

HUMAN RIGHTS AND THE NON-HUMAN BLACK BODY¹

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ABSTRACT

When a black student threw faeces at a statue of British imperialist Cecil John Rhodes at the University of Cape Town in South Africa, it sparked the formation of #RhodesMustFall, a black radical student movement that sought to address systemic racism at the white liberal university through its demand to decolonize the institution. #RhodesMustFall adopted a decolonial framework centred on Black Consciousness, Pan-Africanism and Black radical feminism, but simultaneously rejected human rights discourses 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 is incapable of contemplating the non-human: an entity, often a black body, that takes on human characteristics but is not recognized as human. Drawing on empirical data, including 46 interviews with #RhodesMustFall student activists, this article considers how social movements shape conceptualisations of race in post-apartheid South Africa.

KEYWORDS

Human rights | Non-human | Black body | RhodesMustFall | Social movements

1 • Introduction

When Chumani Maxwele, a black student at the University of Cape Town (UCT) in South Africa, took containers of human faeces and threw it at a bronze statue of Cecil John Rhodes located on the university's campus on March 9, 2015, it sparked the formation of #RhodesMustFall (#RMF)² – a radical student movement centred on decolonising UCT by confronting questions of institutional racism, access to education and reforming the Eurocentric university curriculum.³ In order to make sense of their experiences in a predominantly white liberal university, black students began de-linking from the dominant model of Euro-American knowledge at UCT, weaving 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 de-linking from Eurocentric knowledge, #RMF activists explicitly rejected South Africa's constitutional framework centred on reconciliation, human rights and transformation, and instead, adopted Steve Biko's⁴ philosophy of Black Consciousness, Frantz Fanon's⁵ decolonisation thesis and Kimberle Crenshaw's⁶ intersectionality framework, among others. This research analyses the results of 46 interviews conducted with #RMF activists to consider why a black radical student movement focused on tackling institutional racism in South Africa chose to adopt a decolonial framework to inform its activism, instead of a human rights-based approach that remains deeply entrenched in South Africa's constitution.

2 • On Human Rights and the Question of Humanness

During my initial interview with prominent #RMF student activist Brian Kamanzi,⁷ he indicated that when the question of human rights was first raised at an open dialogue hosted by the #RMF movement at UCT, one of the participants suggested that because black people were not seen as human beings, human rights could not possibly apply to black people. This argument is based on the belief that human rights discourses are inherently anthropocentric and that because black bodies are often seen as non-human, human rights frameworks are unable to conceive of the non-human black body. Kamanzi suggested 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 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”.⁸ Wilderson's argument appears to draw on Fanon's assertion in *Black Skin, White Masks*: “...a Black is not a man”.⁹ Consequently, Wilderson distinguishes between the human life and the black non-human indicating that the divide between the two is an “unbridgeable gap”.¹⁰ For Afro-pessimists such as Sexton, “black life is lived as social death”.¹¹ Afro-pessimism then becomes a way of providing a language for such suffering “to establish the rules of its grammar”.¹²

The human/non-human binary developed by Wilderson is however dismissed by Gordon who asserts that while racism requires the construction of the non-human, “[t]he performative contradiction is that they would first have to be identified as human beings in order to deny their being such. It is thus a form of *mauvaise foi*”¹³ (bad faith). 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”,¹⁴ Gordon poses the following critical questions for Afro-pessimists: “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?”¹⁵ Furthermore, Gordon suggests that an additional problem with Afro-pessimism “is that its proponents treat ‘blackness’ as though it could exist independent of other categories”.¹⁶

Gordon’s critique suggests 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”. #RMF activist, Ru Slayen,¹⁷ suggested 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 like actually engaged with the philosophical, like what is this thing actually saying...”. 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, it’s like this abstract notion that we supposedly have, that’s like completely inaccessible to most people. And when you look around it’s clear like who are the humans who have these rights, you know... and it’s not black people”.¹⁸

While most of the 46 students I spoke to were sceptical of Afro-pessimism, including Slayen and Kamanzi, there was general agreement with the idea that human rights principles embedded in South Africa’s constitution were an inadequate framework to make sense of the questions of institutional racism they were dealing with. This critique of South Africa’s progressive human rights-based constitution seems counter-intuitive given the link between social movements and human rights more generally. Employing human rights language could strengthen claims for access to education, a right that is explicitly contained in South Africa’s constitution. In most case studies on human rights, it is usually civil society and social movements that employ rights discourses to make claims against the state. The state is often seen as reluctant or unwilling to implement human rights laws and practices. In South Africa, it appears as if there has been a reversal of these roles in that the #RMF movement has rejected human rights discourses, while the state has taken significant measures to include human rights language in its laws and policies.

3 • #RhodesMustFall and the Human Rights State

The #RMF movement’s mission statement makes one reference to human rights in its critique of the South African constitution’s approach to racism. 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”.¹⁹ The statement goes on to indicate that “The Constitution’s conception of racism has systematically been used to deter irrepressible urges by black South Africans to challenge racism and violence” (JWTC 2015, p. 7).

As part of its critique of South Africa’s human rights-based constitution, which has been described as the “most admirable and progressive constitution in the history of the world”,²⁰ the #RMF mission statement offers an example of how the South African Human Rights Commission (SAHRC) interprets the equality provisions in the constitution by referring to its finding against the Forum for Black Journalists (FBJ). The SAHRC is an independent constitutional body established to monitor, protect and promote human rights²¹ and in 2008, it received complaints when the FBJ excluded white journalists from a meeting addressed by the African National Congress President, Jacob Zuma. After holding a public forum on these complaints, the SAHRC deemed the racially exclusive membership policy of the FBJ unconstitutional. Reflecting on this decision, the #RMF mission statement argued that “white journalists were banned from the [FBJ] in February 2008 and this was declared unconstitutional and racist.” This led the #RMF to conclude that South Africa’s history compels black people to organise themselves “to the exclusion of white people in the fight against racism”.²²

The critique of the constitution and its interpretation by the SAHRC was led primarily by law students involved in the movement, according to Ru Slayen and Leila Khan, both of whom were intimately involved in drafting the #RMF’s mission statement. According to Khan, “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”.²³ For Khan, the criticism of human rights discourse is linked to a critique of the 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”.²⁴ Brian Kamanzi similarly 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”.²⁵

These arguments reflect the critiques of legal scholars such as Mutua who suggest that in the “Age of Rights” following the Second World War, South Africa “represents the first deliberate and calculated effort in history to craft a human rights state”.²⁶ Mutua, however, finds that South Africa’s incorporation of human rights discourses into its constitution was a “mistake”.²⁷ Drawing on the work of Gassama, Mutua believes that South Africa’s mistake was failing to recognise that human rights can be used by the privileged white minority to protect their economic status as the holder of significant private property rights.

Khan also recalled how a discussion on race organised at the law school was disrupted by #RMF activists in which someone shouted, “the constitution is anti-black (laughs).

And I was like, ah that's exactly what it is (laughs). Well, I remember for me, I was like, yes".²⁸ At the same time, Slayen recalled how UCT's management "ridiculed"²⁹ the #RMF's evaluation of the constitution as anti-black. He suggested that the constitution's roots could be traced back to the Freedom Charter which was developed by the African National Congress (ANC) and that consequently, the #RMF's critique of human rights reflects a critique of both the Charter and the ANC.

The rejection of human rights discourses, then, becomes a proxy for the rejection of the ANC and its human rights-based constitution. In addition, various students I interviewed linked human rights to individualism, liberalism and whiteness, suggesting that decolonisation 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. For Chumani Maxwele, the student who threw faeces at the Rhodes statue, "there is no doubt that the language of the constitution is the language of white people".³⁰ Similarly, Mbali Matandela, a black radical feminist and leading voice in the #RMF movement, indicated that human rights was 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..."³¹

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

However, the #RMF activists' understanding of human rights and its connections to South Africa's constitutional dispensation is not shared by human rights lawyer, Tembeka Ngcukaitobi. According to Ngcukaitobi, a black advocate who practices human rights law in South Africa, the ANC first developed an "African Bill of Rights for South Africa"³² as early as 1923. 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".³³ Ngcukaitobi's comprehensive historical analysis of the development of human rights within the ANC among black intellectuals leads him to dispute the "'Eurocentric origins' of the country's constitutional order".³⁴

Consequently, Ngcukaitobi's book 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. If these arguments fall away, 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 centred on what it represents in South Africa's negotiated democratic process and how its entrenchment in the constitution has "watered down"³⁵ the struggles faced by black people. The rejection of human rights then appears to be a proxy for the rejection of the ANC's negotiated settlement, which student activists believe results in the continued dehumanisation of black people and a failure to adequately address the dispossession of land. As a result, decolonisation, instead of human rights, becomes the primary theoretical framework employed by students to address the challenges they face.

4 • 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 and instead, employed decoloniality as a framework to formulate strategies to challenge institutional racism at the University of Cape Town. Recognising that South Africa is considered a "human rights state" and its constitution is regarded as one of the most progressive human rights-based constitutions globally, 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 to opt for more radical decolonial frameworks as a strategy in their fight against racism.

NOTES

- 1 • "This article was first published at Columbia Human Rights Law Review 2018, accessed December 12, 2018, 2018, <http://hrlr.law.columbia.edu/hrlronline/>."
- 2 • 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.
- 3 • RhodesMustFall, "UCT RhodesMustFall Mission Statement," *The Johannesburg Salon* 9 (2015): 6-8, accessed November 29, 2018, https://jwtc.org.za/the_salon/volume_9.htm.
- 4 • Steve Biko, *I Write What I Like* (Chicago: University of Chicago Press, 1978).
- 5 • Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove, 2004).
- 6 • Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (July 1991): 1241-1299.
- 7 • Brian Kamanzi, personal communication, August 12, 2016.
- 8 • Frank B. Wilderson III, *Red, White & Black: Cinema and the Structure of U.S. Antagonisms* (North Carolina: Duke University Press, 2010): 58.
- 9 • Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markmann (New York: Grove, 1967): xii.
- 10 • Wilderson III (2010): 57.
- 11 • Jared Sexton, "Afro-Pessimism: The Unclear Word," *Rhizomes* 29 (2016), accessed November 29, 2018, <http://www.rhizomes.net/issue29/sexton.html>.
- 12 • *Ibid.*
- 13 • Lewis R. Gordon, "Phenomenology and Race," in *The Oxford Handbook of Philosophy and Race*, ed. Naomi Zack (Oxford: Oxford University Press 2017): 295.
- 14 • Fanon (1967): 2.
- 15 • Gordon (2017): 297.
- 16 • *Ibid.*
- 17 • Ru Slayen, personal communication, July 26, 2017.
- 18 • *Ibid.*
- 19 • RhodesMustFall (2015): 7.
- 20 • Christopher Oechsli and Darren Walker, "20 Years On, South Africa's Remarkable Constitution Remains Unfulfilled." Public Radio International, March 21, 2015, accessed November 29, 2018, <https://www.pri.org/stories/2015-03-21/20-years-south-africa-s-remarkable-constitution-remains-unfulfilled>.
- 21 • Constitution of the Republic of South Africa, Act 108 (1996).
- 22 • RhodesMustFall (2015): 7.
- 23 • Leila Khan, personal communication, July 19, 2017.
- 24 • *Ibid.*
- 25 • Kamanzi (2017).
- 26 • Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Philadelphia Press, 2002): 126.
- 27 • *Ibid.*, 128.
- 28 • Khan (2017).
- 29 • Slayen (2017).
- 30 • Chumani Maxwele, personal communication, June 26, 2017.
- 31 • Mbali Matandela, personal communication, July 31, 2017.
- 32 • Tembeka Ngcukaitobi, *The Land Is Ours: Black Lawyers and the Birth of Constitutionalism in South Africa* (Cape Town: Penguin, 2018).
- 33 • *Ibid.*, 2.
- 34 • *Ibid.*, 196.
- 35 • Matandela (2017).



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