

HUMAN RIGHTS AND THE NON-HUMAN BLACK BODY

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ABSTRACT

On March 9, 2015, a black student threw feces against a statue of British imperialist Cecil John Rhodes, located at the University of Cape Town in South Africa. The incident sparked the formation of #RhodesMustFall, a black radical student movement that sought to address institutional racism at the university through its demand to decolonize the institution. While #RhodesMustFall adopted a decolonial framework centered on Black Consciousness, Pan-Africanism, and Black radical feminism, the movement simultaneously rejected the human rights discourse embedded in South Africa's progressive Constitution. This paper examines the arguments developed by #RhodesMustFall in its rejection of "human rights," including the idea that "human rights" are incapable of contemplating the "non-human," an entity, often a black body, that takes on human characteristics but is not recognized as human. This article draws on qualitative data, including 44 interviews with #RhodesMustFall student activists, to examine how social movements like #RhodesMustFall shape conceptualizations of race and human rights in post-apartheid South Africa.

KEY WORDS

Human rights; non-human; black body; RhodesMustFall; social movements

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INTRODUCTION

On March 9, 2015, Chumani Maxwele, a black student at the University of Cape Town (UCT) in South Africa, threw human feces at the bronze statue of Cecil John Rhodes located on the university's campus. The incident sparked the formation of #RhodesMustFall (#RMF),¹ a brief but formidable radical student movement aimed at decolonizing UCT by confronting questions of institutional racism and access to education, and reforming the Eurocentric university curriculum.² As a part of the #RMF movement, black students began disengaging from the dominant model of Euro-American knowledge at UCT in order to make sense of their experiences in a predominantly white liberal university. Instead, they weaved together Pan-Africanism, Black Consciousness and Black radical feminism to create a decolonial framework that shaped their activism and disruptive tactics. As part of their disengagement from Eurocentric knowledge, #RMF activists explicitly rejected South Africa's constitutional framework centered on reconciliation, human rights, and transformation. In its place, the student activists adopted Steve Biko's philosophy of Black Consciousness,³ Frantz Fanon's decolonization thesis,⁴ and Kimberlé Crenshaw's intersectionality framework,⁵ among others.

1. The hashtag (#) that precedes the name 'RhodesMustFall' is used on social media networks such as Twitter to identify and search for messages on a particular issue.

2. The Rhodes Must Fall Movement, *UCT Rhodes Must Fall Mission Statement*, 9 JOHANNESBURG SALON, 2015 at 6–8, https://jwtc.org.za/resources/docs/salon-volume-9/FINAL_FINAL_Vol9_Book.pdf [<https://perma.cc/F7PE-8UQ5>] [hereinafter "RMF Mission Statement"].

3. See generally STEVE BIKO, I WRITE WHAT I LIKE (Aelred Stubbs C.R. ed., Heinmann 1987) (1978). Biko's philosophy of Black Consciousness redefined "black" as a positive identity and taught that black South Africans could fight deep-seated racism in their society if "concertized" or awakened to a critical awareness of their self-worth, and their ability to change the situation through activism.

4. See generally FRANTZ FANON, THE WRETCHED OF THE EARTH (Richard Philcox trans., Grove 2004) (1961). Fanon posits that violence is a necessary part of the fight towards decolonization, in order for the oppressed to rid themselves of the dehumanizing effects of colonization.

5. See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–299 (1991). Crenshaw's framework renounces the idea that gender, race, class and other such markers can be divorced from each other. In observing the experience of women of color, she considers how their experiences are often the product of intersecting patterns of oppression.

This article analyzes the results of 44 interviews conducted with #RMF activists to consider why a Black radical student movement centered on tackling institutional racism in South Africa chose to adopt a decolonial framework to inform its activism, rather than the traditional human rights-based approach that remains deeply entrenched in South Africa's constitution.

I. The Rise of #Fallism

The students involved in the #RMF movement have been referred to as “activists”⁶ and “hooligans.”⁷ They have even been compared to Boko Haram.⁸ Sometimes, these student activists are called “Fallists”⁹ and their movement to decolonize the university is referred to as “Fallism.”¹⁰ The term “Fallism” is derived from the students’ demand to remove the Rhodes statute from UCT: for the statue to fall. The statue glorified the white British imperialist and racist Rhodes, and the #RMF’s mission statement characterized it as “an act of violence” as well as “the perfect embodiment of black

6. Sandy Ndelu, Simamkele Dlakavu & Barbara Boswell, *Womxn’s and Nonbinary Activists’ Contribution to the RhodesMustFall and FeesMustFall Student Movements: 2015 and 2016*, 31 AGENDA, no. 3–4, 2017, at 1–4.

7. William Gild, *Toppling the Universities*, POLITICSWEB (Oct. 5, 2016), <http://www.politicsweb.co.za/opinion/toppling-the-universities> [<https://perma.cc/99KY-Z9VH>].

8. Aislinn Laing, *Students Protesting University Fees Likened to Boko Haram by Top South African Academic*, THE TELEGRAPH (Oct. 18, 2016), <https://www.telegraph.co.uk/news/2016/10/18/students-protesting-university-fees-likened-to-boko-haram-by-top/> [<https://perma.cc/TVB4-K64H>].

9. Meghan Healy-Clancy, *The Everyday Politics of Being a Student in South Africa*, African Studies Association Annual Meeting Paper (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2751105 [<https://perma.cc/J9XB-ADNU>]. See also Dennis Davis, *Academics and the Fallist movement*, GROUNDUP (November 4, 2016), <https://www.groundup.org.za/article/academics-and-fallist-movement> [<https://perma.cc/BES5-7NPL>] (referring to the protests as part of the “Fallist movement”); Joel Modiri, *In the Fall: Decolonisation and the Rejuvenation of the Academic Project in South Africa*, THE DAILY MAVERICK (October 16, 2016), <https://www.dailymaverick.co.za/opinionista/2016-10-16-in-the-fall-decolonisation-and-the-rejuvenation-of-the-academic-project-in-south-africa/> [<https://perma.cc/G9KU-UBVX>].

10. Simamkele Dlakavu, Sandile Ndelu & Mbali Matandela, *Writing and Rioting: Black Womxn in the Time of Fallism* 31 AGENDA, no. 3–4, 2017, at 105–09. See also, Wandile Ngcaweni, *Revisiting the ABC’s of the Decolonial Paradigm of Fallism*, THE DAILY VOX (Sept. 30, 2016), <https://www.thedailyvox.co.za/wandile-ngcaweni-revisiting-abcs-decolonial-paradigm-fallism> [<https://perma.cc/ET85-T3CT>] (describing the rise of “Fallism”).

alienation and disempowerment.”¹¹ Yet, the statue served primarily as a symbolic focal point for the #RMF movement’s broader decolonial objectives. These objectives, which included the removal of white supremacist iconography and the implementation of “a curriculum which critically centres Africa and the subaltern,”¹² were derived from the #RMF’s adoption of a decolonial framework centered on Black Consciousness, Pan-Africanism, and Black radical feminism rooted in intersectionality.

A. Black Consciousness

The decolonial framework reflected in the #RMF’s mission statement makes explicit reference to anti-apartheid activist Steve Biko’s philosophy of Black Consciousness. According to Biko, who was murdered by the apartheid government while in detention, “being black is a reflection of a mental attitude” rather than pigmentation, and by adopting blackness as an identity, “you have started on a road towards emancipation.”¹³ Accordingly, black identity and black liberation constitute key components of the #RMF’s mission statement, wherein #RMF defines itself as a movement that emanates from the “black voices and black pain that have been continuously ignored and silenced.”¹⁴ For the #RMF movement, “black pain” is characterized as “the dehumanisation of black people” informed by the “violence exacted only against black people by a system that privileges whiteness.”¹⁵

As a consequence, the #RMF’s mission statement calls for a movement that is deliberately black and that welcomes the participation of white students “so long as that participation takes place on our terms.”¹⁶ In limiting the involvement of white students, the #RMF movement again draws on Biko’s philosophy of Black Consciousness,¹⁷ which offers a trenchant critique of white liberalism. Biko argued that racism was intrinsically connected to fear and that the only way to combat this fear was to instill in black people “a new-found pride in themselves, their efforts, their value systems, their culture, their religion, and their outlook to life.”¹⁸ This sense of pride,

11. RMF Mission Statement, *supra* note 2, at 6.

12. RMF Mission Statement, *supra* note 2, at 8.

13. BIKO, *supra* note 3, at 48.

14. RMF Mission Statement, *supra* note 2, at 6.

15. *Id.*

16. *Id.*

17. BIKO, *supra* note 3, at 66.

18. *Id.* at 49.

combined with the realization that black people need to “rally together” for the purpose of “liberation,” is what Biko characterizes as Black Consciousness.¹⁹

B. An Intersectional Understanding of Blackness

Following these references to Biko, the #RMF mission statement introduces the idea of “intersectionality,” indicating that the movement aims to adopt an intersectional approach that “takes into account that we are not only defined by our blackness, but that some of us are also defined by our gender, our sexuality, our able-bodiedness, our mental health, and our class, among other things.”²⁰ #RMF therefore extends Biko’s idea of Black Consciousness to include an intersectional approach in their framing of the struggle for black liberation.

The concept of intersectionality was first popularized and theorized by Kimberlé Crenshaw, an American civil rights advocate and Professor at the UCLA School of Law and Columbia Law School. In her 1991 article entitled *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, Professor Crenshaw argued that existing feminist theories developed primarily by white women failed to fully acknowledge and understand the subordination of black women.²¹ In contrast, intersectionality recognizes the interconnectedness between categories such as race, class, and gender, which create overlapping systems of discrimination.²²

C. Pan-Africanism

In addition to combining intersectionality with Black Consciousness, students also added Pan-Africanism as a third dimension of their decolonial framework. While the term “Pan-Africanism” is not mentioned in the #RMF mission statement released on March 25, 2015, the list of 28 demands at the end of the statement contained strong references to Pan-Africanist ideas. For instance,

19. *Id.*

20. RMF Mission Statement, *supra* note 2, at 6.

21. Crenshaw, *supra* note 5.

22. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. CHI. LEGAL F., 1989, at 139, 140.

under a sub-heading entitled “our long-term goals include,” the second demand listed: “[r]ename buildings and roads from names commemorating only white people, to names of either black historical figures, or to names that contribute to this university taking seriously its African positionality.”²³ Furthermore, the fifth long-term goal provided that UCT:

Implement a curriculum which critically centres Africa and the subaltern. By this we mean treating African discourses as the point of departure – through addressing not only content, but languages and methodologies of education and learning – and only examining western traditions in so far as they are relevant to our own experience.²⁴

Pan-Africanist thought relies heavily on the decolonial scholarship of Frantz Fanon, a psychiatrist and revolutionary involved in Algeria’s decolonial struggle. For Fanon, decolonization “is always a violent phenomenon.”²⁵ This idea is powerfully conveyed in Fanon’s *Wretched of the Earth*, in which he states that “[d]ecolonization, which sets out to change the order of the world is clearly an agenda for total disorder.”²⁶ Furthermore, Fanon asserts that, “[d]ecolonization is the encounter between two congenitally antagonistic forces.”²⁷ Adopting an understanding of violence that recognizes its liberatory effect on the colonized and its ability to create a form of equality between the colonizer and the colonized, Fanon finds that “violence against oppression is thus cleansing.”²⁸ While Fanon does not consider violence revolutionary in and of itself, he recognizes that the violence of colonial occupation and its aftermath necessitates the use of violence by the oppressed.²⁹ This form of anti-colonial violence should be considered as “counterviolence.”

23. RMF Mission Statement, *supra* note 2, at 8.

24. *Id.*

25. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 34 (Constance Farrington trans., Penguin 1967).

26. FANON, *supra* note 4, at 2.

27. *Id.* at 2.

28. LEWIS R. GORDON, *WHAT FANON SAID: A PHILOSOPHICAL INTRODUCTION TO HIS LIFE AND THOUGHT* 114–15 (Fordham University Press, 1st ed. 2015).

29. *See* FANON, *supra* note 4, at 46.

D. The Lasting Impact of the #RMF's Decolonial Framework

The student activists of the #RMF movement developed this decolonial framework, drawing from Fanon, Biko and Crenshaw, during the student occupation of UCT's central administration building on March 20, 2015.³⁰ Following Maxwele's defacement of the Rhodes statue on March 9,³¹ this occupation represented a watershed moment in the creation of the #RMF movement. The occupation lasted nearly three weeks, culminating on April 9, 2015 when the Rhodes statue was eventually removed from UCT.³²

In addition to the illegal occupation of the university's central administration building, the #RMF movement employed a range of disruptive tactics in their attempts to decolonize UCT. One such tactic included the burning of artwork hung in university buildings that students believed depicted black bodies in dehumanizing ways. Students involved in these disruptive moments indicated that they were influenced by #RMF's decolonial framework, which compelled them to take radical action as opposed to engaging with the university in a more traditional, scholarly manner. By developing this decolonial framework based on Black Consciousness, an intersectional understanding of Black radical feminism, and Pan-Africanism, the #RMF movement "de-linked"³³ from Eurocentric ideas of human rights and founded its own framework for making sense of their experiences as black students in a predominantly white liberal university.

Ultimately, while the #RMF movement was highly controversial, it played a catalytic role during its one year of existence in shaping subsequent protests on the cost of higher education across South African universities, and fueled an ongoing national debate on

30. See generally Achille Mbembe, *Decolonizing the University: New Directions*, 15 ARTS & HUMAN IN HIGHER EDUC., no. 1, 2016, at 29–33 (acknowledging the value of #RhodesMustFall's engagement with Fanon's work in developing its decolonial approach, but he warns that the decolonial project should not be conflated with 'Africanization').

31. See Mahmood Mamdani, *Between the Public Intellectual and the Scholar: Decolonization and Some Post-Independence Initiatives in African Higher Education*, 17 INTER-ASIA CULTURAL STUD., no. 1, 2016, at 68 (drawing important connections between the symbolic defacement of the Rhodes statue and the larger project of 'epistemological decolonization' of the university).

32. See JONATHAN JANSEN, *AS BY FIRE: THE END OF THE SOUTH AFRICAN UNIVERSITY* at i–iii (2017).

33. See Walter D. Mignolo, *Epistemic Disobedience, Independent Thought and Decolonial Freedom*, 26 THEORY CULTURE & SOCIETY, no. 7–8, 2009, at 159.

decolonization. The defacement of the Rhodes statue served as a catalyst for the creation of a national student movement across South African universities, expanding #RMF into the #FeesMustFall (#FEMF) movement which demanded free, quality, decolonized education.³⁴ Furthermore, in a paper written by #RMF UCT activists Ndelu and Dlakavu in conjunction with academic Barbara Boswell, they argued that RMF went on to inspire similar decolonisation student movements such as Open Stellenbosch at Stellenbosch University, the Black Student Movement at the University currently known as Rhodes (UCKAR), the RhodesMustFall Movement at Oxford in the United Kingdom, and the Royal Must Fall Movement at Harvard in the United States of America.³⁵

Consequently, the #RMF movement's adoption of a decolonial framework and its influence on similar movements in South Africa, the United Kingdom, and the United States, suggest that its ideas resonate strongly with students across the world. Its emergence and adoption of a radical, decolonial approach, rather than a neutral, legalistic human rights-centered framework, could signal a global shift away from human rights discourses toward frameworks that emanate from and center on the subaltern.

II. On Human Rights and the Question of Humanness

During an initial interview with prominent #RMF student activist Brian Kamanzi, he recalled how, at a #RMF open dialogue at UCT, a student suggested that human rights could not possibly apply to black people because black people were not seen as human beings.³⁶ Similar arguments have been made by other scholars who contend that human rights discourse is inherently anthropocentric.³⁷ Thus, existing human rights frameworks are unable to conceive of the non-human black body because black bodies are often seen as non-human.³⁸

34. SUSAN BOOYSEN, FEES MUST FALL: STUDENT REVOLT, DECONOLISATION AND GOVERNANCE IN SOUTH AFRICA 23 (2016).

35. Ndelu et al., *supra* note 6, at 2.

36. Personal Communication with Brian Kamanzi, #RMF Activist (Aug. 12, 2016) (on file with the author).

37. *See generally* Nelson Maldonado-Torres, *On the Coloniality of Human Rights*, 114 REVISTA CRÍTICA DE CIÊNCIAS SOCIAIS, Dec. 2017, at 117.

38. *Id.* at 131 (contending that the coloniality of human rights results in a particular construction of the human, which “is loaded with ideas about secularism, individualism, and racism that motivate certain problematic forms of skepticism about what constitutes being human.”).

Kamanzi, reflecting on the student's comment, posited that the idea of the non-human emanated from "black existentialists" as well as from "Afro-pessimists" who were involved in the #RMF movement.

"Afro-pessimists," according to Professor Frank B. Wilderson III, "are theorists of Black positionality who share Fanon's insistence that, though Blacks are indeed sentient beings, the structure of the entire world's semantic field . . . is sutured by anti-Black solidarity."³⁹ Wilderson's argument appears to draw on Fanon's assertion in *Black Skin, White Masks*: "a Black is not a man."⁴⁰ Consequently, Wilderson distinguishes between the human and the black non-human, indicating that the divide between the two is an "unbridgeable gap."⁴¹ For Afro-pessimists such as Professor Jared Sexton, "black life is lived as social death."⁴² Afro-pessimism then becomes a way of providing a language for such suffering, "to establish the rules of its grammar."⁴³

The human/non-human binary articulated by Wilderson is, however, dismissed by Professor Lewis Gordon. Gordon asserts that, while racism requires the construction of the non-human, "[t]he performative contradiction is that [non-humans] would first have to be identified as human beings in order to deny their being such. It is thus a form of *mauvaise foi*," or bad faith.⁴⁴ Gordon is therefore opposed to the idea of Afro-pessimism and offers a critique of Wilderson and Sexton's argument that being black is equated with "social death." Drawing on Fanon's notion of "the zone of nonbeing,"⁴⁵ Gordon poses the following critical questions for Afro-pessimists:

39. FRANK B. WILDERSON III, *RED, WHITE & BLACK: CINEMA AND THE STRUCTURE OF U.S. ANTAGONISMS* 58 (North Carolina: Duke University Press, 2010).

40. FRANTZ FANON, *BLACK SKIN, WHITE MASKS* xii (Charles Markmann trans., Pluto Press 2008 ed.) [hereinafter FANON, *BLACK SKIN*].

41. WILDERSON, *supra* note 39, at 57.

42. Jared Sexton, *Afro-Pessimism: The Unclear Word*, 29 *RHIZOMES: CULTURAL STUD. IN EMERGING KNOWLEDGE*, 2016, <http://www.rhizomes.net/issue29/sexton.html> [<https://perma.cc/79J2-DJRP>].

43. *Id.* at 4.

44. Lewis R. Gordon, *Phenomenology and Race*, in *THE OXFORD HANDBOOK OF PHILOSOPHY AND RACE* 294, 295 (Naomi Zack ed., Oxford University Press 2017). Gordon's "bad faith" assertion suggests that in order to classify someone as non-human, they would first have to be identified as human, resulting in a circuitous argument that defeats the very basis for the idea of non-human in the first instance.

45. FANON, *BLACK SKIN*, *supra* note 40, at 2.

Why must the social world be premised on the attitudes and perspectives of antiblack racists? Why don't blacks among each other and other communities of color count as a *social* perspective? And if the question of racism is a function of power, why not offer a study of power, how it is gained and lost, instead of an assertion of its manifestations as ontological?⁴⁶

Gordon also suggests that an additional problem with Afro-pessimism “is that its proponents treat ‘blackness’ as though it could exist independent of other categories.”⁴⁷

Gordon’s critiques suggest that #RMF activists who invoke the idea of the non-human appear to misread Fanon’s assertion in *Black Skin White Masks*, that a “black is not a man.”⁴⁸ In attempting to justify the invocation of the “non-human” in #RMF discourse, #RMF activist Ru Slayen reasoned that the idea of the non-human was primarily employed by student activists “at the rhetorical level,” although it “resonated with people even though few people had . . . actually engaged with the philosophical.”⁴⁹ For Slayen:

I think it was pretty clear to people just through their own lived experiences and from looking around, that this thing of human rights [is an] abstract notion that we supposedly have, that’s . . . completely inaccessible to most people. And when you look around it’s clear . . . who are the humans who have these rights, you know . . . and it’s not black people.⁵⁰

Notably, most of the 44 #RFM student activists interviewed were skeptical of Afro-pessimism, including Slayen and Kamanzi. On the one hand, they recognized the rhetorical value of the “non-human” identity as a way of characterizing their experiences as black bodies, while simultaneously acknowledging the limitations of employing a concept that negated their very existence.

46. Gordon, *supra* note 44, at 297.

47. *Id.* at 297.

48. FANON, *BLACK SKIN*, *supra* note 40, at 1.

49. Personal Communication with Ru Slayen, #RMF Activist (June 26, 2017) (on file with the author).

50. *Id.*

III. #RhodesMustFall and the Limits of a Human Rights State

While human rights principles are deeply embedded in South Africa's Constitution, most #RMF student activists that were interviewed agreed that the Constitution provided an inadequate framework to resolve questions of institutional racism. In the #RMF movement's mission statement, under the subheading "On Reverse Racism," the movement argues that, "the Constitution's conception of racism is fundamentally racist because it presupposes that racism is a universal experience, thus normalising the suffering of those who actually experience racism."⁵¹ The statement goes on to indicate that "[t]he Constitution's conception of racism has systematically been used to deter irrepressible urges by black South Africans to challenge racism and violence."⁵²

Paradoxically, the South African Constitution draws extensively on human rights language as a tactic to move away from the unjust apartheid regime toward a democratic state. In its preamble, the Constitution establishes itself as the basis for "[h]eal[ing] the divisions of the past and establish[ing] a society based on democratic values, social justice and fundamental human rights."⁵³ Additionally, the Constitution's Bill of Rights includes socio-economic rights such as access to health, food and education.⁵⁴

Considering that the South African Constitution affirms progressive, human-rights based principles, the #RMF movement's rejection of the Constitution seems counterintuitive. The language of the Constitution reflects the goal social movements and activists strive for: state acceptance of human rights principles.⁵⁵ Moreover, the document has been described as the "most admirable and progressive constitution in the history of the world."⁵⁶

51. RMF Mission Statement, *supra* note 2, at 7.

52. *Id.*

53. S. AFR. CONST. pmb., 1996.

54. *Id.* at ch. 2.

55. See MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE 126 (2002) (describing South Africa as the "first state to be reborn after the universal acceptance, at least rhetorically, of human rights ideals by states of all the major cultural and political traditions.").

56. Christopher Oechsli and Darren Walker, *20 Years On, South Africa's Remarkable Constitution Remains Unfulfilled*, GLOBALPOST (Mar. 21, 2015, 2:18 PM), <https://www.pri.org/stories/2015-03-21/20-years-south-africa-s-remarkable-constitution-remains-unfulfilled> [<https://perma.cc/JN3T-ZSXC>].

Furthermore, the #RMF movement's critical view of the Constitution situates the movement in an unconventional role. Civil society and social movements, like #RMF, usually employ rights discourses to make claims against the state, while the state reluctantly or unwillingly implements human rights laws and practices.⁵⁷ In South Africa, the #RMF movement reverses these roles by rejecting human rights discourses while the state has taken significant measures to include human rights language in its laws and policies.

The #RMF movement's criticism is not unfounded, and the group's mission statement, in calling attention to a 2008 verdict against the Forum for Black Journalists (FBJ), offers an example of why the group rejects the Constitution's human rights principles. In 2008, the South African Human Rights Commission (SAHRC), an independent constitutional body established to monitor, protect and promote human rights,⁵⁸ received complaints that the FBJ had excluded white journalists from a meeting addressed by the African National Congress president, Jacob Zuma.⁵⁹ After holding a public forum on these complaints, the SAHRC deemed the racially exclusive membership policy of the FBJ unconstitutional.⁶⁰ The #RMF mission statement condemned the SAHRC's finding, declaring that "white journalists were banned from the [FBJ] in February 2008 and this was declared unconstitutional and racist."⁶¹ The #RMF found the SAHRC ruling to be antithetical to the supposed equality human rights principles of the South African Constitution, and ultimately concluded in their mission statement that South Africa's Constitution constrains black people from challenging systemic racism. Therefore, #RMF activists believed that black people are compelled to organize

57. See generally SOCIAL MOVEMENTS: AN ANTHROPOLOGICAL READER (June C. Nash, ed., 2005) (laying out case studies of various movements, some of which used human rights discourses to advance their goals and engage the state).

58. See S. AFR. CONST. § 184, 1996.

59. See e.g., Natasha Marrian, *White Journalist Fume Over Forum's Zuma Meet*, MAIL & GUARDIAN (Feb. 23, 2008, 7:55 AM), <https://mg.co.za/article/2008-02-23-white-journalists-fume-over-forums-zuma-meet> [<https://perma.cc/8USJ-RFSJ>] ("Talk Radio 702 has laid a formal complaint with the South African Human Rights Commission (SAHRC) of racial prejudice. The SAHRC confirmed receipt of the complaint and said it will be dealt with through its normal complaints process.").

60. See *Rights Commission Dismisses FBJ Appeal*, MAIL & GUARDIAN (Feb. 23, 2009 4:39 PM), <https://mg.co.za/article/2009-02-23-sahrc-dismisses-black-journalist-forum-appeal> [<https://perma.cc/X8J8-Q537>].

61. RMF Mission Statement, *supra* note 2, at 2.

themselves “to the exclusion of white people in the fight against racism.”⁶²

A. #RhodesMustFall and South Africa’s ‘Anti-Black’ Constitution

According to #RMF activist students Ru Slayen and Leila Khan, both of whom were intimately involved in drafting the #RMF’s mission statement, law students involved in the movement primarily led the critiques against the Constitution. Khan explained that “there were a lot of law students involved in #RMF, which I think is also telling about the law faculty and how messed up it is.”⁶³ Khan recalled how a discussion on race organized at the law school was disrupted by #RMF activists in which someone shouted, “the Constitution is anti-black (laughs).”⁶⁴ Khan then reflected, “And I was like, ah that’s exactly what it is (laughs). Well, I remember for me, I was like, yes.”⁶⁵

For Khan, a law student herself, criticism of human rights discourse also represented a critique of the South African Constitution. The Constitution, according to Khan, “allows for non-structural interpretations of power . . . it allows land to be kept in the possession of white people.”⁶⁶ By failing to adequately address the dispossession of land during colonialism and apartheid at a structural level, Khan argued that the Constitutional provisions on property articulated in the Bill of Rights, legitimized white land ownership and tacitly sanctioned the theft of Black owned land.

Brian Kamanzi, an engineering student, tied the idea of the non-human back to the Constitution and the land question raised by Khan, arguing that “many of those categories [of human] have no meaning outside of the return of the land, which is also the return of independence and the ability to self-determine.”⁶⁷

Ru Slayen, a student in applied math, remembered how UCT’s management “ridiculed” the #RMF’s evaluation of the Constitution as anti-black.⁶⁸ In his opinion, the Constitution’s roots could be traced back to the Freedom Charter that was developed by the African

62. RMF Mission Statement, *supra* note 2, at 7.

63. Personal Communication with Leila Khan, #RMF Activist (July 19, 2017) (on file with the author).

64. *Id.*

65. *Id.*

66. *Id.*

67. Kamanzi (2016), *supra* note 36.

68. Slayen (2017), *supra* note 49.

National Congress (ANC) during the anti-apartheid struggle.⁶⁹ Consequently, since the ANC's Freedom Charter formed the basis for the human rights provisions contained in the Constitution, the #RMF's critique of human rights can simultaneously be interpreted as a critique of the ANC.

Chumani Maxwele, the student who threw feces onto the Rhodes statue, asserted that "there is no doubt that the language of the constitution is the language of white people."⁷⁰ Similarly, Mbali Matandela, a Black radical feminist and leading voice in the #RMF movement, indicated that the Constitution's human rights principles were intrinsically connected to South Africa's 1994 transition to democracy: "human rights discourse, what it's done, it's a watered down discourse about blackness and critical race theory and instead, it has replaced it with liberal approaches on what is needed to be done with the black struggle."⁷¹

Finally, various interviewed students linked human rights to individualism, liberalism, and whiteness, suggesting that decolonization as a framework offered an approach to black struggles that were more relatable to their current condition as black students in a historically white Eurocentric university.⁷²

B. Scholarly Critiques of the South African Constitution's Human Rights Principles

The arguments presented by the #RMF law students and activists reflect the critiques of legal scholars who suggest that South Africa's incorporation of human rights discourse into its Constitution was a "mistake."⁷³ Drawing on the work of Professor Ibrahim Gassama, Professor Makau Mutua believes that South Africa's mistake was failing to recognize that human rights can be used by the privileged white minority to protect their economic status as the holder of significant private property rights.⁷⁴ White South Africans who accumulated considerable wealth under apartheid continued to benefit

69. *Id.*

70. Personal Communication with Chumani Maxwele, #RMF Activist (June 26, 2017) (on file with the author).

71. Personal Communication with Mbali Matandela, #RMF Activist (July 31, 2017) (on file with the author).

72. Kamanzi (2016), *supra* note 36; Slayen (2017), *supra* note 49.

73. MUTUA, *supra* note 55, at 128.

74. MUTUA, *supra* note 55, at 128.

from the advantages derived under the white supremacist state.⁷⁵ Thus, while South Africa's Constitution may have "represented the first deliberate and calculated effort in history to craft a human rights state" in the "Age of Rights" following the Second World War,⁷⁶ it reinforced, rather than dismantled, an exclusionary society.

Critical human rights scholarship further contends that human rights discourses, though well meaning, are predominantly based on Euro-American values and have been deliberately designed as a mechanism to civilize the global South.⁷⁷ Human rights discourses, therefore, cannot be separated from their historical formation in the global North, and their affiliation to capitalist globalization.⁷⁸ Furthermore, critical scholars argue that human rights have been appropriated by conservative governments, civil society organizations, and international financial institutions.⁷⁹ Thus, the #RMF's negation of human rights in a country described as "a human rights state" seems to symbolize a denunciation of South Africa's post-apartheid transition to democracy and the politically negotiated, human rights-based constitution.

However, the critiques provided by #RMF activists and legal scholars, like Mutua, are not shared by human rights lawyer Tembeka Ngcukaitobi, a black advocate who practices human rights law in South Africa. According to Ngcukaitobi, the ANC first developed an

75. See generally MELISSA STEYN, *WHITENESS JUST ISN'T WHAT IT USED TO BE: WHITE IDENTITY IN A CHANGING SOUTH AFRICA* (2001).

76. MUTUA, *supra* note 55, at 126.

77. See generally José-Manuel Barreto, *Decolonial Strategies and Dialogue in the Human Rights Field*, in *HUMAN RIGHTS FROM A THIRD WORLD PERSPECTIVE: CRITIQUE, HISTORY AND INTERNATIONAL LAW* 1 (José-Manuel Barreto ed., 2013); Ariella Azoulay, *What are Human Rights?*, in 35 *COMPARATIVE STUDIES OF SOUTH ASIA, AFRICA AND THE MIDDLE EAST* 8 (2015); Frederic Megret, *Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes*, in *NEW APPROACHES TO INTERNATIONAL LAW* 4 (J. M. Beneyto & D. Kennedy eds., 2012); Wendy Brown, *Suffering the Paradoxes of Rights*, in *LEFT LEGALISM/LEFT CRITIQUE* 420 (W. Brown & J. Halley eds., 2002).

78. See Peter Fitzpatrick, *The Revolutionary Past: Decolonizing Law and Human Rights*, 2 *METODO: INT'L STUD. IN PHENOMENOLOGY AND PHIL.* 117, 125–26 (2014); see generally Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 *HARV. HUM. RTS. J.* 1 (2002).

79. A. Kayum Ahmed, *Disrupting Power/Entrenching Sovereignty: The Paradox of Human Rights Education*, 47 *PROSPECTS: Q. REV. OF COMP. EDUC.* 3, 12 (2017).

“African Bill of Rights for South Africa” as early as 1923.⁸⁰ While Ngcukaitobi acknowledges that “it is not possible to draw a straight line between the writings of early African intellectuals and the present Constitution,” he argues that “the idea of a Bill of Rights had its origins in South Africa . . . [and] was a negation of colonial violence.”⁸¹ In his book *The Land is Ours: Black Lawyers and the Birth of Constitutionalism in South Africa*, Ngcukaitobi’s comprehensive historical analysis of the development of human rights among black intellectuals of the ANC leads him to dispute the “Eurocentric origins of the country’s constitutional order.”⁸² Accordingly, Ngcukaitobi challenges two arguments offered by #RMF activists: first, that human rights is a Eurocentric idea imposed on Africans, and second, that human rights is an inadequate framework to challenge colonialism.

Notwithstanding Ngcukaitobi’s contentions, then, the #RMF’s rejection of human rights can largely be considered as a rejection of the ANC and its failure to ensure the restoration of the dignity of black South Africans. The critique of human rights by #RMF activists seems to be largely centered on what it represents in South Africa’s negotiated democratic process and how its entrenchment in the constitution has “watered down” the struggles faced by black people.⁸³ The rejection of human rights then appears to be a proxy for the rejection of the ANC’s 1994 negotiated settlement with the apartheid government, which student activists believe results in the continued dehumanization of black people and a failure to adequately address the dispossession of land. As a result, instead of human rights, decolonization becomes the primary theoretical framework employed by students to address the challenges they faced.

CONCLUSION

This analysis of the #RMF movement reveals the complexity of how black-led social movements engage with race and human rights. It suggests that while human rights is often employed as a framework for combating racism, student activists involved with #RMF viewed human rights as an extension of Eurocentric thinking. To combat this Eurocentricity, the activist students employed decoloniality as a

80. TEMBEKA NGCUKAITOBI, *THE LAND IS OURS: BLACK LAWYERS AND THE BIRTH OF CONSTITUTIONALISM IN SOUTH AFRICA* 6 (2018).

81. *Id.* at 2.

82. *Id.* at 196.

83. Matandela (2017), *supra* note 71.

framework to formulate strategies in challenging institutional racism at the University of Cape Town.

Recognizing that South Africa is considered as a “human rights state,” and that its Constitution is regarded globally as one of the most progressive human rights-based constitutions, the rejection of human rights by #RMF activists raises fundamental questions about the limitations of employing a human rights framework to engage with questions of blackness, and in particular, the notion of the non-human black body. It appears that black students are deeply disillusioned by the failure of South Africa’s human rights constitutional framework to address systemic racism, and are increasingly turning away from rights discourses, opting for more radical decolonial frameworks as a strategy in their fight against racism. Furthermore, given that students in other parts of the world, including the United States and the United Kingdom, were deeply influenced by the #RMF’s decolonial framework, it may signal a global shift away from human rights toward more radical frameworks that speak to the lived realities of black bodies.