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**The Dark Places of Capitalism: Mineral Rights and the Entrenchment of
Capitalism in South Africa**

**Mini-dissertation submitted in partial fulfilment of the requirements of
the LLM (Law and Political Justice) degree, Faculty of Law, University of
Pretoria**

by

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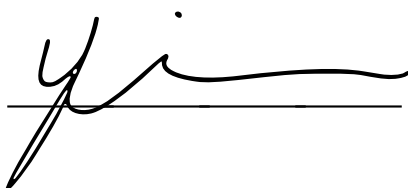
November 2017

DECLARATION

I, Iram Yousuf, hereby declare that this mini-dissertation is original, and has never been presented in the University of Pretoria or any other institution. I also declare that any secondary information used has been duly acknowledged in this mini-dissertation.

Student: Iram Yousuf

Signature:

A handwritten signature in black ink, appearing to be 'Iram Yousuf', written over a horizontal line.

Date: 30 November 2017

*For my mother,
my first teacher; my first love.*

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Firstly, to He who has always had my back, for there can be no words to encapsulate my gratitude.

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1. Identification of the Research Theme

1.1 Research Problem

The research problem of this study is to trace the development and impact of racial capitalism within the mining sector in South Africa, specifically in relation to the Marikana Massacre.

This study engages with decolonial thought, and it is a critical exposition of mining law. For this purpose I have intentionally engaged with the works of scholars in the decolonial field such as Tshepo Madlingozi, Ramon Grosfuguel, Nelson-Maldonado Torres, Cedric Robinson, Samir Amin, and Anjabil Quijano, and have not engaged with the works of neo-liberal and western scholars such as Thabo Mbeki, Adam Smith, or Friedrich Engels. The focus of this work is to critically engage with the prevalent hegemonic discourse that already exists and not to simply reiterate it. My intention in doing this work and for following this approach is to bring in the pluriversal discourse that has been neglected in engaging with topics such as the one presented in this study.

The purpose of this dissertation is to consider capitalism in South Africa, specifically the entrenchment of racial capitalism. For capitalism to be entrenched, it must have already existed. This dissertation explores how capitalism, having arrived with the first colonialists, then entrenched itself as the dominant economy. One of the ways in which it achieved this was through asserting itself in the mines in a racialised form. This dissertation affords capitalism within the mining industry as its main focus.

This dissertation considers capitalism's assertion, specifically racial capitalism, into the mines from 1886 through mineral rights, and traces its influence to the current mining legislation and mining rights, as contained in the Mineral and Petroleum Resources Development Act (MPRDA),¹ which entered into force in May 2004. With the introduction of the MPRDA, the mineral laws of South Africa were changed. The MPRDA abolished

¹ 28 of 2002.

existing mineral laws, and introduced a new system relating to the exploration and mining of minerals, and made special provision for the transition from the old to a new order. However, it is my contention that despite changing the law, the status quo has been preserved. Essentially, the law has not been combined with an ethical or moral consciousness.

In seeking to transform the law, the MPRDA provides that mineral rights would no longer be privately owned and vested: “Mineral and petroleum resources are the common heritage of all the people of South Africa and the state is the custodian thereof.”² Thus, I propose that the MPRDA essentially nationalizes minerals and petroleum resources by subjecting their control to the state. The Minister of Minerals and Energy becomes the overseeing body of these minerals and the mining rights³ and it is in this status that the entrenchment of capitalism becomes apparent, especially in instances where the state is committed to capital (as in the case of the exploitation from White Monopoly Capital and state capture) and not to labour.⁴

I propose that the problem with custodianship⁵ lay in the contradictory responsibilities of the minister, and that too high expectations are placed on the minister to act *bona fide* without considering the possibility of socio-economic and political bias. A conflict of interest may thus arise when ministers who represent a political party that rules as a majority (as

² s3(2).

³ S23 of the MPRDA.

⁴ Malikane “Notes on white monopoly capital” (2017) <http://www.ann7.com/notes-on-white-monopoly-capital/> [accessed 6 December 2017].

⁵ There is no consensus as to what custodianship actually entails. Van der Schyff suggests that this means that the state has actually conferred upon itself the obligation to act as custodian of the country's mineral and petroleum resources for the benefit of all South Africans. If this is so, then it would have the implication that the mineral and petroleum resources have, as a result thereof, been bequeathed to the people of South Africa- Van der Schyff “South African Mineral Law: A historical overview” (2010) Potchefstroom Electronic Law Journal, 122. This however is subject to certain powers which the state may exercise in terms of the MPRDA, see: “Explanatory memorandum for the MPRD bill” (2008) <http://www.treasury.gov.za/public%20comments/EM%20Royalty%20Bill%202008%20-%202020%20Aug%202008.pdf> [accessed 6 December 2017].

has been the case in South Africa where the ANC has been in power as a majority party) are empowered with custodianship of state resources, and are unchallenged. This is because in their role as members of a political party, there is no guarantee that in the exercise of their duties as minister, they are free from any sway of their party's interests. Furthermore, the state can and is often influenced by a varying number of political, economic, and social considerations. These considerations may influence the manner in which the state awards mining rights that can be contradictory to its role as custodian of these resources. It may also be in contradiction to the spirit of sustainable development especially where incentive structures by powerful elite and financiers are utilised to service state personnel. This is particularly problematic in post-colonial states where the structures and incentives have fused at the level of capital, not labour.⁶ The new elite⁷ represent the ways of the old order and function to contain the accumulation of new wealth in the hands of those who are considered as the in-group. This is largely due to political expediency, and because most political players focus their attention in terms of short-term rather than long term results. In this regard it is better for them to strengthen the in-group - the patronage networks, in order to buy support and loyalty. As a result the state functions as an instrument in the creation of classes. The global structure of capital,⁸ when fused with the state, can be exceptionally violent where interests of extraction and control are concerned or contested.

In this regard the state becomes a pawn in the mineral monopoly that creeps into developing countries' politics,⁹ when either the state and corporates or both seek to exploit the wealth of minerals and cheap labour, which these countries possess for specific gains.

⁶ Burawoy "The Hidden Abode of Underdevelopment" <http://burawoy.berkeley.edu/Books/Politics/Underdevelopment.pdf> [accessed 6 December 2017].

⁷ As will be discussed in 4.5.

⁸ That is, capitalism on a global scale. For the Western Perspective see: Marx *Capital: A Critique of Political Economy, Vol. 1* (2010) CreateSpace Independent Publishing Platform, United States of America.

⁹ For example, see the discussion by Kabemba "Undermining Africa's Wealth" <http://www.osisa.org/economic-justice/blog/undermining-africas-wealth> [accessed 6 December 2017].

In light of these realities, and despite the ruling of the Constitutional Court in *Agri SA*,¹⁰ that the awarding of custodianship to the state does not amount to expropriation or arbitrary deprivation of property (which is open to argument),¹¹ I will argue that the concept of custodianship contains a loophole in the language of the legislation, which can amount to a misuse and abuse of the law. This loophole is the nationalization of minerals without nationalizing the mines. The misuse and abuse of law can occur when the institutions of a state, such as parliament are weak.¹² In the face of weak mechanisms of accountability and legislation, the exploitative nature of racial capitalism in the mining industry continues. Furthermore, I argue that the misuse of the law becomes possible when state institutions do not have substantive autonomy and there is a contestation between different centres of power.¹³ In this regard, this study illustrates how the state, when not sufficiently challenged by a strong political opposition or mobilisation at the grassroots level, has been used as a tool of exploitation by capitalist systems. It also considers the merging of the state-regime divide, and the resultant lack of accountability that accounts for excessive violence from the state when the interests of the regime and in this case, capital are threatened. In South

¹⁰ *Agri South Africa v Minister for Minerals and Energy* (CCT 51/12) [2013] ZACC 9; 2013 (4) SA 1 (CC); 2013 (7) BCLR 727 (CC) (18 April 2013).

¹¹ *Agri South Africa v Minister for Minerals and Energy*, note 9 above: In the case brought by Agri SA to determine whether the MPRDA expropriated mineral rights in South Africa, the Supreme Court of Appeal held that it is necessary to examine the history of mineral rights in South Africa. It emerged that the right to mine, (to prospect for, mine and dispose of minerals) has always been regarded as a right vesting in the state, and has always been allocated by the state in accordance with the policies of the day. The MPRDA maintains this situation. By extending the right to mine, beyond those who traditionally held mineral rights, to the community at large, the monopoly previously enjoyed by the holders of mineral rights has been terminated. This reflects government policy to transform the mining sector. It does not mean that there has been an expropriation of mineral rights. The court accepted the possibility of an argument that a right had been expropriated by the MPRDA in specific factual situations, but held that the contention advanced by Agri SA that there had been a general expropriation of mineral rights was unfounded. This was so whether one considered mineral rights generally or only unused mineral rights. It accordingly upheld the appeal and set aside the order for the payment of compensation made by the trial court.

¹² Qobo *The Role of the South African State In Mining* (2011) CPR Press, Pretoria, 20-50.

¹³ That is, three branches of government experience tensions when exercising their powers. For example consider *Malema and Another v Chairman of the National Council of Provinces and Another* (12189/2014) [2015] ZAWCHC 39; 2015 (4) SA 145 (WCC); [2015] 2 All SA 728 (WCC) (15 April 2015).

Africa, and specifically in the context of Marikana, this fusion between state, regime, and capital serves a particular agenda. This study will show how it has facilitated exploitation and domination through the racial structures and systems that had been instituted since the discovery of mineral resources in South Africa, and through the episodes of colonial and apartheid rule, where South Africa's mineral resources have been, and continue to be, exploited. These systems became entrenched in the mining sector and have sunk their tentacles into the control of many of South Africa's resources.

Through this exploitation of the state, by state personnel/the current regime, the corporate and finance sector, and the law, the majority of South Africa's previously disadvantaged citizens have been, and continue to be exploited, giving birth to a rising anti-capitalist revolution¹⁴ within these mining corporations and in these spaces of violence.¹⁵ These revolutions, when seen for what they really are – social movements that spur to life within “dark places”- can help us to understand and place into context events such as the Marikana Massacre.

1.2 Research Questions

Based on the above, the following questions are posed:

1. How can Marikana be seen as a microcosm of what truly plagues the South African economy?

¹⁴ The wildcat strikes which spread through the mines of South Africa following the Marikana Massacre serves as an example of these revolutions.

¹⁵ Anti-capitalists, in the strict sense of the word, are those who wish to replace capitalism with another type of economic system. Ideally, capitalism would be replaced with socialism. Newman *Socialism: A very short introduction* (2005) Oxford University Press, London has defined socialism: “Socialism advocates public or direct worker ownership and administration of the means of production and allocation of resources, and a society characterized by equal access to resources for all individuals, with an egalitarian method of compensation.”

2. What has been the effect and consequences of capitalism (particularly racial capitalism) introduced in South Africa through colonialism, Eurocentrism, and modernity?

3. How has the MPRDA contributed to maintaining exploitative capitalistic structures in South African mines?

1.3 Motivation and Rationale

Pre-1994, the basic structure of society was seen as a relationship between a dominant white group, and a dominated black group.¹⁶ This perspective of the state in South Africa reflected the role of the state as that of an instrument of oppression of whites over blacks, but as neutral in the relationship between classes.¹⁷

Post-1994 however, the state can be seen as an instrument of oppression of black over black, due to a seceding of the capitalist and colonialist thought from white to black during the passing of power in 1994 - the South African state has become an instrument of class rule although the underlying dynamics of racial exploitation prevail unabatedly.¹⁸ While there have been variations in legislation, policy, and power, nevertheless since as far back as the discovery of gold in the Witwatersrand in South Africa in 1886, the state¹⁹ has been utilized at all times to secure and develop the capitalist mode of production within the mining sphere specifically for white investors.²⁰

¹⁶ Wolpe 'Capitalism and cheap labour-power in South Africa: From segregation to apartheid' (1972) *Economy and Society* 1(4), 428.

¹⁷ Wolpe, note 16 above, 428.

¹⁸ For the leading authority on this, consider Wolpe, note 16 above.

¹⁹ When I speak of state, I speak of a political organisation with a centralized government.

²⁰ Lipton Aldershot *Capitalism and Apartheid: South Africa, 1910–84* (1985) Gower, and Temple, Smith, Cape Town, 195.

The state has acted directly through the law, through special agencies, through the development of state enterprises and in other ways to foster capitalist development.²¹ Furthermore, the repressive apparatus of the state (police, army, prisons) has been used broadly in two ways. Firstly, as the occasion arises, to coerce workers, whether black or white, on behalf of or in support of employers. Secondly, to enforce the laws which overtly guarantee the perpetuation of capitalism-laws. Laws have thus actively operated to mask both the capitalist nature of the society altogether, and the consequences of their provisions for the functioning of that system. This is apparent from the granting of custodianship of minerals to the state, to freely exercise it as it sees fit, without, regulating the outcome of the decision with regards to whom such minerals and mining rights would be awarded to, aside from the meeting of certain requirements stipulated throughout the MPRDA- for example section 100.

These repressive apparatus have stripped people, in particular black people, of their power (as will be demonstrated by the historical entrenchment of racial capitalism through mineral rights). This is contrary to the purpose and spirit of the law as outlined under the claim of a transformative vision whereby governments should invest in ventures that empower people, by giving them and opening up for them the means of power.²² Additionally, the state should have already established significant processes for the redistributing of resources along egalitarian lines in keeping with the vision to address historical injustices. Countries such as Germany instituted reparations and restitutions immediately once the unification of Germany had been completed. South Africa should have envisioned its responsibility likewise and the state, as an actor in the transformative constitutionalism project,²³ should have instituted this vision substantively.²⁴

²¹ Horwitz *The Political Economy of South Africa* (1967) Weidenfeld and Nicholson, London 155.

²² Gordon (author of *What Fanon Said*), in a seminar on the 6th of October 2015, at the Archie Mafeje Research Institute-UNISA in Pretoria, 11.00-13.30.

²³ My thanks to Quraysha Ismail Sooliman, MPhil, Dphil, University of Pretoria, for bringing this to my attention.

²⁴ Ludtke 'Coming to Terms with the Past: Illusions of Remembering, Ways of Forgetting Nazism in West Germany' (1993) *Journal Of Modern History* 65 (1) 552.

In terms of mineral rights, after stipulating that minerals would be the common heritage of all South Africans, the state could have taken more substantive steps to ensure that power can be returned to the people by going one step further. This could have been achieved by nationalising the mines themselves through a consultative process that would ensure ownership, accountability and transparency did not rest solely with the state, but through a partnership accommodation with communities. This would have stripped the corporations of their power, and placed the power of ownership, and the benefit of resources, in the hands of the people. In doing this, we would:

[Bring] black people into the orbital value, and include them into property. We must recognize the humanity of all to ensure we recognize the potential of all being harmed.²⁵

However, by not including black people into the orbital value (through a lack of consultation, and the maintenance of racial capitalism, as will be discussed in the coming chapters) it has been much easier to dehumanize them and to separate the harm of the poor black man from that of the self. This lack of inclusion perpetuates cycles of capitalism, Eurocentrism and modernity, which still considers white people as a superior race. This is evident in the extent to which tragedies such as the police brutality at Marikana can go unpunished,²⁶ and can merely be shrugged off our conscience because they are acts of terror against black bodies.

Furthermore, the abuse of power lends thought to the idea that transformation from apartheid South Africa has not yet occurred, and that we still have deeply rooted colonial structures, which contribute to the exploitation of black people, because of the underlying premise that black people are dispensable.²⁷

²⁵ Gordon, note 22 above.

²⁶ Saunderson-Meyer "The Silent Must Shriek for Justice" (2017) <http://www.politicsweb.co.za/news-and-analysis/the-silent-must-shriek-for-justice> [accessed 6 December 2017].

²⁷ Quijano 'Globalización, colonialidad y democracia' in Tendencias básicas de nuestra época globalización y democracia, ed. Instituto de Altos Estudios Diplomáticos 'Pedro Gual' (2001) Caracas, Ven: Instituto de Altos Estudios Diplomáticos 'Pedro Gual' 25-61.

1.4 Methodology

This study is primarily constituted a desktop based research based on two different components, namely capitalism and mineral rights. It includes the application of critical thinking in order to link these two, and to develop a critical legal theoretical argument.

It employs interpretivism in order to interpret the events at Marikana. Interpretivism is an epistemological position that requires the social scientist to grasp the subjective meaning of social action.²⁸ Interpretivism is a way to gain insights through discovering meanings by improving our comprehension of the whole. Interpretivism proposes that there are multiple realities, not single realities of phenomena, and that these realities can differ across time and space. Thus, this approach is used to explain that the events leading up to the Marikana Massacre were not merely about wages or agitating violent black bodies, that it is not simply about a micro-context, but also of a more complex structure, a meta-context, that includes an anti-capitalist, de-colonial revolution spurred on by a frustration of exploitation and anger at the poverty that cannot continue to be unseen.

1.5 Structure and Outline

Chapter 2 presents the current socio-economic and political context of South Africa. It considers the black elite, the media, and the state as assisting in the desensitizing of the killings at Marikana, which prevented a mass condemnation by the public. It further argues that racial capitalism and coloniality constitute significant factors in explaining the violence at Marikana.

Chapter 3 provides a history of mineral rights and the entrenchment of capitalism in a pre-1994 context, beginning with the discovery of gold in Witwatersrand. It explores how this historical event led to the creation of racial capitalism.

²⁸ ResearchGate “Interpretivism (interpretivist) Research Philosophy” https://research-methodology.net/research-philosophy/interpretivism/#_ftn1 [accessed 6 December 2017].

Chapter 4 considers the laws on mineral rights and the effect this has had in entrenching capitalism in a post-apartheid South Africa.

2. Against the Backdrop of Capitalism: Capitalism and the Marikana Massacre

This chapter considers the socio-economic and political context of South Africa at the time of the Massacre. It considers the black elite, the media, the regime and the state as tools in the capitalist system which assisted in the desensitising of the killings at Marikana, so that there was no real, effective mass condemnation of the police brutality by the public; with the exception of those voices that came largely from the Economic Freedom Fighters (EFF), and some human rights organisations and affiliates. This lull in responding to “black deaths” contributes to the argument that racial capitalism and coloniality constitute significant factors in explaining the violence at Marikana.

From the onset, it must be made apparent that I pursue an angle that considers the events at the mine from a broad consideration of facts, coupled with a Marxist reasoning- a historical materialist approach.²⁹ A Marxist approach is developed further; as stated by Samir Amin:

[I]t is not [sufficient] to stop at Marx, but to start from him. For Marx is not a prophet whose conclusions, drawn from a critique of both reality and how it has been read, are all necessarily ‘correct’ or ‘final.’ His opus is not a closed theory. Marx is boundless, because the radical critique that he initiated is itself boundless, always incomplete, and must always be the object of its own critique.³⁰

2.1 A brief summary of the Marikana Massacre

Perhaps the most important lesson of Marikana is that the state can gun down dozens of black workers with little or no backlash from 'civil society,' the judicial system or from within the institutions that supposedly form the bedrock of democracy. What we have instead is the farcical Farlam commission, an obvious attempt to clear the state's role in the massacre and prevent any sort of real investigation into the actions of the police on that

²⁹ Historical materialism is the application of Marxist science to historical development.

³⁰ Amin *The Law of Worldwide Value* (2011) Monthly Review Press, New York, 10.

*day. In other words, the state can get away with mass murder, with apparent impunity in terms of institutional conceptions of justice and political accountability.*³¹

At the heart of the Rustenburg platinum belt rests the mining town of Marikana. Footprints are often left in the dust as workers return home after a day spent in the mine. Footprints are not the only imprints that linger. At the base of a koppie where miners once gathered to protest for better working conditions and pay, white crosses stake the ground- memorials for those killed in the Massacre which took place between the 10th of August and the 20th of September 2012. The Massacre is considered the most lethal use of force by South African security forces against civilians since the 1960 Sharpeville Massacre.³²

The events leading up to the Marikana Massacre started in August 2012 at a mine owned by Lonmin in the Rustenburg area, and were followed by a series of wildcat strikes throughout South Africa.³³ These wildcat strikes extended beyond the mining belt to the transport industry, and the Western Cape farmlands, and were fuelled by popular anger and social despair as workers demanded wages that were substantially above inflation in several crucial sectors. Indeed Marikana was the microcosm of much larger socio-economic issues in a South Africa that has failed to address the economic injustices of the past, in particular, the exploitative wages that have continued to impoverish an already poverty-riddled people.³⁴ A pertinent point to consider in this scenario is that South Africa has one of the biggest wage gaps in the world. In a report compiled by Mergence Investment Managers, it was found that CEOs earn, on average, seven hundred and twenty five times more than their workers.³⁵ Furthermore, the CEO of Lonmin was placed

³¹ Fogel 'Marikana: 1 year later' (2013) *Amandla*, Issue No. 32, November 2013.

³² The Washington Post Associated Press "South African police open fire as striking miners charge, killing and wounding workers" <https://www.washingtonpost.com/business/south-african-police-killing-and-wounding-workers/> [accessed 28 April 2016].

³³ BBC News, "Amplats fires 12,000 South African platinum miners" <http://www.bbc.com/news/world-africa-19848915> [accessed 28 March 2016].

³⁴ Terreblanche *Lost in transformation: South Africa's search for a new future since 1986* (2012) KMM Review Publishing Company, Johannesburg, 104.

as the fifteenth highest paid CEO, on a list compiled of the remunerations of the “20 Highest JSE-listed CEOs,” with a total annual remuneration of thirty four million rands.³⁶

In terms of the wage gap, the difference between the Lonmin CEO's salary and that of the average worker is one hundred and fifty one times greater.³⁷ Although it may be argued that these exorbitant gaps are in keeping with global trends and promote 'excellence,' the reality of the matter is that the level of benefit has not transferred to the workers, to effect a more equitable outcome that is in keeping with the vision of an economy post-1994, that should spread well-being across the board. Additionally, South Africa's income inequality gap ranks higher than many developed and developing countries that are considered “peers” in the market.³⁸

It is these discrepancies in well-being that bring into sharp focus questions of law (the minimum wages and laws regulating the mining of South Africa's natural resources) and historical injustice. It can hardly be surprising then, that as workers expressed popular anger and social despair at the income inequality that has been glaringly evident, the platinum belt became the site of immediate conflict which reached its inflection point in the late afternoon of August the 16th.³⁹ Several thousand miners had gathered at the base of a koppie that was located more than a kilometre away from Lonmin property. The miners blocked neither facilities nor the mining operations. Despite undertaking an unprotected wildcat strike, they were permitted to gather in terms of section 17 of the Constitution.⁴⁰ In spite of them exercising this section 17 right, the provincial police department, with the aid

³⁵ Bronkhorst “South Africa's Wage Gap” <https://businesstech.co.za/news/general/59173/south-africas-massive-wage-gap/> [accessed 14 October 2017].

³⁶ Bronkhorst, note 35 above.

³⁷ Bronkhorst, note 35 above.

³⁸ Bronkhorst, note 35 above.

³⁹ Al Jazeera, “The best MARIKANA documentary on YouTube: MINERS SHOT DOWN” <https://www.youtube.com/watch?v=ssPrxvgePsc> [accessed 9 October 2017].

⁴⁰ “Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket, and to present petitions.”

of a special commando unit, ordered the mineworkers to abandon the hill where they had gathered for the past four days. They subsequently surrounded and caged in the mineworkers with barbed wire. Often, sporadic shots of teargas were fired at the mineworkers. It can be inferred that the actions of the police resembled an intentional provocation and harassment of those persons who were non-violently using the law to protect against an incidence of violence- that of wage exploitation.

The mineworkers were forced to leave the hill through a break in the fence, with sixteen of them having been shot dead as they tried to escape. An additional eighteen mineworkers were murdered in a field neighbouring the hill where they gathered, and seventy eight were found to suffer bullet wound injuries. Two police officers were harmed. Testimony placed before the Farlam Commission of Inquiry stated that police hunted down fleeing protesters after the first clash had ended. It also heard testimony that the police planted weapons next to the bodies of dead miners in an attempt to justify the shooting.⁴¹ From the evidence gathered and presented, it became apparent that most of the victims were shot in the back and many victims were shot far from police lines.

On 18 September, a mediator announced a resolution to the conflict, stating that the striking miners had accepted a 22% pay rise, a one-off payment of two thousand rand, and that they would return to work on the 20th of September.

2.2 Marxism, Capitalism, and the events at Marikana

Considering the gross discrepancy in the wage gap between the elite and the workers in Lonmin (and, by extension, many of the JSE listed companies in South Africa)⁴² it would be appropriate to conclude that exploitation in the South African economy (especially in the resource rich mining sectors) forms the foundation of not only the operating capitalist

⁴¹ York "Police lied, covered up killings in mine massacre, inquiry finds" <https://www.theglobeandmail.com/news/world/inquiry-unearts-police-cover-up-in-south-african-marinkana-massacre/article14414358/> [accessed 14 October 2017].

⁴² See Bronkhorst, note 35 above, which illustrates this gap.

system in South Africa, but a more perverse system- that of racialised capitalism.⁴³ In addition to this theorising is the element of class consciousness prevalent in Marxist theory. Class consciousness refers to the idea that social-classes are self-aware, and as such have the capacity to act in their own rational interests. Objectively, the interests of the classes essentially oppose one another, and because the classes are self-aware, this eventually leads to class conflict.⁴⁴

In capitalist societies, class conflict manifests at two moments in the production process.⁴⁵ The first conflict occurs at the site of production, and concerns the amount of work effort, productivity, and the quality of working conditions.⁴⁶ The second conflict is between workers and employers over wages and salaries. Class conflict not only involves strike and other job actions, but also the state.⁴⁷ In the South African scenario, the extent of the conflict is exacerbated because of the racial dynamic, and the fact that black workers were not only forced into systems of wage-labour, but that their labour was dismally remunerated because they were black. Marx saw that the development of class conflict would first be confined to individual factories and capitalists where workers, being self-aware, recognised injustices. It is again necessary to affirm that in these instances, in the South African context, the recognition of injustices incorporates both racial and economic elements. These injustices manifest in various forms, such as exploitation of workers

⁴³ Robinson *Black Marxism* (1983) Zed Press, London, xxxiii. "Capitalism emerged within the feudal order and grew in fits and starts, flowering in the cultural soil of the West-most notably in the racialism that has come to characterize European society. Capitalism and racism, in other words, did not break from the old order but rather evolved from it to produce a modern world system of 'racial capitalism' dependent on slavery, violence, imperialism, and genocide." For the Western perspective consider Marx & Engels *Karl Marx & Friedrich Engels - Collected Works* (2001) Lawrence & Wishart, United Kingdom.

⁴⁴ Peilin (et. al) *Handbook on social stratification in the BRIC countries: change and perspective* (2013) World Scientific Publishing Company, Singapore, 733.

⁴⁵ Howell & Dixon 'Marx's Theory of Rebellion: A Cross-National Analysis of Class Exploitation, Economic Development, and Violent Revolt' (1993) *American Sociological Review*, 58 (5), 683.

⁴⁶ Howell & Dixon, note 45 above.

⁴⁷ Howell & Dixon, note 45 above.

without fair pay, unacceptable working hours, unsafe working conditions, a widening wage gap between the workers and the owners, and the overall disparate conditions of the proletariat.

The increased “polarization and homogenization” within the classes fosters an environment for individual struggles to become more generalized.⁴⁸ In other words, larger social movements, develop from individual class struggles, in respect of broader socio-economic problems. Thus, when there is an increase in conflict on a societal level, common interests also increase, thereby leading to an increase in class consciousness which spurs class conflict. This expansion of class consciousness- facilitated by the creation, expansion, and organisation of the working class- is often crippled by policies orchestrated to ensure the interests of the ruling class.⁴⁹ In order to enforce these policies, repressive apparatus are usually employed. Dahrendorf describes this as:

[T]he distribution of political power... determined by power over production, or power over capital... no surprise that the bourgeois class uses their wealth to legitimatise and protect their property and consequent social relations. Thus the ruling class is those who hold the economic power and make the decisions.⁵⁰

The ruling class in South Africa have always been racialised, and part of that privilege has been to ensure maximum profit from black labour. The underlying principle of capitalism is to maximise profit, and in order to achieve this goal, government, labour, and policy processes are exploited.⁵¹ However, Marx saw capitalism as a “geometric whole... whose characteristics could be discovered with arithmetic means and certainty.”⁵² Consequently,

⁴⁸ Peilin, note 44 above, 734.

⁴⁹ Terreblanche, note 34 above.

⁵⁰ Dahrendorf *Class and Class Conflict in Industrial Society* (1939) Stanford University Press, Stanford CA, 336.

⁵¹ Kirby & O'Mahony *The Political Economy of the Low-Carbon Transition* (2017) Palgrave, United Kingdom, 249.

⁵² Robinson, note 43 above, xxxviii.

Marx excluded race, gender, culture, and history from the discussion, and portrayed the world from a historically materialist perspective that is at best a rearrangement of a Eurocentric world history.⁵³ If considered only from this viewpoint, Marx's theories would negate the lived experience of black South Africans who have been oppressed, suppressed, and exploited because they are black. Consigned to a secular messianism and Eurocentrism,⁵⁴ Marx also excluded violence- perpetuated by the colonial era- from this narrative. This contrasts with Fanon, who considers violence by the oppressed (in the decolonial project) to be a natural reaction to colonialism,⁵⁵ which is violent in its natural state.⁵⁶ In South Africa, capitalism's existence and development by the existence and development of colonialism has been a violent process. It is therefore insufficient to view revolutions or social movements in South Africa as purely classed based struggles, or purely decolonial struggles. They are interwoven struggles- the same heat rising from different coals to bubble water in the pot. Therefore, while class consciousness is a tool with which to view the events at Marikana, it is not the *only* tool. Marikana can simultaneously be viewed with an understanding of (colonial) violence, and as a result of the violence of coloniality.⁵⁷

⁵³ Robinson, note 43 above, xxxviii

⁵⁴ Robinson, note 43 above, xxxviii

⁵⁵ Fanon *The Wretched of the Earth* (1963), Grove Press, New York, 36

⁵⁶ Fanon, note 55 above, 61.

⁵⁷ This will be illustrated in the forthcoming chapter 3.2, which establishes that mines function as economic enclaves. Coloniality differs from colonialism. Where colonialism refers to an economic and political relationship with the sovereignty of a nation, or a people who rests on the power of a coloniser, which makes such nation an empire, coloniality instead, refers to established "power patterns." These "power patterns" emerge as a consequence of colonialism, and "define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administrations." Coloniality- maintained in art, culture, books, sculpture, criteria for academic performance, the self-image, and an overall encapsulation of the modern experience- thus survives colonialism. Quijano, note 27 above, 25-61; Maldonado-Torres 'On the Coloniality of Being' (2007) *Cultural Studies* 21(2) 244.

Violence plays a central role, as violence was used as a tool to impregnate the economic systems of colonised countries.⁵⁸ This led to the violent economic system of capitalism developing into a form of racial capitalism. Violence has its own consequences and impact, and often one finds that in response to capitalist violence, resistance violence erupts.⁵⁹ Capitalist violence usually takes the form of subjective and objective violence, and these will be discussed below.

2.3 Defining Violence and the Marikana Massacre

Galtung classifies violence into two categories where, on the one hand, violence is a visible action within a subject-object relationship, and on the other, it is “built into structure.” This structural violence can also manifest as social injustice, or it can be used to threaten people into subordination.⁶⁰ Structural violence is a form of subjective violence which is violence that is overt, and exercised with intent such as the repressive apparatus of the state, crime, terror, and even interpersonal aggression.⁶¹ Subjective violence is often employed by the bourgeoisie with the assistance of the state, to subdue the masses who have developed a class consciousness, and to maintain exploitation. Consequently, social injustice develops from this violence as one group defends its own interests at the expense of the other.

⁵⁸ Robinson, note 43 above, xxxix. Marx confined himself to the secular, without recognising the existence of the Other. Consequently, struggles that were non-European, and which took place outside of Europe, did not have a place in Marxian thought. However, Marx's theories can be applied more horizontally as the colonial project that began in South Africa with the arrival of the Dutch and the British relied on the notion of the Other through the instrumentalisation of race. This served as a mirror as in the colonies, workers are colonial subjects of colour. Whereas in the heart of the Empire, the working class is the racialized minority.

⁵⁹ “You can’t wage a war against capital and not expect a reaction,” quoted from Fletcher, “Former ANC ‘bad boy’ plans election bid against the odds” (2013) <http://server-technology-blog.blogspot.co.za/2013/07/south-africa-ex-anc-boy-plans-election.html> [accessed 1 October 2017].

⁶⁰ Galtung 'Violence, Peace, and Peace Research' (1969) *Journal of Peace Research*, 167-168.

⁶¹ Žižek *Violence: Six Sideways Reflections* (2008) Picador, New York.

Objective violence is that violence which is built into capitalism and manifests in the subject-object relationship as structural racism, discrimination, economic destruction, and other various forms of understated exploitation.⁶² Objective violence also includes symbolic violence or “cultural violence” and refers to those forms of culture that “can be used to justify or legitimise direct or structural violence.”⁶³

Thus, cultural violence could include those aspects of news media that legitimise the use of force against protest or social movements.⁶⁴ Both these forms of violence are different manifestations of systemic violence stemming from socio-political power and economic exploitation. Exploitation, particularly class exploitation is therefore a fundamental contributor to class conflict.

The conflict that unfolded at Marikana signalled an awakening of class-consciousness, a demand for justice, and redress of historical injustices inferred from the recognition of the disparity in wage earning by the have-nots as opposed to those who have. It was further a reaction to the objective, exploitative violence of a racialized capitalism as Marikana has deep systemic roots in the conditions of workers in that mine, and in Nkaneng, the nearby shack-settlement where many workers live with their families.⁶⁵ The settlement has been an inhospitable space plagued by a lack of clean, running water, sanitation, electricity, schools, clinics, and storm-water drainage. Nkaneng is inhospitable from a basic services viewpoint, and even a year after the massacre, has not been upgraded to a level that would be suitable of housing for migrant workers.

⁶² Žižek, note 61 above.

⁶³ Galtung, note 60 above, 291.

⁶⁴ Roy *Capitalism: A Ghost Story* (2014) Haymarket Books, Chicago.

⁶⁵ Bond, “Marikana's Meaning for Crisis Management: An Instance of South Africa's Resource Curse” (2014) <http://ccs.ukzn.ac.za/files/Bond%20Marikana%20as%20resource%20curse%20and%20CSR%20problem.pdf> [accessed 8 October 2017].

Workers rose to challenge these conditions, and the system that served to exploit their labour.⁶⁶ This challenge consisted of two phases of conflict: firstly, workers rose to demand better working conditions as they felt the mines were becoming more and more unsafe; and secondly, workers demanded better wages. This demand for what would ordinarily be deemed as ethical and a legitimate right was met with the only language that has been, and is still being used against South Africa's majority black population - that of violence.⁶⁷ In order to subdue the masses that challenged the system, repressive apparatus were employed.

A key figure in this conflict has been Cyril Ramaphosa, acting deputy president of the Republic. At the time, Ramaphosa was a non-executive director at Lonmin, and his company Shanduka was a majority shareholder of the black empowerment subsidiary of Lonmin. As such, there can be no doubt that Ramaphosa was a central link between Lonmin and the state, with a conflict of interest as he had a nine percent ownership in Lonmin at the time.⁶⁸

Evidence came to light during the Marikana Commission's inquiry which detailed a correspondence between Ramaphosa and Lonmin's chief commercial officer Albert Jamieson, in which Ramaphosa described the strike as:

terrible events that... cannot be described as a labour dispute. They are plainly dastardly criminal and must be characterised as such. There needs to be concomitant action to address the situation.⁶⁹

⁶⁶ On occasion, the leaders of the protest stated "Unlike us he [the manager] gets a good salary." This displays an awareness of the wage gap. Al Jazeera, note 38 above.

⁶⁷ Yousuf "In Memory of the Land" (2017) https://www.academia.edu/35078601/In_Memory_of_the_Land_Informal_Settlements_Colonial_Geographies_of_Death_and_the_Apartheid_City 10 [accessed 20 October 2017].

⁶⁸ Bond *Marikana's Meaning for Crisis Management: An Instance of South Africa's Resource Curse* in Scheurkens (ed) *Global Management, Local Resistances: Theoretical Discussion and Empirical Case Studies* (2017) CRC Press Books, South Africa, 204.

The email shows how the Lonmin directors colluded with Ramaphosa to lobby the state against the strikers. It is through this smoke of concealed realities that we see the typical depiction of the bourgeoisie colluding with the state to protect capitalist interests.

Ramaphosa spoke to the police minister at the time, and warned him to come down hard on the striking workers.⁷⁰ In addition, Ramaphosa sent an email to then minister of police Nathi Mthethwa, requesting additional police deployment to the area to “protect life and property.”⁷¹ He also influenced the mineral resources minister, Susan Shibangu, to whom Ramaphosa wrote:

You are absolutely correct in insisting that the minister and all government officials need to understand that we are dealing with a criminal act. I have said as much to the minister of safety and security.⁷²

This illustrates the parasitic relationship between a dependant government, intertwined with capitalists and reliant on them vis-a-vis to promote their interests and working together in order to suppress the proletariat movement. In order to accomplish this suppression, they turned to a form of subjective violence - the repressive apparatus of the state, namely the police force. The chaos that brewed in the exploitation of workers whose grievances could not be heard culminated when their call for substantive equality and fair treatment was met with oppressive violence. It spread to other mines throughout South Africa, thereby expanding the individual struggle of mineworkers to other mines in the country, and the struggle was often recalled in the #FeesMustFall protests of 2015 as a

⁶⁹ “Statement submitted by Matamela Ramaphosa to the Judicial Commission of Inquiry into the events at the Marikana Mine in Rustenburg” (2017) <http://www.dailymaverick.co.za/document/s/130530-Ramaphosa-statement-to-FarlamCommission.pdf> [accessed 7 October 2017].

⁷⁰ Bond & Saul *South Africa: The Present as History, From Mrs Ples to Mandela and Marikana* (2014) Boydell & Brewer, Suffolk.

⁷¹ Bond & Saul, note 70 above.

⁷² Statement submitted by Ramaphosa, note 69 above.

race and class-based struggle- in respect of broader socio-economic problems, ensuring that post-Marikana South Africa will “never be the same.”⁷³

In order to legitimise their subjugation tactics, the state employed cultural violence through its news agencies, to delegitimise the proletariat movement. It did so by promoting a narrative in which it deployed the movement as vulgar, violent, and dangerous, without considering the factors- the lack of engagement by Lonmin management with mineworkers, the provocation by police forces, the grievances of the workers, the frustration of exploited workers- that lead to the creation of this dangerous environment.⁷⁴ The most important issue of all was side-lined- the diabolical nature of a widening income inequality in South Africa that had transited from apartheid to neo-apartheid some twenty odd years ago.⁷⁵ A ‘fog of war’⁷⁶ of apartheid and colonial stereotypes, and dehumanisation tactics had obstructed the narrative regarding the unfolding of the events at Marikana, with mainstream media trapped in the narrative behind police lines. Media houses relied on the National Prosecuting Authority (NPA) and the police as their official source of information.⁷⁷ As branches of the state, the NPA, and police constructed a narrative that the police were “under violent attack”⁷⁸ by the ‘uncivilized’- those who still

⁷³ Rajah “Marikana, a past never truly escaped: a critique on the commodification of the legal system and the law as an instrument of justice in post-apartheid South Africa” (forthcoming) (2017) PSLR.

⁷⁴ For a detailed account of this, see Mpofu-Walsh *Democracy & Delusion - 10 Myths In South African Politics* (2017) Tafelberg, Cape Town.

⁷⁵ Neo-apartheid is defined as those post-1994 constitutional re-arrangements which aim to transform society in ways that do not instantiate a fundamental rupture with the inherited, sedimented and bifurcated social structure, in terms of which the majority of black people remain confined in a ‘zone of non-beings.’ See Madlingozi ‘Social justice in a time of neo-apartheid constitutionalism: critiquing the anti-black economy of recognition, incorporation and distribution’ (2017) SLR 28(1) 123.

⁷⁶ Kasrils “The Slayings Grow More Sinister” (2012) *Amandla!* September 2012.

⁷⁷ Bond & Saul, note 70 above.

⁷⁸ Nzimande “Our condolences and sympathies to the Marikana and Pomeroy victims” (2012) Johannesburg, SA Communist Party, 24 August 2012, www.sacp.org.za [accessed 30 August 2017].

clung to a spirituality that belonged to a pre-capitalist era.⁷⁹ This media bias served to stigmatise the protestors, and to legitimise the excessive violence by the police. In combing through the media coverage of Marikana, not a single local media house interviewed or engaged with the miners. The story was always told from behind the lines of Lonmin management. Consequently, those who controlled the media controlled the narrative (and the propaganda).

This excessive use of force however, is not historically unprecedented.⁸⁰ In 1920, a similar fate was endured by African miners who protested the wage gap between black and white miners. They were dealt with violence and harshness by the colonial government. This led to subsequent protests in 1922, where two hundred people were killed, and 1946, where the government of the time deployed sixteen thousand police officers to subdue the protestors. Throughout history, instances of collusion between capital and the state can be found. The mining industry has a particular place in this sordid history, as collaboration extends beyond the state and capital, to a tripartite alliance whose creed was based on oppression. The third in this trifecta are the corrupt 'tribal chiefs' who were used by the oppressive governments to turn self-sufficient black African farmers into slave labour workers for the capitalist.⁸¹

Today, these chiefs have been replaced by BBBEE partners, like Ramaphosa, and those who take on the role of the so-called 'black boer.'⁸² Interestingly enough, Ramaphosa holds a billionaire status in South Africa. Among the first beneficiaries to receive equity-based black economic empowerment deals in 1997, he partnered with Nthalo Motlana to

⁷⁹ I use the term spirituality as opposed to customary religion, as it is more holistic, whereas , customary religion is an attempt to codify and limit the identity, history, culture, and religion of a people. I use pre-capitalist as interchangeable with pre-colonialism, as the development and spread of one was accompanied by the spread and development of the other.

⁸⁰ Saul & Bond, note 70 above.

⁸¹ Saul & Bond, note 70 above.

⁸² Dugard, Madlingozi, & Tissington, "Rights-compromised or rights-savy? The use of rights-based strategies to advance socio-economic struggles by Abahlali baseMjondolo, the South African shack-dwellers' movement" in Klare & Williams (eds.) *Social and Economic Rights in Theory and Practice* (2015) Routledge, New York, 39.

join New African Investment Limited. Ramaphosa used miners' pension funds to buy shares.⁸³ The BEE model has been developed over the years, since the establishment of the Urban Foundation in 1977 by Harry Oppenheimer and Anton Rupert. The problem lay in the nature of BEE policies, which entail wealth redistribution from the economic oligarchs to certain black individuals which has resulted in the creation of a very specific black upper-middle class.⁸⁴ A side effect of this is that the voluntary wealth redistribution produced a new class of unproductive, rich black politicians. These politicians have become co-opted- political allies of the economic oligarch that have aligned with capital instead of labour. Consequently, the poor and politicians live in different worlds, with the poor living in squalor, whilst politicians enjoy the benefits of a capitalist lifestyle.⁸⁵ Ramaphosa is a prime example of this. As Adam Habib states:

The ANC says it is committed to economic transformation. If this is true, how do you elect a billionaire as your deputy president? He has an admirable political record, but his track record on economic transformation is abysmal.⁸⁶

Marikana is a prime example of how the MPRDA has failed to address the challenges that arose in these instances. Despite a *prima facie* shift by the legislature toward a nationalisation of natural resources, there exists a contradiction within legislation, together with the influence of external forces, which negate this movement, and which must rely on violence in order to assert its authority. Furthermore, there appears to be no initiative to

⁸³ Otto "How Ramaphosa obtained his wealth" (2015) <https://www.news24.com/MyNews24/How-Cyril-Ramaphosa-obtained-his-wealth-20150713> [accessed 2 October 2017].

⁸⁴ Phasha "Whites still control SA" (2017) <https://blackopinion.co.za/2017/06/06/whites-still-control-sa/> [accessed 20 October 2017].

⁸⁵ However, there exists the possibility that I may be incorrect in my initial statement, and that South Africa did not develop further into the capitalist world system. Instead, we returned to a feudal system. The state having replaced the Crown; the corporates replaced the nobility. The bourgeoisie are tenants of the corporates, and the peasants remain those individuals whose desperation can be exploited. The 'black boer' is then one who is granted lordship and land through the benevolence of the state, and is free to exploit the peasantry without any real consequences.

⁸⁶ Dixon "South African President Jacob Zuma Retains ANC Leadership" *Los Angeles Times* 18 December 2012, www.latimes.com/new/nation-word/world/la-fg-south-africa-zuma-20121219.0.340440.story [accessed 30 August 2017].

further the nationalisation of natural resources by expanding the nationalisation of the means of production,⁸⁷ and dismantling a system based on the ownership of private property.

From the foregoing it is evident that the black elite, the media, the regime and the state have served as tools for advancing the exploitative measures in the capitalist system. Through them, racial capitalism and coloniality have continued to endure and have contributed to the manifestation of violence in Marikana. The following chapters will analyse how legislation has been unable to undo the effects of colonialism and racial capitalism. This is because legislation which has been drafted with the underlying notions of capitalism can only produce conflict and chaos, as its discretion rests in the hands of capitalists, who influence the state. This conflict and chaos has sunk its poisonous roots into South Africa from the moment of colonisation, through the post-1994 Constitutional dispensation, and coiled itself around the current mineral rights legislation. The arrival, growth, and continued existence of capitalism within the mining sphere of South Africa is demonstrated in the forthcoming chapters.

⁸⁷ Instruments of labor (tools, factories, infrastructure, etc.) and subjects of labor (natural resources and raw materials). In this particular context, mines are of considerable importance.

3. Mineral Rights and Capitalism from 1886 to 1994

Considering the foregoing discussion on the Marikana Massacre, the co-option of the state, regime and media into the agenda and interest of capital that exploitatively functions in South Africa through a system of racial capitalism, chapter three considers the history of mineral rights and the entrenchment of capitalism in a pre-1994 context, beginning with the discovery of gold in Witwatersrand. It explores how this historical event led to the occurrence of racial capitalism in South Africa's labour market in general and in the mining sector specifically.

Before positing a brief history and introduction of capitalism in South Africa, it is necessary to grasp two concepts; that of modernity, and Eurocentrism as they are fundamental to understanding the development of the capitalist system. Capitalism in what has been problematically described as "the third world," is based on an extractive economic activity that developed from the principles of modernity and Eurocentrism.⁸⁸

3.1 Modernity, Eurocentrism, and Capitalism

In the context of this essay, the vein of modernity that is considered is Western modernity.⁸⁹ Amin defines modernity as "constructed on the principle that human beings, individually and collectively (i.e. societies), make their own history."⁹⁰ Coupled with this, modernity is based primarily on ideas of industrialization,⁹¹ racialisation, and individualisation. The advent of Western modernity led to the formation of a hierarchical

⁸⁸ Amin *Eurocentricism* (2009) Monthly Review Press, New York, 13.

⁸⁹ In Jeffery Alexander's *The Dark Side of Modernity*, Alexander refers to modernity as Janus-faced. Janus was a Roman god associated with the creation of order in the Universe, but there was always the idea that disorder followed close behind. It stands to reason that capitalism, the product of modernity and Eurocentrism would be the disorder that follows.

⁹⁰ Amin, note 88 above, 13.

⁹¹ Industrialisation is based on treating African people as objects of change rather than subjects. It ignores agency and subjective experience of industrialisation from a colonial citizenry perspective.

structure in the international system with European notions and ideals at its centre. At the heart of this structure, was the pre-eminence in the superiority of European socio-economic systems and culture. The promotion and lionising of European ideology came to be known as Eurocentrism.

Amin further describes Eurocentrism as “part of a global, core-periphery, or dependency model of capitalist development.”⁹² Immanuel Wallerstein argues that there has been a single-world system since the 16th century. According to Wallerstein, this capitalist economic system has been global since its inception.⁹³ The expansion of this system was accompanied by the imperial want to expand political power whilst preventing a body politic from arising at its roots.⁹⁴

The modern capitalist system, having developed simultaneously with the conquest of the Americas, illustrates colonial expansion and the development of political power, whilst quashing the body politic through a process of othering. Capitalism, in particular racial capitalism,⁹⁵ thus produced a modernity and Eurocentrism whose “logic of fundamental laws which govern capitalism leads to a growing inequality and asymmetry on a global level.”⁹⁶

In drawing from this meaning, it is reasonable to presume that with the arrival of the Dutch in South Africa in 1652 came the arrival of capitalism, and modernity, and Eurocentrism “entered.” The arrival of these structures were coupled with the inevitable arrival of inequality and asymmetry within South Africa. For the purposes of this essay however,

⁹² Miri Javed *East and West: Allama Jafari on Bertrand Russell* (2013) University Press of America, Lanham, Maryland, 49

⁹³ Wallerstein *World-systems Analysis: An Introduction* (2004) Duke University Press, London.

⁹⁴ Arendt *The Origins of Totalitarianism* (1951) Schocken Books, New York, 135.

⁹⁵ Robinson, note 43 above, xiii.

⁹⁶ Robinson, note 43 above, xiii.

consideration is placed on the consequences that this inequality and asymmetry has specifically within the mining sphere.

3.2 Planting the Seed: The History of Capitalism in South Africa

The discovery of gold in South Africa in 1886 at the Witwatersrand orefields- which overlapped Afrikaner and British territory- triggered the Anglo-Boer war. This gold rush differed from other gold rushes on the 'Dark Continent'⁹⁷ and other colonies for three main reasons: firstly, there was an abundance of indigenous people which meant that labour was easily accessible and cheaply available. This abundance of human raw material held the promise of a permanent emancipation from work, and served to tempt many to settle in South Africa.⁹⁸ Secondly, this idea of emancipation from work prevented the extermination of the indigenous population, but not dispossession. Consequently, black people were dispossessed of their assets (in particular, land, and livestock), and inter-related to this was the loss of traditions and technical skills. Coupled with this loss was the prevention, by the West, from acquiring the new technical skills of the West. Since the white settlers were isolated from modern Europe, it stands to reason that they did not have access to the skills that the European population had developed in their absence. White people were further excluded from the notion of skills development, as most manual work was done by slaves in the Cape, but skilled labour was undertaken by other white immigrants who flooded South Africa from early 1860. This leads to the third difference where the gold rush was financed by the European community, and organized and connected to Europe with the assistance of Jewish financiers.⁹⁹ Thus, from the moment that the prospect of gold mining manifested in South Africa, the capitalists had already instituted the exploitative system of racial capitalism in order to fund their ventures, and had turned the mines into colonial enclaves.¹⁰⁰

⁹⁷ Arendt, note 94 above, 198

⁹⁸ Arendt, note 94 above, 198.

⁹⁹ Arendt, note 94 above, 198.

¹⁰⁰ Colonial enclaves refer to those economic systems in which export based industry dominates international and/or non-local capital extracts, resources, or products from another country.

The proper functioning of these enclaves were disrupted in 1899,¹⁰¹ when tensions arose between the British and the Afrikaners,¹⁰² -following a Boer ultimatum that the British should cease building up their forces in the region. A number of British towns were invaded by the Boers, who subsequently gained control over these towns. By the late 1900s however, the British received a large number of reinforcements and through this increase in troops, they were able to reclaim those lost cities, whilst also annexing the Transvaal and Orange Free state to the Crown. This victory in 1901 meant that the British would gain control over the country's mineral resources, particularly the gold deposits in the Transvaal. This victory however, did grant them access to the cheap and vast labour they required to exploit the gold deposits. In order to acquire this cheap labour, they had to mobilise the black people of South Africa into supplying labour for agriculture, transport, infrastructure development, and the mining industry. The British accomplished this through the establishment of South African Native Affairs Commission in 1903 (which would later develop into the Poll and Hut tax laws, the Native Land Act, and the Bantustans).¹⁰³

Furthermore, in the early 1900s, Cecil John Rhodes visited the Rand goldfields for the first time, and became aware of the abundance of small claims to mineral rights that had come to life. The Transvaal Gold Law at the time severely limited large number of claims that could be held by one person. It was further designed for the typical "alluvial gold digging situation, where many individual diggers exploited the deposit on small 50 ft. by 50 ft. claims."¹⁰⁴ Consequently, a number of small claims to mining rights arose. In order to minimise these claims, and to maximise capital (which is a basic of capitalist thought) and to allow for ease in the search and exploitation of gold, Rhodes considered amalgamating these claims (as he had done within the diamond industry). He persuaded the president of that time, Paul Kruger, to allow for the amalgamation of claims, without any limits. Having made the argument that it would be easier for the government to deal with a few large companies than to deal with thousands of individual claim holders, Kruger agreed.

¹⁰¹ Who controlled large parts of the Natal and the Cape.

¹⁰² Who controlled the Transvaal and Orange Free State.

¹⁰³ Arendt, note 94 above, 198.

¹⁰⁴ Stephens *Fuelling the Empire* (2003) Wiley, New York, 168.

In 1901 that the Boers were offered a peace treaty in which it was suggested that the republics would become crown colonies, though with the ultimate aim of self-government within the empire. The British further guaranteed that prisoners of war would be released, and amnesty would be granted to those who had participated in the conflict. It further stated that 'coloured persons' would receive the same legal rights as they had in the Cape Colony, however their right to vote would be subject 'to secure the just predominance of the white race.'¹⁰⁵ The Boers declined. However, in 1902 they agreed to the peace treaty, having amended a certain number of the treaty's terms. One of these terms stated that voting rights for natives would not be considered until the colonies had achieved their self-governing status.¹⁰⁶

While it was considered a 'white man's war' by both the British and the Boers, black people played an important part, and suffered severely. The British Army initially employed black people as wagon drivers, and then increasingly in roles of combatants, such as spies, guides and eventually as soldiers.¹⁰⁷

The war contributed to Boer poverty and accelerated urbanisation, as many Afrikaners experienced lasting psychological and economic repercussions. This awakened a strong racial patriotism, and an aggressive nationalism. Together with a fear of the black majority, the desire for self-determination and complete dominance of white Afrikaner South Africa as the racial superior may partly explain the implementation of the policy of apartheid.¹⁰⁸

The war left black people devastated and disenfranchised. Their occupation of Boer land during the second Boer War was not recognised. Furthermore, they did not receive an

¹⁰⁵ "The South African War" (2015) <http://www.nationalarchives.gov.uk/pathways/census/events/britain5.htm> [accessed 1 May 2017].

¹⁰⁶ Note 105 above.

¹⁰⁷ Pretorius "The Boer Wars" (2011) http://www.bbc.co.uk/history/british/victorians/boer_wars_01.shtml [accessed 11 September 2017].

¹⁰⁸ Pretorius, note 107 above.

extension of the qualified franchise.¹⁰⁹ Pakenham concludes, “it was the Africans who had to pay the heaviest price in the war and its aftermath.”¹¹⁰ This, coupled with the Hut Tax of 1908 forced many black people into the colonial economy.

3.3 From Capitalist Modernity to Capitalist Apartheid

In May of 1910, eight years after the conclusion of the Boer war, the government of the new Union of South Africa came into power. Historically speaking, the new government was nothing more than a racist continuation of its predecessor- a minority government of a minority; the unification had only served to benefit people of a white skin colour.¹¹¹ Historically analysed, I propose that this new government, with capitalist ideologies, saw the rise of three elitist groups: the English commercial elite who represented mining investors from London, and who wielded economic power, but not political power; the Black elite, whose accommodationist faction saw itself as an ally to the British; and the Afrikaner elite, who saw their interests as antagonistic toward the African elite. These three groups saw their interests as being served by the entrenchment of the capitalist system.

However, the vast majority of Black people were subject to exploitation, which served as means to an end to guarantee capitalist interests. Furthermore, these Black people were still deliberately excluded from political rights, economic rights, and social and human rights- despite the Boers stating that once independence was achieved, consideration would be given to the voting rights of people of colour. Thomas Pakenham correctly observes that “once self-governing, no Boer state would give the vote to Africans.”¹¹² The

¹⁰⁹ Cape Qualified Franchise was the system of non-racial franchise that was adhered to in the Cape Colony, and in the Cape Province in the early years of the Union of South Africa. Qualifications for the right to vote at parliamentary elections were applied equally to all men, regardless of race. Bickford-Smith *Ethnic Pride and Racial Prejudice in Victorian Cape Town* (2003) Cambridge University Press, 26.

¹¹⁰ As quoted in Bickford-Smith, note 109 above.

¹¹¹ Malkin *Imperialism, White Nationalism and Race: South Africa, 1902 to 1914* (2008) Wesleyan University, Middletown, Connecticut, 72.

¹¹² As quoted in Bickford-Smith, note 109 above.

inclusion of race in the body politic was an assertion of Imperialism, and an explanation of the human in a way that no European could understand. Race, both as a “home-grown ideology of Europe” or, in this instance an “emergency explanation” of the human served as a way to explain the “monstrosity of Africa- a whole continent populated and overpopulated by savages” attracted the “worst elements in Western civilization.”¹¹³ It is this construction of race that began the process of othering of black people, and facilitated for the institution of racial capitalism. Capitalism is at its roots a system of minority privilege and class rule based on the private ownership of means of livelihood. This places power within the hands of the wealthy to buy and sell jobs, which means that they can build or destroy entire communities, which depend on those jobs.¹¹⁴ This new government, over the course of time continued the process of land alienation and an extraction of capital and labour from African communities, bringing about chaos and the collapse of a self-sufficient subsistence economic system.¹¹⁵ An agricultural system that had once been independent, viable, and self-sustaining ceased to be functional.¹¹⁶

The loss of independence in African communities meant that the once independent farmer or herder would now become a wageworker, reduced to selling his labour (now a commodity) for an income. Thus, capitalism, formed from the seed of Eurocentrism and modernity, settled its roots in South Africa.

Modernity, introduced in an authoritarian manner through colonialism viewed non-Europeans as objects of history, and not subjects, as bodies who do not have the potential to exercise meaningful agency, and is inherently linked to dispossessing and destroying all pre-modern historical structures. Modernity introduced a change in the social and

¹¹³ Arendt, note 94 above, 198.

¹¹⁴ Engler “10 Reasons to Hate Capitalism” (2014) https://www.google.com/urlhl=en&q=https://www.counterpunch.org/2014/08/13/top-10-reasons-to-hate-capitalism/&source=gmail&ust=1508919940133000&usg=AFQjCNHUI_nsT2CPCQJ1wHodYYhVdKdHlg [accessed 10 October 2017].

¹¹⁵ Terreblanche “An incomplete transformation: What is to be done?” (2003) Harold Wolpe Memorial Trust Forum meeting, Institute for Democracy in South Africa, Cape Town, 20 May 2003.

¹¹⁶ Salvatore, *African Development Prospects: A Policy Modelling Approach* (1989) Francis & Taylor, New York 57.

economic structures of African communities that led to an outcome where black people could freely participate in the capitalist system, while in reality the vast majority of them were denied the benefits of their labour. Essentially, it destroyed a self-sustaining economy, and turned black people into objects subject to the control of white people. Racial laws, coupled with the loss of land by the Africans, and the resources contained in its earth in accordance with the *adcoelum* doctrine,¹¹⁷ deliberately excluded them from the system, and secured their position as objects.¹¹⁸

It was through these racist laws that the African was denigrated to the bottom of the socio-economic ladder, and in this new Eurocentric system that emerged in South Africa, the African's prevailing purpose was to serve as a source of cheap labour for white capital.¹¹⁹ Black labour that was readily available, cheap, and above all expendable- to the Eurocentric owner, nothing more than a piece of coal for the capitalist's fire.¹²⁰

In the mining sector, this expendability was demonstrated in the treatment of African labourers who were placed in large labour camps, which exhibited similar conditions to that of concentration camps. In these camps, labourers were forced to work for white mine owners.¹²¹ The creation of a class of migrant labourers can be seen as the creation of the

¹¹⁷ *Cuius est solum, eius est usque ad coelum et ad inferno*: "Whomever's is the soil, it is theirs all the way to Heaven and all the way to Hell." Property owners therefore have rights relating to the space immediately above and immediately below ground. In relation to mining, this would entail the right to prospect for minerals and the right to mine these minerals Van der Schyff 'Who "Owns" the Country's Mineral Resources? The Possibility of Incorporating the Public Trust Doctrine through the Mineral and Petroleum Resources Development Act' (2008) TSAR, 757

¹¹⁸ Lulat *A History of African Higher Education: from Antiquity to Present- a Critical Synthesis*, (2005) Praeger, Westport Connecticut, 285.

¹¹⁹ Lulat, note 118 above, 285.

¹²⁰ Ghosh & Chakrabarty 'A Correspondence on Provincializing Europe: Postcolonial Thought and Historical Difference' (2002) *Radical History Review* 83, 146-160.

¹²¹ For a better understanding and more detail regarding the conditions in these camps, see Weiss, & Lindsay, *Exceptional Space: Concentration Camps and Labor Compounds in Late Nineteenth-Century South Africa* in *Archaeologies of Internment*, eds. Myers, & Moshenska, (2011) Springer, New York, 21-32.

proletariat in South Africa. Conflict, brought about by an emergence of the class-consciousness would erupt sporadically in response to these conditions. In 1920, African miners protested the wage gap between black and white miners. The fact that there was a racial distinction in the administration and the value of wages between whites and blacks points to the heightened awareness of the discrimination of workers based on colour. This was thus not only a class struggle. To protect their interests, the white capitalist class colluded with the state in order to subdue the mostly black workers. This led to subsequent protests in 1922, referred to as the Rand Revolt.¹²² Strikes began in the Transvaal coal mine collieries and then spread throughout the Reef, particularly in the East Rand. Among the miners and other protestors were the engineering and foundry workers.¹²³ In 1946, the government of the time deployed sixteen thousand police officers to subdue the protestors.

While white men participated in the 1920's protests, and eventually benefitted from the outcome, it was again the black men who had to suffer as a colour bar of benefit in the employment sector was adopted. In this regard, Heppie states:

[I]t was a struggle of white men, striving for a higher standard of life and imbued with a fiery belief in their cause which carried them into bloody strikes, violence and rebellion. Their main enemy was the Chamber of Mines, a body of men who owned the rich gold mines. The quarrel revolved around the Chamber's low-wage policy. This conflict greatly influenced the pattern and direction of trade unionism in South Africa. It introduced the race factor into labour economics and steered white workers into support of an industrial colour bar, with all its damaging effects on workers' solidarity.¹²⁴

White workers thus became the aristocrats of labour in South Africa, being among the highest paid workers in the world, while their black compatriots were forced below the

¹²² SAHistory "Timeline of the Labour and Trade Union Movement in South Africa 1920 – 1939" (2012) <http://www.sahistory.org.za/topic/timeline-labour-and-trade-union-movement-south-africa-1920-1939> [accessed 1 September 2017].

¹²³ SAHistory, note 122 above.

¹²⁴ SAHistory, note 122 above.

poverty line.¹²⁵ It was also these white workers who became the main and most vociferous supporters of successive racist regimes.¹²⁶ These racist regimes established themselves in legislation that was enacted which further prevented non-whites from obtaining any benefit from the exploration and discovery of minerals. Hence, Africans and non-whites:

were barred from the right to acquire mining licenses; from the right to trade in minerals; from the right to reside on proclaimed ground; and from the right to establish shops on such ground.¹²⁷

In addition to Hut Tax laws which were adopted and which served to cripple the African way of life by placing financial burdens on the African people, the Precious Base Metals Act 15 of 1908 (Gold Law) of the Transvaal went on to state that "...no coloured person may be a license holder, or in any way connected to the working of gold mines, except as a working man in service of whites."¹²⁸ This compulsion to pay taxes, which included salt taxes and tax on homes (the Hut Tax), coupled with the refusal for black-owned mines and businesses compelled the black population to seek employment in white-owned businesses.

Modernity thus began through a process of individualisation, brought about by the idea of industrialisation.¹²⁹ It began to strip communities of their unity that had existed in their cultural systems and in their self-subsistence farming processes. It created a system where the self must benefit and work in order to maintain the self, in a system that began

¹²⁵ SAHistory, note 122 above.

¹²⁶ SAHistory, note 122 above.

¹²⁷ Johnstone *Class, Race, and Gold: A Study of Class Relations and Racial Discrimination in South Africa* (1976) Routledge & Kegan Paul, London, 23.

¹²⁸ Johnstone, note 127 above, 23.

¹²⁹ Harvey *The New Imperialism* (2003) New York, Oxford: UP, would consider this a redistribution by the state in order to combat a system of accumulation by dispossession stemming from privatization.

to move toward a more modern economy, mostly and largely for white people, based on the European model of “accumulation by dispossession.”¹³⁰

It destroyed the entire concept of Ubuntu, which prioritises the party over the individual, and shifted the focus to one of individualisation.¹³¹ According to Leggasick:

[R]estrictions on permanent urbanisation, territorial separation of land ownership, and the use of traditional institutions as providers of ‘social services’ and means of social control... [and] along with other mechanisms of labour coercion... the system of migrant labour which characterized South Africa’s road to industrialisation.¹³²

The laws that were introduced to distinguish between races can be considered the final aspect of modernity: that of racialisation, and the discursive production of racial identities. This final aspect gave rise to the idea of the 'other' and began a process of self-identification, eventually leading to self-superiority.¹³³ It was through this process of othering, the creation of financial burdens, the prevention of black financial independence, coupled with the loss of the traditional way of life, that many African people were forced to become migrant labourers.

¹³⁰ Harvey, note 129 above. Accumulation by dispossession is a concept which defines the neoliberal capitalist policies in many western nations as resulting in a centralization of wealth and power in the hands of a few by dispossessing the public of their wealth or land. These neoliberal policies are guided mainly by four practices: privatization, financialization, management and manipulation of crises, and state redistributions.

¹³¹ Ubuntu in this sense is a way of thinking about what it means to be human, and how we, as humans, should behave towards others. I would argue that an Africanization of politics and society would mean a greater sense of communalism and socialism.

¹³² As quoted in Wolpe, note 16 above, 425.

¹³³ Foucault describes the social body as being articulated around two races, which undergo clashes, These clashes form the “matrix” from which social warfare arises and is constructed. Radovanovic “Bi-Power and State Racism by Michael Foucault: How the Right to Kill is Justified in the Modern Era” (2010) https://is.muni.cz/th/236868/fss_b/Bachelor_Thesis.pdf [accessed 6 December 2017].

In order to obtain the maximum amount of manual labour, out of the labour force, at a minimal wage, a highly coercive and exploitive system, of industrial relations was developed in this migrant system. The vulnerability of the migrant arose less from the migration, and more from the conditions in the mines and way of life as a migrant. In addition to the vulnerability of being illiterate and innumerate, the social security inherent in the extended family of the male mine worker was exploited, as lodgings on the mine were that of single-sex hostels, housing between eight to sixteen males per a room on mining property.¹³⁴ Consequently, mineworkers were forced to live separately from their families. This served to benefit the mine's employers, as they would neither have to pay for social security services nor would they have to provide a wage to maintain more than a 'single unit of labour.'¹³⁵ The mine wage was therefore not structured to pay for the housing and maintenance of the whole family, but only of one man, as his family continued to take care of themselves back home. Mine owners therefore reaped the rewards by exploiting a successful agricultural and social system that was developed by the indigenous black population of the region. This meant that they were using the surplus produced in the rural areas to depress the wages of black miners to below the normal economic value.¹³⁶ Consequently the rural economy experienced a destabilization, as the rural family underwent destruction, and this eventually led to the gradual impoverishment of these communities. Thus these systems imposed a number of hardships on black people, with mining compounds contributing to these hardships as the way of life within these compounds were not conducive to facilitating one's humanity.

When the National Party came into power in 1948, under the leadership of Daniel Malan in a national election for whites only, his plan was to institutionalize the segregation of the races into what would later become known as the apartheid system. It became apparent that the vast majority of whites were in favour of this idea as it would guarantee continued minority rule with economic subjugation of the majority. The subjugation of the majority would secure the continued existence of cheap, expendable labour, and the continuation

¹³⁴ Stephenus, note 114 above, 177 to 180: The word used to describe these hostels is "compound," which derived its concept from the Malay word "kampong" meaning enclosure.

¹³⁵ Stephenus, note 114 above, 177 to 180.

¹³⁶ Stephenus, note 114 above, 177 to 180.

of a minority rule would allow for the continued existence of racial and cultural purity of the whites.¹³⁷

Apartheid was both an economic and political project that did not wish to annihilate black life, but which thrived on the exploitation of it. It required the black populace for cheap labour and dominated him under the ruse of *separate-but-equal*, as was the case in the United States before the civil rights movements. Thus, apartheid came to be a form of modernized slavery.¹³⁸

Its system was built on existing racist legislation that justified economic appropriation- for example, the Native Land Act 27 of 1913 and the Education Act 7 of 1907- and an “oppressive, neo-fascist, racially segregated, super exploitative, socio-political economic order.”¹³⁹ In fact, apartheid went above and beyond the previous system by “perfecting labour coercion and modernising the system of cheap migrant labour in the economic sphere.”¹⁴⁰ Furthermore, the apartheid government moved swiftly to put in place structures that would serve as monopoly capital, by promoting the emergence of State Owned Enterprises (SOE's). These SOE's were used for the upliftment of poor whites, in order to develop white skills in supervisory, technical, and managerial areas. This agenda was shared by investors in the mineral resources sector, in addition to the promotion of a cheap labour supply. Apartheid succeeded for it found a way to provide South Africa's mineral resources to the global market at competitive prices.

I propose that one of the reasons that led to the collapse of the apartheid government was its economic suffocation – which included an inability to provide products on a global scale without the use of violence against the labour force. Where the apartheid government had initially relied on colonial violence and policies to subdue the black population, they had to

¹³⁷ Lulat, note 118 above, 287.

¹³⁸ Kallaway *The History of Education Under Apartheid, 1948-1994: The Doors of Learning and Culture Shall be Opened* (2002) Peter Lang International Academic Publishers, New York, 13.

¹³⁹ Lulat, note 118 above, 287.

¹⁴⁰ Wolpe, note 16 above, 425.

now develop more potent forms of oppression. This led to the use and development of repressive apparatus by the state, specifically to subdue the black population. Included herein was an aggressive police force to protect state interests (a common tool used by capitalists to justify the protection of their interests), the imprisonment and exile of black opposition political leaders and their parties, and the implementation of “homelands” to decentralise black power. The apartheid government arrogantly and openly employed excessive forms of violence, such as the public shootings in 1976, which attracted public attention, and international disapproval.¹⁴¹

Initially, the system was constructed around three races, namely whites, Africans, and coloureds. A fourth, Indians, was later added. In addition, the system began fragmenting the majority African population into fictively rooted geographical locations in separate rural labour reservations. These became known as *bantustans* or “homelands,” and were sliced from the thirteen percent of land awarded to Africans by the Native Land Act.¹⁴² Viewed from this angle, apartheid can be seen as a form of internal colonialism,¹⁴³ in addition to being a form of modernised slavery. Through this system of allocation about eighty-seven percent of the land, and the mineral resources contained within, had been placed in the control of thirteen percent of the (white) population.

In 1977, the Urban Foundation was established by Harry Oppenheimer and Anton Rupert, who acted as chair and vice-chair respectively. Their aim was to pursue economic objectives on the urban black population. The true aim of the foundation was to address

¹⁴¹ It was around this time that Oppenheimer founded the Urban Foundation, and began to withdraw his support from apartheid, and proposed changes in industrial relations legislation. His changes manifested in 1979 in the Labour Relations Act which, amongst other things, permitted the establishment of a union registration. A year later, Ramaphosa, whose education had been funded by the Urban Foundation, became a legal advisor to the National Council of Trade Unions.

¹⁴² Wolpe, *The theory of Internal Colonialism: the South African Case*, in *Beyond the Sociology of Development* (1975) Routledge & Kegan Paul, London, 229.

¹⁴³ Internal colonialism is defined as the way which a country's dominant group exploits minority groups for its economic advantage. The dominant group manipulates the social institutions to suppress minorities and deny them full access to their society's benefits, see: The Sociology Guide 2016 http://www.sociologyguide.com/social_inequality_exclusion/internal-colonialism.php [accessed 20 February 2016].

growing black militancy, and to co-opt “civilised” blacks amongst the natives.¹⁴⁴ Oppenheimer identified members of the oppressed black majority as a major force in the changing economic trajectory of white capital, and considered them a useful tool. He selected a group of leaders to be educated in Europe from the UDF, as well as a number of exiled ANC leaders. Oppenheimer did this because he believed that certain black people could be trained to become capitalists. According to Terreblanche this objective was achieved in the secret negotiations that occurred during the CODESA talks in which the economic oligarchs met with representatives of the black upper middle class.¹⁴⁵ These two groups formed the Transitional Executive Committee (TEC) whose purpose was to promote the preparation for and transition to a democratic South Africa. In 1993, the TEC accepted an \$850 million loan from the International Monetary Fund (IMF). The loan which took the guise of a political shift of power from apartheid to democracy was rather an assimilation and acceptance of white monopoly capital. Consequently, CODESA ensured a change of faces of the status quo, but no change to the status quo itself.

This lack of transformation is acknowledged by the Constitutional Court in the *Agri SA* case:

Consequently, white South Africans wield real economic power while the overwhelming majority of black South Africans are still identified with unemployment and abject poverty. For they were unable to benefit directly from the exploitation of our mineral resources by reason of their landlessness, exclusion and poverty.¹⁴⁶

In the capitalist system property ownership is the only way in which value can be ascertained and realised. That a vast majority of property was allocated to whites who privately owned the property, and in turn the mines, the means of production, and labour of the individuals within the mines, it is not unreasonable to deduce that the racialised capitalist system took root in South Africa.

¹⁴⁴ Phasha, note 84 above.

¹⁴⁵ Terreblanche, note 34 above, 1-8.

¹⁴⁶ *Agri South Africa v Minister for Minerals and Energy*, note 10 above.

The history of mineral rights and the entrenchment of capitalism in South Africa's mines have a linked history. Pre-1994 taxes, which included salt taxes and tax on homes (the Hut Tax), coupled with the refusal for black-owned mines and businesses compelled the black population to seek employment in white-owned businesses. Post-1994, black people have been unable to shed the burdens of a capitalist, colonialist society. While some black people have joined the ranks of the capitalists, as the black elite, the vast majority remain within the working class, exploitable and susceptible, and victims of violence. The deplorable living conditions which black mine workers experienced in the mines and their living quarters are not unlike those that still exist in Marikana today, though since the massacre and under the watchful eye of the public, Lonmin has attempted to uplift living conditions by building new housing quarters. The vulnerability of illiteracy and innumeracy has not changed. Many mineworkers in present day South Africa are illiterate and innumerate, and are aware of the vulnerability that it creates, as demonstrated during the protests that occurred prior to the Massacre where they stated as much.¹⁴⁷ Mines still function as colonial enclaves; the forthcoming chapter will illustrate that MPRDA has not been able to alter this. This legacy of exploitation has remained, and has continued the cycle of inequality and poverty within South Africa's mining community, particularly amongst the black people. The tragedy of Marikana is still palpable in South African society, and while the massacre would "never leave South Africa the same," the patterns of violence throughout history suggest that colonial South Africa has always remained. Essentially, very little has changed, and despite the promise of democracy, the delusion is potent. In this regard, chapter four will explore the continuation of a system of (racial) capitalism in post-1994 legislation and its failings in terms of addressing the historical legacies of exploitation and dehumanisation of South Africa's black mine workers.

¹⁴⁷ Al Jazeera, note 39 above.

4. Mineral rights and Capitalism in post-1994 South Africa

...it's as if South Africans said to each other, the whites said to the blacks, "You take the crown, and we'll keep the jewels ... Black people should assume the crown of political power, and white people should retain the jewels of economic prosperity."¹⁴⁸

This chapter explores how the MPRDA, as the leading mining legislation, has contributed to maintaining exploitative capitalistic structures in South African mines. Post-1994, the South African government has adopted a number of policies such as Broad Based Black Economic Empowerment, Reconstruction and Development Projects (RDP), and Growth Employment and Redistribution (GEAR). The aim of the implementation of these policy objectives is to address unemployment, inequality, and poverty, yet despite these laudable objectives poverty and inequality has deepened, so that South Africa today is considered as one of the most unequal countries in the world.¹⁴⁹ The MPRDA is one such policy. In seeking to transform the law, the MPRDA provides that minerals would no longer be privately owned: they would be "the common heritage of all the people of South Africa", while the state is to be their "custodian... for the benefit of all South Africans".¹⁵⁰ These policies, however *bona fide* their objectives are, have yielded less than fruitful results, as they have often been misguided. Consequently, they have ended up benefitting the minority instead of the vast majority for whom these policies were intended.¹⁵¹ Consider the following,

¹⁴⁸ Mazrui "In conversation with Ali Mazrui" (2015) <https://www.nelsonmandela.org/news/entry/in-conversation-with-ali-mazrui> [accessed 30 October 2017].

¹⁴⁹ Mortlock "SA One of Most Unequal Countries" (2017) <http://ewn.co.za/2017/04/27/research-sa-one-of-most-unequal-countries-in-the-world> [accessed 20 October 2017]; TheGuardian "Inequality index: where are the world's most unequal countries?" (2017) <https://www.theguardian.com/inequality/datablog/2017/apr/26/inequality-index-where-are-the-worlds-most-unequal-countries> [accessed 6 December 2017].

¹⁵⁰ s3(2).

¹⁵¹ Terreblanche, note 34 above, 1-8.

For those who had any doubts, the figures provide unassailable proof that ANC policies have been much more supportive of capital than labour...You have to go back 21 years to find another period in which capital did as well. That was in 1981 when, for reasons quite beyond the control of any South Africans, the gold price shot up to \$800 an ounce...The situation in 2002 is entirely different. It represents the success of policies designed to achieve such a result. The return on capital has been significantly enhanced while the return to labour has been mercilessly squeezed. In real terms labour costs in South Africa have fallen exceptionally fast in the last decade, which is why our productivity has recorded the fifth biggest increase of the 46 largest economies in the world.¹⁵²

This chapter analyses that this allotment of custodianship by the MPRDA fails in its objectives. The problem with custodianship lay in the contradictory responsibilities of the minister, and that too high expectations are placed on the minister to act *bona fide* without considering the possibility of socio-economic and political bias.

4.1 Definition of a Mineral and a Mineral Right

In order to understand the scope of the MPRDA, it is necessary to understand the definition of a mineral. The Minerals Act (MA)¹⁵³ afforded a broad meaning to the concept “mineral” and included within its definition:

[A]ny substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, in or under water or in tailings and have been formed by or subjected to a geological process, excluding water, but including sand, stone, rock, gravel and clay, as well as soil, other than topsoil.¹⁵⁴

¹⁵² SARN “Socio-economic transformation-progress or regression?” (2008) <https://sarpn.org/documents/d0000164/page1.php> [accessed 20 October 2017].

¹⁵³ 50 of 1991.

¹⁵⁴ S1 of the MPRDA.

In accordance with the common law the owner of the land was the owner of everything in the land, according to the rule *cuius est solum ad caelum et ad inferos*.¹⁵⁵ Thus, once extracted from the land, the minerals become a distinct legal object, separate from the land, and thus could become the property of someone other than the landowner.

A mineral right, on the other hand, has come to be confined to the entitlement to search for and mine minerals. In common parlance, this can be understood as the “right to mine” or more appropriately the “right to prospect and mine for minerals and extract and dispose them.”¹⁵⁶ It is a quasi-servitude, which must be distinguished from the right of ownership of the minerals.¹⁵⁷

4.2 The MPRDA

The Mineral and Petroleum Resources Development Act was adopted in 2002 and entered into force in May 2004. In terms of the previous mining legislation in South Africa mineral rights were held privately, and in some instances by the state. The MPRDA now does away with mineral rights and places custodianship on the state to allocate prospecting and mining rights through an express provision which reads: “Mineral and petroleum resources are the common heritage of all the people of South Africa and the state is the custodian thereof.”¹⁵⁸ Through the transitional provisions included in the MPRDA, a new system of the exploration for minerals was introduced.

¹⁵⁵ Note 117 above.

¹⁵⁶ *Agri South Africa v Minister for Minerals and Energy*, note 9 above, para 34.

¹⁵⁷ Ownership is a *ius in rei sua*.

¹⁵⁸ S3(1) of the MA.

The purpose of the MPRDA is to address the imbalance in the allocation of mining rights and minerals by regulating future distribution of minerals and mining rights, and to create an opportunity to evolve those rights that had been distributed in the past.¹⁵⁹ In order to accomplish this, the MPRDA sets out two phases in the redistribution phase.

The first phase abolishes the principle that mineral rights and the ownership thereof find their origin in landownership. The second phase entails that holders of previously 'old order rights' were given a limited opportunity to gain entry into the new system introduced by the MPRDA, by converting their existing 'old-order rights' into 'new-order' prospecting and mining rights in accordance with the MPRDA.¹⁶⁰

4.3 The MPRDA, Expropriation, and Deprivation

The point of this section is to illustrate that the MPRDA does not expropriate or deprive one of one's private property. This is necessary as private property is one of the pillars of capitalism. By nationalizing minerals in a sense, but retaining private property, the nationalization is essentially fruitless.

Section 3(1) of the MPRDA states that “mineral and petroleum resources are the common heritage of all the people of South Africa and the state is the custodian thereof.” Therefore, mineral rights as regulated by the common law were discarded. Furthermore the owner of the land is no longer the owner of the minerals contained within. Holders of the 'old order' rights therefore had to apply for prospecting and mining rights, as the 'old order' rights were set to expire within a specified period. The written consent of the Minister of Mineral and Energy Affairs is required for such rights to be transferred.¹⁶¹ Of recent debate is whether the introduction of the MPRDA, which essentially nationalises minerals, amounts

¹⁵⁹ This is akin to Harvey's redistribution by the state in order to combat a system of accumulation by dispossession stemming from privatization, note 128 above. While the MPRDA may have had the intention to shift away from a capitalist agenda, it is set-off against other clauses within itself that prevents this movement.

¹⁶⁰ Van der Walt, & Pienaar *Introduction to the Law of Property, 4th Edition* (2002) Juta Legal and Academic, South Africa, 296.

to an expropriation of the 'old order' rights of a landowner and/or of the holder of mineral rights. The Constitutional Court in *Agri South Africa v Minister for Minerals and Energy* found that it does not amount to expropriation.¹⁶²

The Constitution of the Republic of South Africa (CRSA), in sections 25(1) and 25(2), makes a distinction between deprivation and expropriation of property respectively. It prohibits the deprivation of property in the absence of laws of general application, and forbids any arbitrary deprivation of property. It further states that expropriation is only permitted in terms of the law of general application, provided that is for a “public purpose or in the public interest, and subject to compensation.”¹⁶³

In *Harkson v Lane NO*, the court acknowledges a difference between expropriation and deprivation:

The distinction between expropriation (or compulsory acquisition as it is called in some other foreign jurisdictions) which involves acquisition of rights in property by a public authority for a public purpose and the deprivation of rights in property which falls short of compulsory acquisition has long been recognised in our law.¹⁶⁴

¹⁶¹ Sections 16 and 22 of the MPRDA. See also *Minister of Mineral Resources and Others v Sishen Iron Ore Company (Pty) Limited and Another* [2013] ZACC 45.

¹⁶² See note 9 above. The essence of the application was that the commencement of the MPRDA expropriated the coal rights of Sebenza (Pty) Ltd (Sebenza), which had been ceded to Agri SA. The Constitutional Court held that, while the MPRDA deprived Sebenza of its coal rights, the deprivation did not rise to the level of expropriation at the time of the commencement of the MPRDA. This conclusion was supported by transitional arrangements which painstakingly protect pre-existing mineral rights and improved security of tenure; as well as the objects of the MPRDA to facilitate equitable access to the mining industry, promote sustainable development of South Africa's mineral and petroleum resources and to advance the eradication of all forms of discriminatory practises in the mining sector. The appeal was therefore dismissed.

¹⁶³ CRSA, s25(2)(a) & (b).

¹⁶⁴ *Harkson v Lane NO* 1998 1 SA 300 (CC) para 33.

From the onset it appears that the only difference between deprivation and expropriation is that the legislature makes for the provision of compensation in the case of the latter. This however, is dismissed by the Supreme Court of Appeal in the Agri SA case, in which the court states that the payment of compensation is not part of the substantive definition of expropriation,¹⁶⁵ but a mere consequence of deprivation amounting to expropriation. Deprivation has thus come to be seen as a broader concept that includes expropriation.¹⁶⁶

In terms of section 25(1) and (2) of the Constitution, the rendering extinct of ownership of a landowner in respect of the mineral and petroleum resources falls solely within section 25(2). Depriving the land owner of their common-law right of ownership of mineral resources within the land is in the interest of the vast majority of the public, and further intended to serve a public purpose. Public interest for purposes of expropriation “includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources,”¹⁶⁷ and “the state’s commitment to reform... [by] eradicating all forms of discriminatory practices in the mineral and petroleum industries.”¹⁶⁸ The MPRDA thus deprives mineral rights owners their right to control, which they had previously enjoyed, without actually arbitrarily depriving them of their property- in particular private property- thereby maintaining one of the fundamental pillars of capitalism.

4.4 “The state as Custodian”

According to section 3(1) of the MPRDA, mineral and petroleum resources are proclaimed to be “the common heritage of all the people of South Africa” with the state as “the custodian thereof for the benefit of all South Africans.” The legal quandary that arises is that “all the people of South Africa” is essentially not a legal subject, thus cannot become

¹⁶⁵ *Minister of Minerals and Energy v Agri South Africa* (458/2011) [2012] ZASCA 93; 2012 (5) SA 1 (SCA); [2012] 3 All SA 266 (SCA); 2012 (9) BCLR 958 (SCA) (2012) para 12.

¹⁶⁶ *Harkson v Lane NO*, note 163 above, para 31.

¹⁶⁷ CRSA, S 25(4)(a).

¹⁶⁸ Preamble of the MPRDA.

the owner of mineral resources. Therefore, the state fills the role of “all the people,” in that it becomes the personification of “all the people of South Africa.”

However, there arises a conflict in this conceptual claim of the fact that the state will also act as the custodian. This conflict arises from the fact that in theory the state will exercise power in the interest of all the people of South Africa. However, in lieu of the lack of a legal subject that arises from “all the people of South Africa,” the state acts in its own interests as it has become the legal subject. This brings about a need to regulate state control, as unregulated state control would inevitably lead to the state facilitating capitalist accumulation through its role as custodian of mineral rights.

Van der Schyff suggests that in order to regulate state control, a public trust be created so that in the awarding and execution of mining and prospective mining operations, the state must exercise a fiduciary responsibility.¹⁶⁹ The benefit of placing the property in trust is that trustee, in this case the state, is under the legal obligation to administer the trust in accordance with the trust deed only.¹⁷⁰

A suggested alternative to a public trust is the formation of a public company, in which members of the community and mine workers are awarded shares, and the state exercises control through a Board of Directors. A public company permits the auditing of financial statements and provides for transparency, accountability, and places a fiduciary duty on the state - incorporated as directors of the company- to act *bona fide*. Furthermore, a system of share allocation to members of the community in the vicinity of the mineral resources, and mine workers, has the potential to progress the current, exploitative, capitalistic system to one of regulated capitalism,¹⁷¹ in recognition of the fact that there are no viable and developed alternative economic systems as of current.

¹⁶⁹ Van der Schyff, note 117 above, 757.

¹⁷⁰ Van der Schyff, note 117 above, 757.

¹⁷¹ Regulated capitalism is about regulation as a defining feature of the capitalist mode of production and about the mutual embeddedness of the social, economic and political. Levi-Faur “Regulated Capitalism” (2017) <http://press-files.anu.edu.au/downloads/press/n2304/pdf/ch17.pdf> [accessed 6 December 2017].

4.5 Capitalism in the new Constitutional dispensation

*We are treated like this because we are poor. We are not allowed to practice our rights in front of the government. Rights are for everyone on paper. In reality they are there only for the rich. Our rights are... documented but not implemented. The alliance between the politicians and the capitalists has created a Democratic Prison. We can vote only for our own oppression. We can vote but the state still ignores the law when it comes to the poor... This is why the people are starting to call the politicians the Black Boers. Yes they govern the country but they do not govern it for us or with us.*¹⁷²

The MPRDA has, through the protection of private property, and the allowing of corporate expansion in the mining sector, merely provided a superficial allotment of the benefits of mineral rights to the people of South Africa, the vast majority of whom will never benefit from their “heritage.” Furthermore, by allowing the state unregulated control in the granting of mining rights based on capitalist economic principles, it has privatised minerals resources not in favour of the vast majority of the working class, but rather in favour of the bourgeoisie. The legacy of ‘racial capitalism’ is not adequately addressed, and corporations have always had an overwhelming influence on state policy and decisions.

The privatisation of natural resources undermines the public interests clause of equal access to natural resources, brought about by capitalist accumulation which ignores broad socio- economic justice and interests, veering toward a utilitarian pursuit, and away from an intuitionist approach toward social justice.¹⁷³ These fallacies have allowed the continuation of capitalism within the mining sector, and with it the chaotic violence that it perpetuates. However, the contents of MPRDA are not the sole contributors.

¹⁷² Mdlalose, as quoted in Dugard, Madlingozi, & Tissington, note 81 above, 39.

¹⁷³ An intuitionist approach relies on the intuition when making deontological moral judgements, whereas utilitarian judgements are made by a controlled cognitive reasoning process. By adopting the intuitionist approach, the judgement made according to one's moral intuition and then justified by reasoning. See Haidt *The Righteous Mind: Why Good People Are Divided by Politics and Religion* (2012) Pantheon, United States, 913

Legislature fails to recognise that placing the Minister in a position which allows him to award and transfer mining rights is a conflict of interest. The Minister, a member of a political party, and a member of the cabinet, cannot be said to be an objective party, uninfluenced by the sway of capitalists and lobbyists. While in theory there is supposed to exist a separation of powers, the reality is that this separation cannot truly be isolated, and that ministers cannot go unaffected by third party interference. Often, there is a blurring of state and party, especially in political systems where there is a majority one-party system of rule.

While the MPRDA provides for state custodianship, it does not question the nature of the state. As such, I am of the opinion that power configurations within the political economy will determine how the state exercises custodianship. This further illustrates that the MPRDA does not consider the mode of production, and that the framework is essentially based on capitalist economic assumptions.

Whether the economy is conceived of in terms of liberal economics,¹⁷⁴ or in Marxist terms as a capitalist mode of production,¹⁷⁵ racial beliefs are treated as an external force, but nonetheless a product of distortions in the economic system. In its most advanced form this leads to “the ‘theory’ of the plural society which both reflects the dominant ideology and provides an apparently scientific corroboration of it.”¹⁷⁶ The basic structure of the society was seen as a relationship between a dominant white group, and a dominated black group. This perspective of the state in South Africa had come to be treated as the

¹⁷⁴ Horwitz, note 21 above, 136.

¹⁷⁵ The capitalist mode of production is characterized by private ownership of the means of production, extraction of surplus value by the owning class for the purpose of capital accumulation, wage-based labour, and, at least as far as commodities are concerned, being market-based: Encyclopedia of Marxism "Capitalism" <https://www.marxists.org/glossary/terms/c/a.htm> [accessed November 6, 2015].

¹⁷⁶ Simons & Simons *Class and Colour in South Africa 1850-1950* (1969) Penguin African Library, London.

instrument of oppression of whites over blacks but as neutral in the relationship between classes.¹⁷⁷

Now, however, the state can be seen as an instrument of oppression of black over black, due to a seceding of the capitalist and colonialist thought from white to black during the passing of power in 1994- the South African state has become an instrument of class rule, with black politicians acting as Black Boers, “governing over the black people, but not for or with them.” While there have been, variations in legislation, policy, and power, nevertheless since as far back as the establishment of the Union of South Africa in 1910, the state has been utilized at all times to secure and develop the capitalist mode of production.¹⁷⁸ It is an alliance that has created what I consider a Democratic Prison, in which the poor are confined to a life akin to that of a pre-1994 society, and their troubles are blanketed under the guise of rights, afforded by law, prompted by politicians, and enforced only in theory.

The state has acted directly through the law, through special agencies, through the development of state enterprises and in other ways to foster capitalist development.¹⁷⁹ Capitalists can exploit the asymmetric property and power relations for their own enrichment. When government policy is friendly towards the capitalist elite, income becomes more unequally distributed. When government policy pursues the welfare of society at large, income becomes more equally distributed. Thus, it is always necessary for governments to implement comprehensive redistribution policies in capitalist countries.¹⁸⁰ While the MPRDA can be considered a re-distribution policy in its own right, its comprehensiveness may be called into question, due to its perpetuation of the systems of racial capitalism in the South African mines. This is contrary to the purpose and spirit of the law as outlined under the claim of a transformative vision, whereby governments

¹⁷⁷ Wolpe, note 16 above, 428.

¹⁷⁸ Lipton Aldershot, note 20 above, 195.

¹⁷⁹ Horwitz, note 21 above, 155.

¹⁸⁰ Terreblanche, note 34 above.

should invest in ventures that empower people by giving them, and opening up to them, means of power.¹⁸¹

In certain instances, laws have actively operated to mask the capitalist nature of the society altogether, and the consequences of their provisions for the functioning of that system, which is inherently colonialist and capitalist in nature. This is apparent from the granting of custodianship of mining rights to the state, This is apparent from the granting of custodianship of minerals to the state, to freely exercise it as it sees fit, without, regulating the outcome of the decision with regards to whom such minerals and mining rights would be awarded to, aside from the meeting of certain requirements stipulated throughout the MPRDA- for example section 100. In terms of section 100 of the MPRDA, the state will award a mining right if it is satisfied that the applicant has complied with certain requirements. One of these requirements is the compliance with the Broad Based Black Economic Empowerment Charter (BBBEE) for the mining industry. Section 100 thus mandates a transformation of the mining industry, and invokes BBBEE in order to achieve this. The mining company must also submit a social and labour plan. Although the intention may have be transformative, the legislation is essentially without strong enforcement guidelines and mandates, and thus it does not account for the effect and impact of state capture and patronage networks. This could have been done by facilitating for an independent oversight mechanism especially in South Africa where the state has been captured by White Monopoly Capital and where the mining sector in particular has been and continues to be dominated by the capitalist elite. Through these two devices, the MPRDA created an elite, 'black boer.' within the mining industry, as a parallel stream to the existing pre-1994 owners. In reality, very little has changed.

In this regard, what stands before us is a crippling question of what this heritage really is. For the new government, they have inherited an economy 'sabotaged and controlled' by the previous apartheid government.¹⁸² For the vast number of black South Africans, they have inherited the dispossession of the ancestors- a place within the zone of non-being. The black heritage has vastly been one of exploitation- mineworkers who are the sons of mineworkers who slave away to benefit the capitalist at the top of the socio-economic

¹⁸¹ Gordon, note 22 above.

¹⁸² Terreblanche, note 34 above.

ladder. An entitlement of heritage to the benefits of mining rights has not benefitted them, but provided a new window dressing to conceal their subjugation, and provide a facade of transformation. Thus, although the law has changed, the context of exploitation and impoverishment has not.

5. Conclusion

The purpose of this research was to consider the entrenchment of capitalism within South Africa's mines, and to consider how the violence of capitalism spurred on the Marikana Massacre. In doing so, this research considered modernity, and Eurocentricism and their links to the capitalist world system. It further applied historical materialism to consider the links between the Marikana Massacre and state collusion with capital. Finally, this essay considered how post-1994 legislation in the neo-apartheid state contributed to maintaining the status quo.

Capitalism is at its roots a system of minority privilege and class rule based on the private ownership of means of livelihood. This places power within the hands of the wealthy to buy and sell jobs, which means that they can build or destroy entire communities, which depend on those jobs. Pre-1994, the government, over the course of time continued the process of land alienation and an extraction of capital and labour from African communities, bringing about chaos and the collapse of a self-sufficient subsistence economic system. An agricultural system that had once been independent, viable, and self-sustaining ceased to be functional- the once independent farmer or herder would now become a waged worker, reduced to selling their labour (now a commodity) for an income. Thus, capitalism, formed from the seed of Eurocentrism and modernity, settled its roots in South Africa.

Modernity, introduced in an authoritarian manner through colonialism viewed non-Europeans as objects of history, and not subjects, and is inherently linked to dispossessing and destroying all pre-modern historical structures. Modernity introduced a change in the social and economic structures of African communities.

Although black people could freely participate in the capitalist system, the reality manifested differently. The vast majority of them were denied the benefits of their labour, turned black people were 'turned' into objects, subject to the control of white people and their potential to be self-sufficient was destroyed. This was achieved through the law – where racial laws, coupled with the loss of land by the Africans, and the resources

contained in its earth in accordance with the *adcoelum* doctrine, deliberately excluded them from the system, and secured their position as objects. Laws have thus actively operated to mask the capitalist nature of the society altogether, and the consequences of their provisions for the functioning of that system, which is inherently colonialist and capitalist in nature. This is apparent from the granting of custodianship of mining rights to the state, to freely exercise it as it sees fit, without regulating the outcome of the decision with regards to whom such minerals, and mining rights would be awarded to, aside from the meeting of certain requirements stipulated throughout the MPRDA- for example section 100.

Thus, the history of mineral rights, mining rights, and the entrenchment of capitalism in South Africa's mines have a linked history. Post-1994, black people have been unable to shed the burdens of a capitalist, colonialist society. The deplorable living conditions which black mine workers experienced in the mines and their living quarters are not unlike those that still exist in Marikana today, though since the massacre and under the watchful eye of the public, Lonmin has attempted to uplift living conditions by building new housing quarters. Whilst some black people have joined the ranks of the capitalists, as the black elite, the vast majority remain within the working class, exploitable and weakened, victims of violence. Mines still function as colonial enclaves; and despite a change in legislation, the MPRDA, although considered a redistributive policy, has not been able to alter this.

Twenty three years after the new dispensation, from apartheid to universal suffrage, black South Africans continue to be trapped in a system of exploitation and impoverishment. The promise of a better life has remained a delusion, and although anticipating new beginnings, the vast majority continue to suffer the dispossession of their ancestors.

The struggle against racialism and racist systems that have penetrated from the old system into the "new" have not been adequately addressed. In this way the cycle of poverty and inequality becomes self-reinforcing as policies and legislation does not envision the South African subject through a re-consideration of rights and justice, and rights and citizenship. Had this been adequately addressed, the MPRDA would have been far more comprehensive and visionary. Ultimately, the Marikana massacre animated the synergy between the prevailing poverty amongst black South Africans and a history of

racial domination, racial capitalism and oppression. This legacy of exploitation has remained, and has continued the cycle of inequality and poverty within South Africa's mining community, particularly amongst the black people.

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