXhosa, which is what this study seeks to address.

This particular study seeks to use two historical texts, WW Gqoba and SEK Mqhayi, written 26 years apart, to make sense of how law-making processes and justice were conceptualized and applied in the precolonial (Xhosa) Cape Nguni society. Specifically it uses lexico-semantics as a theoretical framework to recover the memory of these forgotten processes (See chapter 4 for more discussion on this theoretical framework). In the approach and ideology, this study is similar to Maseko's (2018) study of two (AC Jordan and Gqoba) Xhosa historic texts. Maseko's study uses a lexico-semantics theoretical approach to unearth how social stratification was organized in the precolonial Xhosa society, and whether 'gender' was a part of it.

Chapter three: Methodology

3.0 Introduction

This chapter outlines the methods that were used to collect process and analyse data for this study. It begins by explaining the nature of this study and the motivation behind the selection of this method. Section 3.2 identifies and describes sources of data, while section 3.3 discusses research instruments and the challenges the researcher faced in the process. The methods of data collection used include scanning and converting pdf documents into plain text format, querying of the documents using the AntConc concordancer and file view tools. Data analysis is described in section 3.4.

3.1 The research design

The aim of this research is to study the meaning of lexical items related to *umthetho* [law], *ubulungisa* [justice] such as inkundla [court], intlawulo [payment] and Ityala [trial] as they appear in S.E.K Mqhayi's *Ityala Lamawele* (1931) and W.W. Gqoba's *Isizwe esinembali* (1873-1888/2015). This was done through lexical and conceptual semantics analysis. One of the objectives of this study is to elicit the earliest meaning of these concepts, as far as memory can recall and also examine how these meanings have changed over time. The ultimate goal of this study is to make inferences about the conceptualization of law and justice in the society of amaXhosa and make proposals on what these inferences could mean in the contemporary understanding of law and justice in South Africa today. The nature of this study is thus qualitative in its approach (see section 3.4) and has adopted corpus linguistics research methods to achieve the above stated objectives.

In general, corpus linguistics can be defined as “dealing with some set of machine-readable texts which is deemed an appropriate basis on which to study a set of research questions” (McEnery and Hardie 2012:1). Sinclair (1994: 2) quoted in Pearson (1996: 42) adds that these texts are “selected and ordered according to explicit linguistic criteria in order to be used as a sample of the language” Corpus therefore, can be a transcribed speech or readily available texts that are accessible [to the researcher] (McEnery and Hardie 2012: 4; Sinclair 1994). These texts can be in different forms, which include but not limited to newspaper articles, books, research publications or any written material. What is important is that these texts should be scanned and be converted into computer

readable in order to qualify as an *electronic corpus* (Sinclair 1994, Gouws and Prinsloo 2005). The advantages of using corpus-based research methods is the ease they provide the researcher to search through text rapidly and reliably as opposed to doing it by hand, as was the case before the invention of computers.

The present study queried two texts written by two leading isiXhosa “intellectuals” of their time¹. One of the writers is W.W Gqoba, who was writing in the mid-nineteenth century and the other one, is S.E.K Mqhayi, who wrote extensively in the early twentieth century. The work of W.W Gqoba in the current study consists of all newspaper articles that could be found by the compilers of this volume, written between 1870-1888 in *Isigidimi samaXosa*. The corpus of Gqoba’s work was compiled by Professor Jeff Opland, and was later edited and translated with Professor Pamela Maseko and published in 2015. Secondly, this study also queried at S.E.K Mqhayi’s *Ityala Lamawele*, published by the Lovedale press in 1931 and revised by the same author in 1931. The present study analysed the 1931 version, which is the first revised version of the 1914 edition.

The copy of S.E.K Mqhayi’s *Ityala Lamawele* (1931), which is readily available on the internet as well as W.W. Gqoba *Isizwe Esinembali: Xhosa Histories and Poetry* (1873-1888) (2015), which was made available in a Pdf format by Professor Maseko, who is an editor of this volume, were both converted into a plain text format and queried using the AntConc concordance and file view tools. Although the process of converting these texts into a plain text format was relatively easy, the process of rectifying scanning errors for *Ityala Lamawele* (1931), compared to *Isizwe Esinembali: Xhosa Histories and Poetry* (1873-1888) (2015), was time consuming (see section 3.1.1 for further discussion).

These texts fit the research objectives stated above, that is; 1) they tackle, amongst other things, issues of law and justice, especially *Ityala Lamawele*. 2) They are written in isiXhosa, by African intellectuals whose intellectual contribution to knowledge making has been marginalized in the academy. 3) They have a 26 years period in between them, which makes a diachronic analysis objective achievable. This is what corpus linguists deem as an “appropriate criteria,” based on the set of research objectives in which the research wants to achieve.

¹ The term intellectual is loosely used here to refer to isiXhosa speaking writers of the 19th and 20th century. I am conscious of the critique of this category, the debates surrounding it, and how it has been extended to give a different meaning by Naom Chomsky (1967) and Mafeje (1994a, 1994b) amongst other scholars.

3.1.1 Challenges of converting the texts into plain text

There were various predictable and unpredictable mistakes or scanning errors (See Gouws and Prinsloo 2007: 22-23) after converting this corpus into plain text. Challenges were mostly in *Ityala Lamawele* compared to W.W. Gqoba’s texts. The primary reason why *Ityala Lamawele* contained many errors is because the copy which the researcher could get access to, was in picture format. Secondly, the text was badly scanned such that the text converter (to plain text) did not recognize some letters appropriately; they read as pictures. Examples of the words that read as pictures are like the following:



Figure 1: example of how the converter read some words, which read as a picture in the converter.

The third challenge was the old isiXhosa orthography which the software could not recognize appropriately. As far as *Gqoba*’s work is concerned, the orthography was left as it was but there were some corrections made in *Mqhayi’s Ityala Lamawele* (1931). In the latter book, there were many old symbols which the text converter software couldn’t recognize. For example, Σ which represents “sh” in the new isiXhosa orthography, was read as C by the software. Below are some of the errors that came along while converting.

Table 1: examples of scanning errors in *Ityala Lamawele* (1931)

c□ □e	fi□ □bi	E□ □b	fi□ □b
I□ □l	m□ □in	o□ □o	Vf□ □W
f□ □f	[□ □f	§□ □a	b□ □6

Although unavoidable, correcting the scanning errors in *Ityala lamawele* was time consuming, since the document contained too many errors. This required for the close reading and re-reading of the document. The researcher also manually corrected these errors as there was no software that could rectify this. In some instances, re-typing was necessary since the texts were reading as symbols/pictures. There were also some missing words in the scanned copy of *Ityala Lamawele*.

Lastly, *Ityala lamawele* (1931) had missing words, especially in the end of the line. For example, some affixes like “so” would be black in the scanned and therefore, a word like “liso” would read

as “li. Again, this was caused by the bad scanning of the texts. The researcher made use of the abridged version to check for some of the missing words.

3.1.2 Orthographical changes the researcher made

There are various things the researcher changed in *Ityala Lamawele* (1931) regarding the orthography and the style. In terms of the orthography, below are a few changes the research undertook. The motivation behind these few changes are for consistency reasons, since Mqhayi’s 1931 revised version is not consistent with his orthography. Below are some of the examples of how I have changed the orthography.

Orthographical changes	
Nqh	Ngq
∫	Sh
Σ	Sh
R	Rh
Nch	Ngc

The researcher kept the text in the same page numbers as they appear in *Ityala Lamawele* (1931). The motivation behind this choice was to make it easy for the researcher to reference the page number in the analysis. The researcher also considered situations where there may be scanning errors in the original version, where he may have overlooked in the proofreading stage. Taking this into consideration, it was vital for the researcher to keep the page numbers as they were in order to be able to reference back to the original source text.

3.2 Data Sources

3.2.1 Primary Sources

As I stated above, the two main texts for enquiry in this study are:

- S.E.K Mqhayi’s *Ityala Lamawele* (1931) and
- W.W. Gqoba’s *Isizwe esinembali* (1873-1888/2015).

Both of these works were treated as a small corpus and lexical items related to *umthetho* and *ubulungisa* were queried using AntConc concordance and file view tools. The contexts in which these lexical items appeared were studied for their contextual meaning, lexical and conceptual meanings. These texts primarily deal with, amongst other things, issues of law and justice in the Xhosa society. In the case of S.E.K Mqhayi's *Ityala Lamawele*, Mqhayi's setting of the play is in the 'traditional setting' in the time of *iKumkani* [King] uHintsisa, before the judiciary institution was swayed and infiltrated by the colonial government in the nineteenth century. Gqoba's writing is at early contact with European societies in Eastern Nguni region. Both these works are written in isiXhosa and they reflect the intellectual thought of the isiXhosa-speaking Nguni people of the Eastern Cape and their African ways of knowing (Independent 2017). This makes them relevant for this study because the researcher here is investigating the conceptualisation of law and justice amongst amaXhosa, and the extent to which this reflects the philosophical worldview of amaXhosa, as embedded in their language.

These texts are also written in different historical epochs, with a 26 year gap between them. This allows the effects of diachronic changes in the meaning of these lexical items to be studied. The corpus that is being studied is not large and the disadvantage of that lies on the fact that the slow-moving change over time is not adequately studied. This is the limitation of using a small corpus. For the purposes of this study, however, this research is still new and this is the first exploration of these questions using this type of data. Further research, using multiple research data like the contemporaries of these African intellectuals is recommended in future.

3.2.2 Secondary sources

Secondary material like early dictionaries such as Albert Kropf's *English Kaffir* (1899) dictionary will be used for comparisons.

3.3 Data collection procedures

3.3.1 Selection of the concepts

Lexical items related to justice and law were selected after a close reading of the two texts, particularly *Ityala Lamawele* (1931), which deals primarily with the nature and the application of justice and law amongst amaXhosa in the eighteenth century. The lexical items that are selected

This screenshot shows that there 275 words attached to the lexical item *-lung* in this small corpus. The roots of the lexical items displayed on the screen may not be lexical derivatives of the verb root *-lung*. Only the words which have the root *-lung* were extracted and analysed. Their contextual usage were studied and analysed in the second part of the analysis.

Orthography, once again, became a challenge in working with these two texts. The main challenge was with regards to the uniformity of orthography of the lexical item in these texts. W.W Gqoba's isiXhosa orthography is more disjunctive and doesn't have aspiration compared to S.E.K Mqhayi's revised orthography. S.E.K Mqhayi's orthography, as indicated above, is also not consistent. For example, Mqhayi sometime uses aspirations, and sometimes he does not. This challenge was addressed by searching for different isiXhosa orthography lexical items, in other words both the old and the new. For example, the lexical item *umthetho* also was searched using isiXhosa old orthography, which changed to *umteto*. The issue of symbols in the old orthography was addressed in the converting stage, by manually changing them, as discussed in section 3.1.1.

3.4 Data Analysis

This study is qualitative in nature, and as a result, adopted qualitative research methodology in collecting and presenting data. Within the qualitative analysis methodology, the researcher has adopted content analysis method to analyse the lexical items related to *umthetho* [law] and *ubulungisa* [justice] as they appear in S.E.K Mqhayi's *Ityala Lamawele* (1931) and Gqoba's *Isizwe esinembali* (1873-1888/2015). According to Krippendorff (2004: 36), content analysis is "a research technique for making replicable and valid inferences from texts to the contexts of their use". This qualitative method has proven successful, particularly in discourse analysis as well as computer text analysis (Krippendorff 2009: 36). As I have noted in the beginning of this section, the purpose of this research is to investigate conceptualisation of law and justice amongst amaXhosa, and the extent to which this reflects the philosophical worldview of amaXhosa, as embedded in their language. This will be achieved through a conceptual, lexical and diachronical analysis. Each of the lexical item identified from *Ityala Lamawele* (1931) and *Isizwe esinembali* (1873-1888/2015) were analysed according to the approaches discussed in chapter 4.

3.5 Ethical consideration

This research has been granted ethical clearance by the School of Languages and Literatures and Linguistics Department Joint Ethics committee. The nature of the study is entirely textual and don't involve people. Lastly, the primary data is more than 50 year old and don't require copyright permission.

3.6 Summary of the chapter

This chapter has described the methodological approach used in this study. The researcher has adopted corpus linguistics methods and content analysis to analyse qualitative data. Challenges the researcher faced are outlined and the changes in which the researcher has done to the primary data are outline. The study is exploratory in nature and contains linguistically based analysis methods in analysing the lexical items in the two primary texts. These methods were briefly explained and examples, where applicable, were given. Lastly, this chapter gave a brief overview of the ethical consideration.

Chapter four: Theoretical framework

4.0 Introduction

The purpose of this study is to use linguistic evidence to reconstruct how law making processes and justice were applied in pre-colonial (Xhosa) cape Nguni society. Specifically, this study uses discourse analysis as a theoretical framework to recover the memory of these (forgotten) processes. The claim this study makes is that the missionary and colonial encounter with the indigenous Xhosa society in the nineteenth century sought to erase the indigenous collective memories by imposing cultural ideology in writing and defining indigenous experiences, and in this case, how law and justice was applied in the early Xhosa society. As a result, the collective memory of the indigenous people does not recall the original meanings of law and how justice processes were applied in their early society before the colonial encounter. This has a negative impact on the identity of the indigenous people. Given this context, this chapter will firstly give theoretical explanation of what constitute memories and in relation to that, what memory erasure is, and how it is facilitated by internal and external factors through lexical items. Section two of this chapter will define what discourse analysis is, and how as a sociolinguistic approach, can help recover lost memories about the social practises. In this section, there will be an exploration of the relationship between language and culture and how this relationship may be illuminated through the shifts in word meaning over time (diachronicity). These two bodies of knowledge frame this study and they will be discussed in separate sections.

4.1 Collective memory, national identity and memory erasure

4.1.1 *Collective memory*

Memory is defined as the ability to recall the past or the capacity to mentally retain and reproduce representations of past things such as images and events (Nikulin 2015, Eysenck 2012). A key aspect to remembering involves the use of cognitive capabilities such as learning from experience and imagination, which reconstructs past events and images (Baddely 2007, Eysenck 2012, Schacter 2007). Memory cannot exist without individuals carrying out the act of remembering (Kuzmanic 2008: 7). Thus, collective memory refers to the memories shared by a group of individuals. According to Durkheim (1912) groups of individuals are capable of collectively sharing an experience through language and communication, where language acts as the social mechanism that shapes memory and enables the past to be recreated in the present. In Halbwachs (1941: 173) words,

It is language, and the whole system of social conventions attached to it, that allows us at every moment to reconstruct our past

Language is thus critical in the act of remembering. As Halbwachs (1941) argues, collective memory is a socially constructed notion and it is individuals who remember, not groups or institutions, but these individuals, being located in a specific group context, draw on that context to re-member or re-create the past. As Nora (2001: 8) puts it:

Memory is [therefore] life, borne out of living societies founded in its name. It remains in permanent evolution, open to the dialectic of remembering and forgetting, unconscious of its successive deformations, vulnerable to manipulation and appropriation, susceptible to being long dormant and periodically revived.

This sense of “living” memory is in stark contrast to a sense of a fixed, singular history, suggesting that societies are both constituted by their memories and, in their daily interactions, rituals, and exchanges, constitute these memories (Kuzmanic 2008, Halbwachs 1941). Through

communication, groups can remember and recall the past by organizing, transferring, and understanding ideas and values (Wa Thiong'o 2013). Collective memory is thus an important function in every society since it preserves and transfers society's cultural capital, perpetuating its existence.

4.1.2. The relationship between memory and the national identity

We gather from the above explanations already, that collective memory is vital for the function of the society. The social constructivist theory posits that national identity is deeply connected to memory. It argues that national identity is constructed from the national memory. This act is done through oral, textual, monuments and other symbolic reminders that are 'authenticated' as methods of recalling the past (Assmann 2011). It is argued that this act organizes the perception of the 'national group' about the world and whose to be called 'national other'. In other words, collective memory influences what the groups of people identify or don't identify with. Assmann (2011) argues that the fundamental part of national identity is social cohesion, "making it vital to the politics and survival of groups". National identity is thus a search for meaning as groups recognize their present and remember their past in the present as a way of ensuring continuity and identity. It is argued that societies in transition, national identity can be contested and collective memory can be a contested terrain. In "post-apartheid" South Africa, for example, the identity of what it means to be a South African is a contested terrain (Coetzee and Nuttall, 1998). The contestation can be from groups of individuals, contesting collective memories that are constructed by the institutions of power: the church, the institutions of knowledge such as university and institutions of governance such as the parliament. The contestation brought by the Rhodes Must fall movement in South Africa in 2016, for example, in relation to national identity and collective memory was that, institutions of knowledge re-produce memories that relegate the past experiences of the indigenous people on the margins. These formulas of relegations, argued the movement, create memory erasure of the experiences of the indigenous people. Pheko (2018) reminds us that those who are relegated to the side note of historical references, the "on-going acts of erasure" is a deliberate and vigilant instinct of conquest and power anchored by a strong ethical framework. This has negative impact on the nation building and social cohesion. It brings memory loss.

4.1.3. Memory loss/erasure

Memory loss can be defined as inability to remember events for a period of time. Although in the medical science literature, this is associated brain injury, illness or effects of drugs or alcohol, this research looks at memory erasure from a sociolinguistic perspective. Here, memory loss refers to the selective removal of memories or associations from the mind as reflected in the language. This could be reminders about the society's past- which includes their achievements, their wrongs, their rights, their social life, bad and the good things. According to Proust (1913) this could be done in many ways which include by not limited to the written texts, oral texts, government documents by removing the memories through silences, banalizations, misrepresentations, etc. This has dire consequences for the nation and national identity. In Smith (1986: 383)'s words:

No memory, no identity, no nation

From this perspective, forgetting has tragic consequences for identity construction of a nation. There is a sense of vulnerability and no shared solidarity by a group of people who are excluded from the memory of the nation. There are a number of approaches to explain how memories get erased. For the purposes of this study, this thesis will adopt a theory of hegemony to understand how powerful institutions use direct and indirect strategies to cause erasure. Hegemony is defined as the ability of dominant groups to impose their interpretations of reality as the normal way to view the world (Gramsci 1971; Molden 2016). In other words, the dominant group's way of thinking becomes universal and delegitimizes other forms of thought, so that "hegemonic systems of control become...incorporated into everyday life, organizing popular sentiments and discourses" (Sue 2015: 115). This could be in the form of texts or symbols. This particular study is interested on how memory erasure has happened in concepts relating to how law and justice was applied in pre-colonial Cape Nguni (Xhosa) society, and how discourse analysis, as an approach can help to recover what has been lost.

4.2. Discourse analysis

There is a general agreement in literature (Gee 1999, Fairclough 1995, Drid 2010, Brown and Yule 1983) that the term discourse analysis (DA) is ambiguous. There is no single or unique theoretical and methodological framework or definition for discourse analysis. Different theorists privilege certain approaches of discourse analysis to meet the ends of their research objectives. The broad definition of discourse analysis would be a study and analysis of the uses of language. It is concerned with how language is used to enact activities, perspectives, and identities (Gee 1999). Stubbs (1983: 1) gives a simplified approach to discourse analysis, in which he argues that DA is simply (1) concerned with language use beyond the boundaries of a sentence/utterance, (2) concerned with the interrelationships between language and society and (3) as concerned with the interactive or dialogic properties of everyday communication. Gee (1999) breaks down discourse analysis into two basic approaches:

1. Formal linguistic approach. In this paradigm, DA is seen as the exploration of language use by a structured analysis of text in order to find general underlying rules of linguistic or communicative function behind the text. This could be semantic, pragmatic, structural, or syntax analysis of text.
2. Critical (applied, political). In this paradigm, DA is concerned about how power is exercised through language.

Hodges et al (2008: 571) layout different approaches to discourse analysis. This study will engage the (1) formal linguistic discourse and as well as the (3) critical discourse analysis.

Table 1 | Three approaches to discourse analysis

Orientation to discourse	Sources of data	Analysis
Formal linguistic discourse analysis (such as sociolinguistics) ¹	Samples of written or oral language and texts	Microanalysis of linguistic, grammatical, and semantic uses and meanings of text
Empirical discourse analysis (such as conversation analysis, genre analysis) ²	Samples of written or oral language and texts; <i>and</i> data on the "uses" of the text in social settings	Microanalysis and macroanalysis of the ways in which language and/or texts construct social practices
Critical discourse analysis (such as Foucauldian analysis) ³	Samples of written or oral language/texts; <i>and</i> data on the "uses" of the text in social settings; <i>and</i> data on the institutions and individuals who produce and are produced by the language texts	Macroanalysis of how discourses (in many forms) construct what is possible for individuals and institutions to think and to say

4.2.1 *The formal linguistics discourse: the case of lexico-semantics*

As it is discussed above, the formal linguistic discourse analysis involves a structured analysis of text in order to find general underlying rules of linguistic of communicative function behind the text. This could be in through semantic analysis, grammatical analysis or syntactic analysis, depending on the objectives of the researcher. Since one of the purpose of this research is to understand the earliest Xhosa conceptualization of justice “ubulungisa” and law “umthetho”, this research will use lexico-semantics as an analytical framework (see Sportiche et al 2014, Gandy 2012, Famer at al 1999, Di Scullo et al 1987). Lexico-semantics is a subfield of linguistics which is concerned with

1. Classification and decomposition of lexical items
2. The relationship between lexical meaning, sentence structure, syntax and a word structure.

As mentioned above, one of this research objective is to unearth isiXhosa conceptualization of words related to justice and law. The decomposition of lexical items will be done with the purpose to unearth the meanings attached in the morphemes that compose words related to law (umthetho) and justice (ubulungisa) Secondly, the purpose of the decomposition of lexical items in this study is done to elicit amaXhosa’s philosophies and thoughts.

4.2.2. *Lexical decomposition*

Lexical decomposition refers to the breaking of lexical units into their small constituents in order to elicit the conceptual meaning of the word. Lexical units are by definition structural semantic units or morphemes within whole words which can only exists with and by virtue of the existence of words (Wilkes 1971, Beard 1965, Greenberg 1975). These include affixes and root words. Root words are defined as individual basic unit which carry the meaning in a word that cannot be reduced to smaller units either in terms of derivational or inflectional morphology (Wilkes 1971). They are “part of a word form that remains when all inflectional and derivational affixes have been removed”. To illustrate the point about roots being the core bearers of meaning will analyze the root *-Nt*. The original sense of the root *-Nt* denoted the mythology that particular people in originated from the person called *Ntu* who was in a place called *eluhlangeni* (Mqhayi 1914). This

person, it is believed had a particular ways of behaving and seeing the world. The meaning of the word shifted in the nineteenth century to include people who come from Europe and originating from other places. This is the sense of this root. This root can be suffixed with the morpheme *-um* (a category which generally refers to the ontology of thing and beings) to form the word *umNtu* which denotes [One who comes from the person Ntu or behaves like those who come from Ntu]. Categories like *isintu* refer to the [way of being like Ntu]. The core of the meaning in all the cases above lies in the root. As argued above, this root *-Nt* cannot be further decomposed. The act of decomposing lexical items is thus critical in unearthing the epistemology of the particular people and to understand their conceptualization of things. To make another example we will consider the word “xoka”.

Writing in the last quarter of the nineteenth century the prolific scholar, journalist and linguist (not by training), Rev Jonas Ntsiko in his article that appeared in *Imvo* (n.a), illustrates this. He discusses some issues related to the meanings attributed to isiXhosa concepts. In this specific case, the bone of contention is the lexical item “xoka”.

In this article, Ntsiko argues that thought is crucial to consider in relation to how a language is used in the textbooks of isiXhosa grammar and the Bible. Here, Ntsiko argues for serious consideration of the philosophy/thought behind the conceptualization of words in the process of describing isiXhosa grammar. In his words, Ntsiko argued that “Ulwazi olukoyo ngenteto yetu, noluruale itafile ye Bhodi lolo uditu lwendlebe, izeke ibe lolwencwadi yenteto” (The existing knowledge about our language in the Language Board – I suggest- is the one I describe as an outside perspective which informs [isiXhosa] grammar book). Here, Ntsiko makes an appeal to the linguists who are overseeing the process of textbooks and bible translation to take seriously the philosophy that informs that conceptualization of isiXhosa concepts.

Ntsiko analyzed the word *-ukuxoka* with the current understanding as [to lie]. He argues that the word is derived from the verb *xokela* which literally means to add pieces of objects to extend an object. “*Ingingane yintambo eyenziwa ngezijungqu ezixomekelelwayo*” (the thought behind this is a rope made up of pieces that can be added together). Using lexical hypothesis which states that bound morphemes can be added to the root word “xok” to make an infinite possibilities of related

concepts, Ntsiko names possible concepts like ukuxokela, ukuxokelela, umxokelelo, umxokelwana, umxokelelwano..ukuxokezelela.

In this example, the prefix –uku (to) is added to the root xok (to add) and a terminative vowel - a is suffixed to form the verb ukuxoka (to lie). Other suffixes modify the core meaning of the verb to denote different things like nouns, reciprocity, verbs, etc. for example, Ixoki, in Ntsiko’s sense is equivalent to (the one that adds), ukuxokisana (to add to one another). The basic meaning in these concepts, he argues, is the same: to express the sense of adding. He further argues that people, according to his knowledge and experience, do say “a person adds [details] to help someone who does not know” *umntu uyamxokela xa engazi*. If we look at the related Bantu languages like Sesotho/Setswana and Swahili, the related concepts that are used as equivalents of xoka in our contemporary understanding is *maka* [seSotho/seTswana], and *Uongo/zuri* in Swahili, and *manga* in isiZulu/isiXhosa.

I want to propose that “xok” comes from two semantically unrelated roots. The one sense of “xok” is be derived from “xok”, the idiophone sound of hubbub, loud talking (Doke and Vilakazi, 1972). Lexical items that relay this meaning could be –*umxokozelo* [the sound of loud talking], - *umxokozeli* [the loud person]. Now, this root is shared between isiXhosa and isiZulu. Doke and Vilakazi (1972) in fact, define –*ixoki* as a person who causes quarrels among people, thus creating –*umxokozelo* [loud noise]. Doke and Vilakazi recorded and defined isiZulu lexical items and published an extensive Zulu-English dictionary. The concept “xok” is thus shared between these languages. Derived from this sense, Doke and Vilakazi (1972) proposed, –*ixoki* carries the meaning of the one who makes people to quarrel. This was probably given an English equivalent for –*the one who lies*, perhaps because the person who was making people to quarrel was doing that on baseless facts, and was often very loud. If one were to consider the African culture, then this sense sounds most appropriate, because people who are soft-spoken are often associated with being reliable and truthful. Hence, loudness could be associated with lies.

In Ntsiko’s perspective, –*Ukuxoka* is not suitable as an equivalent of “lies”. For him, a better equivalent would be “ukungxenga” [diluting]. According to Ntsiko, when someone adds water in milk, that act is known as *ukungxenga* [diluting], in essence, removing the basic substance that makes the milk rich. A person lying (*umntu oxokayo*), amaXhosa say that person “uyangxenga”. For Ntsiko, it is only the people who understand the isiXhosa thought, the native speakers of the

language who understand this conceptualization. Although I accept Ntsiko's proposition that the word "ngxeka" carries the English equivalent of "lies" in his contexts, I do not agree with his outright rejection of the term "xoka". I argue that the word means sense that it is derived from the ideophone "xok" which carries the sense of loudness. In my experience with amaXhosa, people who tell lies are also known as talking very loudly. Doke and Vilakazi (1972) record that *-ixoki* is a person who speaks loudly.

This case shows that the memory of words is contested over time because of the change of time which results in memory loss, especially in societies where there is no long tradition of writing. This case shows that root will not always share the same semantic meaning. For example, *-ixok* derived from the ideophone and *-xok* derived from the sense of adding. The thought behind the root *-xok* for adding is not clear. This may be the case of 'primitive' root and may not be able to be decomposed because of memory deficiency.

As we can see from this example above, language is a storage of cognitive categories with which human beings make sense of the world (Breal 1897: 275). Language is linked with the total set of cognitive capacities that enable human beings to understand the world with refined conceptual tools, and that is embedded in their experience of the world. Lexico-semantics is thus intimately connected to the relationship between concepts and thought. Paraphrasing his great-grandmother, *Maqandeyana*, Kunene (1981: ix) argues that "the secret ancient wisdom lies in the names of things and their forgotten meanings". In the words of Thiong'o (1986), language thus serves as a "collective memory bank" of cultural cognition of speech community, philosophy and belief systems/spirituality. In this sense, language can be viewed as a primary mechanism for "storing" and communicating cultural cognition, acting as both memory bank and a fluid vehicle for (re-) transmission of cultural cognition (Sharifian 2017: 5).

As a result of societies contact, power struggles and the shift of values in the society the meanings in the language also change. This is called the semantic shift. Like a living entity, words develop and grow. Studying meanings over time is thus important to understand the power and dominance in any society. This is called a diachronical study of language (Traugott 1980, 1982; Bybee and Dahl 1989; Bybee 1994, Roberts 1996, Levinson 2000).). Different factors trigger change. These factors are intralinguistic and others are extra-linguistic. The extra-linguistic factors include the

history of the social, economic and political life of the people influences the semantic aspect of language. These are called social factors. According to Daiu (2015) social factors refer to the word changes its area of use. To see how the change in word usage, this diachronic linguistic approach posits that scholars need to search the usage (language in context) of concepts in a range of sources across a wide time span. In other words, to analyze the concepts and study the contexts in which they appear, taking into consideration the political and economic contexts in which the texts emanate. Cultural and social changes are unpredictable, they are related with the way how the language works and how it is transmitted from one generation to another (Daiu 2015:2).

The recently published volume titled *Doing Conceptual History in Africa* edited by Fleisch and Stephens (2016) is one example. In his study of the concept of 'work' in the Nguni languages of Southern Africa, Fleisch examines the meanings and change of concepts related to work. He investigate isiNdele concept *ukuberega*, the term borrowed from Afrikaans *werk* and *ukusebenza* a Nguni equivalent for work. Manger analyses the meanings of the concept *ukusebenza* in isiXhosa. This research sheds light into how the meanings attached to these concepts have changed overtime. Using a range of sources from the 19th century like missionary documents like dictionaries and diaries, this research shows how the political and social changes in the societies like the colonial contact, power contestations between linguistic communities and the introduction of labour played a big role in shifting the meanings. The concepts remained but the meanings shifted from the original factors.

There are also intra-linguistic factors that influence linguistic change. These include the changes of the meaning of lexical items because of interdependence of vocabulary units in language and speech, changes resulting from the ambiguity of terms in certain contexts, intentional borrowing and discrimination of synonyms. The works of Bybee 1994; and Heine 1993, 1997, 2000 have been critical in shedding insights on the linguistic factors affective language change. This study will look both the intra-linguistic and extra-linguistic factors that influence the semantic shifts

4.3. Critical discourse analysis

The section above discussed formal linguistic discourse in relation to lexico-semantics as an analytical approach. It discussed its importance as an analytical tool in unearthing the epistemologies of a speech community. It further discussed how the meanings attached to words change over time and the factors that influence these changes. The importance of analysing language change include to gain an understanding on how power and hegemony plays a role in shifting meanings. This particular section will discuss critical discourse analysis, a subfield of discourse analysis.

Critical discourse analysis (CDA) is concerned about how power is exercised through language (Fairclough 1999, Foucault 1989). CDA involves not only the examination of text and the social uses of language but also the study of the ways in which the very existence of specific institutions and of roles for individuals play are made possible by ways of thinking and speaking (Hodges et al 1995: 337). Oyewumi (1997) study of gender in Yoruba society, for example, uncovered different discourses that have constructed what 'gender' is in different historical periods as well as the European societies. The study looks at gender as a biologically deterministic construct that organises society's hierarchies, gender as a European invention that was imposed in the African societies as a way of organizing society in the advent of colonialism. Critical discourse analysis is therefore an interdisciplinary approach to the study of discourse that use language as a form of social practise. This analysis will be used here to study the

1. Social practises of amaXhosa in relation to *umthetho* and *ubulungisa*. Social practise is about standards of a society or social organisations. This approach highlights the productivity and creativity of discourse practice and its realization in texts which are heterogeneous in their forms and meaning, the heterogeneity emanating from their intertextuality.
2. Institutions of power. This model assumes that language helps create change and can be used to change behaviour. Language becomes a power tool. Power is conceptualized both in terms of asymmetries between participants in discourse events, and in terms of unequal capacity to control how texts are produced, distributed and consumed in particular

sociocultural context. A range of texts is regarded as potentially ideological, including features of vocabulary and metaphors, grammar, etc. (Fairclough 1999: 2). The power to control discourse is seen as the power to sustain particular discursive practices with particular ideological investment in dominance over the alternative.

4.4 Summary:

This section has discussed two bodies of knowledge that frame this study, viz, the memory erasure as a theoretical point of departure and discourse analysis as an analytical framework. To remind the reader again, this study moves from the point of departure that the that the missionary and colonial encounter with the indigenous Xhosa society in the nineteenth century sought to erase the indigenous collective memories by imposing cultural ideology in writing and defining indigenous experiences, and in this case, how law and justice was applied in the early Xhosa society. As a result, the collective memory of the indigenous people is deficient in recalling the original meanings of law and justice; and how justice processes were applied in their early society before the colonial encounter. This study therefore uses discourse analysis as an analytical framework to unearth the meanings and practises of *ubuungisa* and *umthetho* in the precolonial Xhosa society. In summarising discourse analysis, this study take two approaches. The first one is the formal linguistics approach. In this regard this study uses lexico-semantics as an analytical approach to recover the indigenous philosophies embedded in concepts related to *umthetho* and *ubulungisa*. The second is critical discourse analysis. This analytical approach is used to understand issues of power relations and how inequality plays out through language. It deals with how a particular period in time and particular place would construct a particular understanding about a social issue. For example, how does a particular society in a particular time understand *ubulungisa* and what is ‘thinkable’ and ‘sayable’ about gender in a particular time.

Chapter five: Data presentation and analysis.

Concepts relating to law-making and processes of justice

5.0 Introduction

This chapter presents and analyses key words constituting part of the data in relation to how the indigenous *inkundla* “court” processes of *umthetho* (the law that governs the society) and *ubulungisa* (the process for resolving the societal disputes) were conceptualized in the precolonial Xhosa society. The extent to which how these terms reflect the philosophy of amaXhosa as embedded in the language is investigated. This data is extracted from Mqhayi’s *Ityala lamawe* (1914) and Gqoba’s *Isizwe esinembali* (1873-1888/2015). As shown in the previous chapter, these texts primarily deal with, amongst other things, issues of *umthetho* translated as “law” and *ubulungisa* translated as “justice” in the early Xhosa society. *Ityala lamawe* (1914) for example, is a partly fictitious story, and partly non-fiction set in an indigenous legal setting. It reconstructs how justice was dispensed in the precolonial Xhosa society. Gqoba’s texts on the other hand are written at the early contact with European societies, and also deal with legal processes and justice. The above mentioned attributes of these texts thus meet the objectives of this study- which is to study the earliest conceptualization of law and justice in the precolonial Xhosa society, to evaluate how these conceptualizations are reflected in the language, to study the context in which they appear and to see how they have shifted in time (see chapter 4 for more discussion about these texts). In order to get a clear understanding on how *inkundla* was constituted, how *umthetho* was dispensed with the aim of ushering *ubulungisa* in the precolonial society, this chapter analyses the key lexical items identified including but not limited to *inkundla*, *inyange*, *igqala*, *umninimzi*, *inkosi*, *ubawokazi*, *umzalisikazi*, *umfana*, *ukudliwa*, *ukuphanda* and *amaphakathi*. These lexical items are identified by the researcher in these two texts based on their appearance and prevalence in the context of law-making and judiciary processes. This prevalence indicates their “keyness” or “centrality” in these processes, thus, important in the analysis of these processes. Acknowledging the dangers of mistranslation of key concepts, I use isiXhosa terminology as much as possible. Through this, I will interrogate the pre-colonial and contemporary understanding of these concepts, and how they influence our imagination about law-making processes.

5.1 The interconnectedness of *ubulungisa*, *umthetho* and *inkundla*.

The purpose of this section is to introduce the concept of *umthetho* “law”, *ubulungisa* “justice” and *inkundla* “court” using isiXhosa conceptualization. These are three interweaving themes this chapter will be exploring under different sub-themes, with the purpose of understanding how they were conceptualized and applied in the precolonial Xhosa society. It will start with the concept *umthetho*, followed by *ubulungisa* and then I will conclude by the concept *inkundla*.

AmaXhosa in the precolonial society had a system of *umthetho* (the law that governs the society) that was orally passed down systematically from one generation to another. The concept *-umthetho* is derived from the verb *-thetha* “to speak”. The thought behind this concept is “speaking”. Words such as *isithethi* [a speaker], *isithethe* [tradition] carry the sense of *speaking or repetition*. They are all derived from the root *-theth* and the thought behind this morpheme is the sense of speaking. *Umthetho* could therefore be translated as “that which is spoken and laid down”- *isiko elinenqayi, elendeleyo ngokokude libe negunya lomthetho ekhayeni ngalinye okanye emzini* (Long standing tradition, very old such that it become authoritative in each home or house) (Tshabe 2008: 442). The thought here is that the concept *umthetho* arises from long-standing “traditions” in which various actors participate and make decisions. These traditions are passed down orally from one generation to another and they become authoritative over time. For example, *ayikho mthethweni into yokuba umntu athuke umzali wakhe* (it is not “lawful” for a person to insult their parent) (Tshabe 2008: 442) The fact that dialogue or speech is central in the concept “umthetho” implies that making it in the precolonial Xhosa society was open to negotiation, carrying an element of democratic or collective participation. The agency is thus given to the collective in informing a “rule” and not the individual.

This conception differs from “law”. The concept “law” etymologically originates from the old English concept “*lagu*” which means “ordinance, rule, prescribed by authority”...something which is laid down, that which is fixed (Online Etymology dictionary). In this conception, speaking or dialoguing is not present. This western notion of law does not privilege collective or democratic agency. The emphasis here is the “laying down” where on the other hand, the emphasis in the Xhosa concept is speech. The earliest comprehensive dictionary compiled by Albert Kropf in the Cape Nguni region in the late nineteenth century, defines *umthetho* as “commandment, law, and ordinance”. The sense of “speaking” or tradition is omitted from this definition. Kropf does not

define what *umthetho* is. Instead, he gives English “equivalents” of this term without defining the essence of this term, and most importantly, how it the sense of speaking is central in this concept. This can be construed as a cultural bias or imperialism that relegates indigenous epistemologies on the margins. This confirms Gouws (2007)’s assertion that the earliest dictionaries like English-Kafir dictionary were “externally motivated” In essence, that the dictionaries were created not as a mechanism to uplift the indigenous languages and epistemologies but to serve purposes of communication between the missionaries and colonial administrators. Contemporary South African dictionaries like (de Schryver and Reynolds 2014) leave out this indigenous conception of *umthetho* as well. These are authoritative texts that are used in institutions of power like schools and courts. These institutions inform the collective imagination and thus inform a dominant discourse in the society. In their definition of *umthetho* de Schryver and Reynolds (2014: 210) say that it is “law, act, and legislation” This conception of *umthetho* does not carry the world-sense of amaXhosa. It is based on the European conception of *law*. This largely informs how people understand and apply the law.

Mqhayi (1914) explains that *umthetho* was integrated into the social life of amaXhosa, widely understood and founded upon “customary precedents.” According to Mqhayi (1914) the smallest unit of *umthetho* was the home and the highest unit was the Great Place (*iKomkhulu*). In other words, *umthetho* was not restricted to the “institution of court of law” as we understand in the present but deeply “societized”. In his own words, “le mithetho uvela nayo umntu kwa sekuzalweni” [a person, from birth, comes with these “laws”] (Mqhayi 1914: v). Gqoba (1873-1888/2015: 214) corroborates Mqhayi’s above assertions as follows:

Although it is an ‘unwritten law’, its principles and practice were widely understood, being mainly founded upon precedence, embodying decisions of chiefs and councils of bygone days, handed down by oral tradition and treasured memories of the people. This law took cognisance of certain crimes and offences; it enforced civil rights and obligations; it provided for the validity of polygamic marriages; and it secured succession to property as well as inheritance, according to simple and well-defined rules.

This society, Mqhayi (1914: v) argues, kept their laws through respect, revering things and being scared of disgrace. As both Gqoba and Mqhayi show, everyone “lived” *umthetho*. For example, it was a known and lived principle in the Xhosa society that any child respects all senior people to them; even if they do not birth them. It was thus, a village that raised a child; and not necessarily the “biological” family and the village was guided by *umthetho*. Umthetho was thus a lifeblood of the culture of amaXhosa. It was not divorced from the way of being of the people.

Tisani (2000) notes that the missionaries accounts of the *umthetho wamaXhosa* and histories centred *Ikomkhulu* (the Great place) and ignored *umthetho* from the smallest unit. The ordinary people were merely represented as “shadows, as simple followers who spent their time singing and dancing. Clan lineages and the authority they enjoyed did not feature at all” (Tisani 2000: 21). This exclusion is perpetuated, sometimes unconsciously, by contemporary philosophers, legal scholars and historians from Africa and abroad (see Simuyu 1998, Gyekye 1997, Ayittey 2006, Randall 1981). In indigenous *iintsomi* (folktales), songs and various forms of oral literature as well as the living tradition, the centralization of the family in the making of *umthetho* is elucidated.

Making a connection between *umthetho* and the society, Mqhayi (1914) recounts that every member of the precolonial Xhosa society had obligations to “correct” the misbehaviour of their junior when it happens in their presence (Mqhayi 1914: v). Failing to do so, Mqhayi argues, the senior would be liable for not meeting the ends of *ubulungisa* (the process for resolving the societal disputes). In other words, *umthetho* in the precolonial Xhosa society was socially binding and every member had to abide and account for it. Similar to the duties of “police officers” in the contemporary world, which are enshrined and protected in the Roman-Dutch constitution adopted as a legal frame in South Africa, each and every member of the precolonial Xhosa society had a duty or obligation to act on something that is “wrong” taking place in their presence; and they were protected by the law of amaXhosa originating from uQamata (God) and protected by the chief *inkosi* (Mqhayi 1914: 30). In other words, it was not a responsibility of a “designated” person to do this duty (not a job); it was a communal responsibility. In Mqhayi’s words:

Ikwayindawo yomntu omkhulu ukuthi, nokuba usekhaya nokuba ungumhambi osendleleni, akhalimele, athethise, angxolise, ade ohlwaye, nawuphi na umntwana ambone esenza into engalungileyo. Yingozi kuye ukungathethi, kuba amehlo akhe, okanye iindlebe zakhe, se zimzele netyala. (Mqhayi 1914: 107).

It is a duty of a senior person, whether is at home or travelling, to rebuke, to speak to, to reproach, and correct, any child whom she/he sees doing something wrong. It is danger to her/him not to speak, because it is her/his eyes or ears that have brought him/her a case (Mqhayi 1914: 107).

In here, Mqhayi (1914) highlights the fact that seniority gave one responsibilities to “act” on something that is widely known as “wrong”. This did not require special training separated from the social polity; anyone, Mqhayi (1914) argues was a “practitioner” of law. This is one of the key things Mqhayi (1914) shows throughout his novel *Ityala lamawele*. Furthermore, what Mqhayi (1914) portrays here is that law in the indigenous Xhosa society was integrated in the social institutions and culture. As corroborated by Majeke (1994:68), law and culture in the indigenous Xhosa society are “seen to flow from the one into the other in complete concentric and interlocking circles of human reality”. In contrast law in European culture-based social system is seen as a separate entity from culture. Thus, social relations like love, the social duty between husband and wife and well as psychological constructs of duty, respect, honour, for example, do not seem to carry the same weight in the western society (Majeke 1994: 63-34).

Umthetho, under the Roman-Dutch law framework in South Africa is divorced from the society. The family and the society is not allowed to take “law to their hands”. A child who is disciplined by the member of the society when they are doing something wrong or unethical according to the social standard is considered “unlawful”. It is only the police officers that are given a right to enforce “law” and courts to make decisions, and not the home and the society. The communal accountability and responsibility is thus relegated on the margins and there is a disjuncture between the society and law making institutions. This conception of *umthetho* is in line with the western conceptualization of law, which is “ordinance, rule, prescribed by authority” in which the family and the society is removed.

Ubulungisa is a noun derived from the verb *-lungisa* “to correct, to fix and re-integrate”. For example, “*nceda ulungise esi situlo sophukile*” (Please help fix this chair it is broken) Words like *-ilungelo* [a right], *lungiselela* [make right for], *ilungisa* [righteous person], *lungisa* [fix] carry this sense of “fixing or making right”. The thought behind the root *-lung* is to correct, make right or fix. The sense of what is “right” and “wrong” is an ethical question and ethics are subjective and

not universal. The sense of what is correcting or what is right therefore, will vary from one society to another- it is not a universal enterprise. In the case of amaXhosa, the ethics of good living is informed by the philosophy and praxis of *Ubuntu* (Majeke 2001: 1). Kropf (1899: 223) defines *ubulungisa* as “goodness, rectitude, straightforwardness, righteousness.” Although this definition abstracts characteristics of *ubulungisa* from the general experiences of the amaXhosa, this is not by any means an explanation of the thought or conceptualization behind *lungisa*- that it is an ethical reference point determined by the ontological and normative ways of living which include certain obligations to the society (Ramose 2000). In other words, *-ubu*, the morpheme in *ubulungisa* is the highest level of generality in ontological terms for being, for example *ubuzwe* (nationality) and notion of permanent suspense of being, e.g. *ubuhlungu* (pain), *ubuhle* (beauty). Kropf (1899) who claims to have collected his data from the indigenous Xhosa speaking people, does not account for this thought. Missionaries, as shown above, although they collected and developed many materials for isiXhosa language, they excised lots of indigenous knowledges, especially those they deemed “uncivilized”. The contemporary dictionaries in South Africa like De Schriver et al (2014) and Tshabe (2008), similar to Kropf only abstract characteristics of *ubulungisa* and do not account the ethical and ontological reference which is central in *ubulungisa*. De Schriver et al (2014) defines *ubulungisa* as “goodness, righteousness, fairness and justice” This is the limitation with most of the dictionary definitions. They do not account for the thought behind the word but simply abstract characteristics associated with the word and universalize them.

The contemporary translation of *ubulungisa* is “justice”. The concept “justice” at an etymological level does not carry this sense of “fixing”. Justice loosely translates “just action”. There is nothing in this conception that connotes “correcting”. A just action is subjective and could be punitive or corrective. However, in the isiXhosa concept *ubulungisa* “correcting” is the central thought.

Early missionary historiographers in the nineteenth century, painted the political systems of amaXhosa as barbaric and backwards. In their civilizing mission, these missionaries painted the “justice” system of amaXhosa as punitive. Even though *isohlwayo* (means of bringing back to basics) would include “unethical” ways according to the missionaries point of view, the philosophy behind *-lungisa* is to restore. In other words, when one is found guilty, the judgment should be aimed to restore what was broken. This was subjective to the point of view of amaXhosa.

Mqhayi (1914) as well as Gqoba (1873-1888/2015) provide different examples to illustrate the application of restorative acts. Below is an example that illustrates the philosophy of “fixing or corrective” behind the word *lungisa*. This is an example about *imfazwe* kaMlanjeni, the eighth “frontier war” that took place between 1850-1853. Mqhayi (1914) gives background about the start of this war, which was initiated by the son of Kala, uMlanjeni who became *itola* [“war” prophet]. Mlanjeni was called by the ancestors to train as *igqirha*. After being initiated to being *igqirha*, Mlanjeni began to preach that amaXhosa should forsake bloodshed and destroy witchcraft (Mqhayi 1914). With the impeding and frustrating colonial grip by the British over amaXhosa, his people listened and followed him. He promised to render Xhosa army impenetrable by the colonialist’s bullets. This entire act was done to end the colonial rule and to restore the peaceful order of the society. The key here is the “restoration” of the old order. Mqhayi narrates:

Isiqalo sale nto yayingeyiyo mfazwe; uMlanjeni wafikelwa ngumoya wokulungisa isizwe. Amaxhosa, nje ngamaSirayeli kubaGwebi ebehlala ahlale avukelwe litola lokulungisa isizwe. (Mqhayi 1914: 101)

It was not the death of a nation when it begun, it was the spirit of fixing and restoring the nation that came to Mlanjeni. In the nation of AmaXhosa, like the Israelites to the Judges, a rainmaker prophet in times of [death of a nation] would arise for the purposes of restoration. (Mqhayi 1914: 101)

Mqhayi is drawing the reader here to the interconnectedness of the spirituality of amaXhosa with *imfazwe* [death of the nation]. He uses the example of the institution of *itola* as being central in the restoration of the old and peaceful order and “just” ways of being of the society. The nineteenth century context is marked by the Xhosa’s being dominated by the British colonial government. This saw having amaXhosa’s judiciary institutions amongst other being swayed by the colonial government. According to Mqhayi (1914), large numbers of amaXhosa were displaced across *Qoboqobo* by Sir Harry Smith, causing overpopulation and hardship. Having experienced this hardship, Mqhayi writes that Mlanjeni wanted to restore the state of things back to the initial order for the purpose of peace and harmony. Hence, he uses the words “wafikelwa ngumoya wokulungisa isizwe” [the spirit of fixing the matters of the nation came to him]. Although in the

form of *imfazwe* [death of the nation] bringing *ubulungisa* by any means necessary, deemed appropriate in the Xhosa sense, was important for amaXhosa to achieve peace.

The case of Babini and Wele in *Ityala lamawele* (1914) is a small scale level application of *ubulungisa*. Here, Wele lodges lawsuit against his twin, Babini. The case starts from home where Wele consults *oomalume bakhe* (his uncles) and *oobawomkhulu* (senior fathers) to find solution to the matter. This is an important point in showing the procedures one needs to undertake in *umthetho wamaXhosa*. According to this law, *undimangele* (plaintiff) first seeks for *ubulungisa* at home from the senior people, by *ukuthetha* (speaking) and if this did not serve “justice”, then the matter would be escalated to *inkundla yekhaya* until a solution is found. *Inkundla* as a space was thus critical in the life of amaXhosa. In *Ityala lamawele*, Wele follows this procedure but takes different routes such as going to *inkundla kaSibonda* [the headman’s court], in what in today’s conceptualization would be thought of as a “magistrates” court, when justice was not or could not be dispensed at home for various reasons. In all of his efforts, Wele is attempting to find *ubulungisa* by following all the proper channels of *umthetho*.

The noun *-inkundla* is derived from the verb root *-khundl* [sitting down in a place unswervingly for the purposes of finding solutions to problems]. It is preceded by a derivational prefix *-in* followed by an inflectional terminative vowel “-a” to form a noun *-inkundla*. Sesotho’s equivalent for *-kundla* is *-khotla*, and this lexical item denotes similar meaning. *-Kgola/khotla* means sitting down in a place unswervingly for the purposes of finding solutions to problems. Similar to isiXhosa thought, the concept has the second sense denoting the “people” who are sitting in *inkundla*. One of the terms that carry this sense in Swahili is *-kukaa*, and this lexical item, as with the isiXhosa and Sesotho one, phonetically sound the same and relay the similar meaning. Moving from this, we can make an assumption that *inkundla*, *kukaa* and *khotla* originate from the same parent word whose meaning expressed the sense of sitting down to find solutions. Albert Kropf who was a missionary lexicographer collected data amongst amaXhosa in the nineteenth century and compiled the first comprehensive dictionary, and published it in 1899. In his definition of *inkundla*, Kropf writes that *-ukukhundla* denotes “to sit or lie on isikundla”. In this definition, the sense of “finding solutions” is not included. Just like missionaries who were involved in language or linguistic activities/scholarship in the nineteenth century (e.g. Doke, Appleyard), Kropf (1899) overlooked this nuance...that people gather or sit in *inkundla* because there are solutions that must

be sought. The core meaning of the first sense is *inkundla* the “place” to find solutions. To illustrate the notion of *inkundla* being the “place” we will consider a case on *Ityala lamawele*. On the second day of the trial at the Great Place, the case between Babini and Wele gets adjourned for the following moon (month) after an agreement by the court that the case to be further investigated. As the participants were preparing to leave, the character Bukwana, who is the son of Langeni of the *abaNtakwenda* clan, who is a bard, rose up and uttered provoking words.

“Ndaza ndalubon’ uzwathi lwetyala!
Ndaza ndalubon’ uzwathi lwetyala!
Kwasa saxhinx, kwasa safak’ithwathwa.
Se zingaphi na ngok’ iinkunzi zalo mzi
kaPhalo?
Fuda sisithi nguHints, akukho yimbi.
Fuda sisithi sisirhorho soNobutho sodw’
inkunzi,—
Inkunz’ ekhwel’ eziny’ iinkunzi.
Ndidane ndaayinko ndakuv’ ukuba izithenile
Yazinikela eNqabarha kwabakaMajeke.
Ayikhweli kuthe ni na le nKunzi?
Lwaphel’ usapho kukutshisana ngasemva.
Ngomziki-zikan’ ogqitywe kwa ngabafaz,
NguTeyase noSingiswa kwa ngamazolo.
Xhwithan’ inkunz’ ikhwele lixesha.
Akukho nto iya kuvel’ eNqabarha
Behold a never-ending case.
Behold a never-ending case.
We have ever since been going up and down
such that our shoes are worn out.

How many bulls (Kings) are there now here
in this Phalo household?
We have been thinking it is Hints alone.
We have been thinking it is Nobutho
dissatisfaction alone that is a bull-
A bull that rides other bulls
Heavily disappointed I became when he
castrated them
and send them in Nqabarha to the Majeke
people
Why is this bull unable to ride?
The family is coming to an end because of
dispute
Because of a decision taken by great
mortals Teyase and Singiswa
Pluck the feathers so the bull can ride it’s
time
Nothing will come out of Nqabarha.

After his utterance, Mqhayi (1914) narrates, no one left *enkundleni*, instead the deliberation stood up, and opened its ears, and then there was a murmur in the midst of *amadoda ebesicweya enkundleni* (men were consulting secretly in the courtyard). This example demonstrates *inkundla* as a place, where solutions are sought, but not without protracted arguments and contradictions. Mqhayi brings the reader to the “openness” of the process, where the bard had a role to play, in criticising or prophesying in the court without being censored. What Mqhayi shows here that irrespective of social status, every community member- male and female- is free and has the right to contribute to the consensus formation. It allows everyone an opportunity to speak their mind and promotes patience, mutual tolerance and an attitude of compromise. Mqhayi here is showing that this meeting space was thus “democratic” space, the Africanist sense of democracy.

This conception of *inkundla* is still maintained in some contemporary dictionaries although removed in some. For example, de Schriver (2014: 88) defines *inkundla* as “an area between huts and the cattle kraal, reserved for meetings and traditional occasions. De Schriver also accounts for the semantic expansion of this term to refer to the “court of [Roman-Dutch] law”. While the missionaries obliterated or showed cultural bias in their definition of some indigenous concepts, other concepts survived this obliteration. The general society outside lexicographers still carry some of these understandings. This can be partly attributed to cultural resilience and practices which have been able to be maintained or grafted through the colonial encounter. In his definition, Fischer (2015: 129) adds that “court” is the residence of the ruler and “his family and officials”. As it is demonstrated above, in the precolonial isiXhosa society, the courtyard was not considered the “residence” of the “ruler”. It was a basic institution where problems were reported to, from home to the great place- and solutions sought by a collective.

Part of the problems that creates forgetfulness is a (deliberate) removal of cultural practices which influence the social thought. This creates a situation whereby the next generation forgets how things looked like in the past. In the context where land for example, especially in the townships, is not available or accessible to the general indigenous population, to reserve for purposes of meetings and rituals, this is likely going to cause a situation where the culture of doing things or holding meetings *enkundleni* is likely to be corroded. The new conceptualization will project that of the new order of the day because language projects the social-experiences of a people.

Inkundla is also used metaphorically to refer to the participants at *enkundleni*. For example *inkundla yekhaya* (family court) is constituted by various family members from the youth to the old who belong to the same clan, the village members (*umphakathi*), as well as other close relatives such as *abatshana* (nephews) as shown in *Ityala lamawele*. *Uyise* [father] of the family, who is considered the keeper of the property of the ‘home’, presides over the *inkundla*, what in today’s terms would be considered as “chairperson”, superintendent or president. While *uyise* (father) assumes the role of being the “chairperson,” it is in line with the fundamental principle of *umthetho wamaXhosa* that he is not *inkundla*. *Inkundla* would be all the stakeholders who get to sit in this court. The decisions that are taken by these stakeholders were thus binding as reported as “*isigqibo senkundla*” [decision of the court]. In recalling a famous case of a European man and *ikhoboka* that was adjudicated by uNkosi uMaqoma, Mqhayi (1914: 96) describes how the decision was made by *inkundla*. When passing a judgement, Maqoma uttered the following words:

Kucacile ukuba wena ndimangele lo mfo umbethile, wamphatha kakubi, nje ngoko inkundla yonke ibonayo; ube wena ungenangozi, ungenawo nomda, obonisa ngawo ukuba lo mfo ubebufanele obu burhalarume umphethe ngabo, kwaye ubufanelwe kukumzisa apha phambi kokuba umenje nje; ngako oko ke le nkundla ithi kuwe: Lo mfo iya mkhulula ukuba ma kaye apho athande ukuya khona, iya yichitha loo nto ibinihlanganisile: uthi wena bubukhoboka. (Mqhayi 1914: 96).

It is clear that you, the complainant, have beaten this mortal and ill-treated him as the court views; you were not in danger and you don’t have grounds to show that this mortal deserved this atrocious treatment, and you were supposed to bring him before this court before you acted on him, as a result, this court says to you: it releases this mortal to go where he wishes, it terminates all the ties between you two: that which you say is slavery. (Mqhayi 1914: 96).

Mqhayi here, as discussed above, shows through language, that decision are taken not by an individual, but the different stakeholders that “constitute” court. In other words, without these stakeholders, there would effectively be no “court”. Nkosi Maqoma here is thus portrayed as a representative of a collective. Secondly, Mqhayi brings the attention of the reader to the social context during Maqoma’s time in the mid-nineteenth century. Mqhayi is bringing an issue of “slavery” which was a foreign concept to the worldview of *amaXhosa*. According to Mqhayi (1914: 115) the word *-khoboka* is a borrowed word that is (during his time of writing) recent phenomenon in the Xhosa language. Mqhayi doesn’t trace of give us a clue in terms of which

language this term could have been borrowed from. Slavery means being a property of another person for the purposes of earning wealth under horrendous circumstances. The concept “ikhoboka” doesn’t denote this sense. The sense of *khoboka* implies to be dependent on something. For example, a person who can’t live without alcohol is called “ikhoboka lotywala”. This does not translate to “alcohol slavery”. This thought could have been extended by amaXhosa to make sense of someone who was depended on the other person, doing everything the other person is saying. The problem of translating this indigenous concept to “slavery” is the transposing of the different experience and epistemology of “slavery”, creating this experience of power and dominance that is racially based as a universal practise. Mqhayi (1914: 115) in the above example invites the reader to some of the atrocious realities of the nineteenth century, in which slavery was practiced by the European colonialists. Maqoma’s court here famously “freed” the “slave” and terminated ties between him and his “master”. The point that Mqhayi is trying to bring to the reader here is that the term “ikhoboka” is pregnant with colonial epistemology. Most importantly, Mqhayi is saying here that *inkundla* indeed ushered *ubulungisa* for the man who was under the bondage of a man who claimed to “own” him. Mqhayi is saying to the reader that the courts obeyed and followed *umthetho* that was rooted in the African ways of being that did not recognize “slavery” is a “legitimate” and correct practise. Working from this framework, *inkundla* then served the “defendant” *ubulungisa*.

5.2 Interrogating the role of *inyange* in recalling precedence in the precolonial Xhosa court

The previous section has shown the interconnectedness of *ubulungisa* “justice”, *umthetho* “law” and *inkundla* “court”. The conceptual understanding of the institution of *inkundla* as well as the processes of *justice* and *umthetho* were illustrated as interconnected in the Xhosa world-sense. The goal of this section is to examine the role of *inyange* [sage] in recalling precedence in the precolonial Xhosa indigenous court. In doing so, I look at the conceptualization of “*inyange*” and its role in the processes recalling historical cases- in the attempt to find solutions in the indigenous Xhosa court. I argue that in decision-making and carving a way for the future, it was critical in the Xhosa court of law to recall the past cases, and in doing so, *inyange* was a critical institution. *Inyange*’s knowledge and wisdom enables him/her in making references to historical cases through oral presentation using his or her sharp memory. In analysing the term *inyange* and related concepts, this section interrogates the precolonial sense of this word as well as the contemporary sense in order to understand the changes and continuities.

Mqhayi (1914) portrays the practice of *umthetho* in *inkundla zamatyala* [court of law] to be based on previous decisions based on facts, similar to the facts of the case presented in *Ityala lamawele*. Precedent was one of the most important sources of indigenous law. It informed the decision that was taken by the courts, in a similar fashion as today. This principle was consistent and integrated in the social life of amaXhosa- from the family unit to *inkundla* of *iKumkani* or *Inkosi enkulu* (paramount chief). The rationale of precedent, similar to the contemporary understanding, was meant to create consistency and avoidance in making wrong decisions based on the contemporary understanding of the matter. In the absence of writing in this period, the lived experiences of old people who had seen things before other people were considered reliable and important. These people are referred to as *amanyange* [sages]. *Amanyange* thus provided continuity with the past. Historians came from this group and so were specialist in rituals and traditions (Tisani 1994: 17).

Inyange can be defined as “the people of old; elders, ancestors” (Kropf 1899: 303). The equivalent for *inyange* in Swahili is *babu* “a term for respect for old people, ancestors” (Rechenbach *etal*, 1967: 20). In this speech community, the sense of *inyange* is the same as that one of isiXhosa. It is both referring to old people with knowledge and experience and the ones who have passed on

occupying the highest place (*enyangweni*) - see Kropf (1899: 303). There is nothing that suggest sex or “gender” in this term. There seems to be connection between *nyanga* (the moon), *inyange* (the old/the sage), and *inyangi* (the healer), *enyangweni* (the highest place where the dead people occupy). These connection here is “highness, healing and guidance”. For example, *inyanga* (moon) is a rock that is very high constituting of healing properties. In the cosmic world of amaXhosa, *inyanga* symbolizes guidance and protection at night and occupies a very high place. When “women” are going through menstruation, they are said to be *enyangeni* (phase of the moon). The sense here is that there is a connection between menstruation and a moon and that relationship is a healing relationship. The ancestors, who are believed to guide and protect that living are said to be *amanyange* who are occupying a place called *inyango* (*enyangweni*). The oral folksong “ndibizeleni abazali bam abasenyangweni ndiyagula mna” (summoned for by my parents who are *enyangweni* I am sick) carries the sense that those who occupy the realm of *inyango* heal the living. The people who have access to those who are at *enyangweni* are *iinyangi* (healers). They are believed that their healing powers are a gift from *enyangweni*. *Amanyange* occupied very special roles in the Xhosa polity. They were mortals and senior mortals who were old, full of wisdom derived from lived experience. Their input was crucial in the indigenous court. This concept is still used in indigenous courts in the context of family meetings or rituals. They occupy a place of prestige. They are given more time to speak and their word is highly regarded. No one can talk when *inyange* is up talking, addressing the house. Even the head of the house cannot say anything because *inyange* is a transcended category.

The character Khulile in *iTyala lamawele*, who is a source of Xhosa oral tradition and custom, occupies the role of *inyange* in this novel. Khulile is only approached by the court after it had encountered great difficulty and complexity with this case. Khulile is suggested by *inkundla* to be brought in to share his wisdom and knowledge on matters related to this one. His father, Majeke, who was also *inyange*, once resolved a similar matter concerning Phalo at the Great Place. One of *amaphakathi* who gives introduction before Khulile makes this point clear.

Ayifumananga le nkundla yacinga ngawe, laye eli ilityala lokuqala elinje kwesi sizukulwana. Ke kaloku asibanga nandawo yakubambelela nakumisa iinyawo, kuba into iba nto ngokuzekelwa kwenye, njengoko waziyo nawe. (Mqhayi 1914: 25)

This court couldn't find wisdom elsewhere and so it thought of you, since it is for the first time this kind of a case is heard in this generation. This court did not have a place to hold on to and put feet on because creating something new has to be taken from an existing one, as you know so yourself. (*Mqhayi 1914: 25*)

Khulile is thus portrayed as the custodian of the greatest wisdom, a person who has seen and experienced the life of amaXhosa before other people. In this indigenous court, old age is thus associated with wisdom. A person given the title *inyange* is therefore presumed to have these above mentioned characteristics. In the court, Mqhayi (1914) portrays this category as a category of "privilege". For example, Mqhayi narrates that many people from different places, went to *komkhulu* just to see Majeke. Everyone was in awe of the wisdom Majeke holds, and each and everyone wanted to experience the moment. In here, Mqhayi (1914) highlights that knowledge, lived experiences, and were valued in the Xhosa law-making and judiciary institution. Majeke's position was similar to an "expert" or "historian" in today's terms. The contemporary institutions of law considers a people with expertise on a particular field as *amanyange*. For example a person who has vastly researched and published on a particular area is deemed an expert regardless of the theories, methodologies and scholarly approach. In the precolonial era, *amanyange* were rooted in the indigenous ways of being and living.

To remind the reader again, the case in *Ityala lamawe* involves Babini and Wele on dispute over seniority. Wele seeks to succeed the seat [*isikhundla*] of his deceased father in order to be able to give harmonious direction to the matters of his home. Wele makes a claim on the number of grounds. The first one was that he ought to be the senior because his brother had surrendered his position when he exchanged it for a bird he had killed sometime previously when they were still boys. The second ground is that he received his home ritual of cutting *ingqithi* [the tip of a finger] first and also received the circumcision ritual first. On the evidence before the court, placed by *abazalisikazi*, it appeared that the birth of defendant and plaintiff was unusual as the plaintiff had his hand protruding instead of the normal birth of the head first. It seems that when the hand made its appearance one of the senior mid-wives cut the tip of one of the fingers and it immediately

retracted and that was how the youngest twin brother came to be the first to observe the custom of cutting the finger.

The court sought Khulile's advice through his lived experience to "ukulamla oludaba" [to help find solution to this case]. Amanyange are thus problem solvers. Khulile recalled a similar case in the Xhosa legal history which also involved a dispute between twin brothers. It was a dispute between Nkosiyamntu, the youngest twin to Liwana. In this case, Nkosiyamntu has also claimed seniority over his elder twin brother Liwana. The parallels between these two cases were thus insightful for the court to gage this particular case. Majeke further testifies that Nkosiyamntu also alleged that he had "bought" the right from his twin brother who had also surrendered it in exchange for a piece of meat called *icongwane*. Majeke testified that the elders who considered the matter decided the issue in favour of the youngest twin as the other twin had relinquished his position by means of exchange. Majeke goes on to complicate this matter to show that precedents can be nuanced. He expressed that seniority does not always depend on priority of birth but the person's deeds. He argued:

Ndibeka eli ke, zinkosi zam, ndipheze. Inkulu le inikelwa ukuba iphathe umzi nje, kungenxa yokuba yona inamava okuvela tanci kunolunye usapho lwakowayo; inabantu bakowayo ebaziyo kunabo, ineengcombolo ezivileyo yona ezingaviwanga ngabanye. Obewele ubukhulu bufika bube phi na kunelinye, bevele ngamini ninye nje? Asizizenzo na into eyenza ubudala, kwanjengokuba nenkulu ethe qelele kwabanye iyahlukana nobukhulu bayo, xa ifike yangumntwana ngezenzo? Ndishiya mfungumfungu njalo ke, zinkosi zam, ukuze nizifumanele ngokwenu apho, eyona nto nifuna yona (Mqhayi 1914: 25)

I put this final word to you, my chiefs. The reason why the responsibility of keeping the family is given to a senior is because of the experience of being born before the others; he knows family members, he has learned information that other do not have. Where does this factor in in the context of twins since they were born on the same day? Is it not the deeds that makes one a senior, in a similar way a distant senior loses its

seniority when it has become a child by deeds? I leave it unresolved like that, my chiefs, so that you can find for yourselves what exactly is that you want. (Mqhayi 1914: 25)

Despite the evidence of precedence that Khulile is bringing to the court, he also complicates it. He exposes the gaps in it in his questioning-style testimony. He does not make any conclusion but simply shows some gaps with the precedence. Therefore, he brings a point here that although similar instances like this happened before, the court cannot rigidly apply precedence. In other words, precedence is dynamic. Khulile summarizes this in these words:

Apha ke kulo mzi kaXhosa, kuthi ukusunjululwa kwabobantu bavele ngalanga linye, kujongwe lowo uzalwe tanci. Loo nto ise ide yamiseleka ingamiswe bani, yanga ngumthetho, ukuba ozalwe tanci abe yinkulu lowo. Kodwa ke, nje ngokuba ndikho, ndabona ezi ntsukwana mbini ndisaphanyazayo, loo nto iya phikiswa iphikiseke kwamanye amawele (Mqhayi 1914: 25)

The law of the house of Xhosa dictates that a matter of this kind be resolved by giving seniority to the one who was born first. That has become fixed for many years, and became a law, that the person who is born before the other to assume seniority. But during my time on earth, and saw in these few years, this can be disputed successfully in some other cases. (Mqhayi 1914: 25)

This testimony put in front of the court became very instrumental in adjudicating this matter. The result was to be greatly influence by this testimony. As it is stated earlier in this section, the wisdom, testimony and lived-experience of *inyange* [sage] was considered valuable knowledge. One of the things we learn through Khulile in this trial is that *umthetho* of amaXhosa was dynamic in character.

The dynamic character of *precedence* is further corroborated by WW Gqoba. He cites a case of Kama who was the chief in the Right Hand House, who after his accession initiated a tranquil rule, in love and respect for his people. Gqoba (1873-1888/2015: 299) recounts that Kama drew greater honour to himself by accepting the word of God wholeheartedly and sincerely. Just like any other chief, Kama was bound by the Xhosa laws to marry a second wife [*isithembu*], who was going to

be the daughter of Mdushane the Cebo chief in the Right Hand of Rharhabe. As Kama's new religion did not allow to such, he declined to marry *isithembu*, and this Gqoba recounts, nearly provoked "warclouds". As a result Maqoma, the son of *inkosi* uNgqika, who presided over this matter as the "regional" court (in today's conception) passed a judgment on behalf of the court with quite remarkable eloquence. Maqoma asked:

Ngubani na onokupikisana no Tixo ka Kama, u Tixo odale bonke ubukosi obukoyo;
yena (Maqoma) ezalwa ngu Ngqika nje, akanamandla okumpikisa u Tixo ka Kama.

Who can withstand the God of Khama, the God who established all the present chieftainships? Even though I, Maqoma, am the son of Ngqika, I lack the power to withstand the God of Khama.

Maqoma shows here that with society's change, some of the laws had to be changed to accommodate change. In other words, that *umthetho* was intrinsically dynamic in character. It was not static as how some missionary writers like (Kay 1833, Maclean 1866) had painted it as "rigid" in their reports with the exceptions of few accounts (for example Dugmore 1866). These accounts by the indigenous Africans contradict the missionary discourse through the oral account rendered by Gqoba and the partly fiction and partly real account told by Mqhayi (1914) capture the essence of dynamism of *umthetho* wamaXhosa during the precolonial period.

This section has showed how *inyange* [sage] was central in the precolonial justice and law-making processes. Amongst other roles that *inyange* played in these processes was to give precedence through recalling from their sharp memory. Their lived experience and wisdom was critical in these processes. These processes were thus intergenerational informed by the philosophy of *ubulungisa*.

5.2 Interrogating the “power and decision-making” in the indigenous court

The purpose of this section is to examine the conception of “power and decision-making” in the indigenous court. To this effect, there will be an examination of social categories such as *inkosi*, *umninimzi*, and *amaphakathi*. Throughout this section, I will interrogate the contemporary understanding of these concepts. I will evaluate the notion that comes a lot in missionary and colonial archive, that *iinkosi* and the *umninimzi* were the final authorities of decision-making in the indigenous court.

Umninimzi is a compound term constituted by two lexical items *-umnini* and *-mzi*. *Umnini* is derived from the noun *-nini* which denotes “presence”, and prefixed by the morpheme *-um* which is a “human class 1” or highest ontological category. *Umnini* thus translates to [The one who is ever present/the keeper]. *-Umzi* translates to “home”. The concept *nini* is also an interrogative morpheme which translates to “when”. The thought here is time. The concept *-umninimzi* thus translates to [The one who is present in/the keeper of the home]. For example, the concept *Sonininanini* translates to [the ever present Father/God].

This concept does not convey the sense of “ownership or proprietorship” as it is defined by Kropf (1899: 271). Lexically, there is nothing that connotes the concept of ownership. The father in the precolonial family structure was the keeper of the property of the “house” or the family but not himself the property owner. According to amaXhosa’s succession laws of the ‘home’, the senior son would take the seniority based on the view that *iintombi* [daughters] were going to get married and keep their own houses. Therefore, by this definition the senior son is not the owner and does not have any right to dispose of the property, except under specific circumstance. Before this step is taken there had to be agreement of the general family. This is contrary to the concept of “private” property, which is the basic unit of capitalist economic enterprise. De Schriver *et al* (2014: 206) defines *umnini* as “owner” and again, this is something that is not in the Xhosa conceptualization of the concept *nini*. This semantic shift could be traced to the early capitalistic configuration of the Xhosa society after the industrialization in the nineteenth century. This meaning was inserted in the early dictionaries by the missionaries and the contemporary dictionaries have carry this

conceptualization which is Eurocentric. This shows the power and dominance of English ideas and world-view which is supported and buttressed by economic relations

Umninimzi (Keeper of the house) kwaXhosa is entrusted with certain responsibilities. Part of these responsibilities is to be the adjudicator of the dispute at the family level. In Ityala lamawele, the character Vuyisile, who fathers Wele and Babini is *umninimzi* of the house of Nzotho. According to the indigenous law, under normal circumstances, Vuyisile would adjudicate the trial if there would be dispute in his house. Unfortunately because he died under unforeseen circumstances, the person who would take his place and preside over the family disputes would be his senior son. This proves to be impossible to be done in this case because both *undimangele* [The one who is taken aback] translated as then “complainant” Wele and *umangalelwa* [the one who is charged] translated as the “defended” Babini are the first born and only sons of Vuyisile. Conceptually, *undimangele* and *umangalelwa* do not denote a sense of guilt. This is contrary to the missionaries’ accounts like Dugmore (1866: 37) who argued that in “Kafirland the accused is held guilty till he can demonstrate his innocence”. At lexical level, there is not conception of this claim.

Babini claims seniority, and thus *ubunini* “keeping” of the house of Vuyisile. According to the succession laws of the indigenous society, any senior member of the family, determined by all family members including the wives, who have knowledge about the family laws. The most senior person who *indoda* (man) of the house of Nzotho is *ubawokazi* (Senior father), Phekeza the son of Gqabi and therefore by the indigenous law is supposed to sit in as an adjudicator when dispute arises. In African setting an elder brother- *umkhuluwa*- stands in the place of a father and is an important figure in a man’s life. Unfortunately Phekesa; Vuyisile’s elder brother- is not partial in the matter, and so Wele takes the matter to *inkundla kaSibonda* (the log of the community) translated to as “headman”. However, before Wele proceeded to take the case at the Great place, he had tried to address the matter at home, the basic institution of the law-making and judicial processes. His uncle’s attempts as well as *umakhulu* [senior mother]’s attempts to solve this matter failed. All of these stakeholders in which Wele had consulted before constitute *inkundla* of the Nzotho family. *Inkundla* is constituted by *abatshana* [nephews], *ninalume* [uncle], *bawokazi* [senior father], *makhulu* [senior mother] and *bawomncinci* [junior father] amongst other family members. Gqoba recalls that the famous *Tshaka* served in the court of his uncle Dingiswayo and

he was *umtshana* [nephew] to Dingiswayo (Gqoba 1873-1888/2015). These stakeholders had enormous roles they played

In the context of dispute as explained above, *umninimzi* acts as the mouth- *umlomo*- of the *inkundla*. Umninimzi is sometime referred to as *intloko yekhaya* (the head of the home) which implies that the purpose of the head is to give direction, guided by the principles of *ubulungisa* as it conceived by amaXhosa. The members of the *inkundla* interrogate, inform and influence decisions. The members who do so are the senior members which include the uncles, senior fathers, senior mothers and the sages with the exception of *abantwana* who mostly listen and learn from the processes. The roles in which the stakeholders play in this court thus gives us a clear picture on how “power is negotiated” between family members. It is negotiated through seniority that is determined by age and experience. The power of the head of the house is balanced by the seniors who interrogate and influence the decisions to be taken by the court.

As it proved impossible to be able to have this case heard in front of *inkundla yekhaya* [family court], Wele takes it to the court of Lucangwana, the local “headman” [*usibonda*]. Mqhayi (1914) demonstrates here that in the precolonial Xhosa society there were mechanisms of appeal when the “plaintiff” was not satisfied with the decision of one court. As it stands, there isn’t much that is portrayed about Lucangwana’s court in Ityala lamawele. The centrality of this case is at the Great Place where Wele went to appeal. It is here that the division of powers is seen and worth analysing. The importance of the structure of these courts, as portrayed by Mqhayi, was to ensure that *ubulungisa* is served. The mechanisms of appeal were thus made available to the society.

The court of *iKumkani* (who is the highest authority) is constituted by *amaphakathi* [the councillors/the middle ones] and *umphakathi* [the insiders]. *Inkosi* is a term that is used to refer to *Kumkani* [the highest authority in the nation. The notion of the inner circle also implies exclusion. The term used to refer to the leaders of the community of the nation is *inkosi*. *Inkosi* [the leader of a group of people/society] as well as *uSibonda* the leader of a village. The sons of *Inkosi* and *ikumkani* are referred to as *iinkosana* [junior chiefs]. All of these positions are hereditary titles passed to the next generation over time. According to Kropf (1899: 194), the term *inkosi* comes from *ukukoka*, “to lead”. It is used in the context of “leadership” of the nation or society in the

indigenous pre-colonial Xhosa society. Kropf (1899: 194) argues that this concept was formerly reserved to chiefs of the “royal blood”. He argues that since the chiefs have lost their authority, “every man is inkosi”. This is not very convincing. Although language reflects the social experience, this argument that this term was reserved only for “royal blood” is not convincing. Gqoba who is writing between 1873-1888, who was writing in a historical time when isiXhosa judiciary still functioning, uses this category to refer to editors, head of households, head of churches as “chiefs”. It seems like this term was reserved for leadership positions, and as leadership evolved, this meaning of the word expanded. The earlier written sources in isiXhosa could give us more clues to this.

De Schriver et al (2014) defines *inkosi* as “chief”. The examples that are in the dictionary are restricted to the Great house and the Christian religion “May the Lord bless you”. This definition does not describe the word but merely gives the English equivalence. In Sesotho, the equivalent of Nkosi is *Kosi*, denoting the similar meaning. *Inkosi* is a “mouthpiece of the councillors” argues Mqhayi (1914: 147) and not the final decision maker. The role *inkosi* plays is similar to that of *umninimzi*. In other words, Mqhayi argues that the power of the decision making process lies in the councillors and other stakeholders in the court such as the mothers of the chiefs and the family members, just like it lies with the family members at home. This reconstruction is that a chief is bound by law and tradition to rule with consent of his people. This type of government rule is a political contract theory.

Mqhayi (1899: v) seems to be responding to the dominant missionary and colonial discourse of the late nineteenth century that “chiefs” were there sole decision maker (see Wanner 1833) Other missionaries like Dugmore (1866: 24) did acknowledge that chiefs’ power was checked upon by *amaphakathi*. Mqhayi (1914) argues that “*inkosi asinguyena mngqibi wezinto yedwa, nje ngoko izizwe ziba zona kunjalo kuthi*” [the chief is not the sole decision maker, contrary to the other nation’s sentiments of us]. When making a claim for seniority, Wele counts that *inkosi igatyulelwa ngumphakathi izigcawu* (*The king’s community go before him to ensure that everything is good*) In other words, the community lead the processes for the king, and only based on that, the king makes decisions. This expression depicts the Xhosa political systems as expression of the popular will.

Mqhayi (1914) also shows the important role of the chief mothers, *amakhosikazi* [great chiefs] in the affairs of the Great Place. The morpheme *nkosi* [leader] is suffixed with the morpheme *kazi* [great] to form *inkosikazi* (*Great chief*). The word *makhosikazi* appears in Mqhayi (1914) in contexts referring to the mothers of the chiefs including married senior mortals were given this title. The sense this word carries is that of greatness in attributes or responsibility but not in husband-wife dichotomy. To illustrate how this category was in the early twentieth century discourse, Mqhayi (1914: 37) writes about a scene at the Great place.

Ngenye imini kubekho imbizo komkhulu; hayi, zeenje njeya izimpi nje ngesiqhelo. Ithe xa ichitakalayo imbizo ukujika kwelanga, weva uBabini kusithiwa uyabizwa yinkosikazi, unina kaSarhili, ekwakusathiwa nguZothana ngeloxesha, eseyinkwenkwana. Unina kaSarhili lowo ke nguNomsa, intombi kaGambushe, inkosi yamabomvana.

There was a deliberation at the Great Place in one day; and as usual the army of people made their way there. At the end of the day as the army was dispersing, Babini heard that he was being called by the *inkosikazi* [great chief] (my emphasis), Sarhili's mother, who was known as Zothana during that time, when he was still a little boy. Sarhili's mother we are talking about is Nomsa, Gambushe's daughter, the chief of *amabomvana*.

The concept *nkosikazi* here refers to mothers of the chiefs, women in leadership positions as well as senior mortals who are married. *Ubumkani* is the place where the *inkosi* resides, a non-gender concept. The "gendered" social organization of the European societies, seems to have been a factor that informed the imposition of the concepts by the missionaries. *Kazi* in this case, seems to be depicting "greatness" in either attributes or responsibilities (see following section for more discussion on this). In this case, *amakhosikazi* seems to have occupied positions of prestige and great responsibilities.

Tisani (2000) corroborates this from a historical perspective. She argues that *amakhosikazi* assumed greater responsibilities such as taking charge of affairs while their hier sons were minors and influencing decisions in their son's court. For example, Tisani (2000) argues that the authority

of Hints'a's mother, Mamthembu, at her son's court was demonstrated when Van der Kemp was interrogated by a Bangalese interpreter sent by Mamthembu. This shows again, that the Great chief assumed much power in the decision-making processes. This does not change the institution to *ebukhosikazini* it remains *ebukhosini* because *ubukhosi* is first and foremost about leadership. In other words, a senior mortal may assume the reigns of leadership and be given that title. In this case, of being *inkosi*. Tisani also makes other references to the role great chiefs played when their "chief" sons died. She writes:

With the sudden death of Hints'a in 1835, Nomsa (*inkosikazi*) had to step in and support her son who was still *ikrwala* (a young man who has just returned from an initiation school). When Ngqika died in November 1829, Sutu (*Inkosikazi*) became regent during the minority of the Rharhabe heir, Sandile. Ndlambe had died in 1828, and, according to Philipps, there was no clarity as to who would succeed him.

Queen mothers thus enjoyed the political and judiciary space of *ubukumkani* and wielded political powers. Contrary to the view popularly held in the feminist scholarship, that "women were subservient to men and had no role to play in the pre-colonial law-making and judiciary" processes, the social-status titles given to *abafazi* suggests that they played a big role in the decision-making processes in the context of law and justice. To illustrate this popular view, Mafela (2007: 1) argues that:

Pre-colonial Tswana society, like many other comparable African societies was based on a strictly defined division of labour based on gender distinction. It was characterised by unequal power relations between men and women. In Tswana traditional society, men regulated women's social and legal sphere, and women were subjected to male control in many areas of their productive and reproductive lives. The age-old statement that "*mosadi ke ngwana wa monna*" ("a woman is a man's child") aptly captures this notion.

Mafela's denial of democracy to the traditional court system is not unqualified: first, it moves from the premise that gender determines and underscores social relations of production in any given setting. It takes this assumption, uncritically, as a universal way of being. This universalizing tendency assumes that the experience and knowledge of societies was shared across time and

space. This is a false assumption. Oyewumi (1997) argues that this is derived from the Western thought system since social organization in the West conceives gender as an organizing principle. In turn this captures the indigenous experiences into the western experience- thus, colonizing the indigenous ways of being. Secondly, the citation of this expression by Mafela is selective and banal. It doesn't account in which context it is used and how it has evolved over time. Maseko (2018) provides a counter argument that in pre-colonial Xhosa society, for example, body-type was not the basis of social hierarchy. She argues that the ranking depended primarily on seniority, which was defined by relative age. The whole paper of Mafela is flawed because the premise from which is located is deeply flawed, banal and devoid of indigenous epistemologies and experiences.

We will now focus on the role of *amaphakathi* [councillors/middle ones] in the court. The term *amaphakathi* is derived from the descriptive noun *phakathi* [inside/middle]. It is prefixed by the morpheme *-ama* class 6 prefix which is a plural of *-i* which denotes a singular of personal title. Conceptually, the concept *amaphakathi* denotes the “insiders or the middle ones” and this implies “knowing and understanding the matters of the inside”. *Amaphakathi* are members of the “chiefs” council who act as advisors to the chief concerning societal issues as well as the matters of the great place. This concept also implies exclusion.

The members of the governing council are usually the heads of the various clans. That is to say, the councillors, to whom everyone in the town has access, have to seek popular opinion. The councillors were thus representatives of not only the chief but their people. This is taken from the assumption that the councillors understand the internal dynamics of the Great Place. Serving at the great place is called *ukubusa*. This includes residing on *inkundla* for the longer or shorter period, depending on the circumstances and sometimes, councillors inclinations. These responsibilities includes settling all lawsuits before the chief and assist him with counsel in all societal disputes, sharing fines which may accrue to the chief. According to Mqhayi, *amapakathi* thus occupy a “central” role in *inkundla*. In his words, “...*nesigwebo etyaleni be sivela kumaphakathi. Inkosi into eyiyo ingumlomo womzi, isikhuphe mhlawumbi isigwebo ilila, ingabi nakuthi ni, kuba umthetho ugqibile, imelwe ke kukuba ibe phantsi kwawo.*” [The judgment of the case comes from the advisors. The chief is the mouth of the house, at times he will give judgment, sobering, because

the law has decided, and he should abide by it]. This illustrates that the chief is guided by the law and the council in making decisions

Wele, who is the “complainant” lodges the case in the court of Hintsu. The members of the court who elicit a dialogue with him are *amaphakathi*. Inkosi is listening most of the time without making any comment, except for a few times. Mqhayi describes the chief in the following way. “*Inkosi iphikele ukutshaya nje iqondele phantsi, ayenzanga nelimdaka*” [the chief looked down smoking his pipe, without saying a word]. It is in few instances where the chief interjects to ask clarifying questions to the council, the similar way “judges” do today. The council reach a decision that there needs to be a consultation with someone who is experienced, who has seen things, and knows “precedence”. The councillor who makes this suggestion to the court is *Ndlombose*. In his words, “*Elona xa lokubalisa leli, zidweshu. Elona xa lifuna inkonde naali. Akukho sifuna ukumoonu kwaabantwana; ngabethu, siyabazala— siyabazala— siyabazala.*” [The time of tracing the history is this one my people. The time of searching for a sage is this one. We do not want to trouble any of these children; they are ours, we give birth to them- we give birth to them]. The counsellors thought of Khulile because his father Majeke, who was also *inyange*, solved the case of Phalo, and as a result of that, there emerged the right house and the great house. He was also at Nqabarha, very old, and blind. This advice, the chief happily takes and sends a delegation of men. The leadership that is portrayed by Mqhayi here is a consultative one, and that the chiefs are guided by the indigenous law as well as the council. Mqhayi also portrays *amaphakathi* as members who are able to resolve conflicts. This is demonstrated in the courtyard when one of the *bards* makes a comment about “stupid men” *izaphuselane*” in the courtyard. Ndlombose, who is the senior brother to Bhukwana was provoked by this bard. Mqhayi narrates:

Uvakele ebuza ukuba uBhukwana uyeva na ke ngoku, so kubongiselwa ngaye nje esitsho esithi, “Uyaqonda na ke ukuba eli gama lakwa Langeni liya kuvakala ngesici esibi esizweni?” Athethe naye amaphakathi; hayi, wee gogololo. (Mqhayi 1914: 32)

The court heard him asking if Bhukwana hears what the commentary is about from the bard, saying, “Do you understand that this name of Langeni will acquire a bad reputation in the nation? The councillors spoke to him and he calmed down. (Mqhayi 1914: 32)/

Mqhayi is showing here the skill and manner in which *amaphakathi* solved matters in the law-making and justice context. The other important point Mqhayi is showing here is that *amaphakathi* wielded so much of power to influence decisions taken by the court. The role players in the matters of the society was not only restricted to *amaphakathi* but to *umphakathi* in general.

Umphakathi is also derived from the descriptive noun *phakathi* and prefixed with *-um* singular class 1 category. *Umphakathi* thus carries a sense of “collective membership” or the ones from inside. Similar to *amaphakathi*, *umphakathi* gives a sense of people who share collective identify, secrets, knowledge, myths and word-view. *Umphakathi* is visible and is active in the course of the proceedings. According to Mqhayi (1914) some of the fines [*iindleko*²] that were accrued in the court would be distributed to *amaphakathi* as well as *umphakathi*. They participated in the proceedings by either observing or interrogating. In essence, interrogation was not only restricted to *amaphakathi* but extended to the society in general. For example, Mqhayi (1914) draws the reader into two characters who ride past the Great Place on horseback during the trial. These men question Wele not even stopping by to listen properly to his reply. These men are in transit, going past. Mqhayi describes the scene in the following way:

Uthe xa akwelo undimangele, kwathi thu uKosani, umVala, noDlisa, umGorha, bekhwel'emaqegwini bephalisa begqitha, babuza:

As the plaintiff was testifying, Kosini, from the Vala clan, and Dlisa for the Gorha clan came out of nowhere riding on the on horseback, stoped and asked

"Kha utsho! Ukho ngani na komkhul' apha?"

“Tell us! Why are you here at the Great Place?”

“Hayi, ndingundimangele.”

“I am lodging a case””

“Umangalele nto ni na?”

“Who are you lodging the case against?”

“Ndimangalel' uBabini.”

² Derived from “*dla*” to eat up a person who has been found guilty by the court. *iindleko* were in the form of livestock-particularly cows since they were a form of wealth during this time.

The point Mqhayi seems to be making here is to show that the general Xhosa society participated in the court proceedings openly. Mqhayi highlights the openness of the court to the “public” as the court cases would be held in public platforms. Secondly this seems to highlight that the power of the court resided on the public and not solely to the chief. We see in different scenarios in *Ityala lamawe* how the public benefits from the fines, for example when Wele is given a cow from the Great place for taking care of his family. The aspect of the public benefiting from the courts fines seems to highlight how the courts and governance were integrated, striving for the good of the community, with the fines not only benefiting the chief but the public good. In instances where the chief exercised its power to the people in ways that disrespects the law, the community had power to *ukukwaya* [to abandon] the chief. This is the next point to be discussed.

Ukukwaya refers to being “disposed or abandoned” by community. Concepts like *umkwayi* (the disposer), *abakwayi* (the ones who dispose) *isikwayo* (the act of disposing) share the root *-kway* which denotes disposing. *Iinkosi* were disposed kwaXhosa if they abused their powers or did something contrary to the laws governing amaXhosa. Mqhayi recounts a story about *imfazwe yamalinde* that took place in 1818. This *mfazwe* was between Ngqika and Ndlambe. The cause of it was Thuthula’s abduction by Ngqika, one of Ndlambe’s wives because Ngqika wanted to marry her. This dented Ngqika’s image among his people and *umphakathi wakhe wamkwaya*. [his community abandoned him] What Ngqika did to his “father” Ndlambe was despicable and this saw different political forces such as the paramount chief of amaXhosa, uKumkani uHintsu pledging allegiance with Ndlambe to *ukohlwaya* [to put him into order] uNgqika for having done this act. Putting Ngqika into order was going to be in the form of *imfazwe*. Going to *imfazwe* with Ngqika was thus a “corrective act” because Ngqika disobeyed *umthetho wamanyange* [the laws of the ancestors] in the land of amaXhosa- by doing *umbulo*. Ngqika was completely defeated in this *mfazwe* and saw him flee to the mountains leaving his Great place burning. Mqhayi recounts that after Ngqika had done this despicable act some of his people transferred to the Ndlambe land. We see here, that *umphakathi*, by deserting its/their chief meant resistance, and effectively, exercising control over their chief. This was a way of negotiating power- and ensuring good governance, following the laws of the land and the good of the people.

The history of *ukukwaya* is long in the history of amaXhosa. Gqoba (1873-1888/2015: 217) reflects about the story of *Tshiwo* who was the great son of *Ngconde* who was the brother of *Gando* by the right hand wife. *Ngconde* having died before *Tshiwo* was born *Gando* assumed the reins of government, until such a time *Tshiwo* grow up. When *Tshiwo* came of age, a fight took place in which *Gando* and *Gwali* were defeated by *Tshiwo* and were both made *amakwayi* or deposed. There are to this day too prominent families known by the name of amaKwayi, and *ikwayi* means one who has been deposed from chieftainship. All these cases go to prove that chiefs were deposed when they transgressed the laws. More importantly, these processes were meant to balance the power of the chiefs and the people. Obeying the law was done for the purposes of meeting the ends of justice and respecting *amanyange*. As we can see from the above cited cases, the king is not the sole decision maker- both the council and the community wage power- from home to the Great place. The next section will investigate the role of *bawokazi*, *abafana* and *abafazi* in relation to decision making in the house level to the highest court.

5.3 Kinship relations and the law-making institution

The goal of this section is to examine the role of kinship relations in *inkundla* as they were articulated in the law-making and judicial institution- from *ekhayeni* [home] - the smallest law-making institution to the Great Place. The social categories that will be examined are *umfazi*, *uyise*, *bawokazi*, *mtshana*, *mzalisikazi* are presented and analysed.

The concept *umfazi* derives etymologically from *-fa* which specifies the sense of “mortality”. The other roots of nouns which present this sense of “mortality” are *umfo* [mortal], *umfokazi* [great mortal], *umfana* [young mortal], *imfazwe* [death of the nation] and *isifo* [death]. -Um, the common prefix of *umfana*, *umfo*, *umfazi* suggest “common humanity”. The translation of the term *umfazi* to “woman” and *umfo* to “man” does not carry the world-view of amaXhosa. The concept “man” in the English sense encompasses both males and females, while *umfo* denotes only mortality and not “gender”. There no conception here of an original human type against which the other variety had to be measured. *Umntu* is the non-gender specific word for humans. In contrast, “man,” the word labelling humans in general in English that supposedly encompasses both males and females actually privileges male. In isiXhosa conception, *umfo* is not posited as the norm, the essence of humanity, against which *umfazi* is the other. Nor is *umfo* a category of privilege. *Umfazi* is not ranked to *umfo* and it does not have negative connotations of subordination and powerlessness.

Another reasons why *umfo* and *umfazi* cannot be translated to English “male” and “female” is that isiXhosa categories only apply to adult human being and are not normally used to *abantwana* (children). Categories referring to *abantwana* have the suffix *-ana*. For example, *umfana* [young mortal] and *umfazana* [a young great mortal]. On the other hand, categories that refer to seniority or greatness (in attributes) have the suffix *-kazi/azi*. For example, *Bawokazi* [Senior father], *Xhegokazi* [Senior Great-mother], *Mlambokazi* [Great river]. I cite these examples to shows that these Xhosa concepts which were used for humans are not equivalent to the English “male” and “female,” respectively. Thus, in this study, the basic terms *mfazi* and *mfo* are translated as “senior mortal” and “mortal” respectively as they don’t have hierarchical connotations as the English concepts. In the English sense, the concept “woman” conjures an image of those who do not have power and those who cannot participate in public arena.

The court as portrayed by Mqhayi (1914) constitutes of *amangqina* [witnesses]. Key among them is *abazalisikazi* translated as [midwives]. *Abazalisikazi* is a compound term consisting of *-aba*, a plural prefix for “human” words, *-zalisi* [birth helpers] and *-kazi* [great/senior]. This term *abazalisikazi* do not translate to midwives in the Xhosa epistemologies. It translates to senior/great birth helpers. There is no “gender” in this conception here as it is visible in the English sense. The precolonial Xhosa society did not organize in “gendered” ways but through seniority. We can deduce from this linguistic evidence that *-abazalisikazi* occupied a position of responsibility that was seen as important in the social life of amaXhosa in the precolonial Xhosa society. It required one to have a skill. This skill and experience is seen when Teyase gives testimony about how they took this responsibility after Vuyisile’s wife was abandoned by her family who were supposed to carry this responsibility. Teyase narrates:

Ikakade lalo mfazi ngumfazi ozala nzima, abantu ababecelwe ukuza kumzalisa bakowabo bada bamshiya bemka ngokubona ukuba iinyanga ziyawufinca umvo weshumi umntu ekhantsula.

In her nature, this great mortal has hard time before labor, the people of her family who were asked to help her give birth abandoned her after seeing that she was going beyond ten months still in labor.

One of the things in which Mqhayi (1914) brings to the attention of the reader is the skills, and knowledge of *umzalisikazi*. Part of the things *umzalisikazi* does as per Nzotho’s tradition is to cut the finger of the child before being completely delivered. A person who does this job is required to be meticulous, highly detailed and responsible. As we are seeing the pattern from the words suffixed with *-kazi*, there seems to be a pattern which suggest that they carried specialized responsibilities, experience and age. *-kazi* here is not gendered. Helping to give life was conceived as an important role. Since this case is about the birth of the twins, the great birth helpers present evidence that is critical in this case. They are included in the case as well as their evidence. According to Mqhayi (1914):

Akukho sizwe simnika umfazi amandla namagunva ngaphezu kwamaXhosa. Nobukumkani buya phathwa emaXhoseni ngumntu oyinkazana. Umtshato kanjalo asinto yakha yaqhawulwa kwaXhosa; yinto eqiniseke nje ngeentaba ezimiyo. Umtshato, ityalike, inkulu—ezo nto zontathu zimi, zimi.

There's no nation that empowers a *great mortal* like amaXhosa. The "kingdom" can be ruled by a *young great mortal*. Same applies to marriage, there's no divorce in Xhosa; it is firm like a mountains. Marriage, the church and seniority- these three things stand incessantly

Other people who play an important role in the family indigenous court is *ubawokazi* (Senior father). Mqhayi (1914) portrays Phekesa, *ubawokazi* [senior father] of the twins as having an important role in the traditional law-making and judiciary institution. *Bawokazi* is a compound term consisting of two lexical items *-bawo* [father] and the suffix *-kazi* [great/senior] = *bawokazi* [senior father]. It is a kinship term that denotes seniority between two brothers. It is not the equivalent of "parental uncle" which translates to "A brother or brother-in-law of one's father." The translation of this term to "paternal uncle" does not carry the world-view of amaXhosa.

Phekesa is senior in terms of age to Vuyisile, the father of Wele and Babini, and therefore *bawokazi* to *Vuyisile's* twins. Phekesa holds family obligations as required by the *isithethe* "tradition" and *umthetho* "law" of isiXhosa. For example, after the trial has been concluded at the Great Place, there is cleansing ritual in which Vuyisile's family is advised to undertake in order to restore the relationship between Babini and Wele, and install the senior son to the "sit" of the family keeper. As Vuyisile is absent in the physical world to lead his house into this ritual, the responsibility to *lead* the family, is entrusted to Phekesa. Seniority is thus seen here as "responsibility" and not a privilege. As argued in the above sections, the roles and responsibilities of individuals are reflected in their kinship titles. Seniority in this case is reflected in the lexical item *bawokazi* by the suffix *-kazi*. As it has been shown in the latter sections, seniority gives one responsibility to "lead" and give direction in the social life amaXhosa. Albert Kropf's definition of the concept "kazi" does not take into account the local knowledge and sociocultural practices of amaXhosa. He does however, provide definitions which account for the polysemy in semantics of *kazi*. As far as Kropf

is concerned there are three senses for the suffix *kazi* which include the augmentative sense of the concept. He accounts for the semantic shift that is a result of missionaries. He writes:

...a suffix for forming feminine nouns from masculine: *inkosi* a chief, *inkosikazi*. A chieftainess or female ruler; a wife of a deceased man, *umfikazi* a deceased woman, *ihashkazi* a mare (Kropf 1899: 184). ...denoting relationship, degree of family connection; *ubawokazi*, my paternal uncle; *makazi*, my paternal aunt (Kropf 1899: 184)....adding a kind of superlative or augmentative meaning to the noun, adjective or adverb to which it is affixed: *inyama*, *inyamakazi*. Lit meat greatly liked (Kropf 1899: 184).

I agree with Maseko (2018)'s argument that the missionary description which renders a sense that *-kazi* is a feminine, is not correct. As Maseko (2018) rightly argues, the suffix *-kazi* can be suffixed to any lexical item and the meaning it conveys is the sense of "superlativeness" whether in attributes, responsibility or age. As we can see in this context, the lexical item *-kazi* is suffixed to *bawo* to mean *great father*. In the case of Phekesa, *-kazi* implies seniority in terms of age and responsibility. This concept, because it refers to a "male" is then referred to by the missionaries as "an exception" yet it refers to age and attributes associated with age. The meaning conveyed in the root and suffix of *bawokazi* cannot be conveyed in the English sense "paternal uncle". There is no sense of responsibility embedded in the English concept.

In the instance where Phekesa could not make it, a younger brother could or senior member of the family could fill up for him, In this case, it was Lalo, his junior brother who went to *ukujola* [to give direction] after Phekesa delegated him to play that role. Lalo is *ubawokazi* to Babini and Wele, although junior to Phekesa. Mqhayi writes:

“Wakufika umhla lowo, uPhekesa, eyona njoli yomsebenzi lo, akabanga kho; wathumela umninawa wakhe uLalo, ukuba asel’ eba sendaweni yakhe. Uthe yena usukela umkhuhlane wakwantombi yakhe, obuhlala ubikwa futhi ngakweleNyathi.”

[When the day arrived, Phekesa, who was supposed to oversee this ritual did not emerge; instead he sent his junior brother Lalo to take up his position. He said he was visiting and to enquire about his daughters sickness from the wise one.]

As we can see from above, the role of *ubawokazi* is a responsibility and seniority in terms of age. As Mqhayi (1914) shows, the responsibility of seniority is not fixed, but flexible. In the instance, when a senior member who is entrusted certain responsibilities cannot fulfil them for whatever reasons, they then pass the role to other members of the family, who are normally younger than them. In this instance, Phekesa passed his roles to Lalo who is *umninawa* [younger sibling] to Phekesa.

Abafana [young mortals] are very visible and seem to be playing different roles in the court *komkhulu* throughout the law-suit case. The plural of the “human class” one category *-aba* is prefixed to the stem *-fa* [mortality] and suffixed by diminutive *-ana* to make *-abafana* [Young mortals]. *Umfana* thus translates to a fully grown boy, or young mortal. The pre-occupation here is youthfulness and mortality. Mqhayi shows the centrality of *abafana* in the court *komkhulu* in different instances. In one instance, *umfana* leads a way for his predecessors. We see *umfana* opening the way for the “Awesome” one *uMhlekezi* Hintsu when he enters the court. Mqhayi narrates:

Lithe ukuba lithi futhu ilanga, lwavela ugaga lomhlekezi nomfana, wabe naye sel’elandela. Ivakele inkundla, “A! Zanzolo!” Uvume kuhle umhlekezi, waya wahlala.

As the sun was rising, the awesome one, his highness emerged with a young mortal, following after him. The court saluted him “A! Zanzolo”. The awesome one acknowledged the greeting and went ahead to take his sit.

The other instance in which we see the young men’s position in the court is during the time when a delegation is nominated to go to Nqabarha at Majeke. The young mortal occupied a position of being an apprenticeship. In Mqhayi’s words:

Kutyunjwe amadoda amathathu aya kuya apho eNqabarha Kwa Majeke—uMalinga Xhego, umNzothwa; uMxhuma Matyeni, umQhinebe; noLucangwana Nyathi, umKhwemnte. Babotshelwe amaqegu, banikwa nabafana ababini, uSigadi noVukubi.

Three men were delegated to Nqabarha at Majeke – Malinga, Xhego, who is from the Nzothwa clan; Mxhuma Matyeni from the Qhinebe clan, and Lucangwana Nyathi from the clan of Khwemnte. A pack of oxen was prepared for the delegation, and were given two *young mortal*, Sigadi and Vukubi.

Mqhayi (1914) is making a point here of the usefulness of the young people in the proceedings; from leading the chief to being sent with a delegation in order to help, in something happens in the way. This is consistently portrayed in the court. In another instance, the *umfana* is asked to bring water for the senior mother *umakhulu* uTeyase. In the Xhosa society, it seems that young men had some responsibilities to play. The knowledge about this responsibility is reflected lexical item *umfana* as it both carries a sense of youthfulness and mortality. This sense is still widely held today. In Gqoba's texts we see *umfana* doing responsibilities such as *ukusenga* (milking a cow) "Et'umfana xa esenga, awap'uz'ememelela" (Gqoba 1873-1888/2015). The youth therefore had scope for political expression and participation in a Xhosa polity.

The argument made in this chapter is that kinship titles reflect responsibilities to the society and to the general public. The concepts that are suffixed *-kazi* carry the sense of greatness in attributes or responsibility. *-Ubuzalikazi* is thus not a "gender" concept but a role of greater responsibility. It is as great, if not more, that the category "bawokazi" because *abazalisikazi* help give life. The *-ana* suffix presents a sense of "youthfulness" in attributes and responsibilities. While this may be the case, their roles are also important. Their input in family and social matters is highly valuable. As Mqhayi (1914) argues, in many traditional courts, no one's input would be excluded, including the one of a very young person.

5.3 Interrogating the philosophy of *isigwebo* in indigenous law-courts.

This last section is going to examine the philosophy of *isigwebo* [judgment], *isohlwayo* “punishment” and *iindleko* [costs] and the different outcomes they bring. It will analyse the concept *isigwebo*, *isohlwayo* and *indleko* in examining the philosophy of amaXhosa’s word-sense in the processes of dispensing *ubulungisa*.

The sense of “gweba” is to bring finality upon a matter, to decide, to make a final ruling. For example, *uzokudla agweb'indlala*. (He/she will eat and bring the hunger to finality). Kropf (1899:140) brings the second sense in this definition- the sense of “condemnation” There is nothing in this concepts that connotes “condemnation”. The thought behind the concept is bringing the matter to finality. This applies in the court as it does happen in other social contexts. The chief announces the final decision of the court.

In the precolonial Xhosa society, decision-making was not resting only on one person who occupies a certain social status. Mqhayi (1914) argues that this responsibility rested upon seniority- that any senior person could “make a final decision on the matter” on the spot, depending on the circumstances. Sometimes through consultation when the matter carried weight, but would not consult if the matter didn’t. As a result, there was no person who had a social title “umgwebi” in the social or political system of amaXhosa, whose sole responsibility was to pass down “judgment”. Unlike the western society, where decision- making was/is ascribed to “one person” the institution where law-making and judiciary decisions were made was not divorced from the leadership or governance and spirituality in the precolonial Xhosa society. This was viewed in a negative light by the missionaries. Dugmore (1866: 32) for example records that the law of amaXhosa “confounds the legislative, judicial and executive departments”. He continued that “It is universally admitted to be dangerous to the claims of justice when the same party that is to administer the law is entrusted to make it”. Warner (1866: 58) added that it was “the greatest defect” and that “consistent with maintaining the peace and every effort, consistent with maintain the peace and tranquillity of the country, ought to be made for their gradual abolition”. These opinions demonstrate the hegemony and steadfastness of the missionaries in collaboration with the colonial government to sway judiciary institutions of amaXhosa. According to Mqhayi (1914) passing down a decision, depending on the circumstances outside the judiciary, could be done by

a single person without any council, for as long as it obeys the laws of amaXhosa. The act could be in the form of *isohlwayo* “correctivness”.

Isohlwayo carries the sense of “sowing a seed back to the root” (Kropf 1899: 164) for example, *ukuhlwayela imbewu* (sowing the seed) , This sense denotes “bringing a person back to basics” These are determined by the ethical codes of the society. It does not denote the sense of the English concept “punishment”. The ultimate goal in the conception of “punishment” is to “cause pain for some offence” while in *isohlwayo* the conception is to bring back someone to basics through a corrective measure. The pre-occupation in the Xhosa conception is not “punitive” but “corrective”. We can argue from this that the conception of justice in the precolonial Xhosa society was “corrective” as opposed to being “punitive”. De Schriver (2014: 113) defines *isohlwayo* as punishment. This definition is trapped in the western understanding of *isohlwayo*. There is nothing that depicts the thought described above. Again, these texts, are authoritative texts, and they shape the popular imagination.

When Ngqika abducted Thuthula, the wife of his “uncle” Ndlambe, Hintsu responded to this offense. In aligning forces with Ndlambe, they went to “correct” Ngqika for this offense. Even though this was in the form of a “battle” where people died, it was an obligation of the seniors to respond to the vulgar offense that provoked the laws of *amanyange* [the ancestors] and *amanyenge* themselves, as *umbulo* [incest] was the considered one of the most despicable offenses in the land of amaXhosa. Mqhayi recounts:

Ngenxa yokungcola akwenzileyo. Waye uZanzolo ngenkqu ekho, nangona umkhosi wawuphethwe nguVurhu into kaKhawuta yaseKunene. Ithe namhla nje into kaKhawuta yee ja umnye, athi loo mehlo azanzolo anga aza kuthi gqi umlilo, phofu ethe zole tu, engathethi. Ahle anakana amaphakathi asekhay’ apha ukuba yinyaniso, namhla nje konakele. Ngelifutshane, kuba andibalisi yona lemfazwe, kuthe kwisithuba senyanga, yabe inqumbululu yamaGcaleka se inganeno apha kweNciba, ize kohlwaya uNgqika (Mqhayi 1914: 58)

As a result of the sin [Ngqika] had committed, Zanzolo himself was present, even though the army from the Great house was under Vurhu’s command, the son of Khawuta in the Right House. Today the son of Khawuta in extreme anger, with deep-set eyes as if fire would come out, was calm as the night, without uttering a word. The

councillors suspected that today something went wrong. In short, as I am not narrating this *death of the nation*, in about months' time, a thick of amaGcaleka was near the Kei River to correct Ngqika. (Mqhayi 1914: 58)

Ukuhlwaya in this context was thus not only a responsibility of one person who had “authority” over their “subjects” but a social responsibility meant to correct behaviour of a person. This was to change under British colonialism. Under the British colonialism, the responsibility of “ukuhlwaya” was relegated to British authority. In recalling a case of the arrest of Maqoma, Mqhayi (1914) draws us into how *inkosi*'s obligation to “ukuhlwaya” was taken away by the colonial authorities. In recalling the early developments of this taking away, Mqhayi (1914) recounts a story of Maqoma who assisted Bawana, *inkosi* of abeThembu whose people rebelled against him. As a result, Mqhayi tells us, Bawana asked for help from Maqoma, the chief of amaNgqika to help him intervene, in which he did. In his intervention, Maqoma confiscated “less valuable” food of *amadoda*. This, Mqhayi narrates, would lead to Maqoma's arrest by the British colonial government. This government justified its arrest that Maqoma had attacked their subjects. In Mqhayi's recollection, it was Colonel Somerset, the son of Lord C Somerset who was leading this arrest. This marks the earliest phase of “institutionalizing” the duty to “correct” to “colonial authorities”. The power of correcting was no longer “societized” but institutionalized.

The last concept this chapter explores is the concept of “ukudliwa” translated as “fine” in English. *Ukudliwa* was part of the justice system of amaXhosa. *Ukudliwa* is derived from the verb *-dla* [to eat]. Words like Sidlabantu [the one who eats people], Kondla derived from uku-ondla- [to feed or make means to bring food to be table], kwindla [a session for eating] are derived from this verb and carry the sense of “eating”. Being eaten meant that a “perpetrator” lost something when found guilty. This is the philosophy of being “eaten” by *inkundla*. Being “eaten” by the court was always in the form of cattle, and the nature of the fine would depend on a number of factors, such as the seriousness of the case. The cattle would be kept at the Great place, and would be shared to the councillors as well as the community when occasions that warranted that arose.

There were *imithetho* put in place for all kinds of offences. These were not separated as “civil” or “criminal”. A law that everything was subjected to was *umthetho wamanyange* (the law of the sages) whose source is uQamata (God of amaXhosa). For example, it was a big offense for *umfo* or *umfana* not to attend his “girlfriend's” *intonjane* ceremony. Missionaries like Warner (1866:

58) saw this as “injurious, subversive of morality, and entirely inimical to Christianity and civilization” to connect laws and system of social and domestic “customs” This again shows the banal colonial engagement with the indigenous cultural practices. This is another demonstration to show how missionaries were so quick to dismiss something which did not correspond to their world-view. On the contrary, amaXhosa saw a deep connection between the social traditions and laws. To demonstrate this, Mqhayi (1914) narrates that *amankazana* [young great mortals] lodged a case at *Sibonda’ court* [local court] against Babini who failed to attend *intonjane* [rite of passage to “girlhood”] of his girlfriend *Nompunzi*. Mqhayi narrates:

Lathethwa elo tyala, wafunyanwa ephosisile uBabini wadliwa inkomo; yaxhelwa apho kwaSibonda, sadliwa eso sizi ngamadoda. Kwaye kusithiwa ukususela kwelo xesha makathi umfana akuphelelwa luthando kungekho sizathu, makayithethe loo nto iviwe lolunye ulutsha yaziwe; athi ukuba unesizathu, asenze naso sivakale, angafumane intombi ayinye ngokwemithombo. Nakwintombi eli lizwi labhekiswa ngokufanayo. (Mqhayi 1914: 38-39).

This case was spoken, and Babini was found guilty and he was fined a cow; and then it was slaughtered right there at Sibonda, and the men ate this meat there and then. It was said that from here moving forward, that a young mortal who loses interest, without any reason to his partner, must make it clear to other young people so that it is known; if he had reasons, to also make it clear, and not fool the girl. The same word was directed to the girls as well. (Mqhayi 1914: 38-39).

Mqhayi (1914) shows how “equals” had responsibilities and obligations to one another. Failing to fulfil these obligations, it was dictated by the law for the “perpetrator” to lose something. That is the sense behind *ukudliwa*- it is to take something from one in the process of “correcting” their action. The contemporary understanding is that “unmarried” couples do not have obligations towards each other. The case that Mqhayi is bringing to us shows us the connectedness of social responsibilities to the laws of amaXhosa. Accountability to one another was protected by the law and failure to account could result in being “eaten up” by the court. The wealth accrued by the court was not only shared by the councillors but the “victim” would also benefit.

In recalling a case of Sinqe Nzolo of the clan of amaThipa, Mqhayi (1914) demonstrates the above point. The story is about the son of Sinqe who beat a Mfengu man, Magopeni with *umqayi* stick

on the edge of the ear. Sinqe reported this matter before court at the Great Place, as it was made a law by *ikumkani* that no mfengu person should be ill-treated. After being found guilty, the *iindleko* of the court went to the Great Place and also the victim. This is parallel to the manner in which fines are transferred today. –*Ukudla* a person was thus restorative act.

This section has presented and analysed some key concepts that are critical in understanding the philosophy of “judgment” in the Xhosa world-view. It has argued that in the process of rendering *ubulungisa*, when a person was found guilty, they were given “isohlwayo” which implied to be brought back to basics. This is a different conceptualization from the concept “punishment” which implies being punitive. We have further argued that isohlwayo could be in the form of a fine or in the form of asking for forgiveness; what seems to be critical here is that the “perpetrator” had to lose something in the process- something that also restores his/her humanity. In other words, the process of dispensing justice was not only aimed to the victim, but to the perpetrator as well.

5.4 Summary

This chapter presented and analysed the data of this study. It presented and analysed how *ubulungisa* (justice) and *umthetho* (law) was conceptualized and applied in the precolonial Xhosa society. The investigation into the conceptualization of justice is done through a lexico-semantics analysis of concepts/lexical items that are related to *umthetho* and *ubulungisa* in order to elicit original meanings and the philosophies embedded in these concepts. Inferences about the social experiences are then made from these philosophies how the early Xhosa society conceptualized justice and law.

In the quest to understand how the processes of *umthetho* and *ubulungisa* were applied, this chapter explored different themes in order to understand the roles of different players in these processes and power dynamics were examined. For example in the theme “Interrogating the “power and decision-making” in the indigenous court” I interrogated concepts like *umninimzi* and *inkosi* in order to gain an understanding of how decisions were taken in the Xhosa judiciary institution in the precolonial Xhosa society and the role of *umninimzi* and *inkosi* as leaders who announce decisions. This is done through a critical discourse analysis.

The evolution of these concepts in their form and meaning is investigated. The current conceptualization of these concepts in authoritative texts such as dictionaries is investigated through a diachronic analysis. My analysis challenges a number of ideas from the missionary’s accounts and feminist school of thought that posit that:

1. Women were excluded from the judiciary and law making institutions
2. Chiefs and men enjoyed absolute power in decision-making in law and judiciary decisions
3. The law of amaXhosa was authoritarian and undemocratic

For example, the term *ubulungisa*, derived from the verb *-lungisa* which means to “correct and re-integrate”, is used in context of correcting something that is wrong. The assumption is that justice in the precolonial Xhosa society was corrective and focused on reintegrating the offender back into the society. The discourse in which this lexical item appears is analysed to see how *ubulungisa* was dispensed. The next chapter will discuss the research findings and provide recommendations.

Chapter six: Findings, recommendations and conclusion

6.0 Introduction

This chapter provides the research findings, recommendations and the conclusions of this study. The findings that are provided below have been observed and detailed in previous chapters and therefore Section 6.1 will provide a summary of these. Section 6.2 will provide recommendations which respond to the findings of this study. Section 6.3 provides the summary and the conclusion of the study.

6.1 Research findings

Firstly, this study has found that there are contestations in the Higher education revolving around curricula and canonical texts that present western knowledge as universal, while marginalizing epistemologies in its teaching, learning and research practices (Zezeza 2009, Mbembe 2016, Heleta 2016). This is largely because higher education across Africa is based on the models developed in the West and this tradition has carried over in the democratic dispensation. Researchers like Oyewumi (1997) and Magubane (2016) have shown how canonical texts, entrenched in humanities and social sciences disciplines are profoundly shaped by racist, sexist and patriarchal theories and social experiences. Heleta (2016:4) argues that such a curriculum does not develop students' critical and analytical skills to understand and move the African continent forward. Secondly, Coetzee and Nuttall (1998) argue that this enterprise firmly roots the collective imagination about the past and present in Eurocentric and racist schematic frames, thus creating a problem of identity loss. The new democratic government committed itself in 1994 to transform higher education as well as inherited apartheid social and economic structure and institutionalizing new order. Despite all of this, higher education, particularly the humanities and social sciences continues to entrench a curricula that marginalizes African knowledge systems and social experiences.

Secondly, this study has found that linguistic evidence as a source of inferences and assumptions about people's conceptualisation of their lived experience has been thoroughly studied in Indo-European languages (see Sapir 1916, Whorf 1956, Fishman 1982). However, the contribution of African languages in humanities and social science studies, as a source to make inferences about their speakers' past has not been sufficiently explored (Oyewumi 1997), with the exception of

historical linguistics studies (see Theal 1886, Oliver 1966, Bailey 1995, Fleisch & Stephens 2016), which have accounted for the language change in African languages in the continent. The works of Amadiume (1977), Oyewumi (1997), and Tisani (2001) are prime examples of studies which have centred African texts (oral and written) in their quest to unearth African epistemologies and social experiences while contesting colonial epistemologies- a dialectical engagement of the texts. Maseko (2018) studies the etymology of words to elicit original meanings and their evolution in form and meaning, [and] also make correspondence of such meanings to the thoughts of society as early as present memory can recall. Oyewumi (1997)'s study renders anatomy irrelevant, in terms of social stratification, it seals-off the biologically deterministic paternity claim of the west and argues, through linguistic evidence, that seniority, status amongst other things determined social stratification. This enterprise debunks the dominant western worldview of knowing and entrenches the African ways of knowing – a dialectical relationship.

Thirdly, this study has found that in humanities and social sciences, particularly in the African languages field, there have been a number of scholars who have undertaken research on the works of the earliest literates like SEK Mqhayi and WW Gqoba. Much work has been done on Mqhayi and to a very less extent, on Gqoba, especially in the African languages. Gqoba though, is much studied by scholars in historical studies such as Peires (1981), Odendaal (1983, 1984), Tisani (2000), and Bradford (2008), and recently Mkhize (2018). These scholars have used Gqoba as well as Mqhayi's texts as historical texts to speak to colonial historiography on certain subjects. These scholars have also used particularly Gqoba's texts to unearth indigenous writers' renditions of how the pre-colonial Xhosa society was constituted. In African languages, scholars such as Kuse (1977), Dikeni (1992), Saule (1996), Kaschula (2002), and Mona (2015) have done some work on Mqhayi focusing on literary and pragmatic analysis. In his study, Kuse (1978) provides linguistic and structural analysis of the works of Mqhayi. Such as *Umhlelezi uHintsisa*, *uDon Jadu* and *Ityala lamawele* He explores these works in terms of morphological, syntactical, phonetic configuration. Qangule (1979) study is a literary analysis on themes and techniques of Mqhayi's selected creative texts. The appraisal of this work in relation to the thought and philosophies of amaXhosa as well as making sense of their social experience is negligible.

Fourthly, this study has found that the early/original conceptualization of most of the concepts that are related to the processes and application of *umthetho* and *ubulungisa* carry cultural and

philosophical values that spring out of the social experiences of amaXhosa. These philosophies differ from the western philosophies that are valorized in the authoritative texts like dictionaries which are used in the institutions of power like universities. For example, the concept *-umthetho* is derived from the verb *-thetha* “to speak”. The thought behind this concept is “speaking”. Words such as *isithethi* [a speaker], *isithethe* [tradition] carry the sense of *speaking or repetition*. They are all derived from the root *-theth* and the thought behind this morpheme is the sense of speaking. *Umthetho* could therefore be translated as “that which is spoken and laid down”- The thought here is that the concept *umthetho* arises from long-standing “traditions” in which various actors participate and make decisions. These traditions are passed down orally from one generation to another and they become authoritative over time. The fact that dialogue or speech is central in the concept “umthetho” implies that making it in the precolonial Xhosa society was open to negotiation, carrying an element of democratic or collective participation. The agency is thus given to the collective in informing a “rule” and not the individual

This conception differs from “law”. The concept “law” etymologically originates from the old English concept “lagu” which means “ordinance, rule, prescribed by authority”...something which is laid down, that which is fixed (Online Etymology dictionary). In this conception, speaking or dialoguing is not present. This western notion of law does not privilege collective or democratic agency. The emphasis here is the “laying down” where on the other hand, the emphasis in the Xhosa concept is speech. The earliest comprehensive dictionary compiled by Albert Kropf in the Cape Nguni region in the late nineteenth century, defines *umthetho* as “commandment, law, and ordinance”. The sense of “speaking” or tradition is omitted from this definition. Kropf does not define what *umthetho* is. Instead, he gives English “equivalents” of this term without defining the essence of the term, and most importantly, how the sense of speaking is central in this concept. This can be construed as a cultural bias or imperialism that relegates indigenous epistemologies on the margins.

Fifth, this study has found that the contemporary conceptualization and applications of concepts related to *umthetho* and *ubulungisa* reflect the western conceptualization and dominance. The indigenous philosophies are relegated to the margins and are painted as backward and primitive. For example, the *umthetho* in the pre-colonial society was societized and senior members of this society had obligations to “correct” the misbehaviour of their junior when it happens in their

presence (Mqhayi 1914: v). Failing to do so, Mqhayi argues, the senior would be liable for not meeting the ends of *ubulungisa* (the process for resolving the societal disputes). In other words, *umthetho* in the pre-colonial Xhosa society was socially binding and every member had to abide by- and account for it. Similar to the duties of “police officers” in the contemporary world, which are enshrined and protected in the Roman-Dutch constitution adopted as a legal frame in South Africa, each and every member of the pre-colonial Xhosa society had a duty or obligation to act on something that is “wrong” taking place in their presence; and they were protected by the law of amaXhosa originating from uQamata (God) and protected by the chief *inkosi* (Mqhayi 1914: 30). In other words, it was not a responsibility of a “designated” person to do this duty (not a job); it was a communal responsibility. The duties of applying *umthetho* in the contemporary South Africa is restricted to “officials” and the members of the community are prevented from taking part in the process of *umthetho* and *ubulungisa*. In other words, the aspect of social obligation and accountability of *umthetho* is removed and replaced with Eurocentric ways of applying *umthetho*. This is perpetuated by the missionary myths that saw this way of applying *umthetho* as “morally” incorrect backward.

6.2 Recommendations

The first recommendation is that the canonical texts that are entrenched in the humanities and social sciences need to be reconceptualised and decolonized by rethinking how the object of study itself is constituted and then reconstruct it and bring about fundamental change through bringing in the excluded voices. As research shows, the curricula in Higher education revolves around canonical texts that present western knowledge as universal while marginalizing epistemologies in its teaching, learning and research practices (Mbembe 2016, Heleta 2016, Zeleza 2009). These canonical texts are based on values, which in their turn were based on ideologies of western societies at a particular time within the world of indigenous people who had their own cosmology. Therefore, the canon in those terms refers to a body of privileged and prescribed texts assumed to be of classical status and underpinned with a power structure, filled with profound meaning. Examples of excluded voices include the Xhosa literary texts of the nineteenth century. These texts are written in isiXhosa and they provide the linguistic and cultural tools. These texts include WW Gqoba, SEK Mqhayi, Jonas Ntsiko, Nontsizi Mgqwetho, AC Jordan, WW Rubusana to name a few. These texts give us access to the philosophical knowledge embedded in these texts about the early Xhosa society. This feeds into the transformation of the university curriculum, which should consider boldly challenging the canonized knowledge that has become entrenched, and claim space for other knowledge reflecting African societies. The early Xhosa literates speak back to the Western canon and foreground African thought and ways of knowing.

The second recommendation is that these texts be studied in relation to their intellectual contributions. As it stands, most of the work done on these early written texts are biographical appraisal and literary critique. This study recommends that researchers go over and beyond this and ask difficult questions that relate to the experiences and intellectual thought of the indigenous people. For example, these texts could be used to ask questions about the social stratification of the precolonial past. Extracting terms that are relevant to the research question could give insight into how the society conceptualized their social reality. Indigenous languages are repositories and transmitters of the knowledge of the society. IsiXhosa does not have long literary heritage, however, the texts that were written almost two centuries ago are closer to the precolonial time and the language shift was not as extensive as it has become now.

The third recommendation is for these texts to be translated and be entrenched in various disciplines in humanities and social sciences. For example, SEK Mqhayi's *ityala lamawele* (1914) which covers how law and justice was conceptualized and applied in the precolonial Xhosa society should be entrenched in departments like philosophy and law. This is a transdisciplinary exercise. Naming, teaching and identifying these literary texts as part of the canon will enable students and researchers to be influenced, to react to them, or reject them, and this way, a continuous tradition was forged between old and newer literatures and social orders.

The fourth recommendation is indigenous epistemologies be unearthed in these text in order to challenge the way in which we understand the world, the “timeless” and “omnipresent” assumptions presented as truths in the academy today. Morrison (1992) captures this succinctly in the following way:

I have been thinking about the validity and vulnerability of a certain set of assumptions conventionally accepted by literary historians and critics and circulated as knowledge. This knowledge holds that traditional, canonical, American literature is free of uninformed and unshaped by the four hundred years old presence of first, Africans and then African American in the United States. It assumes that this presence, which shaped the body politic, constitution and the entire history of the culture has had no significant place or consequence in the origin and development of that country's literature. Moreover, such knowledge assumes that characteristics of our national literature originate from a particular “Americanness” that is separate and unaccountable to this presence (Morrison 1992: 1)

What Morrison raises here speaks to how canons are constructed to erase the presence of certain people's cultures. Furthermore, this raises a point about how the present knowledge about the pre-colonial practices is accepted uncritically in the modern day scholarship - as if it is devoid of the global history of colonialism and imperialism. A diachronic study of African concepts will give insight into their initial conceptualization and will account on the forces that influence the contemporary understanding. This will influence the way in which the current young scholars make sense of the past and engage the present. Steeping them into African cosmologies and world sense will develop student's critical and analytical skills to understand and move the African continent forward.

6.4 Conclusion

The focus of this research is on how *inkundla* “court” processes of *umthetho* (the law that governs the society) and *ubulungisa* (the process for resolving the societal disputes) were conceptualized and applied in the pre-colonial Xhosa society. The study explored different themes asking different questions related to power and the roles of different stakeholders that participate in the processes of *umthetho* and *ubulungisa*. The naming of the different stakeholders reflects the philosophy of amaXhosa as embedded in the language. It was discovered that age which comes with experience, expertise and status of a person was privileged in the decision-making processes. The lexical items revealed the sophistication of the legal procedure and judiciary application in the precolonial Xhosa society.

Central in the conceptualization of justice was the notion of correcting instead of being punitive. Through critical discourse analysis, the application of the processes were revealed to be consistent with the philosophy of *umthetho* and *ubulungisa* although at times these were contested and were contradictory. However, mechanism to create consistency between praxis and philosophy were put in place. Secondly, this study has revealed the elements of public participation and democratic decision-making in judiciary and law-making institutions to be central in the pre-colonial Xhosa society.

The missionaries accounts of the nineteenth century attempted to trivialize, misrepresent and paint these processes as backward and primitive. This enterprise, it is argued throughout this thesis to be facilitated by the missionary zeal to “civilize and enlighten” the indigenous people. This was done deliberately and systematically in collaboration with the colonial government in order to erase the indigenous conception of *ubulungisa* and *umthetho* and to replace them with colonial memories. This study further showed that these accounts of the missionaries were entrenched in the academy and canonised in the university curriculum fundamentally. As a result, it is argued that the manner in which we think of these processes of *umthetho* and *justice* today is largely influenced by western reading of the African culture which has become entrenched in the institutions of power such as the universities in the form of canonized texts.

This study therefore claims that these canonized texts and knowledges be challenged in humanities and social sciences, and entrench the texts and knowledges that reflect African ways of being and

knowing SEK Mqhayi and WW Gqoba are some few examples of the early Xhosa literates whose writings reflect the African ways of knowing. Their texts deal with a range of issues that span from *umthetho*, *ubulungisa*, social histories of amaXhosa, the issues of politics and the colonial administration government of the nineteenth century, the aspiration of amaXhosa, their bad habits and achievements. These texts enable us to reconstruct some aspects of the precolonial Xhosa society, to reflect on the contemporary society and to trace the changes systematically. These texts need to be studied critically in relation to the sociocultural practises of amaXhosa and their knowledge.

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APPENDICES

Screenshots showing few cases of concordances of the lexical items that were searched in SEK Mqhayi and WW Gqoba's texts.

The screenshot displays a concordance search tool interface. The main window shows a list of 20 concordance hits for the search term 'theth'. Each hit consists of a line number, a snippet of text with the search term highlighted in blue, and the file name 'ITyala lamaw'. The search term 'theth' is also highlighted in blue in the original image. The interface includes a menu bar with options like 'Concordance', 'Concordance Plot', 'File View', 'Clusters/N-Grams', 'Collocates', 'Word List', and 'Keyword List'. Below the menu bar, there are search controls including 'Search Term' (set to 'theth'), 'Search Window Size' (set to 50), and 'Kwic Sort' options (Level 1 1R, Level 2 2R, Level 3 3R). A 'Clone Results' button is located at the bottom right.

Hit	KWIC	File
1	kwa mna,, ndisithi banyangani na, uku thethisa abantwana bomntwan\x92 am, ingekabi	ITyala lamaw
2	umlilo, phofu ethe zole tu, enga thethi . Ahle anakana amaphakathi asekhay\x92	ITyala lamaw
3	bukhosi basemhlabeni. Xa umntu acela um thetheleli , akatsho ukuthi loo mthetheleli sel\	ITyala lamaw
4	iindlebe, mzi kaGcaleka. La maphakathi a thethileyo akusingisa oku kuthetha kuBabini, unyana	ITyala lamaw
5	ngaloo mhla. Okwenene ke uGunguluza u thethelwe amagama ambalwa, warhintyelwa ngentambo, wakh	ITyala lamaw
6	amakhoboka akumaXhosa,\x97aye ke e thetha amaMfengu. Aye amaMfengu nawo ewuhlohiwe	ITyala lamaw
7	. Unge anganyakathisa noko uSiphendu, koko am thethisile amanye, wathotha. ungcambazile uMxhuma wathi	ITyala lamaw
8	ke ma kazifunele incutshe yesiXhosa, yoku thetha amatyala olu hlobo ngendlela yawo.	ITyala lamaw
9	ukwenza iintsimbi. Akubanga nyanga ngaphi, a thethana amawele kunye namaNaantsi, ngendawo yokuba	ITyala lamaw
10	abikwe akuzalwa, okanye uyise adliwe. U thethelwa . Amazwi anje ngokuthi, \x93Sikhangele,	ITyala lamaw
11	khaya nokuba ungumhambi osendleleni, akhalimele, a thethise , angxolise, ade ohlwaye, nawuphi na	ITyala lamaw
12	anye, yinkulu epheleleyo uWele, ngokomthetho owawu thethiwe apha kule nkundla yakomkhulu. Ibe	ITyala lamaw
13	. Esinye isizathu sesengxwaba-ngxwaba ebimana uku thethwa , awathi uSandile wathimba imipu kumapolisa	ITyala lamaw
14	nto yamawele, azivelela zonke iinkalo zoku thetha . Aye ayame kakhulu kwintetho kaKhulile	ITyala lamaw
15	, wathi kanti noko usayilindele kowabo imi thetho , aze naye ezinye iindawo angazigqibi,	ITyala lamaw
16	\x92 am, ingekabi yimini yokuba bazi thethele ; bashoba nto ni na?\x94 \	ITyala lamaw
17	, into edla ngokukhathazana nenkqubo entle yom thetho , bebusemva kakhulu oko. UNgconde.\x97	ITyala lamaw
18	beli lizwe Baphantse ukuba ziincutshe zom thetho bonke, namasiko abo asekw phezu	ITyala lamaw
19	, wase\x92 ephakama yena ngomothuko, e thetha ebhekisa kwiimbombo zone zomhlaba yathi	ITyala lamaw
20	yokuphathwa kwesizwe ngemithetho\x97\x97imi thetho ebopha wonke ubani ukuba abe	ITyala lamaw

Corpus Files

Gqoba Xhosa text MS
ITyala lamawe final v

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Concordance Hits 346

Hit	KWIC	File
1	ke mawetu, Alusapo oluntsundu Intliziyo ibuh lungu. Ababantu mhla bafika Kwakuyole \x92	Gqoba Xhos:
2	yenzeka pakati kwalo. Lwaye lonke lungabantu ababe neziqanaqwana zemfundo, ekute ke	Gqoba Xhos:
3	I 000 lamahashe, nama 600 eenkomo ezihlawula aba Lungu ababini abafileyo beberhweba kulo mhlaba	ITyala lamaw
4	\x92nye, Ofisini, shishinini, Abe Lungu abaketi?. \x92De kwavela kwa	Gqoba Xhos:
5	base Mlungwini nguye lo wabulala abe lungu abango Messrs Farewell no Thackway	Gqoba Xhos:
6	ngokwalo ukungabi bantu; luthi ukuba lungabantu abanobulumko, uthobe phantsi ufunde kulo,	ITyala lamaw
7	\x92 ukuze kuliwe ngomsindo nom- Lungu agxotwe kweli lizwe ngelo qinga	Gqoba Xhos:
8	kokwake ukubona into engalungayo kukuba ama lungu ahlauliswe, eyamagosa intlaulo igqite kweyamalun	Gqoba Xhos:
9	nalo ntlalo. (3) Okwesitatu,\x97Ulaulo, nama lungelo alo, kwanexwaleko zalo. Ishwankatele zonke	Gqoba Xhos:
10	bafun\x92ukuze bamgxote um- Lungu, alwe onke ama-Xosa, enomsindo,	Gqoba Xhos:
11	ziyayigxeka, ke ayikuma intlanganiso xa ama lungu amadala ayo atyeshileyo, zigxeke ke	Gqoba Xhos:
12	anje ngo Mlanjeni, no Nxito, oku lungisa amadoda ayakulwa imfazwe. Ukuba yayi	Gqoba Xhos:
13	angaka ingabi namali. Lentlanganiso selivelise ama lungelo amakulu, kwinto ezinjengevoti. Amabhulu angxam	Gqoba Xhos:
14	apo. Wambi amatiletile ngangokungeniswa kwama lungu amatsha, ukuhlulwa kwemali zentlanganiso nokulu	Gqoba Xhos:
15	97asinaku hamba nga pasi, xa um lungu anga hambu ngayo; asinaku hlutwa	Gqoba Xhos:
16	ngayo; asinaku hlutwa imipu, xa um lungu angahlutwayo; asinaku nga pulwapulwa, xa	Gqoba Xhos:
17	ukucinga ingati ngobukulu bayo iwoyikise ama lungu angenazibindi. Uyayiqonda into yokuba lomcimbi	Gqoba Xhos:
18	ukufa, wahlinzwa. Litshone elo kusenziwa ama lungiselelo angomso. Lithe liya yishiya intaba	ITyala lamaw
19	92 ameh\x92oba sel\x92eseh lungulwini. Anivanga na ngomfo waseKunene oza	ITyala lamaw
20	ihanjelwe ngamalungu. Namhla ulusizi ukuba ama lungu apambili entlanganisweni awako, bona bebeze	Gqoba Xhos:

Search Term Words Case Regex

lung Advanced

Search Window Size

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Start Stop Sort Show Every Nth Row 1

Kwic Sort

Level 1 1R Level 2 2R Level 3 3R

Clone Results

Total No.

2

Files Processed

2

AntConc 3.5.7 (Windows) 2018

File Global Settings Tool Preferences Help

Corpus Files
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ITyala lamawele final v

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Concordance Hits 67

Hit	KWIC	File
1	, zezona be zizezokuthi ni na enkundleni apha. "Kuhle kuhle, Siphendu inkundla	ITyala lamav
2	bona busahleli endaweni yabo. Le nkundla ayisiqethuli isigwebo sikaLucangwana.\x94 ISAH	ITyala lamav
3	senkundla. Uphikile uWele wathi, nakanye, inkundla ayizanga igqibe ngaloo ndlela. Kungene	ITyala lamav
4	. Bakuba bendululwe abaninityala isele icweya inkundla. Bebiziwe ummangali nommangalelwa, inkosi isingi	ITyala lamav
5	kwincwadi yakhe athi lalithethwa nguMaqoma enkundleni, ekho naye. Eli tyala linje :	ITyala lamav
6	92ozuko, Berlin, C.P., 1931. vi INKUNDLA. Eli tyala lalithethelwa eGcuwa, kule	ITyala lamav
7	. Afike la madoda ema ngazo enKundleni enika ingxelo : inkosi 1e (umLungu),	ITyala lamav
8	ekuphumeni kwakhe, wakha waya kuthetha kwinkundla ePhakamileyo eKapa. Ube nabafundisi abaliqela	ITyala lamav
9	uthe, akazi ukuba ingaba yile nkundla esenokulindela ukuthetha kuye. Yena uthobele	ITyala lamav
10	ngwana walithetha elakhe, elingaphikwanga nayile nkundla. Ewe, le nkundla noko se	ITyala lamav
11	ilizwi eliphathiswe umninawa wakho yile nkundla. Goduka ke, ufike uncedisane naye	ITyala lamav
12	enkundleni apha. "Kuhle kuhle, Siphendu inkundla ibasaphulaphula" utshilo uGqomo. Unge anganyakat	ITyala lamav
13	, hlawula inkabi yenkomo, iindleko zale nkundla." Ibe ngumgqagqwane indoda emhlophe yakusiva	ITyala lamav
14	madoda omathathu, uze urhole eyale nkundla, ibe ziinkomo ezine ezo.\x94 66	ITyala lamav
15	ijuri; kukhwelela abanini-tyala, isale inkundla ibunga, kuba yonke inkundla le	ITyala lamav
16	kwiimbombo zone zomhlaba yathi kuba inkundla imthobele umfundisi, yamthomalalisa. ImiJadu.\x	ITyala lamav
17	, ize ekhaya, ifike ibuthe apha enkundleni, ingenzi nto yimbi. Ize ithi	ITyala lamav
18	2 esingisa kuWele (undimangele), ukuba aqhubele inkundla into ekungayo. Utsho, watsho, watsho,	ITyala lamav
19	igwangqa sipilile, Lisipile imihlaba, Lasinika izi kundla?. Into yona engenene, Ekuteta amafene,	Gqoba Xhos:
20	ngathi akachwayithile kanye. Idume yonke inkundla, isithi, \x93 A! Zanzolo! " Akaphendula	ITyala lamav

Search Term Words Case Regex Advanced Search Window Size 50

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Kwic Sort Level 1 1R Level 2 2R Level 3 3R

Clone Results

Total No. 2
Files Processed

Corpus Files

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ITyala lamawele final v

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Concordance Hits 64

Hit	KWIC	File
1	entsimbi! AMA RILA NE CELESI. Kuma nyange akudala, ib\x92iyinto enkulu	Gqoba Xhos:
2	?go, into endala ka Mazamisa nama nyange akwa Kubone, nawakwa Dlambulo, nawakwa	Gqoba Xhos:
3	abangoku abanye ababalisayo. Kodwake amaninzi ama nyange, angasekoyo inxenye, ayamisa wona kakuhle	Gqoba Xhos:
4	yabantu abalolo hlobo; nithi, ingaba ama nyange anolwazi wona olugqithileyo kolwenu ngobuwele.	ITyala lamaw
5	? Litolwe nga Batwa.\x94 Kutiwa ngama nyange bebeti a Batwa bakuba betole	Gqoba Xhos:
6	kuqala, pambi kokuba bavele, kuba bengama nyange, besiza nenkosi yabo u Napakade	Gqoba Xhos:
7	Eyambathwa kwangoo Pha. Kude kuze nakooMnyango. 13. Camagu ke nkosi ndini Wavele\	ITyala lamaw
8	, ekubeni oobawo se besandulele ukuya e Nyangwaneni ebuKumkanini bukamEnzi, oPhezu Konke, ngoko	ITyala lamaw
9	nezinye. Bokumbula abalesi betu ukuba kwi nyanga eduleyo, bendigalele ibinzana lokuqala lale	Gqoba Xhos:
10	mbolo kwaCentane. UKUKHUZA 47 Kuthe emva kwe nyanga enye efileyo, inkosi yesusa uFuzile	ITyala lamaw
11	. 3 Ndinivimbe ozimvula Zise ntatu kwane nyanga Ezandulela ukwindla, Kumu, anibuyelanga. 4 Ndiy	Gqoba Xhos:
12	ma ze ulindele; wobizwa ukuthwasa kwe nyanga ezayo. Kwaye kulungelelaniswa nethuba angaba	ITyala lamaw
13	, baye kuxela ukuba inkosi iyeza kwi nyanga ezayo, xa kanye isisonka, izela	ITyala lamaw
14	kwangoku. Size esinye sihlawulwe kwisithuba see nyanga ezintandathu. Phezu kwale mpahla ke	ITyala lamaw
15	zake nesipeli neculo. Kute kwakuhamba i nyanga ezitile lomntu endile, yasuka indoda	Gqoba Xhos:
16	bubunzima besihlo esazeke sibe senzekile. Le nyanga ifileyo, intsuku zeveki ezimbini zilandelelana	Gqoba Xhos:
17	zakwaZulu, ngomVulo womhla we-2 kule nyanga imiyo uTshazimpunzi. Kwaw\x92 iintsizwa	ITyala lamaw
18	Bakhwelela okunene, baya mgama. AMAVA ENYANGE 25 ISAHLUKO VII AMAVA ENYANGE. Ithe	ITyala lamaw
19	lile Komkhulu (Isahluko VI) 22 AmaVa e Nyange (Isahluko VII) 25 IsiGwe6o (Isahl	ITyala lamaw
20	, Elal\x92 imibethe evel\x92 e Nyangweni. 6. Isisimakade esakwananini, lizele ngamava,	ITyala lamaw

Search Term Words Case Regex

nyang

Advanced

Search Window Size

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Start

Stop

Sort

Show Every Nth Row

1

Kwic Sort

 Level 1

1R

Level 2

2R

Level 3

3R

Level 4

4R

Clone Results

Total No.

2

Files Processed

Corpus Files

Gqoba Xhosa text MS
ITyala lamawele final v

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Concordance Hits 219

Hit	KWIC	File
1	ma kuye kubizwa uTeyase noYiliwe, abazalisi kazi. A! NTABA! Usarili into kaHints.	ITyala lamawele final with pictures.txt
2	lisa ukubulala umgqeku lo. Kukutshata kweLawo kazi. Aaba bantu babengenzi zintsuku bona	ITyala lamawele final with pictures.txt
3	ini. Abanye aboni, ngokuqonda kukaBabini, ngooyise kazi aaba, uPhekesa lo kanye, ngokuthi	ITyala lamawele final with pictures.txt
4	yasemaMpandleni. E?kile uBabini ehamba nooyise kazi ababini, bathe thande phaya kwelinye	ITyala lamawele final with pictures.txt
5	inKulu elixa akhoyo uNamba unyana womThembu kazi. Abanye ke ngooTini, Rhiliho (Ndesi),	ITyala lamawele final with pictures.txt
6	uvumela, Swazi olumaqhina-qhina lwakuloTo kazi. ABATHUNYWA ENQABARHA 21 Nku	ITyala lamawele final with pictures.txt
7	Pambi kokuba ivulwe ingxoxo? kungene amanene kazi abeze nawo kupulapula. Nawo lusapo	Gqoba Xhosa text MS.txt
8	into endingazange ndibone kumaqaba! Asuka amanene kazi abomvu nawasesikolweni apuma nentsapo zawo,	Gqoba Xhosa text MS.txt
9	lenkundla. Ngale ntsasa yonke ke, umHle kazi akaphumanga ebottle; kodwa kuthe ngeli	ITyala lamawele final with pictures.txt
10	nabo ubukumkani. Ingade inkosi ibe namazwe kazi amakhulu, aphesheya kwemilambo enamagama,	ITyala lamawele final with pictures.txt
11	.. INKQUBELA PHAMBILI 137 Uliqhube ngamandla kazi amakhulu eli \x93Bandla lo	ITyala lamawele final with pictures.txt
12	alinikele abathunywa lithe, \x93 Nothi kumHle kazi apho, ndiya wubulela lo mthetho;	ITyala lamawele final with pictures.txt
13	intlanganisox97u Mr. Njokweni namanene kazi ase Horton. Yavalwa ngeculo nomtandazo	Gqoba Xhosa text MS.txt
14	omo, ayesebenza into zawo nangalomini.226 AMAXEGO KAZI ASE NGXWANGU. Kutiwa ke kute	Gqoba Xhosa text MS.txt
15	umzi ukucitakala. Ahlala ntsukwana lo maxego kazi? ase Ngxwangu, kwasa ngomnye umhla,	Gqoba Xhosa text MS.txt
16	, nKosi, kokwam ukuthabathisa Wena lo, mHle kazi, asinguwe umntu wokugabulela umphakathi izig	ITyala lamawele final with pictures.txt
17	le nkomo, \x93Kaloku thina maxhego kazi asisaphulaphulwa, kunini ndiyithetha le nto,	ITyala lamawele final with pictures.txt
18	oyika ukuti ndakuyeka kungabisatunywa ngakwa Tando kazi. Au! selundixolela Mhleli nkosi yam	Gqoba Xhosa text MS.txt
19	ngaye. Ubale ukugxotha kwakhe amadoda angoooyise kazi, awayeze ngeendawo zokulungiswa komzi nje	ITyala lamawele final with pictures.txt
20	nza emakhaya, izinto ezinje ngokulolela amakhosi kazi awo imbola, nokuphehla izibozi, nokuphaala	ITyala lamawele final with pictures.txt

Search Term Words Case Regex

kazi

Search Window Size

50

Show Every Nth Row 1

Kwic Sort

Level 1 1R Level 2 2R Level 3 3R

Total No.

2

Files Processed

2