Black Spaces: The Group Areas Act, the Material Boundaries of Life and Grievability

by

Nosipho Salazi Goba

Submitted in accordance with the requirements

for the degree

Doctor of Laws with specialisation in Constitutional Law and Philosophy of Law

in the

FREE STATE CENTRE FOR HUMAN RIGHTS

FACULTY OF LAW

at the

UNIVERSITY OF THE FREE STATE

PROMOTOR: PROF K VAN MARLE

NOVEMBER 2023

DECLARATION OF ORIGINALITY

I hereby declare that this work submitted for the degree of Doctor of Laws at the University of the Free State, is my own original work and has not previously been submitted to any institution of higher learning. I further declare that all sources cited or quoted are indicated and acknowledged by means of a comprehensive list of references.

Nosipho Goba Date

DEDICATION

Jangase, Wece, Ndai

Scubu noma sincane, asosiwa siya'phekwa.

Goba omuhle, gezangobisi abanye bageza ngamanzi.

Adla aphelele amaGoba.

—Goba clan praises

I dedicate this thesis to my late father who passed away in my first year of LLB. Baba, I believe you've been walking with me through this journey. Ngiyabonga, Jangase

I dedicate this thesis to my sister who passed away last year. Ta, thank you for believing in me and never letting me quit. I wish you were here to buy me that burger you promised me.

Lastly, I dedicate this to myself. There have been so many times when I didn't think I could do it. I personally do not know anyone on the autism spectrum who has a doctoral degree. Many of us struggle to even complete a bachelor's degree. If there's a student on the spectrum who doesn't think it's possible, it is. It won't be easy, not at all, but it is possible!

ACKNOWLEDGEMENTS

I could not have done this without the love and support of my family, partner and friends. Thank you cannot express my gratitude. I would like to thank my mother, Maureen Goba, for getting me here. I would like to thank my babies, Noah and Jokim, for being understanding and giving me the quiet time to work, even when you just wanted to play and cuddle. I would like to thank my partner, Beatrice Line, for holding me accountable and making sure I work and taking care of me when I was exhausted and loving me. I would like to thank my best friend, Priscilla Mahlangu, for laughing and crying with me through this journey; and for her wisdom and patience. I would like to thank my friend, Tashreeqah Benjamin, for always being my cheerleader and being a soft place to land.

To my supervisor Prof Karin van Marle, thank you for believing in me and encouraging me. You are the best teacher I have ever had. You challenge and inspire me. Whenever I doubt myself, I remind myself that you are brilliant and incredibly intelligent and you believe in me. Thank you for your patience and guidance. We have come so far since my LLB mini, I would not have come this far without you and I am eternally grateful.

I would like to thank Prof Danie Brand and the Free State Centre for Human Rights for the financial support and for welcoming me to Bloemfontein and making me feel at home.

I would like to thank my friends and colleagues Rantsho Moraka and Tanveer Jeewa for their insight and comments in the final stages of completing my thesis.

I would like to thank UFS research librarian, Hesma Van Tonder, for her assistance at all hours of the day. There are resources that I would not have had access to if not for you.

I acknowledge financial support from the National Research Foundation.

All opinions and findings expressed in this thesis are my own.

SUMMARY

My aim in this thesis is to unpack the ways in which the Group Areas Act of 1950 and apartheid spatial planning more broadly was not only concerned with who had access to socio-economic rights but also with deciding which lives were valuable and thus grievable. The spatial expression of (post)apartheid South African life is undoubtedly racialised, gendered and classed.

The central theme of this research project is to critically engage apartheid geography through the lens of Judith Butler's notion of "grievability" as put forward in *Precarious Life: The Powers of Mourning and Violence* and *Frames of War: When is Life Grievable?* as well as Giorgio Agamben's "bare life" as put forward in *Homo Sacer: Sovereign Power and Bare Life* to explore an understanding of spatial injustice that is informed by the (re)production of exclusionary conceptions of a normative human those falling outside of which cannot be mourned publicly. One of the main arguments in this project is that spatial justice extends beyond the geographic arrangements of the material realm into the recognition and restoration of humanity and dignity.

This thesis examines how social markers impact the ways in which certain people can navigate space and the results of not belonging in certain spaces. As a research project grounded in critical race theory, feminist theory, queer theory, class analysis and disability rights, this thesis pushes me to think about space and how we inhabit space as marginalised people in (post)apartheid South Africa. I turn to black feminist geographic thought for a grounded exploration of pathways to achieving spatial justice and conducting a critical race spatial analysis of the endurance of apartheid geography.

Key Words: Group Areas Act, spatial justice, black geography, feminist geography, apartheid geography

Table of Contents

INTRODUCTION

THE ENDURANCE OF SPACE AND SPIRIT

> Let's face it. We're undone by each other… One does not always stay intact. One may want to, or manage to for a while, but despite one's best efforts, one is undone, in the face of the other, by the touch, by the scent, by the feel, by the prospect of the touch, by the memory of the feel. And so, when we speak about "my sexuality" or "my gender", as we do and as we must, we nevertheless mean something complicated that is partially concealed by our usage. As a mode of relation, neither gender nor sexuality is precisely a possession, but, rather, is a mode of being dispossessed, a way of being for another or by virtue of another… we may need other language to approach the issue that concerns us, a way of thinking about how we are not only constituted by our relations but also dispossessed by them as well.
>
> —Judith Butler[1]

1.1 Research Problem

I do not present myself as being a disembodied spectator regarding race, gender, sexuality and class. As such, this chapter should be read bearing in mind that my positionality has and continues to inform my experiences and my current reality even where it is not discussed explicitly. It is important for me to recognise that as a black middle-class queer woman my experience in relation to class makes me an insider, my sexuality makes me an outsider in relation to sexuality, and my experience in relation to blackness makes me an insider. Thus, my analysis is informed by my simultaneously inside-outside relationality.

This thesis is inspired by themes I explored in my Master's mini-dissertation in which I examined how social markers impact the ways in which certain people can navigate space and the results of not belonging in certain spaces. As a larger research project grounded in race, this thesis pushes me to think about space and how we inhabit space as black people in (post)apartheid South Africa. My thesis is a spatial conversation presented in four carefully connected chapters. While these four chapters should be read side by side in collaboration, they are informed by somewhat

[1] Butler 2004: 23-24.

differing approaches to analysis and are at the same time their own conversations addressing the particular issues which I wish to highlight and explore. While there is a golden thread that weaves through all of them, their complete merger could run the risk of misinterpretation. As conversations naturally progress, there is always a moment to pause for meditation. There is something to be received from all four of the chapters that encourage further conversations—provocation for alternative spatial conversations.

My aim in this thesis is to unpack the ways in which the Group Areas Act of 1950[2] and apartheid spatial planning more broadly was not only concerned with who had access to socio-economic rights but also with deciding which lives were valuable and thus grievable. The spatial expression of (post)apartheid South African life is undoubtedly racialised, gendered and classed.[3] If human existence is simultaneously historical, social, political and spatial then the question of ontology must be raised. The central theme of this research project is to critically engage apartheid geography through the lens of Judith Butler's notion of "grievability" as put forward in *Precarious Life: The Powers of Mourning and Violence*[4] and *Frames of War: When is Life Grievable?*[5] as well as Giorgio Agamben's "bare life" as put forward in *Homo Sacer: Sovereign Power and Bare Life*[6] to explore an understanding of spatial injustice that is informed by the (re)production of exclusionary conceptions of a normative human those falling outside of which cannot be mourned publicly. One of the main arguments in this project is that spatial justice extends beyond the geographic arrangements of the material realm into the recognition and restoration of humanity and dignity.

The Group Areas Act provides me with an analytical tool for conducting a critical race spatial analysis of apartheid geography by tracing its evolution. This is done to illustrate the continuance of apartheid spatial planning into (post)apartheid South Africa and the endurance of apartheid geography.[7] I use different instantiations of

[2] Act no 41 of 1950. Hereafter referred to as the Group Areas Act.
[3] In 'The Angel of Progress: Pitfalls of the Term "Post-Colonialism"' Anne McClintock provides that the "post" of postcolonial must be an analytic in nature and not temporal as it aims to address the ongoing structural violence that settler colonial states inflict on indigenous peoples as best as it can.
[4] Butler 2004.
[5] Butler 2009.
[6] Agamben 1995.
[7] A McClintock 'The Angel of Progress: Pitfalls of the Term "Post-Colonialism"' (1992) 31/32 *Social Text*

violence, poverty and neglect such as the rape and murders of three young women in Khayelitsha and Cape Town as well as the deaths of 144 mental health care users at the hands of government in Gauteng. In addition, I want to expose that settler colonialism has been and remains a gendered process.[8] In addressing this, townships must be understood as the underbelly of modernity and segregation must be understood as a system of inequality and a structure of oppression designed to engineer disadvantage for the black majority in service of white hegemony. This needs to be redressed directly and simultaneously,[9] because a failure to acknowledge the intersection of race, gender, sexuality, class, disability and age weakens any academic discussion of the personal and the political.

1.2 Motivation

Settler colonialism transforms spaces and claims places in powerful, consistent ways, leaving patterns that are clearly discernible across the span of centuries and continents. As a settler colony South Africa was built on the violent dispossession of land and the subjugation of the black majority through processes of legal enactment and spatial planning mechanisms. Systems of spatial or territorial control associated with the former racist regime of apartheid are a symbolic reference to all forms of cultural domination and oppression arising from spatial strategies of segregation and boundary making. The imposition of these powerful apartheid geographies were rationalised through ideological variants of Orientalism that were intended to dehumanise the colonial 'other'.[10] The production and maintenance of public spaces in South African cities is related to the representation of racial identities. Subjective identities and material urban spaces exist in a mutually constitutive relationship which is why certain territories are exclusionary. The often national responses by individuals

Anne McClintock provides that the "post" of postcolonial must be an analytic in nature and not temporal as it aims to address the ongoing structural violence that settler colonial states inflict on indigenous peoples as best it can.

[8] Arvin, Tuck & Morrill 2013: 8.

[9] The term intersectionality was first coined by Kimberle Crenshaw in her 1989 work "Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine Feminist Theory and Antiracist Politics" *University of Chicago Legal Forum* 139.

[10] Mawani 2016: 115.

and groups to the deaths I highlight in this thesis shed light on the production and representation of racialised geographies in South African cities.

1.3 Assumptions

Apartheid geography was a tactic of spatial control, a product of imperialism and the generation of power. Thus it is important to understand that townships serve as settler colonial enclaves geographically demarcating zones of non-being while simultaneously affirming settler protection from perceived and imaginary threats; that the violent taking of land directly impacts the humanity of the colonised; and that the transformative potential of social justice within the South African context is limited by a failure to conceptualise justice as being simultaneously spatial, social, ethical and historical.

I expect to find that being in specific spaces and places like townships, shack settlements and rural areas makes certain people more vulnerable to violence, poverty and death; that being in specific spaces and places causes those people to be subject to a “bare life” and affects their “grievability” through no recognition of mourning when traumatic things happen to them as their lives are seen as less valuable or not valuable at all; that within the historical context of settler colonial South Africa, the endurance of apartheid geography is both legislative and political; and that the way spatial justice has been conceptualised in South Africa is limited and that a more expansive and nuanced approach to the right to the city would better respond to spatial injustice.

1.4 Research questions

A solution is needed that addresses the inhumane and socially produced geography of institutionalised racial segregation under apartheid that created spatial strategies and processes that were commonly used in colonial situations as a means of population control and assuring disproportionate economic advantage for the colonisers versus the colonised. This can be achieved by focusing on the following:

1. How are Khayelitsha and Cape Town and the event of Life Esidimeni examples of concrete instantiations of racialised, gendered and classed geographical boundaries causing death, poverty and violence in specific areas owing to the Group Areas Act and apartheid geography more broadly?
2. Can concepts such as “grievability” and “bare life” be understood as having spatial expression, thus making space and place the sites of grief and life?
3. What are the continuities of both the Natives (Urban Areas) Act[11] and the Group Areas Act; and what impact did these legal and political mechanisms have on the concretisation of race?
4. If spatial justice extends beyond geographic arrangements into restoring dignity and humanity, can the ‘right to the city’ critically engage the fact that racially devalued groups are removed from normative space and thus adequately respond to the (post)apartheid South African landscape? And does ‘the right to the city’ include the right to mourn and be mourned in public space?

1.5 Theoretical approach and method

The main theoretical framework informing this thesis are Judith Butler’s works *Precarious Life: The Powers of Mourning and Violence* and *Frames of War: When is Life Grievable?* as well as Giorgio Agamben’s *Homo Sacer: Sovereign Power and Bare Life*. I rely on these works to conduct a critical race spatial analysis of apartheid geography and colonial legal classifications that were racially and territorially inscribed to achieve spatial purity; a cleansing or removal of those seen as ‘other’ in service of the ideal of a racist white supremacist Afrikaner utopia.[12] Colonial and apartheid geography relied upon a white supremacist identity that had to be managed through the generation of various types of space: advantageous spaces for superior white people and marginal spaces for inferior ‘others’.

The instantiations I have chosen of violence, poverty, vulnerability and neglect are meant to illustrate that the systemic violence and inequality that shape people’s lives in marginalized communities is co-constitutive. Jennifer L. Fluri and Amy Piedalue examine how raced, sexed, gendered and classed bodies experience vulnerability to

[11] Act no 21 of 1923. Hereafter referred to as the Urban Areas Act.
[12] Foucault 1984: 3-4.

violence in space as a result of entrenched inequalities and that certain geographies are also vulnerable to violence.[13] It is thus critically important to examine the link between space and gender/race/class corporeal processes that produce social and political violence through 'othering'.[14] Piedalue observes that spatial exclusion and structural violence lead to increased vulnerability to violence.[15] Piedalue also warns against rendering the violence experienced in middle to upper middle-class spaces invisible.[16]

Of Butler's many works, these two are central to my understanding of what is considered a "livable life" and what is considered a "grievable death" and how these were expressed spatially through apartheid geography that persists into (post)apartheid South Africa. Butler proposes that the production of a normative human creates exclusionary conceptions of the value of life and that those lives deemed less valuable or not valuable at all are more likely to experience violence. These conceptions inform which particular lives count as lives and which particular deaths count as deaths; thus that certain forms of grief and suffering are nationally recognised and must be mourned and that without the capacity to mourn, we lose a sense of life that is needed in order to oppose violence and injustice.[17] In this regard it is important to consider the categories of identities or "groups" and the social value ascribed to them that were concretised by the Group Areas Act. Giorgio Agamben's "bare life" expresses our subjection to political power. The decision on the value (or nonvalue) of life corresponds to "bare life".[18] Only if we understand the theoretical implications of "bare life" will we be able to solve the question of ontology.[19] The ideal of political power as Agamben understands it is concerned with "not simple natural life, but life exposed to death (bare life or sacred life) is the originary political element*".*[20] He refers to a person subject to such a life as *homo sacer*. A query into the origin of the sacredness of life is a query of human existence. What defines the status of *homo sacer* is the violence to which he finds himself exposed. This violence is classifiable

[13] Fluri & Piedalue 2017: 537.
[14] Fluri & Piedalue 2017: 538
[15] Fluri & Piedalue 2017: 540.
[16] Fluri & Piedalue 2017: 541.
[17] Butler 2009: XIV-XV.
[18] Agamben 1995: 80-81.
[19] Agamben 1995: 102.
[20] Agamben 1995: 55.

neither as “sacrifice nor as homicide, neither as the execution of a condemnation to death nor as sacrilege”.[21] The concepts of “grievability” and “bare life” are helpful in understanding space as the site of recognising life and its political and social value.

I employ a socio-politico-legal approach to answer my research questions, which will allow me to make use of multidisciplinary research. My research is qualitative and informed by critical theoretical approaches to space, race, gender, queerness, temporality, colonisation and justice which is why document analysis is most suitable. This research method allows me to place emphasis on historical trajectory and provides the starting point for a theoretical framing of the continuance of dispossession, displacement and dislocation by drawing connections between productions of space, location in place, whiteness and the legacy of settler colonialism. Throughout this thesis I use the Group Areas Act as an analytical tool with which to expound the role of the law in maintaining a segregated society.

1.6 Summary of Chapters

1.6.1 Chapter Two

In Chapter Two I address my chosen instantiations of racialised, gendered and classed geographical boundaries to illustrate that being in specific spaces and places makes certain people more vulnerable to violence, poverty and neglect as a result of how non-white racial bodies can or cannot occupy space. I do this to show that the body is both public and private and that location in space has social and political implications that are exerted on the body. I examine the body and its different definitions proffered by various authors to better understand that the body is implicated in space and place and that the environment reflects the interest of the body as either its demise or the source of its flourishing. I examine the elucidation proffered by Elizabeth Grosz that the place is the locus of the inscription of the body and that place and the body cannot be separated. Further that bodily difference is produced by space and place and space and place produce bodily difference.

[21] Agamben 1995: 52-53.

I then examine place and, just as the body, the different definitions proffered by various authors to better understand that place is space imbued with meaning and that these meanings exist within power dynamics that influenced by race, gender, sexuality, class and disability, making place the product of social interactions and simultaneously the producer. I consider Yi-Fu Tuan's definition of place as differentiated space that does not necessarily have a measurable distance, but is permanent and has acquired definition and meaning. Then I consider Doreen Massey's definition of place as constructed in relation to other places and the meanings and symbols people attach to it. For Massey, place is not permanent but dynamic and changing and exists within networks of social relations in which race, gender, sexuality and class construct place. Additionally, Tim Cresswell's observation that place is the material setting for social relations and that a sense of place is the emotions that are evoked by place because place is the point of departure for human existence.

In this chapter I offer a critical analysis of the approach of the courts in the judgements of the cases of the instantiations to consider the role of the law in the production of space. I have chosen Khayelitsha, Cape Town and the event of Life Esidimeni as instantiations to ground my argument and give concrete examples of the spatial expression of South African life as a result of apartheid geography and its legacy of harm.

I examine the rape and murders of the three young women to illustrate that spatial injustice impacts women by normalising violence and neglect based on class and race as certain women are more devalued and often silenced. I begin with the case analysis for the murder of Zoliswa Nkonyana, a black lesbian teenager who murdered by a mob because of her sexuality and gender expression in Khayelitsha and the significance that her murder took place in a township and the homophobic culture present there. I examine the facts of her case and the final judgment and the sentencing of her murderers. I then analyse the rape and murder of Franziska Blöchliger, a white teenager who was murdered in a wealthy area and the significance of her whiteness, her wealth and the whiteness of the place where she was murdered because of the social and historical meanings attached to affluent white areas and their assumed protection from violence. I examine the facts of her case and the final judgment and the sentencing of her murderer. Following that I analyse the rape, murder and desecration case of Uyinene Mrwetyana, a wealthy black teenager who was a student

at UCT who went missing in a white suburb and the significance of her wealth, education and the area where she went missing because of the assumed protection in space and place class ought to provide. I examine the facts of her case and the final judgment and the sentencing of her murderer. I then analyse the arbitration of the negligent deaths of 144 mental health users in Life Esidimeni where patients in a mental health care facility were unlawfully moved from the facility to various non-governmental organisation in various townships and impoverished areas where they died because of ill-treatment, torture and neglect. I examine the facts of the arbitration and the final award. This matter illustrates that the Group areas Act was not limited to specific locations and shows its impact on poor and disabled people. Lastly I examine the connection between place, violence and apartheid. These instatians are post-1948, they are recent and yet the spatial practices of domination and privilege of apartheid are still in place, which speaks to the endurance of apartheid geography into (post)apartheid South Africa.

1.6.2 Chapter Three

In Chapter Three I expand upon the concepts of “grievability” as put forward by Judith Butler and “bare life” as put forward by Giorgio Agamben which both relate to the question of the human and of life and try to situate these concepts within spatial theory as South African life is expressed spatially. This chapter is theoretical and conceptual in wide-ranging ways and is the elucidation of ideas and issues that can be reconciled with the preceding and subsequent chapters.

I begin by critically engaging Butler’s two projects which address the aftermath of the bombing of the Twin Towers and the conditions of the inmates detained in Guantanamo Bay. First examine precariousness and precarity as theories of human fragility as ontological questions what is life, what is the being of life and of the constitution and production of *being* where the body, as a result of social relations and social inscription, is exposed to violence. These ontologies create subjects who can be recognised as subjects, those that are not quite recognisable subjects and those that are not recognised as subjects at all; where only subjects are injurable. I then examine grievability as the theory of who counts as human, whose lives count as lives are regarded as valuable and as such livable and what makes for a grievable life. Grievability, Butler explains is the apprehension of the living being as living and the

foundation for an ethical obligation to guard one another again harm and establishes one within a political and legal framework.

I then critically engage Agamben exploration of the origin and meaning of the term 'life' through ***zoē,*** which is the simple fact of living attributable to even animals and *bios* which a qualified, political life. Epistemologically, as a "being" falling outside the norms required to be apprehended as a life, ***zoē*** is not a life and the converse can be said of *bios*. I then examine the decision on the value or non-value of life that is Agamben's *homo sacer* (sacred man) and bare life. What defines the status of *homo sacer* is the violence to which he finds himself exposed. *Homo sacer* is included in the juridical order through his exclusion, he may be killed by anyone and killing him is neither sacrifice nor murder, unsanctionable by neither human nor divine law. I then examine bare life which is the politicised form of natural life. Being neither *bios* nor *zoē*, bare life emerges from within this indistinction and can be defined as that which exists when ***zoē*** is removed from *bios*.

I then consider the usefulness and limits to Agamben's concepts and whether or to what extent they can be reconciled with Butler's. I then engage Alexander Weheliye's critique of Agamben and bare life by grounding his argument principally within feminist and black studies and demands a return to the flesh for an understanding of how racialised brutality is included in the operation of the normal juridico-political order. Lastly, consider the state of exception and the suspension of human and what that looks like in the South African context.

1.6.3 Chapter Four

In Chapter Four I address whether the violent, dehumanising and ostracising natures of both the Natives Urban Areas Act and the Group Areas Act concretised race in ways that have endured materially, legally and politically to better understand that social injustices are expressed spatially. This chapter is historical and interpretative as I critically analyse apartheid legislation and as such it necessitates a longer more sustained conversation than the preceding and subsequent chapters. I explore the affect that segregation and apartheid geography had on women and the use of their bodies to (re)produce segregation and geographical boundaries through concepts such as *die Volksmoeder* who is the role model of white Afrikaner women. In line with this I examine apartheid spatial legislation that is directed towards women. I then

examine Afrikaner Nationalism and the creation of *die volk* as part of a consolidated white identity. I then examine the racial classification and the racial groups created by the Population Registration Act and its intended use for the application of the Group Areas Act and illustrate the creation of race as a spatial practice.

I critically analyse the Urban Areas Act beginning with its conception and the introduction of the Bill to illustrate its intended introduction of the principle of racial differentiation and preserve white racial purity. I then examine the Urban areas Act itself and its role in controlling the urban black population and establishing a legal racial framework for segregation. I engage and examine specific sections of the Act and their role in developing separate residential areas for black people, the dislocation of families and the various organs of state that were endowed with the powers to apply it. I then examine the key amendments of the Act and their role in strengthening a uniform policy across the provinces for the influx control of black people into urban areas. Then I examine the role it played in the foundation of the Group Areas Act.

I critically analyse the Group Areas Act beginning with the conception of the Act. I consider the coming into power of the National Party in 1948 and its commitment to compulsory racial segregation. I refer to Michel Foucault's concept of governmentality and governments tactics and techniques to manage the population and I reconcile this with the Group areas Bill and Minister of the Interior Eben Dönges who introduced the group areas legislation in the House of Assembly Debates in Parliament in 1950. I engage and examine specific sections of the Act and their role in production of space and race through patterns of segregation and the organs of state empowered to apply it. I then analyse the Group Areas Act itself and the juridico-political structure of the township through exploration of Foucault's concept of discipline and punishment and the entrapment of the body in relations of power and domination. I examine space organised through disciplinary power, surveillance and racial classification. Lastly I analyse the two main amendments to the Act and how they narrowed definitions of race through specific sections that were then expressed spatially illustrating that the Act concretised race in and through space.

1.6.4 Chapter Five

In Chapter Five I address black spaces and material boundaries as indicated by the title. I argue for an alternative way of (re)conceptualising spatial justice to explore the

role of race, racism and memory in the production and maintenance of geographic arrangements to show that the right to the city is inextricably linked to dignity and humanity and extends beyond the material.

I consider the usefulness and limits of spatial justice as understood by the Global North and the risks associated with its direct application to contexts in the Global South. I refer to key spatial theorist such as Henri Lefebvre to begin my engagement with spatial theory and elucidate that space is powerful force for shaping politics, society and justice and his exploration of uneven development, democracy and citizen's rights. From there I engage spatial theorists influenced by his work such as Edward Soja and his understanding of the concept of the right to the city and his search for spatial justice in which space influences democracy and human rights. For Soja, justice should be approached from a critical spatial perspective as human life is spatial and biases are imposed on entire populations based on their geographical location. I then consider Marxist geographer David Harvey and his elaborated concept of territorial justice, that he later considered capitalist urban processes, which addresses the societal need for a just distribution of social resources and the impact discriminatory human practices on the production of unjust geographies. I then consider feminist geographer Doreen Massey's concept of four-dimensional space-time which details social interrelations at global and local scales and the manner in which gender and ethnicity impacts our experience of space and place. Massey contends that power relations between social groups regulates movement in space and place.

I deliberate on the spatial imagination of white South Africa as envisioned by the apartheid government to contrast white spaces with black spaces. I address separate development through various legislation and the impact that had on the political and social segregation of black people. Additionally, the attitudes of important Nationalist members towards the nation and the splintered black nations.

I situate spatial justice within black geographic thought for a critical race spatial analysis of the endurance of apartheid geography. I turn to Verónica Vélez's definition of critical race spatial analysis to better understand the role that race and racism have on shaping space and how this is complicit in the oppression of people of colour and the ability of white supremacy to exclude people of colour from space. I then turn to black feminist human geographer Katherine McKittrick's very urgent and necessary

interventions to human geography that links blackness to the production of space. She contends that central to the project of human geography is the intervention of black women's geographies to explain how race, sexuality, class, disability and gender organise and produce space and make connections between socio-geographical domination and subjectivity. She is also central to my exploration of the material and immaterial geographies of black existence, anti-black racial violence as a spatial practice, situating the black human in space and considering possible futures. As this is the final substantive chapter in my thesis, it is the shortest chapter.

1.6.5 Chapter Six

Chapter Six is my conclusion, it is the final conversation in my thesis and here I make my final remarks on the findings of my research and neatly knot the golden thread.

CHAPTER TWO:

THE VIOLENCE OF RACIALISED, GENDERED AND CLASSED GEOGRAPHICAL BOUNDARIES OWING TO APARTHEID GEOGRAPHY

> There are ways of distributing vulnerability, differential forms of allocation that make some populations more subject to arbitrary violence than others.
>
> — Judith Butler[22]

2.1 Introduction

As I have mentioned, I do not present myself as being a disembodied spectator. As a black queer woman on the spectrum, this chapter should be read bearing in mind that my positionality has and continues to inform my experiences. This chapter is informed by my reality and the realities of many other women like me—beyond theory.

For the purposes of this chapter I view place through the frame of the body by focusing on the corporeal experience of space.[23] By body I am referring to the public and private casing of subjectivity, the mass of flesh and bones which form the surface of social and cultural inscription. What is central in this chapter is that the Group Areas Act[24] and apartheid geography more broadly created gendered, classed, ableist and raced geographical boundaries that have endured into (post)apartheid[25] South Africa which caused death, poverty and violence in specific areas. I explore how internal and external societal problematics such as cultural norms and systemic and structural inequality are expressed through vulnerability in space. As such, geographical location

[22] J Butler *Precarious Life: the Powers of Mourning and Violence* (2004) XII.

[23] The term "body" is a contested and polarising one that is problematic in many instances especially when referring to women, black people and disabled people. My use of the term "body" here refers to the lived embodied experience of space and I hope that this is reflected in this chapter and throughout this thesis. I choose, however, not to place diacritical marks around the term "body" throughout my thesis as I have made clear my use and intentions.

[24] Act no 41 of 1950. Hereafter called the Group Areas Act.

[25] A McClintock "The Angel of Progress: Pitfalls of the Term "Post-Colonialism"" (1992) 31/32 *Social Text*. Anne McClintock provides that the "post" of postcolonial must be an analytic in nature and not temporal as it aims to address the ongoing structural violence that settler colonial states inflict on indigenous peoples as best it can.

and the body are critically important in examining the link between place and gender, race, sexuality and class as corporeal processes that produce social and political violence as they are deeply imbricated with issues of subjectivity. I have chosen Khayelitsha, Cape Town and the event of Life Esidimeni as instantiations to ground my argument and give concrete examples of the spatial expression of South African life as a result of apartheid geography and its anti-black racist cisgender heteropatriarchal legacy of harm. I do this to show that the body is both public and private and that location in space impacts exposure to violence, poverty, neglect and death as certain geographies are more vulnerable to violence which in turn shapes people's lives in marginalized communities because spatial exclusion and structural violence lead to increased vulnerability to violence; additionally that these traumatic vulnerabilities are intergenerational. It is difficult to acknowledge that these deaths were gruesome and callous and to give respect to the victims while analysing them for an academic project. I endeavour to not detach my analysis from their humanity and dignity.

Firstly, I address the relationship between the body and place. I examine the notion of the body to argue that as corporeal beings we are born into and positioned within pre-existing contexts that are a simultaneity of corporeal processes and intersecting axes of privilege and oppression. I examine the notion of place to define geographical differentiation and its social and political implications. I do this to explore the insidious disfiguration of place that occurs when a dominant group maintained power for what is a considerably long period of time within the context of South Africa.

I then examine the violent rape and murders of three young women in Khayelitsha and Cape Town, namely Zoliswa Nkonyana, Franziska Bloghliger and Uyinene Mrwetyana, to argue that the socio-political spatial conditions under which they occurred are a result of spatial injustice normalising and being normalised by violence. Following that, I examine the deaths of the 144 mental health care users in Life Esidimeni in Gauteng in order to argue that the Group areas Act was not limited to specific locations and to show its impact on poor and disabled people.

Lastly, I address apartheid as a violent geographic practice and make my closing remarks.

2.2 Geography of the body and place

2.2.1 The body

There are many factors imbricated in the social production of corporeality and place is one of these factors. The body and the environment in which it is, produce one another so much so that the environment is a reflection of the interest of the body. Place is thus a crucial framework and locale of the body thus complicating their relationship since the body is the locus of the inscription of differing subjectivity. As elucidated by Elizabeth Grosz: "the city is made and made over into the simulacrum of the body, and the body, in its turn, is transformed, 'citified', urbanised as a distinctively metropolitan body… the constitutive and mutually defining relation between bodies and cities".[26] The city, as a social, political and economic organisation of space and place, brings together power flows and displacement. This is an element that I examine. And since the body does not exist outside of nor separate from place, the social geography of place impacts the way we live in space and the material constitution of corporeality and subjectivity which must be navigated day to day.[27] As the site of the body, place is actively produced and transformed by the body and it in turn actively produces and transforms the body. This co-constitutivity is a form of lived spatiality which forms both the norms of place and the support of the body.[28] Grosz further provides that "different cities, different sociocultural environments actively produce the bodies of their inhabitants as particular and distinctive types of bodies, as bodies with particular physiologies, affective lives, and concrete behaviours".[29] Robyn Longhurst states that "there is, of course, no one body - *the* body is a masculinist illusion… there are only bodies in the plural".[30] This illusion of human bodies is sexed as the images are either of men or women.[31] As the producer and circulator of power and vulnerability, the structure of place is the context for social marginalisation which upholds the status quo. Since public and private domains are divided, place geographically defines and organises sexual and social relations, and positions individuals and groups in bounded distance thus ensuring social conformity and cultural life. Specific sexual and racial

[26] Colomina (ed.) 1992: 242.
[27] Colomina (ed.) 1992: 248.
[28] Colomina (ed.) 1992: 248-249.
[29] Colomina (ed.) 1992: 249-250.
[30] Longhurst 1995: 98.
[31] Longhurst 1995: 98.

bodies are severely impacted by the constituting nature of a place's form and structure.[32]

Many theorists have grappled with defining *the body*. I do not endeavour to put forward a definition, but, in order to move forward, I do, however, want to trace the ever growing theories of this mysterious and intriguing *thing* that is never fully captured yet never fully slips through the fingers like fine sand. As a starting point, Grosz has worked with "the body" extensively and has an offered the useful definition that:

> The body is, so to speak, organically/biologically/naturally "incomplete"; it is indeterminate, amorphous, a series of uncoordinated potentialities which require social triggering, ordering, and long-term "administration"… The body becomes a *human* body, a body which coincides with the "shape" and space of a psyche, a body whose epidermic surface bounds a psychical unity, a body which thereby defines the limits of experience and subjectivity, in psychoanalytic terms, through the intervention of the (m)other, and, ultimately, the Other or Symbolic order (language and rule-governed social order)… making the body a meaningful, "readable," depth-entity; and its production and development through various regimes of discipline and training, including the coordination and integration of its bodily functions so that not only can it undertake the general social tasks required of it, but so that it becomes an integral part of or position within a social network, linked to other bodies and objects.[33]

Experiences of places are deeply embodied. Bodies and space are intricately interwoven and the daily ways in which we move through life necessitates that I interrogate this entwinement further. Since place is simultaneously social, racial and political, so is the relationship between the body and place. The body is the vessel through which we navigate place and place is the site through which the body contests and is contested. In her talk given at the First Summer School of Critical Semiotics titled *Notes toward a Politics of Location*, Adrienne Rich writes "I need to understand how a place on the map is also a place in history within which as a woman, a Jew, a lesbian, a feminist I am created and trying to create"[34]; this is what Heidi Nast and Steve Pile call the "lived place and spatial relationships" of geographical location.[35] Through its geopolitical and historical simultaneously fixed and fluid placement, the body is the site of struggle produced by unequal power relations; these power relations are "between men and women, between blacks and whites, between heterosexuals

[32] Colomina (ed.) 1992: 250-251.
[33] Colomina (ed.) 1992: 243-244.
[34] Rich 1984: 212.
[35] Nast & Pile 1998: 1.

and homosexuals".[36] This racist, heterosexist, classist configurations of power is the cause of abuse and displacement.[37] Bodies and places are made, unmade and remade by embedded socio-political spatial practices.[38] Heidi Nast conceives of bodies as "the sites upon which the world inscribes itself—places to which others come and mark their difference, places like any other place—localised and with continuously negotiated boundaries and subregions".[39] In formulating the relationship between the body and its environment Maurice Merleau-Ponty wrote:

> By considering the body in movement, we can see better how it inhabits space (and, moreover, time) because movement is not limited to submitting passively to space and time, it actively assumes them, it takes them up in their basic significance which is obscured in the commonplaceness of established situations.[40]

He referred to the nature of the body as being "the potentiality of a certain world" because as we exist in our bodies, our bodies exist in the world.[41] He went on further to argue that this world, this potentiality, is not simply an arrangement of space, but rather the means through which the positioning of "things becomes possible".[42]

Robyn Longhurst discussed that "bodies exist *in* places; at the same time they *are* places". She further held that while we all have bodies we *are* bodies and such these bodies are differentiated by race, sexuality, gender, disability, sex and ethnicity to name a few things.[43] These bodily differentiations are the material inscriptions of "values, morality, social laws, and even cities".[44] Bodies are in constantly explicit co-constitutive power relations both temporally and spatially, which informs our understandings of subjectivities and politics; thus "the ways in which we live out body/place relationships are political" as individuals and collectively at all scales.[45]

Intersectional geographical research that is aware of positionality is always concerned with the multiple social categories of differentiation previously mentioned.[46]

[36] Nast & Pile 1998: 2.
[37] Nast 1998: 83.
[38] Nast & Pile 1998: 2-4.
[39] Nast 1998: 70.
[40] Merleau-Ponty 2002: 117.
[41] Merleau-Ponty 2002 112.
[42] Merleau-Ponty 2002: 284.
[43] Longhurst 2005: 337.
[44] Longhurst 2005: 341.
[45] Longhurst 2005: 345.
[46] Landzelius 2004: 280.

Considerations of the body must do the work of addressing the reality that a cisgender heteropatriarchal society shapes and creates normative space in the idea and to the benefit of what Michael Landzelius has described as:

> Able-bodied and heterosexual men – distinctions understood to dominate over differentiation within this category in terms of, for example, class, education, race, and ethnicity. The resulting spaces are understood to exclude from recognition, in a both corporeal and discursive sense, 'deviant' groups and individuals and thus to both inhibit and devalue their particular embodied identities.[47]

Understanding that power is concretely embedded in places and is "bodily articulated" strengthens the geopolitical perspective of the body.as such the "fleshy and fluid messiness of bodies challenges established social and spatial boundaries"[48] because otherness is socially, historically and spatially constructed by "representational and symbolic space as with physical space".[49] Referring to Henri Lefebvre, Landzelius accounts this "historico-geographically" social space as materialised social relations in built space.[50] The question then becomes what can be said of place when the dominant group maintains its power over the span of time and space and does not allow for difference within the South African context.

2.2.2 Place

Place is similar to the body in its difficulty to define. In human geography, it is the human relationship with "the Earth's surface".[51] Like the body, its meaning is also constructed and differentiated by culture and subjectivity that requires active transformation.[52] One of the definitions put forward is that place signifies a unit of space which interacts with other units of space of different internal characteristics. According to Derek Gregory, Ron Johnston, Geraldine Pratt, Michael Watts and Sarah Whatmore there are three elements of place that should be noted:

1. The idea that place, to be a place, necessarily has meaning.
2. Place as becoming locale.
3. The de-centred, global sense of place. [53]

[47] Landzelius 2004: 281.
[48] Landzelius 2004: 283.
[49] Landzelius 2004: 285.
[50] Landzelius 2004: 290.
[51] Gregory *et al* 2009: 539.
[52] Gregory *et al* 2009: 539.
[53] Gregory *et al* 2009: 539-541.

Place is given a meaning through not only geography, but also the subjectivity of human experience. As they described it, "places themselves were understood as unique, meaningful material constructions that reflected and articulated cultural perceptions and habits".[54] As people, we identify with and develop attachments to particular places. The underlying power relations then inform the meanings and attachments people ascribe to particular places. The meanings places take on come "to be seen as specific to particular racial and gender-, sexual- and class-based identities".[55] Similar to bodies, the meanings of places exist in a cultural, political and social web of power which creates the distinction between "social order/disorder".[56] Within this social order, place is "inextricable from imposed/internalised social and cultural rules that dictate what belongs where";[57] thus the social relations interacting at a specific location create 'place' and this place creates new social interactions.[58] Place becomes locale through the transformation of space to place. This happens when place is rendered "largely as a particular moment within produced space".[59] It relates to temporality and is "continually emergent";[60] it is an "always-already on-going assemblage of geographically associated, ontologically co-constitutive elements and relationships".[61] According Gregory *et al*, a global sense of place refers to the differentiation of one place through its relation and connections to another.[62]

Place is not abstract, it is differentiated, secure and endowed with value. In his seminal book *Space and Place: The Perspective of Experience*, Yi-Fu Tuan among other things, describes place as requiring space for definition and vice versa and that "if we think of space as that which allows movement, then place is pause; each pause in movement makes it possible for location to be transformed into place".[63] Through this reading place is that space which is consciously familiar to us,[64] part of routine life; it has acquired "definition and meaning".[65] While not always having a measurable

[54] Gregory *et al* 2009: 540.
[55] Gregory *et al* 2009: 540.
[56] Gregory *et al* 2009: 540.
[57] Gregory *et al* 2009: 539-540.
[58] Massey 1994: 16.
[59] Gregory *et al* 2009: 540.
[60] Gregory *et al* 2009: 540.
[61] Gregory *et al* 2009: 540.
[62] Gregory *et al* 2009: 540-541.
[63] Tuan 1997: 3-6.
[64] Tuan 1997: 73.
[65] Tuan 1997: 136.

distance, place is permanent.[66] It is a "highly visible public symbol" which creates a sense of "uniqueness and of identity", despite there being comparable units, giving the local people a sense of place not only due to physical position in space.[67]

Doreen Massey thinks of place as constructed in relation to their relationship with other places and the meanings and symbols people attach to places, not simply strict and specific boundaries as these relations exist within the larger context of social and political processes. There is a unique combination of social relations taking shape in a place, while not being limited to that place.[68] Systems and structures contrast highly in different parts of the country and the world at large which has political implications resulting in different interpretations of spatial variation.[69] Massey's idea of heterogeneous place sees the multiplicity of identities, which exist within a complex web of social relations, as resulting in different meanings being attached to different places as with the body; this is precisely why they are contestable and not static.[70] Places can be conceptualized as processes, making different places unique not only geographically.[71] As she maintains, places are:

> … a *meeting* place. Instead then, of thinking of places as areas with boundaries around, they can be imagined as articulated moments in networks of social relations and understandings, but where a large proportion of those relations, experiences and understandings are constructed on a far larger scale than what we happen to define for that moment as the place itself, whether that be a street, or a region or even a continent.[72]

In terms of place becoming locale, Massey considers locality the social and political background through which we understand their differences. Locality is then the counter-position between the wider meaning of place and the more specific meaning of the local, making locale a smaller spatial scale. While being a smaller spatial scale, locale has a mutually constituting relationship with wider social processes, being impacted by and impacting them.[73] Localities are about the dynamic and changing

[66] Tuan 1997: 136-140.
[67] Tuan 1997: 163-167.
[68] Massey 1994: 5.
[69] Massey 1994: 127.
[70] Massey 1994: 118-121.
[71] Massey 1994: 137.
[72] Massey 1994: 154.
[73] Massey 1994: 129-131.

intersection of social activities and social relations.[74] Localities are not only spatial areas a line can be drawn around; they are about the “interaction” of social relations or processes.[75] She sees place, race, gender and class as constructing individuals' identities, and race, gender and class as constructing place. As such, place is imbued with “tensions and conflicts”.[76] Places have multiple identities which either enhance it or create great tension. The multiplicity of place is such that a network of individuals and communities can exist in one place with similar religious, ethnic and political interests. While it can also be said that place is not a signifier of coherent shared interests or community and that these networks can exist outside of a single sense of place.[77] The specificity of place is formed by its accumulated history and this may produce effects which would not have happened otherwise.[78]

She further holds that:

> A ‘place’ is formed out of the particular set of social relations which interact at a particular location. And the singularity of any individual place is formed in part out of the specificity of the interactions which occur at that location (nowhere else does this precise mixture occur) and in part out of the fact that the meeting of those social relations at that location (their partly happenstance juxtaposition) will in turn produce new social effects.[79]

Following this line of thought, this specificity is the identity of a ‘place’ and the continual production of further social effects makes place inevitably unfixed because a proportion of the social interactions will be wider than and extend beyond the area being referred to in any particular context as a ‘place’ as a result of that juxtaposition. The unfixed nature of place makes it always open to contestation.[80]

Tim Cresswell sees place as a “site that combines location, locale, and sense of place”.[81] By location he is referring to cartographic maps and coordinates with measurable distances from other such locations. By locale he is referring to “the material setting for social relations” which is made up of the observable, concrete characteristics of a place. Lastly, he refers to a sense of place which is for him “the

[74] Massey 1994: 136.
[75] Massey 1994: 139.
[76] Massey 1994: 137.
[77] Massey 1994: 153.
[78] Massey 1994: 156.
[79] Massey 1994: 168.
[80] Massey 1994: 168-169.
[81] Cresswell 2009: 1.

feelings and emotions a place evokes" that are both personal and shared in private and social ways.[82] Place is used and lived in and requires "the reiteration of practice on a regular basis".[83] He refers to an Aristotelian philosophy of place in which place is "the starting point for all other forms of existence".[84] In this we can conceive of our relating to the world as a product of place and place a product of the world. He also agrees that places are caught in a web of power in which they are constructed, reproduced and contested through social processes. This power shapes the material structure of places at all scales due the assigned meanings' creation by those who maintain power. In this way, the associated meaning of places are created by power and in turn create processes of exclusion through the "mapping of particular meanings, practices, and identities on to place… [which] leads to the construction of normative places where it is possible to be either 'in place' or 'out of place'"[85] based on gender, race, class, sexuality and physical disability. Places are embodied and always open to challenging and transformation.[86]

One feels a sort of tension when reading Tuan and Massey side by side as both of their arguments are widely held as important and accurate, by me as well, for the theorisation of place. Tuan views place as permanent while Doreen Massey has a different view in which place changes over time and all the time due the nature of the interacting social relations at a specific location. These social relations are the site of contestation, much like the body, because of the shift in power of which group is dominant at which point in time. Tuan's concept of familiarity seems to support a homogeneous understanding of place which does not necessarily align with difference. Massey sees place as heterogeneous and supporting difference because community does not necessarily mean place and place does not necessarily mean community. Cresswell is influenced by both theorists, but is more inclined to stepping away from the static understanding of place theorised in the 1970s and embraces a dynamic understanding aligned with Massey.

Tuan sees place as a pause, as permanent and a monument while Massey sees place as dynamic and constantly changing. What I receive from both is that place need not

[82] Cresswell 2009:1.
[83] Cresswell 2009: 2.
[84] Cresswell 2009: 2.
[85] Cresswell 2009: 4-6.
[86] Cresswell 2009: 4-6.

be measurable with boundaries. Within the South African context I would argue that place is a pause before continuing to move. By this I mean that there is value in building monuments and recognising the value in a place and the feelings it evokes. But also our social relations are in flux and changeable so, yes, place can be transformed but elements of it will always stay behind and that is necessary when considering the spirit of a township and it's imagined future.

2.3 Zoliswa Nkonyana

In 2006 a mob killing claimed the life of nineteen-year-old black lesbian Zoliswa Nkonyana. My reason for clarifying her sexuality and race will become apparent soon. Zoliswa was a masculine presenting openly out lesbian. Her style was tomboyish and she aspired to play for the women's national soccer team, Banyana Banyana. She was an inspiration and a role model for younger lesbians in her township of Khayelitsha.

On 4 February 2006 she went to Phela's Tavern with a few of her friends. Together they bought six beers and had consumed three by the early evening.[87] Zoliswa and her friends wanted to use the ladies toilet at the tavern and an argument broke out outside of the toilet between Zoliswa and female patrons who were at the tavern with a party of nine men. The women said that Zoliswa and her masculine presenting friends should have gone to the male toilets since they were acting like men. As the confrontation grew, one of the women informed their male friends, who were also at the tavern, about their confrontation with Zoliswa and alleged that she made unwanted sexual advances towards them. Once they heard this, the men ran outside and began assaulting Zoliswa and her friend who tried to run away. They were followed by a group of young men while trying to flee and the two friends decided to separate. The group of young men caught up with Zoliswa next to a school and she was beaten up and stabbed just metres from her Khayelitsha home. Zoliswa's stepfather, Gladwell Mandindi, saw and heard a scuffle but did not realise it was his stepdaughter who was being attacked. According to Eric Ntabazalila of the National Prosecuting Authority in

[87] De Waal "We'll make you a 'real' woman - even if it kills you", https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).

Cape Town, “the argument was about Zoliswa and her friends wanting to use the ladies toilet while pretending to be ‘tom boys’”.[88]

Not much is known about Zoliswa, which is perhaps due to the fear and torment her friends and family experienced throughout the legal proceedings and their subsequent anxiety about speaking to the media. All we know is that she was her mother, Monica Mandindi’s only child. Thso Gcakafi, Zoliswa’s friend, one of the founders of Wini Soccer club, and her teammate said that township police often laughed at and dismissed the LGBTQI+ community when they reported rapes, assaults or threats to their lives.[89] Only one image of Zoliswa appeared in the media in the time between her murder and the conclusion of the trial. In this single photo, she was standing with three friends wearing a blue jersey and a red beanie. There were no humanising stories or anecdotes about who she was or what type of person she was. No information about where she attended school. No stories about what she was like growing up. More than four-hundred people attended Zoliswa’s funeral and Guguletu’s first-ever Gay Pride march took place in her honour.[90]

2.3.1 Court case

On 4 February 2006, Zoliswa Nkonyana was stabbed and beaten to death by a group of young men. Three women and nine men were taken into police custody for stoning and stabbing Zoliswa to death that fateful February evening for being an openly lesbian teen; although it is speculated that twenty men participated in the mob killing. She was stabbed multiple times by several members of the mob and large rocks were used by two members to bash her head in. On 6 February 2006, nine suspects were arrested. Initially, nine men were charged with the murder and attempted murder on 21 February, but Sabelo Yakiso, Themba Dlephu, Mfundo Kulani, Zolile Kobese and Anele Gwele were acquitted, leaving Lubabalo Ntlabathi, Sicelo Mase, Luyanda Lonzi and Mbulelo Damba. State prosecutor Alfred Isaacs represented the state, while the defence changed attorneys to Wayne Hencock.

---

[88] De Waal “We'll make you a 'real' woman - even if it kills you”, https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).
[89] Thamm “Not just another murder”, https://mg.co.za/article/2006-02-26-not-just-another-murder/ (accessed 20 October 2023).
[90] Thamm “Not just another murder”, https://mg.co.za/article/2006-02-26-not-just-another-murder/ (accessed 20 October 2023).

The investigating officer, Constable Geldenhuys, only contacted the single witness at the time after a journalist alerted police to her existence. Geldenhuys later denied failing to take her statement and said “I was getting round to taking a statement from her”.[91] One of the women who accosted Zoliswa and her friend, Phindiswa Magxala, outside of the toilet and went to the accused to claim that they had made inappropriate sexual advances towards her turned state witness. In her testimony, the woman, who wished to remain unnamed, admitted that she had harassed Zoliswa and her friend for using the women’s toilet and told them to use the male toilets because “they were acting like men”.[92] She then detailed how she had returned to the nine accused that she was with and that the men then ran outside of the tavern and began assaulting Zoliswa and Phindiswa who tried to run away. She further told the court that the men caught up to Zoliswa at a nearby school and “started klapping [beating] her”.[93]

From 13 October 2006 to late 2007, two of the accused were granted bail.[94] On 5 February 2008 the state failed to ensure the presence of witnesses in court and was found to have been grossly negligent. Defence attorneys routinely missed court appearances without reasons. In December 2008, close to three years after her murder, the state was able to ensure that Phindiswa Magxala was able to take to the stand and give her testimony as the key state witness of the trial. She was Zoliswa’s friend, who was also attacked, on the day of her murder and she was later threatened by the accused. The main state witness was attacked after a photograph of her appeared in the press and this led to her fleeing the province and going to the Eastern Cape after the state failed to provide her with protection.[95] In September 2009, Phindiswa was asked to return to the court to provide a further testimony which lead to a six hour long cross-examination interrogating the statement she provided to the

[91] Thamm “Not just another murder”, https://mg.co.za/article/2006-02-26-not-just-another-murder/ (accessed 20 October 2023).
[92] De Waal “We'll make you a 'real' woman - even if it kills you”, https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).
[93] De Waal “We'll make you a 'real' woman - even if it kills you”, https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).
[94] Lynch & Van Zyl 2013: 53.
[95] Lynch, & Van Zyl 2013: 53.

South African Police Service in 2006 and another statement she had provided the court in her first appearance.[96]

A civic alliance of nearly two-hundred people consisting of The Social Justice Coalition, Treatment Action Campaign, Free Gender, Triangle Project and Sonke Gender Justice lobbied, protested and tried to realise justice for Nkonyana and her family. Feeling outraged and let down by the state on account of the many delays, the alliance petitioned the National Prosecution Authority to have the case officially transferred to the high court. The National Prosecuting Authority instead decided to nominally change the Khayelitsha court into a high court.[97]

On Wednesday 15 September 2010, the day before the state was supposed to close its case, four of the accused escaped from the holding cell in the Khayelitsha Regional Magistrate's Court. A police sergeant, Fundile Salela, was arrested thereafter for defeating the ends of justice, aiding prisoners in escaping from lawful custody and corruption. In October 2010 the escaped accused were rearrested.[98]

Between the start of the trial and 2011, five "trials within trials" had taken place and on 9 March 2011, Magistrate Raadiyah Wathen delayed the trial once more until 11 April 2011 so that another trial within a trial could take place to analyse the handwriting of an accused's confession.[99] One of the four accused who escaped from police custody, Zolile Kobese, was alleged by the state to have written a statement shortly after the murder containing the details of the night of the murder. Hencock denied that Kobese had written and signed any statement which then led the state to request samples of his handwriting and signature to have them compared to the statement by an expert. Isaacs then requested a further postponement to conduct a trial within a trial to receive the report from the expert. Two police officers, Melvyn Geldenhuys and Frank Newman, who said they had taken his statement, were recalled by the state as witnesses for cross-examination. Both of the officers testified that they had read

[96] Lynch & Van Zyl 2013: 53.
[97] Lynch & Van Zyl 2013: 1.
[98] Matsolo "Sonke Gender Justice angered at further unexcusable delays in the Zoliswa Nkonyana murder trial", http://www.ngopulse.org/press-release/tac-and-sonke-gender-justice-angered-further-unexcusable-delays-zoliswa-nkonyana-murde (accessed 20 October 2023)
[99] Matsolo "Sonke Gender Justice angered at further unexcusable delays in the Zoliswa Nkonyana murder trial", http://www.ngopulse.org/press-release/tac-and-sonke-gender-justice-angered-further-unexcusable-delays-zoliswa-nkonyana-murde (accessed 20 October 2023)

Kobese his rights and made him sign the statement. Magistrate Raadiyah Wathen postponed the case once again to await the results of the samples.[100]

Some of the nine accused men were under age when they were arrested and they were all charged with murder and two charges of attempted murder. The accused applied for Section 174, which is an application to acquit them of all charges. All nine men were acquitted on the two charges of attempted murder. Two of the accused, Anele Gwele and Zolile Kobese, were acquitted of all charges on 8 September 2011 leaving the remaining seven men to face murder charges.[101] On 7 October 2011 Lubabalo Ntlabathi, Sicelo Mase, Luyanda Lonzi and Mbulelo Dama were found guilty on the charge of murder. Sabelo Yekiso, Themba Dlephu and Mfundo Kulani were acquitted as the state could not prove their involvement in the murder beyond reasonable doubt.[102]

On 19 January 2012 the sentencing was postponed until 1 February 2012. Her killers, Lubabalo Ntlabathi, Sicelo Mase, Luyanda Londzi and Mbulelo Damba, were each sentenced to 18 years, with four suspended for five years on condition they were not convicted of murder during the period of suspension. With good behaviour and attempts to rehabilitate, there is a possibility that they could have been released within seven years of sentencing. In sentencing the men, Khayelitsha Regional Court magistrate Raadiyah Wathen took into account that eight of the men were teenagers at the time and were first offenders, aged between sixteen and twenty-five at the time of the offence and that they showed no remorse during the trial.[103] Wathen said Zoliswa had the constitutional right to life and freedom of choice. Wathen then explained:

[100] Mjekula 'Fury over lesbian murder trial delay' https://www.iol.co.za/news/fury-over-lesbian-murder-trial-delay-1038024 (accessed 20 October 2023).
[101] De Waal "We'll make you a 'real' woman - even if it kills you", https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).
[102] De Waal "We'll make you a 'real' woman - even if it kills you", https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).
[103] Witten "18 years won't bring our daughter back", https://www.iol.co.za/capeargus/18-years-wont-bring-our-daughter-back-1226070 (accessed 20 October 2023).

> A young woman's life was taken away by virtue of her beliefs and life choices. I am satisfied that the motive of the murder was driven by hatred and intolerance of her difference. The accused acted out their opinion in a brutal and public way.[104]

The National Prosecuting Authority spokesperson Eric Ntabazalila said they had asked for the men to receive fifteen years each despite cries from her community for a harsher sentence of life imprisonment.[105]

Zoliswa's parents Gladwell and Monica accepted the sentence. Gladwell expressed "eighteen years sounds enough, but it can't be because it will never bring her back".[106] He said that their family would try to relax and leave the court case behind them and that "maybe now Zoliswa can rest in peace forever".[107] After the sentencing, Zoliswa's mother refused to speak to the media.[108]

It took six years for Nkonyana's murder trial to come to an end and to realise justice[109] for Zoliswa and her family.[110] Her trial was also significant for having the most postponements in a single trial recorded in the country. Without the intervention of the civic alliance it would not have been possible to achieve such a positive outcome. The civil society organisations monitored the case and advocated for the acknowledgement of her gender and sexual identity as a basis for her murder. Without them and their constant presence and interventions it is unlikely that homophobia would have been recognised as the motive.[111]

---

[104] Witten "18 years won't bring our daughter back", https://www.iol.co.za/capeargus/18-years-wont-bring-our-daughter-back-1226070 (accessed 20 October 2023).
[105] "Cape lesbian killers get 18 years", http://www.news24.com/SouthAfrica/News/Cape-lesbian-killers-get-18-years-20120201 (accessed 20 October 2023).
[106] Witten "18 years won't bring our daughter back", https://www.iol.co.za/capeargus/18-years-wont-bring-our-daughter-back-1226070 (accessed 20 October 2023).
[107] Witten "18 years won't bring our daughter back", https://www.iol.co.za/capeargus/18-years-wont-bring-our-daughter-back-1226070 (accessed 20 October 2023).
[108] Witten "18 years won't bring our daughter back", https://www.iol.co.za/capeargus/18-years-wont-bring-our-daughter-back-1226070 (accessed 20 October 2023).
[109] My use of "justice" is not a position on the contentious concept of justice, rather it addresses the conclusion of her trial and her parents' feeling of vindication and the relief that their daughter's murderers have been imprisoned.
[110] Mjekula "Sonke Gender Justice angered at further unexcusable delays in the Zoliswa Nkonyana murder trial", http://www.ngopulse.org/press-release/tac-and-sonke-gender-justice-angered-further-unexcusable-delays-zoliswa-nkonyana-murde (accessed 20 October 2023).
[111] Mjekula "Sonke Gender Justice angered at further unexcusable delays in the Zoliswa Nkonyana murder trial", http://www.ngopulse.org/press-release/tac-and-sonke-gender-justice-angered-further-unexcusable-delays-zoliswa-nkonyana-murde (accessed 20 October 2023).

The reluctance of the National Prosecuting Authority to transfer the trial to the Western Cape High Court had major implications for the sentencing of the accused. The court transcripts are not even available in any legal database. It was also upsetting to the LGBTQI+ community as it was an affront to the seriousness of the crime and the values of the Constitution of protecting and allowing people of all sexualities to feel safe and heard. This decision not to transfer the trial missed a significant opportunity for legal reform. The verdict marked an important moment in the quest for equal rights and was a landmark case as a magistrate acknowledged that hatred and homophobia were motives for the murder. It was the first case in South Africa where sexual orientation and identity were named and recognised as an aggravating factor in a murder trial.[112]

2.3.2 The hegemonic heterosexuality of place

Culture and identity are linked and are deeply implicated in homophobia and responses to people who are perceivable as forming part of a sexual minority. As social processes that shape and produce space, it is important to consider how spaces are shaped by the hegemony of heterosexuality as it is the presumed natural state of concrete and representational spaces. Sarah Phillips explains hegemony as referring to "the permeation of 'a way of life' or 'social organisation' into every sphere of society"[113] that is "a crucial mechanism by which those in power dominate".[114]

Spaces do not exist outside of sexual politics because sexual politics cross the boundaries of public and private and as such sex and space cannot be separated. Space and place have a profound effect on people's sexuality as sexuality affects how people move through, live in and interact with space and place. There are many variables that position bodies in webs of power relations including gender and sexuality. Longhurst refers to Grosz who avers that "bodies are always irreducibly sexually specific, necessarily interlocked with racial, cultural, and class particularities".[115] Lawrence Knopp described cities in the Global North as "characterised by very traditional gender-based spatial divisions of labour, dominantly coded as heterosexual, and imagined and experienced in terms of public and private

[112] Phillips 1991: 454.
[113] Phillips 1991: 454.
[114] Phillips 1991: 454.
[115] Nelson & Seager (eds.) 2005: 344.

spheres of existence" through segregation based on race, class, gender and ethnicity.[116] This is also true of apartheid South Africa.

Place is both gendered and sexed and gender and sex are both expressed spatially. David Bell, Jon Binnie, Julia Cream and Gill Valentine argue that "sexual identity impacts on the use and reading of space, and that the socially and culturally encoded character of space has bearing on the assuming and acting out of sexual identities".[117] With their own emphasis they then refer to Joseph Bristow held that "[I]t is possible to be gay [only] in specific places and spaces".[118] Within the space-producing web of power that is cisgender heteropatriarchy, everyday places are presumed to be heterosexual.[119] Place is constructed as heterosexual through the constant and active performance of identities which are simultaneously sexualised and gendered.[120] Heterosexuality privileges the everyday occupation of space as individuals are allowed to live their sexual lives without interference and as such, protection from homophobic violence is not afforded to people not perceived as heterosexual. [121] The sexual identities referred to capture the complex interrelatedness of sexuality and gender.

Places are constructed around expectations of sexual behaviour such as the formation of heterosexual relationships.[122] Richard Phillips explains that "spaces may facilitate the formation of community and identity".[123] Phillips refers to Dick Hebdige who held that sexual behaviour can "warn the 'straight' world in advance of a sinister presence––the presence of difference".[124] The result of which is the influence of place on the formation of sexual identities.[125] Phillips additionally refers to David Sibley who avers that:

> It is impossible to understand the social and spatial margins without understanding the processes and imperatives that construct the social center; it is impossible to understand

[116] Bell & Valentine 1995: 140.
[117] Bell *et al* 1994: 32.
[118] Bell *et al* 1994: 32.
[119] Bell *et al* 1994: 31-32.
[120] Bell *et al* 1994: 44-45.
[121] Bell *et al* 1994: 33-34.
[122] Duncan *et al* 2004: 266.
[123] Duncan *et al* 2004: 269.
[124] Duncan *et al* 2004: 269.
[125] Duncan *et al* 2004: 269.

> 'deviance' without understanding how certain powerful social groups invent their own 'normality' and use it to reproduce their social power.[126]

Places are sexualised through the normalisation of heterosexual power relations that are unwelcoming of difference; thus enforcing the appearance of heterosexual ways of being as natural both ideologically and materially. This hegemonic sexual order associates certain places with nuclear family structures in both homes and shared public spaces. These shared public spaces function as heterosexual spaces which, according to Phillips, are because "heterosexual sex and sexuality have always been quite public. Take the very public marriage ceremony with its various ritual fertility rights, for example, or the simple acceptability of heterosexual couples kissing in public".[127] In a dominantly heterosexist environment in which a sense of community and shared identity relies on heterosexual culture, the presence of queerness threatens the stability of the social order which is privileged and seen as "pure". This results in hostility and expulsion from the community and shared identity through the implicit and explicit inability to occupy and navigate space.[128] Large dense urban places cause people to live in close proximity to one another which forms challenges when beliefs and values differ. As stated by Johnston and Longhurst, the largeness of these dense places enforce heterosexist norms and "offer a concentrated view into the materialisation of sexual identity, politics, performances, and paradoxes".[129]

The sexed and sexual body controls how individuals, communities and the nation engage in sexual power and controls "what we ourselves can do with and to our bodies, what we can do with and to other people's bodies, how we move, what spaces we have access to, what spaces we are excluded from".[130] This inclusion or exclusion depends on place and time and is an indication of the process of the sexualisation of bodies.[131] Lynda Johnston and Robyn Longhurst aver that this is how "gender writes itself not on but through bodies".[132]

[126] Duncan *et al* 2004: 273.
[127] Duncan *et al* 2004: 274.
[128] Duncan *et al* 2004: 273-275.
[129] Johnston & Longhurst 2010: 80.
[130] Johnston & Longhurst 2010: 83.
[131] Johnston & Longhurst 2010: 3.
[132] Johnston & Longhurst 2010:12.

Places reflect the cultural views and values of communities which then shape space as well as are shaped by space. The size, density and informal nature of Khayelitsha makes people live in close proximity to one another; just as Phela's Tavern, the school where they caught up to her and Zoliswa's home were in close proximity to each other. As an area that has a higher population of women than men in which the average home has aspirations of a nuclear family, spaces are normalised as heterosexual, which normalises the privilege and power of heterosexuals over sexual minorities and imposes compulsory heterosexuality. This causes violence and hostility against and towards sexual minorities based on difference/deviance ultimately resulting in expulsion from shared public spaces.

2.3.3 The problematics of sexuality and gender in Khayelitsha

It has been argued that homophobia is part and parcel of black South African culture and that violence against queer people is an internal problematic of African culture.[133] I find it overly simplistic to view homophobic violence as only existing within the confines of "culture" and "identity" and as not having some sort of relation to space. It is important to question to what extent homophobic violence is linked to public space and what this means within the South African context. The leafy and luxurious sprawls of Cape Town have come to be known as queer friendly, even having one of the most attended LGBTQI+ Pride Marches in the country, one that brings many international travellers to participate in the parade. Neither sprawling nor luxurious, but as densely populated areas, townships pose different implications for navigating space as visibly queer people. Public spaces reflect cisgender male interests and norms, this is so in Khayelitsha.

Ethan Allwood explains that in 1983 Khayelitsha (which means 'New Home') Township was established to provide housing to 'legal' residents of the Cape Peninsula by the apartheid government, in a 3220-hectare purpose-built and controllable township. Khayelitsha is located on the periphery of Cape Town and was built for racial

[133] On 28 November 2006 South Africa's legislature passed the Civil Union Act 17of 2006, which legalised same-sex marriages and civil partnerships. During public hearings on the bill, members of the ANC and other Christian organisations referred to same-sex marriages as 'unAfrican', 'unChristian' and 'unnatural' and former State President Jacob Zuma stated that same-sex marriage is "a disgrace to the nation and to God" which he later retracted under pressure. Kindra "Zuma slammed for views on homosexuality, same-sex marriage" https://www.thenewhumanitarian.org/news/2006/09/27/zuma-slammed-views-homosexuality-same-sex-marriage (accessed 24 January 2024).

segregation with the of creation of four towns, each having 30,000 residents in brick houses, a certain number of which were to be privately owned.[134] Khayelitsha had a population of 450,000 by 1990 with unemployment at a staggering at 80 per cent.[135] The population had grown to over 500,000 people by 1995. A large percentage of the populated area was un-serviced and only a few residents had electricity and most families had to fetch water from public taps.[136] People, who were previously deterred by influx control, arrived from the Eastern Cape in search of work and a 'new home'. To date it is the second largest township in South Africa after Soweto with a population of just over a million people.[137]. As estimated by Sikhula Sonke Early Childhood Development women form 52 per cent of the predominantly black (90.05 per cent in 2023) population in Khayelitsha,[138] rates of domestic violence, rape, child abuse and murder increased dramatically during the 1990s and police presence was minimal. According to Melikhaya Zagagana as of 2023 the population is estimated to be 2.4 million.[139] The densely populated area of Khayelitsha is serviced by three police stations—Khayelitsha, Harare and Lingelethu West.[140] In November 2011, a number of Khayelitsha-based civil society organisations lodged an official complaint with Western Cape Premier Helen Zille to address a greater problem of the failures of the Khayelitsha police and criminal justice system. The Khayelitsha Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations Between the Community and Police in Khayelitsha was established as a result of the high number of mob killings in the area and the under sourcing of police in the area.[141]

---

[134] Allwood "Khayelitsha, South Africa", https://prezi.com/rloyckdbacuk/khayelitsha-south-africa/ (accessed 20 October 2023).
[135] Allwood "Khayelitsha, South Africa", https://prezi.com/rloyckdbacuk/khayelitsha-south-africa/ (accessed 20 October 2023).
[136] Allwood "Khayelitsha, South Africa", https://prezi.com/rloyckdbacuk/khayelitsha-south-africa/ (accessed 20 October 2023).
[137] Mandonyana. "Is the South African lockdown effective for townships like Khayelitsha?", https://www.71point4.com/is-the-south-african-lockdown-effective-for-townships-like-khayelitsha/ (accessed 20 October 2023).
[138] Sikhula Sonke Early Childhood Development "Khayelitsha, the 'new home'", https://www.sikhulasonke.org.za/about-khayelitsha.html#:~:text=Today%20Khayelitsha%20is%20home%20to,as%20a%20result%20of%20flooding (accessed October 2023).
[139] Zagagana "Khayelitsha Community Makes Safety Gains With Neighbourhood Watch Initiative", https://ewn.co.za/2023/03/23/khayelitsha-community-makes-safety-gains-with-neighbourhood-watch-initiative (accessed 20 October 2023).
[140] Meyer "More CCTV cameras needed in Khayelitsha", http://www.pressreader.com/south-africa/cape-argus/20160901/281565175193856 (accessed 20 October 2023).
[141] Meyer "More CCTV cameras needed in Khayelitsha", http://www.pressreader.com/south-africa/cape-argus/20160901/281565175193856 (accessed 20 October 2023).

The complainant organisations' heads of argument were served and filed in the Western Cape High Court.[142] The Commission found that "38 per cent of the Khayelitsha population live in formal housing: 15 per cent live in backyard dwellings, which are in mostly formal areas, and 46 per cent in shacks. All of the backyard and many of the shack dwellings are to be found in generally formal areas".[143]

On 30 October 2013 Human Rights Watch released a report supported by one of the specific cases referred to by the complainant organisations in their complaint, namely the brutal murder of Zoliswa. This report found that "black lesbians and transgender men in South Africa experience discrimination, harassment and violence at the hands of private individuals and sometimes state agents".[144] The Commission findings also suggest that this is likely due to the predominantly male branch commanders including the provincial detective branch that has only one female detective commander.[145] Ms Funeka Soldaat, the founder of one of the complainant organisations, said that the vulnerability of the LGBTQI+ community is related to public spaces.[146] The Human Rights Watch report suggests that, historically, black lesbians and transgender men living in townships, peri-urban and rural areas and informal settlements are among the most marginalised and vulnerable members of South Africa's LGBTQI+ population;[147] and that police inaction and unwillingness to provide services to lesbians and transgender men increases this vulnerability.[148] Justice Catherine O'Regan Advocate Vusumzi Pikoli

Sub-standard policing is experienced by vulnerable groups such as women, children, LGBTQI+ persons, the elderly and foreign nationals the most.[149] As the first point of contact a victim has with state agents after sexual assault, homophobia in the police makes it more likely that crimes against the LGBTQI+ community are particularly underreported as circumstances in Khayelitsha indicate.[150] The three Khayelitsha

[142] The Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations Between SAPS and the Community of Khayelitsha released a report titled "Towards a Safer Khayelitsha". Hereafter referred to as the Commission of Inquiry Report.
[143] Commission of Inquiry Report: 5.
[144] Commission of Inquiry Report: 227.
[145] Commission of Inquiry Report: 456.
[146] Commission of Inquiry Report: 3.
[147] Commission of Inquiry Report: 227-230.
[148] Commission of Inquiry Report: 228.
[149] Commission of Inquiry Report: 452.
[150] Commission of Inquiry Report: 237-238.

police stations together have the highest number of reports of sexual offences, rape included, in the country. In addition to this, the Family Violence, Child Protection and Sexual Offences Unit in Khayelitsha is the worst performing unit in the Western Cape because of apartheid era service delivery patterns.[151]

Nearly half of the population of Khayelitsha is made up of men who shape public spaces through their patriarchal use of power to dominate others through the exertion of control over women, children, other men and LGBTQI+ people. These population dynamics are reflected in the police. The continuation of apartheid era under policing and aggressive police action in a densely populated ever-growing area such as Khayelitsha is a direct link to place-based violence and its exacerbation.

2.4 Franziska Blöchliger

In the upper middle-class Tokai residential suburb of Cape Town, under a thirty-minute drive from Khayelitsha, the body of a sixteen-year-old white girl was found naked and bleeding from the face and genitals on 7 March 2016. The body was of Franziska Blöchliger who did not return from her jog in Tokai Forest. Yvonne Elgar, a nurse walking her dogs in the forest that day, found the teen's body.[152] Franziska was found on her knees naked with one of her shoelaces fastened around her neck, which was twisted into an unnatural position. Police said that a bra and T-shirt had been used to strangle Franziska. The state believed that "she died after being suffocated by pressing her face into the ground and/or by manual strangulation/throttling".[153] Four men were arrested in connection with her rape, murder and robbery. The trial of three of the co-accused was separated and to be heard in the Wynberg Magistrate's Court while the trial of the main accused was sent to the Western Cape High Court.[154]

Three of the men appeared in the Wynberg District Court facing charges of receiving and possession of stolen property belonging to Franziska. Jerome Moses, Jonathan

[151] Commission of Inquiry Report: 479-480.
[152] Daily Voice "Judge delays Franziska 'killer's' trial", https://www.dailyvoice.co.za/news/judge-delays-franziska-killers-trial-9203090 (accessed 20 October 2023).
[153] Daily Sun ''Skelm' pleads not guilty to Franziska's rape, murder", https://www.dailyvoice.co.za/news/skelm-pleads-not-guilty-to-franziskas-rape-murder-9044781 (accessed 20 October 2023).
[154] Etheridge "Trial of Tokai forest murder accused sent to High Court", http://www.news24.com/SouthAfrica/News/trial-of-tokai-forest-murder-accused-sent-to-high-court-20170118 (accessed 20 October 2023).

Jonas and Daniel Easter appeared in the dock before Magistrate Sylvia Mandla. Advocate Kevin Peterson represented Moses and attorney Monique Carstens represented Easter, who said the pair wished to plead guilty to the charges. Jonas was represented by legal aid lawyer Laetitia September and opted not to enter into a plea bargain. The three men initially faced charges of murder and aggravated robbery, together with a fourth accused, Howard Oliver. However, the murder and robbery charges were withdrawn against the three, at a hearing before Magistrate Goolam Bowa.[155]

Moses was alleged to have sold Franziska's cell phone to Easter. An application was brought before the court to have Moses' bail conditions relaxed because he intended to check himself into a rehab facility. National Prosecuting Authority's spokesperson, Eric Ntabazalila, said:

> Moses has to report at the Kirstenbosch Police Station three times per week. He has applied to attend a rehab facility in Elsies River as an in-patient. He will be at the facility for eight weeks and the defence has requested that he doesn't report to a police station from 23 November to January 20, and after that he will go back to his previous bail conditions.[156]

Jonas was discovered in possession of Franziska's Apple iPhone, however, senior state advocate Lenro Badenhorst decided that there was insufficient evidence to secure a conviction against him. The charge of possession of stolen property was withdrawn against him in the Wynberg Magistrates Court before Magistrate Wezile Rixana. Western Cape Directorate of Public Prosecutions instructed prosecutor Craig Esterhuyse to inform the court that he had instructions to withdraw the charge.[157] Easter admitted in an affidavit that he bought the password protected phone from Moses for R200 as that was the only money he had with him. Initially he said that he was not aware that her phone was stolen. But the phone was later traced to his home

[155] van Hees "Two to plead guilty over Franziska's stolen property", https://www.iol.co.za/amp/news/two-to-plead-guilty-over-franziskas-stolen-property-7810846 (accessed 20 October 2023).
[156] Lepule "Accused's guilty plea", https://www.dailyvoice.co.za/news/western-cape/accuseds-guilty-plea-6992883 (accessed 20 October 2023).
[157] Citizen "Charge withdrawn against accused caught with Blochliger cellphone", https://citizen.co.za/news/south-africa/1461089/charge-withdrawn-accused-caught-blochliger-cellphone/ (accessed 20 October 2023).

in Westlake.[158] Moses and Easter were both fined R5 000 or 12 months imprisonment, suspended for five years.[159]

The main accused, Howard Oliver, appeared in the Western Cape High Court and detailed that he had needed R200 to pay crèche fees so he decided to rob someone after he finished work on 7 March 2016.[160] He explained that he smoked a Mandrax pill and walked home on a path in the forest through the bushes. When Franziska jogged around a corner she crossed his path wearing earphones and a phone on her arm. He grabbed her from behind as she approached.[161] She was strong and fought back and that was when he gripped her around the neck causing her to lose consciousness although she was still breathing. While she was unconscious, he dragged her into the bushes by her arms and took her phone and ring. He said that he fastened her wrists with one shoelace and tied another around her mouth and that her pants were pulled down but said that her underwear was not removed. He denied that she was wearing earrings and a watch.[162]

On 7 June 2017, Oliver, who had previously denied raping and killing the teen, was sentenced after admitting guilt. He was sentenced to two life sentences for the rape and murder of the teen with an additional 15 years for the robbery as he could not explain why events transpired the way they did and why the teen was left for dead.[163] Franziska's parents wrote a letter that was read out in the Court stating: "there can never be any justification for taking her life. Her family and friends are left with the

[158] Petersen "Two plead guilty to possession of Franziska's phone", https://www.news24.com/news24/SouthAfrica/News/p2-two-plead-guilty-to-possession-of-franziskas-phone-20170223 (accessed 20 October 2023).
[159] Daily Voice "Judge delays Franziska 'killer's' trial", https://www.dailyvoice.co.za/news/judge-delays-franziska-killers-trial-9203090 (accessed 20 October 2023).
[160] Daily Sun "'Skelm' pleads not guilty to Franziska's rape, murder", https://www.dailyvoice.co.za/news/skelm-pleads-not-guilty-to-franziskas-rape-murder-9044781 (accessed 20 October 2023).
[161] Daily Sun "'Skelm' pleads not guilty to Franziska's rape, murder", https://www.dailyvoice.co.za/news/skelm-pleads-not-guilty-to-franziskas-rape-murder-9044781 (accessed 20 October 2023).
[162] Daily Sun "'Skelm' pleads not guilty to Franziska's rape, murder", https://www.dailyvoice.co.za/news/skelm-pleads-not-guilty-to-franziskas-rape-murder-9044781 (accessed 20 October 2023).
[163] Fisher "Franziska Blochliger's killer handed double life sentence", http://ewn.co.za/2017/06/07/alert-franziska-blochliger-s-killer-handed-double-life-sentence (accessed 20 October 2023)

eternal grief and loss".[164] The National Prosecuting Authority's Eric Ntabazalila welcomed the two life terms handed to the man stating: "it's the sentence that fits the crime and we hope it does send out a message that these types of crimes against women and children will not be tolerated".[165]

Nearly 3 000 people, some of whom were friends and family, held a silent vigil in Tokai Forest to mourn Franziska.[166] Her baby photos appeared in newspapers, her kind nature and interest in fitness were often cited online. Humanising stories about her young life were widely spread. Mention was made that she was a good girl without a boyfriend. An image of a young, pure child was evoked, a child that the country failed to protect.

2.4.1 Court case

On 7 June 2017 Judge Kate Savage delivered the judgment on Franziska's murder case in the Western Cape High Court.[167] Mr Lenro Badenhorst appeared for the state and Mr Ken Klopper and thereafter Mr Henk Carstens appeared for the accused, namely Howard Oliver as instructed by Legal Aid.

On 31 May 2017 the Court convicted the accused, Howard Oliver, on four counts:

> 1. the murder of the FRANZISKA BLÖCHLIGER on 7 March 2016 by suffocation and manual strangulation;
>
> 2. two contraventions of section 3 of Act 32 of 2007[168] in unlawfully and intentionally committing two distinct acts of sexual penetration with 16 year old female FRANZISKA BLÖCHLIGER by penetrating her anus and then her vagina with his penis without her consent (rape); and
>
> 3. one count of robbery with aggravating circumstances as defined in section 1 of Act 51 1977[169] with grievous bodily harm inflicted on FRANZISKA BLÖCHLIGER during the commission of the

[164] Dolley "'How could an adult do this to a child?'– Franziska's parents", https://www.news24.com/SouthAfrica/News/how-could-an-adult-do-this-to-a-child-franziskas-parents-20170531 (accessed 20 October 2023).
[165] Dolley "'How could an adult do this to a child?'– Franziska's parents", https://www.news24.com/SouthAfrica/News/how-could-an-adult-do-this-to-a-child-franziskas-parents-20170531 (accessed 20 October 2023).
[166] Phaliso & Dominic "Thousands at vigil for teen", https://www.iol.co.za/capetimes/news/thousands-at-vigil-for-teen-1995184 (accessed 20 October 2023).
[167] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 65.
[168] Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.
[169] Criminal Procedure Act 51 of 1977.

> offence in which she was robbed of her Apple iPhone; a gold ring with diamonds; and a set of earphones.[170]

Oliver acknowledged that both contraventions of section 3 of Act 32 of 2007 as well as the provisions of Part 1 of Schedule 2 applied to the count of murder in that the death of the victim was caused by the accused after having committed rape as contemplated in section 3 of Act 32 of 2007 and after having committed robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977 applied to the crimes he committed prior to pleading.[171]

In sentencing Judge Savage ordered that:

> 1. In respect of counts 1 and 2 (rape), considered together for purposes of sentencing, the accused is sentenced to life imprisonment in terms of section 51(1) read with Part 1 of Schedule 2 of Act 105 of 1997.
>
> 2. In respect of count 3 (robbery with aggravating circumstances), the accused is sentenced to fifteen (15) years imprisonment in terms of section 51(2) read with Part 2 of Schedule 2 of Act 105 of 1997.
>
> 3. In respect of count 4 (murder), the accused is sentenced to life imprisonment in terms of section 51(1) read with Part 1 of Schedule 2 of Act 105 of 1997.[172]

The accused was given notice that a minimum sentence of life imprisonment applied to both rape counts, as offences contemplated in section 3 of Act 32 of 2007 in terms of section 51(1) and that in terms of Part 1 of Schedule 2 the *'victim was raped more than once*' by the accused and that grievous bodily harm had been inflicted in the rape.[173] Additionally that the aggravating circumstances of the robbery carried a minimum sentence of 15 years in terms of the provisions of section 51(2) and that the crime is one mentioned in Part II of Schedule 2 of the Act.[174]

Judge Savage referred to *S v Malgas*[175] which dealt with the discretion of the court to impose a minimum sentence in terms of section 51 to achieve a severe, standardised and consistent response from the courts. It was held that minimum sentences are not

[170] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 1.
[171] *S v Oliver* (CC47/2016) [2017] ZAWCHC: paras. 2-3.
[172] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 42.
[173] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 4.
[174] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 6.
[175] *S v Malgas* 2001 (1) SACR 469 (SCA).

to be departed from lightly and easily unless there is a truly substantial and compelling reason to do so while being conscious of the fact that legislature has endowed the courts with the ability to impose life imprisonment or another prescribed period of imprisonment for any particular case as entered into the record of the proceedings. Additionally, that factors traditionally taken into consideration during sentencing are not to be ignored.[176]

The state argued that the cruel and vicious nature of the crime committed by the accused could not be found by the court to warrant deviation from the minimum sentence, the imposition of which the accused had been notified. Franziska's parents, Shireen and Andreas, were called to testify as the state's first witnesses and they submitted a signed letter which they elected as their only evidence describing the eternal impact the loss of their daughter would have on them and their lives. They wrote:

> A year after her death and we are still struggling with our grief and in shock over her murder. The loss of a child is almost indescribable. There's pain, there's sadness, there's anguish but acceptance is the hardest. To know that your child suffered and needed you, that is devastating. The loss of a child is the most traumatic experience. You lose a piece of yourself that can never be regained…
>
> We are left with the eternal question of WHY? How could one human being do this to a child?
>
> The senseless murder of our beautiful Franziska can never be understood or explained. There can never be any justification for taking a life. Her family and friends are left with the eternal grief and loss.
>
> We only hope that the person responsible for this brutal act of violence against an innocent child is NOT ALLOWED to walk free to hurt another person.[177]

The accused had ten previous convictions, seven of which were for the possession of drugs, one of assault and the others were robbery and theft. No oral evidence was led on his behalf in mitigation and the accused elected not to testify, but his personal circumstances were submitted from the bar. These circumstances were that he was a 28 year old father of two young daughters, he had a drug habit and his relative poverty; in addition that he showed remorse and guilt during the trial and that he had already

[176] *S v Oliver* (CC47/2016) [2017] ZAWCHC: paras. 7-9.
[177] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 12.

spent time in custody awaiting the trial. The defence argued that it would be appropriate for the Court to deviate from the prescribed minimum sentence on all counts although a long period of imprisonment remained warranted.[178] The state allowed two letters written by the accused to be handed up during the course of argument, one of which was written following his arrest in 2016. While acknowledging that Franziska's life could never be brought back, he said that he would have been devastated if that had happened to one of his own children and felt true remorse. The accused sought forgiveness for his actions and a plea bargain, stating that he had only intended to rob her of her phone but that he did not know "what evil spirit came over me… everything happened so fast".[179]

Judge Savage regarded the seriousness of the crime committed, the interests of the community and the personal circumstances of the offender in order to reach an appropriate and just individualised sentence passed dispassionately while serving as deterrent, preventative, reformative and retributive punishment. Detailing that "the elements of punishment should be given prominence, with (e)ach…not required to be accorded equal weight, but instead proper weight must be accorded to each according to the circumstances"[180] and with proper knowledge that each sentence "creates a legislative standard that weighs upon the exercise of the sentencing court's discretion".[181] Referring to *S v Schwartz*[182] Judge Savage considered the seriousness of the crime and the outrage experienced by the country in maintaining that such crimes "will usually require that retribution and deterrence should come to the fore and that rehabilitation of the offender will consequently play a relatively smaller role".[183] In the argument on sentencing, the accused expressed his intent to steal Franziska's money and phone, but neither he nor the defence, Mr Carstens, could not explain his excessive use of violence or why he continued to rape and murder "a young girl in the prime of her life" in such a cruel and gruesome manner.[184]

[178] *S v Oliver* (CC47/2016) [2017] ZAWCHC: paras. 13-15.
[179] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 16.
[180] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 19.
[181] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 20.
[182] *S v Schwartz* 2004 (2) SACR 370 (SCA).
[183] *S v Oliver* (CC47/2016) [2017] ZAWCHC: paras. 18-21.
[184] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 26.

Judge Savage considered that the accused assisted the police investigation by pointing out where the robbery took place and made admissions regarding that, however, he denied the brutality of the robbery as well as the rape and murder. Whatever remorse he felt, it was not compelling enough to cause him to admit to his crimes until faced with the irrefutable evidence of a DNA test and the testimonies of fourteen witnesses midway through the trial. This led the Court to believe that his remorse was insincere. Coupled with his late admission, the accused left Franziska's dead body in the fynbos bushes and "walked home, callously removing her sim card from her iPhone and placing it in his own cellphone with full knowledge of the heinous crimes he had just committed".[185] Judge Savage held that:

> The deceased was a teenaged girl, a child who had her life before her. She was attacked in the middle of a weekday afternoon in a well-used public space while she was alone, out running to get fit, while her mother walked the family dog in the same forest. The accused watched her from between the pine trees of the forest where he waited and planned his attack from the shadows before launching it. In achieving his goal of robbing the deceased of her cellphone he immobilised her with extreme violence during which he fractured the anterior hyoid bone of her neck and, following a struggle, rendered her unconscious. He then dragged her unconscious body through the fynbos bushes and stripped her of her shoes and clothing. In a calculated manner he removed her shoelaces from her shoes and tied first her hands together and then her neck with her own shoelaces. He placed her body in a position which displayed a clear intent to rape her, which he then did both anally and then vaginally causing severe injuries to her. He throttled and suffocated her to the point that she aspirated sand and blood into her lungs and with such violence that asymmetry was caused to the left side of her face. After he had done this the accused left the lifeless body of the child lying in the bushes, having robbed her of her cellphone, ring and earphones, to be found more than an hour later. It is difficult to contemplate a more brutal and chilling death.[186]

Judge Savage further held that:

> There is nothing mitigating in the fact that the deceased was unconscious when she was raped and then murdered. Society demands that violent crimes of this nature be punished harshly and that a clear message be sent that this is so, particularly in crimes such as this committed against a young teenaged girl who had not even begun her adult life. The Court, in having heard the grief of the parents of the deceased during sentencing proceedings through their letter handed up by agreement, has been placed in a position to understand the tragic, extraordinarily difficult and lifelong consequences for the deceased's family of the accused's heinous crimes.

[185] *S v Oliver* (CC47/2016) [2017] ZAWCHC: paras. 29-31.
[186] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 32.

> In hearing the victim's parents this Court has been usefully aided with a sense of balance and enhanced proportionality in the manner encouraged in *S v Matyityi* (The existence of remorse, as a 'repentance, an inner sorrow inspired by another's plight or by a feeling of guilt' or a 'gnawing pain of conscience' and 'genuine contrition', is a factual question. Where it exists it may constitute a mitigating factor since a truly remorseful offender is unlikely to commit the crimes again, with the court at liberty to take into account any sorrow or anguish suffered by the accused).[187]

The Court relied on *S v Matyityi*[188] which states that where an accused is unlikely to commit the crimes again due to true remorse and suffering, the Court has the discretion to consider it a mitigating factor.[189]

Judge Savage continued that regard was given to:

> The applicable minimum sentencing regime, to the objective gravity, nature and seriousness of the crimes committed by the accused, the personal circumstances of the accused, the relevant mitigating and aggravating factors placed before this Court and the interests of society, I am not persuaded that it has been shown that substantial and compelling circumstances exist in this matter warranting a departure from the minimum sentences prescribed. There are no convincing reasons, in my mind, to justify a departure from such minimum sentences, which the legislature has enacted to ensure a severe standardised response to exactly the sorts of crimes committed in this matter given their continued prevalence in our society. This was the gravest and most serious of crimes and there is no basis on which to justify an overemphasis in this matter of the interests of the accused at the expense of the public interest.[190]

It was on these grounds that Judge Savage considered it both just and proportionate to sentence the accused to the prescribed minimum sentence of life imprisonment, in the interests of society, for the murder of the deceased; the prescribed minimum sentence of life imprisonment for the two rapes considered together for the purposes of the sentence in the interest of justice and proportionality given that the accused raped her twice.; the prescribed minimum sentence in Part 2 of Schedule 2 of Act 105 of 1997 of fifteen years imprisonment for robbery with aggravating circumstances due to the violence with which the robbery was committed, resulting in a fracture to the deceased's hyoid bone during the attack, in the interest of justice and proportionality as there were no substantial and compelling circumstances present.[191] She then made

[187] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 33.
[188] *S v Matyityi* 2011 (1) SACR 40 (SCA).
[189] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 27.
[190] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 35.
[191] *S v Oliver* (CC47/2016) [2017] ZAWCHC: paras. 37-39.

a clear condemnation of gender based violence and the abuse of children in our country as women and children should be able to safely and freely make use of public spaces without the risk and fear of being attacked, violated or murdered without disregard for their constitutionally enshrined rights. Being that the accused was a danger to society and to women and children, his punishment was harsh due to the severity of the level of violence he used.[192]

2.4.2 Whiteness in/as place

The upper middle-class Tokai area is a large residential suburb in the Southern Suburbs of Cape Town that was built in the late 1940s to house predominantly English speaking white South African soldiers returning from World War II. In 2011 it was estimated to have a population of 2 568 people making it a low density place with many open spaces and recreational areas, such as a forest, bike trails, the mountain and the Steenberg wine and golf estate, near the foothill of the Table Mountain range. It is the only sustainably large area in the world where the endangered Cape Flats Sand Fynbos can be found. The racial makeup of its population is 10.2 per cent Black, 3.8 per cent Coloured, 0.7 per cent Indian and 82.2 per cent White. Over 90 per cent of the population remains English speakers while a small percentage are Afrikaans speakers and an even lower percentage speak an African language. Tokai was named after a range of hill in Hungary call called Tokai. Originally it was an open area made up of wine farms and smallholdings, but today only a few wine farms remain as well as a few old Cape Dutch houses. It is not far from Pollsmoor prison where political prisoners, such as Nelson Mandela, were incarcerated by the apartheid regime. The slowly increasing population is a result of the development of cafes and restaurants opening in the area creating a luxury neighbourhood for wealthier families.[193]

In historically white affluent areas the associated meanings attached to those places is whiteness. When whiteness is the meaning to which a specific place is associated, violence that takes place there is not simply violence, it is an attack on the place and whiteness itself as a spatially expressed cultural construct. What happened to Franziska was horrific and heinous, but it shook the collective imagination because she was a relational self, one with whom I feel a familiarity and sense of kinship. Her

[192] *S v Oliver* (CC47/2016) [2017] ZAWCHC: par. 40.
[193] Wikipedia 'Tokai, Cape Town' https://en.wikipedia.org/wiki/Tokai,_Cape_Town (accessed 20 October 2023).

violation in such a well-known and well-frequented place had a completely different impact than it would have in another place.[194] Places defined as white are not perceived to be sexually dangerous to white women as black places are associated with sexual deviance and illicit activity. This is due to the coding of black men (and women) as potential threats to white purity, cleanliness and beauty. The basis of this is that whiteness and its imagined safety rely on the absence of black people from historically white places.[195] Whiteness establishes a relationship between place and identity as well as place and a sense of belonging. It uses segregation to (re)make whiteness and enables the continuance of white supremacy.

Linda Peake posits that "racialisation needs to be understood from a normative and relational position of whiteness that situates non-white people in and out of place".[196] As such she argues that whiteness is the structural privilege to view yourself, others and society in turn drawing its power from geographically and historically different meanings ascribed to it through "embodied systems of social stratification and differentiation".[197] Whiteness gives the privilege of having access to safe suburban areas and freedom of movement, such as in the landscapes of apartheid which maintained whiteness and white privilege as natural spatialities.[198]

Owen Dwyer and John Jones III argue that public and private spaces provide a strong basis for the cohesion and maintenance of whiteness and the authority to navigate social space, making social space a precondition of white privilege. Whiteness attributes characteristics to places and naturalises them through reification of social space. This process encloses and creates homogeneous place.[199]

Applying Massey's theory, it can be said that whiteness as a spatial practice relies on political and social power relations and lays "claim to some particular moment/location in time-space when the definition of the area and the social relations dominant within it were to the advantage of that particular claimant group".[200] In order to enclose and

[194] Cresswell 2009: 1.
[195] Bell & Valentine (eds.) 1995: 143-145.
[196] Peake 2009: 249.
[197] Peake 2009: 247.
[198] Peake 2009: 251.
[199] Dwyer & Jones III 2000: 210-212.
[200] Massey 1994: 167-169.

stake claim to place, whiteness must create fixed identities for places which are "defined through counterposition against the Other who is outside".[201]

Cheryl Harris excellently argues that whiteness can not only be a passive characteristic, but also an entity used to fulfil the exercise of power.[202] She further stated that whiteness is a form of property; in this regard whiteness allows for the legal recognition of a claim to many social and political aspects of life and land based on racial classification. Within the scope of my project her use of whiteness as a valued social identity foregrounding segregation is important and helpful for an understanding of the use of space as the assertion of whiteness.

As a spatial practice under apartheid, whiteness allowed/ enabled the right to exclude. It was the right to determine who had the privilege to use and enjoy public space.[203] The associational preference of whites in Tokai created formal and informal mechanisms for the subjugation of other races. These have continued as represented by the current racial demographics. This illustrates that the invent of Tokai successfully fixed racial identity to place and race to a sense of belonging.

2.5 Uyinene Mrwetyana

On 24 August 2019 nineteen-year-old black UCT student, Uyinene Mrwetyana, went missing and she would later be found burned and buried in a shallow grave. On 20 April 2000 in East London, the Mrwetyana family welcomed their second child, a baby girl, into their family, Uyinene Mrwetyana. Her mother Nomangwane and her father Mabhele, a civil engineer. After a difficult pregnancy, the Christian family named her Uyinene, meaning God is truth.[204] Uyinene went to pre-school at Little Sunflowers and then moved on to Hudson Park Primary School until Grade 7.[205] Uyinene attended high school at Kingswood College from 2014 to 2018 as boarding scholar where she

[201] Massey 1994: 168.
[202] Harris 1993: 1734.
[203] Harris 1993: 1736.
[204] Raborife "Uyinene – God is truth" part of "#AmINext" a News24 special feature https://aminext.news24.com/ (accessed 20 October 2023).
[205]SA People "Emotional Scenes at Uyinene (Nene) Mrwetyana's Funeral in South Africa", https://www.sapeople.com/2019/09/07/emotional-scenes-at-uyinene-nene-mrwetyanas-funeral-in-south-africa/ (accessed 20 October 2023).

matriculated. Kingswood College is a private Methodist co-educational school in Grahamstown, Eastern Cape, that it is attended by boarding and day scholars. Average annual tuition fees range from R101 805 up to R136 860 from Grade 8 to Grade 12.[206]

In 2019 Uyinene moved to Cape Town and began her tertiary education at the University of Cape Town studying film and media. She stayed in student residence Roscommon House in Claremont. On 24 August 2019 she was reported missing after she did not return from her trip to Clareinch Post Office in the Cape Town suburb of Claremont. Within hours of her going missing, her friends had begun an online missing person alert actively asking for any and all information regarding her whereabouts. This alert went viral on social media, on UCT campus and in public spaces around Cape Town.[207] Her disappearance caused national outrage and mobilised students across the country to demand responses from the Government and the South African Police Services that acknowledge and adequately address the epidemic of gender based violence in the country. Her disappearance immediately received the university's vice-chancellor Professor Mamokgethi Phakeng's attention and she also joined the online alert on Twitter, changing her profile photo and her handle.[208] Along with friends and fellow students, private investigators were hired by her family to join in the frantic search for her and they all hoped for her safe return.[209]

Five days after Uyinene went missing, the family's private investigator aided high-level task team, as authorised by Police Minister Bheki Cele, to find and arrest the person responsible for her disappearance.[210] Aided by Western Cape Flying Squad members, South African Police Services detectives were able to locate and arrest the man in

[206] Dordley "Uyinene Mrwetyana receives posthumous award", https://www.capetownetc.com/news/uyinene-mrwetyana-receives-posthumous-award/ (accessed 20 October 2023).
[207] Raborife "Uyinene – God is truth" part of "#AmINext" a News24 special feature https://aminext.news24.com/ (accessed 20 October 2023).
[208] Raborife "Uyinene – God is truth" part of "#AmINext" a News24 special feature https://aminext.news24.com/ (accessed 20 October 2023).
[209] Meyer "Missing UCT student Uyinene Mrwetyana was 'bludgeoned with a scale' in post office", https://www.timeslive.co.za/news/south-africa/2019-09-02-breaking-missing-uct-student-was-bludgeoned-with-a-scale-in-post-office/ (accessed 20 October 2023).
[210] Raborife "Uyinene – God is truth" part of "#AmINext" a News24 special feature https://aminext.news24.com/ (accessed 20 October 2023).

Claremont.[211] On 2 September 2019 the man, Luyanda Botha, was arrested and appeared in the Wynberg Magistrate's Court after confessing to raping and murdering the teen. Police Minister later revealed that the man attempted to burn her body and bury her in a shallow grave 29 kilometres away from Claremont in Khayelitsha on the day of disappearance.[212] As confirmed by NPA Western Cape spokesperson Eric Ntabazalila, he was charged with murder, rape and defeating the ends of justice and was expected to return to court on 5 November 2019.[213] [214] Prosecutor Nomnikelo Konisi detailed in court that the man, a post office employee, lured Uyinene into the post office after operating hours under the guise of helping her to send a parcel only to lock her in the building then rape and bludgeon her to death with a scale.[215]

Uyinene's funeral was held in Abbotsford Christian Centre in East London where thousands of mourners gathered, including Police Minister Bheki Cele.[216] She was then buried in Qina in Centane where her ancestors are buried.[217]

After her death, Kingswood College posthumously honoured her with the Neil Aggett Award, which is awarded to Kingswood College students who display a high degree of human courage and awareness of social justice. The school released a statement saying:

> The impact of Nene's death has been significant, giving hope to the hopeless and a voice to the silent majority, and the fact that a Kingswoodian could raise such awareness should not go unnoticed," it said. "A born leader, a keen academic, a talented musician, an excellent

[211] IOL "42-year-old man arrested over missing UCT student Uyinene Mrwetyana", https://www.iol.co.za/news/south-africa/western-cape/42-year-old-man-arrested-over-missing-uct-student-uyinene-mrwetyana-31575183 (accessed 20 October 2023).
[212] Raborife "Uyinene – God is truth" part of "#AmINext" a News24 special feature https://aminext.news24.com/ (accessed 20 October 2023).
[213] Njilo & Savides "Uyinene Mrwetyana's alleged killer had criminal conviction and faced a previous rape charge: NPA", https://www.timeslive.co.za/news/south-africa/2019-09-02-uyinene-mrweytanas-alleged-killer-had-criminal-conviction-and-faced-a-previous-rape-charge-npa/ (accessed 20 October 2023).
[214] Daily Maverick "Murder Confession arrives with a thud – but Uyinene Mrwetyana is still officially missing", https://www.dailymaverick.co.za/article/2019-09-03-murder-confession-arrives-with-a-thud-but-uyinene-mrwetyana-is-still-officially-missing/ (accessed 20 October 2023).
[215] Meyer "Missing UCT student Uyinene Mrwetyana was 'bludgeoned with a scale' in post office", https://www.timeslive.co.za/news/south-africa/2019-09-02-breaking-missing-uct-student-was-bludgeoned-with-a-scale-in-post-office/ (accessed 20 October 2023).
[216] SA People "Emotional Scenes at Uyinene (Nene) Mrwetyana's Funeral in South Africa", https://www.sapeople.com/2019/09/07/emotional-scenes-at-uyinene-nene-mrwetyanas-funeral-in-south-africa/ (accessed 20 October 2023).
[217] Velaphi "I am sorry for not warning you about post office, says Uyinene's mom at funeral", https://www.iol.co.za/sundayindependent/news/i-am-sorry-for-not-warning-you-about-post-office-says-uyinenes-mom-at-funeral-32555242 (accessed 20 October 2023).

> competitor at sports, Nene was the balanced individual who loved life. But more than that, she cared deeply. She was often outspoken about her views on gender and patriarchy, not only at school but with her family too.[218]

In honour of Uyinene, UCT created a scholarship called the Uyinene Mrwetyana Scholarship for Women in the Humanities about which Professor Phakeng said:

> Each time the scholarship is awarded, it will be a cautious reminder of the tragic circumstances under which Uyinene's life was taken and spur the scholarship recipient on, to keep the flame of her legacy shining brightly. Each time Uyinene's name is mentioned in this way, she will be alive to us as we work together towards ending the scourge of gender-based violence. We do not want to forget who she was.[219]

There is no shortage of information about Uyinene as shown. Everything about her has been described in great detail: her hobbies, the name of the pre-school she attended, her aspirations, her education and even her eating habits. She has become a martyr, the symbol of the country's fight against gender based violence. Perhaps this is because of the times.

2.5.1 Court case

Luyanda Botha briefly appeared in the Wynberg Magistrates Court. His murder and rape trial was then formally transferred to the Western Cape High Court by Magistrate Goolam Bawa. On 15 November Mr Botha appeared in the Western Cape High Court before Judge Gayaat Salie-Hlope. Western Cape Director of Public Prosecutions Adv. Rodney de Kock represented the state in the case and Mr Botha was represented by Mr John Solomons.[220]

There are no official court transcripts available on legal databases, only a fifty-three minute long video of the live stream of the case in the court posted on YouTube on 15 November 2019.[221] There are photographs taken of a physical copy of the indictment

[218] Dordley "Uyinene Mrwetyana receives posthumous award", https://www.capetownetc.com/news/uyinene-mrwetyana-receives-posthumous-award/ (accessed 20 October 2023).
[219] Raborife "Uyinene – God is truth" part of "#AmINext" a News24 special feature https://aminext.news24.com/ (accessed 20 October 2023).
[220] John Solomans is sometimes referred to as Advocate Solomans and other times as Mr Solomans. In the Western Cape High Court Judge Salie-Hlope refers to him as Mr Solomans.
[221] News24 "Luyanda Botha pleads guilty, sentenced to life for Uyinene Mrwetyana rape, murder", https://www.youtube.com/watch?v=jYpOBkMZtco (accessed 20 October 2023).

in court available online.[222] The details of the case are my own as transcribed from the audio and visuals of the YouTube video and have been transcribed verbatim with no alterations of any sort.

Advocate de Kock began by detailing the background of the case before the court and stated the plea and admissions made the accused as follows:

> The plea of guilty and admissions were as follows: the accused freely and voluntarily admits that on or About Saturday 24 August 2019 and at or near Claremont post office, he unlawfully and intentionally committed an act of sexual penetration with the complainant to wit, Uyinene Mrwetyana, by penetrating her vagina with his fingers without her consent. The provisions of section 51 of Act 105 of 1997, as indicated previously, is applicable. The accused freely and voluntarily admits that on or about Saturday 24 August 2019 and at or near the Claremont post office he unlawfully and intentionally committed an act of sexual penetration with the complainant to wit, Uyinene Mrwetyana, by penetrating her vagina with his penis and or an object unknown to the state without her consent and similarly the provisions in terms of the minimum sentence legislation is applicable to that. The accused freely and voluntarily admits that on or about the Saturday 24 August 2019 and at or near the Claremont post office, the deceased in this matter, he assaulted her by repeatedly hitting her on head with a blunt object and or inflicting other violence unknown to the state on her. The provisions of section 51, is similarly applicable to the charge of murder as set out above. The accused furthermore admits in the document that he committed the offence of defeating or obstructing the administration of justice to with that he disposed of the body of the deceased by dumping it on a field, dousing it with an accelerant and having his car cleaned in order to mislead the police as to the true method of her death, her identity, the identity of the perpetrator and to destroy forensic evidence which acts defeated or obstructed the administration of justice. Those are the formal admissions made by the accused in terms of the details of the pre-explanation. Advocate Solomans and his learned colleague will proceed further to inform the court of that.[223]

Mr Solomans then proceeded to read the explanation of Mr Botha as follows:

> If it pleases you, My Lady, I will be reading the C section of the record you with, My Lady. I, Luyanda Botha, was employed as a teller at the Claremont post office in Claremont. I first interacted with the deceased on the 24 August 2019 when she entered Claremont post office to enquire about a parcel she was expecting. The parcel contained clothing she had purchased online. The parcel was not available and I told the deceased that I would contact her to tell her

[222] Tembo "State says they're ready to start with Uyinene Mrwetyana's murder trial", https://www.iol.co.za/capeargus/news/watch-state-says-theyre-ready-to-start-with-uyinene-mrwetyanas-murder-trial-36811206 (accessed 20 October 2023).
[223] News24 "Luyanda Botha pleads guilty, sentenced to life for Uyinene Mrwetyana rape, murder", https://www.youtube.com/watch?v=jYpOBkMZtco (accessed 20 October 2023).

when the parcel was available. The parcel arrived at the post office on the 16 August 2019. I registered the parcel on the same day. On Saturday 24 August 2019, I reported for duty at Claremont post office in Claremont, the post office was due to close at 1 o'clock. Shortly before 1 o'clock my colleague, Suraya Abdulla, went home as an agreement between us leaving me alone in the post office. I contacted the deceased to inform her that the parcel was available for collection. The deceased used the Taxify taxi service to travel from her residence Roscommans university student accommodation in Claremont to the Claremont post office. She arrived at the post office after closing time. I unlocked the front door and the deceased entered. When she entered the post office we were alone in a locked post office. When the deceased searched her bag to pay the requisite customer fees, I started making sexual advances towards her. The deceased did not respond and looked scared. I grabbed her by the waist and forcefully pulled her closer to me. I proceeded to sexually touch the deceased against her will. I inserted my fingers into her vagina. I then inserted my penis into her vagina. The deceased fought me whilst I sexually violated her. She managed to run to the door, but I caught up with her knocked her to the ground. I dragged the deceased to the safe inside the post office. I locked her up inside the safe. The deceased screamed whilst inside the safe. I choked the deceased and she fought back and kicked me. I took a 2kg weight used to weigh packages received at the post office and used it to bludgeon the deceased to death. I targeted her head. I left the post office and consumed alcohol outside a nearby liquor outlet. I returned to the post office shortly thereafter. I covered the body of the deceased with cushions, a blanket and a jersey as she lay in the safe. I left the post office in the evening. I returned to the post office in the early hours of Sunday 25 August 2019. The area where I attacked the deceased and where her body lay was covered in the blood of the deceased. I proceeded to clean up the inside of the post office to remove the blood from the scene. I waited until it was dark and requested the security officer who patrolled the outside of the parameter of the post office to allow me to park my motor vehicle in the yard of the post office. Once parked in the yard, I placed the body of the deceased in a large postal bag and carried her body to my motor vehicle. I transported the body of the deceased to a field in Lingelethu West and dumped it in a shallow hole. I then drove to a nearby petrol station and purchased petrol. I returned to where I disposed of the body of the deceased, doused her with petrol and then set her alight. I admit that I did so to defeat or obstruct the course of justice by destroying forensic evidence. I admit that I hired someone to clean my car to destroy the forensic evidence. I admit that the body of the deceased was discovered on Monday 26 August 2019. I admit that she was correctly identified as Uyinene Mrwetyana. I admit that the body of the deceased did not sustain any further injuries from the moment the murder was committed until the post-mortem examination was performed on it by Dr Vister on the second and the fourth of September 2019. The content of the post mortem report is attached and is admitted as correct and is attached as annexure B. I admit that the DNA retrieved from the body of the deceased during the post-mortem examination was semen and that I was the depositor thereof and the report is attached as annexure C. I admit that the photographs taken at the Claremont post office correctly reflects the scene where the deceased was killed and is attached as

annexure D. I admit that the photographs taken correctly reflects the scene where the body of the deceased was discovered in Lingelethu West and is attached as annexure E. I admit that the photographs taken correctly reflects the post-mortem examination and is attached as annexure F. I admit that I acted with the full appreciation of the wrongfulness of my actions when I committed the above mentioned acts and I am liable for my actions as I had the intention to rape and kill the deceased. I also intended to defeat or obstruct the course of justice. I admit that the above mentioned court has the necessary jurisdiction to entertain this matter as it pleases you, milady.[224]

The physical copy of the indictment in the matter as photographed read as follows:[225]

The state alleges that the accused is guilty of the following offences:

1. Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) amendment act, no. 32 of 2007.
2. Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment act, no. 32 of 2007.
3. Murder Read with the Provisons Of Section 51(1) Of The Criminal Law Amendment Act 2015 of 1997 (as amended).
4. Defeating or obstructing the administration of justice.[226]

After the explanation was read out, Advocate de Kock then relayed the aggravating factors of the sentencing as follows:

The act aggravating factors of this case can be summarised as follows: the deceased was a 19 year old student who was murdered in a callous and vicious manner for no reason other than she rebuffed the sexual offences, the sexual advances of the accuse. The deceased was a first year student at the University of Cape Town in the prime of her life, had much to offer the country and the opportunity to reach her potential was brutally cut off by that accused. The family and the friends of the deceased are greatly traumatised by the fact that the deceased in what should have been a safe public space.[227]

Judge Salie-Hlope, satisfied with conviction, charged Mr Botha as follows:

Mr Botha, you have heard the submissions made by the defence on your behalf and the state and I am satisfied that the conviction and sentence agreement is in accordance with justice and

[224] News24 "Luyanda Botha pleads guilty, sentenced to life for Uyinene Mrwetyana rape, murder", https://www.youtube.com/watch?v=jYpOBkMZtco (accessed 20 October 2023).
[225] Tembo "State says they're ready to start with Uyinene Mrwetyana's murder trial", https://www.iol.co.za/capeargus/news/watch-state-says-theyre-ready-to-start-with-uyinene-mrwetyanas-murder-trial-36811206 (accessed 20 October 2023).
[226] I have quoted the indictment verbatim and have not made any alterations of any sort.
[227] News24 "Luyanda Botha pleads guilty, sentenced to life for Uyinene Mrwetyana rape, murder", https://www.youtube.com/watch?v=jYpOBkMZtco (accessed 20 October 2023).

> accordingly I convict you as charged. Now as regarding to the sentence the court convicts you as charged as regarding the sentence I'll read out as follows: count one in short rape by inserting your fingers into the vagina of the deceased, life imprisonment; count two which is rape by inserting your penis inside the vagina of the deceased, life imprisonment; on count three for the unlawful and wrongful killing which is the murder of Uyinene, life imprisonment; and count four, 5 years direct imprisonment which essentially is defeating or obstruction the administration of justice and disposing of her body, setting it alight and cleaning up various forensic evidence in the course of obstructing the administration of justice.[228]

When asked whether he had anything to say to the family of Uyinene Mr Botha told the judge that he had written a letter to the family which he wanted them to read privately and not in court as assisted by the defence. Both Advocate De Kock and Judge Salie-Hlope highlighted that the high rate of gender based violence in the country was not to be ignored that they hoped that this ruling would strongly convey the judiciary's commitment to combating gender based violence through harsh sentencing for these cruel and heinous crimes. Judge Salie-Hlope closed by wishing the family well in the "healing of your grief".

What stands out to me in this case is that both the Advocate De Kock and Judge Salie-Hlope make constant reference to Uyinene being a UCT student and that this showed the huge potential impact of her contribution to her community and the country. While they also mention her age and refer to her as a "beautiful young girl" or a "lovely young lady",[229] it is not lost on me that her prestigious schooling was directly linked to and exacerbated the weight of her murder and the collective grief experienced by not only her family, but by the country as well. Professor Phakeng in her many statements also raised things that implied that the fact that a young woman from UCT being murdered is particularly shocking and heavy on the psyche. There seems to be a collective feeling in the Western Cape that class and public space are intertwined in such a way that place should shield people from violence.

2.5.2 Class analysis of place

People are 'placed' into varying types of places which then results in the spatial formation of class. Following this understanding, class should be thought of as a spatialised phenomenon which increases precariousness in poorer communities.

[228] News24 "Luyanda Botha pleads guilty, sentenced to life for Uyinene Mrwetyana rape, murder", https://www.youtube.com/watch?v=jYpOBkMZtco (accessed 20 October 2023).
[229] These comments will be revisited and their significance discussed in Chapter 3.

Within the context of South Africa it is true that both occupation and residential location define social class.

Speaking about assaults that took place in a middle to upper class area in an expensive café, Susan Ruddick analyses the extended media attention that these assaults received and the significant collective anxiety they brought to the fore for their local community and the country at large. One of her postulations is "the assumption that public spaces are universally accessible to a civic public"[230] whereas "recent scholars of urban life have noted, gendered and racialised identities function to constrain participation in the public sphere" because the ways in which different identities vary across space and time are in an *interlocking matrix of power relations*.[231] Her second postulations regards the function of public space in that "public spaces have tended to be equated with the local level, functioning within the neighbourhood or urban community, circumscribed within processes that operate at regional, national, and international scales".[232] She further argues that the constitution of the "scaling of public spaces" and bodies is itself a political construction in that it reflects the "structural patterns of group privilege and oppression".[233] As a place where these constructs are constituted and contested, public spaces reflect the structuring of social identities and their relation to one another in and through place. Thus the media becomes a critical tool in instructing the public on how it should think about encounters of violence from an understanding of how gender, race, and class intersect within individuals and within places.[234]

The reference to where Uyinene was studying and where she lived is symbolic of the power that social classification has on location.[235] In this regard, what is particularly shocking about certain violence is in part related to the location in which the violence occurs. A theme that surfaced in Uyinene's murder is the location in which it happened. This is significant for what it means to the middle-class suburban community. What it represents is that her murder compromises "the freedom of middle-class families to move without fear through the city" a freedom experienced in the greater city of Cape

[230] Giesking *et al* 2014: 7.
[231] Giesking *et al* 2014: 7.
[232] Giesking *et al* 2014: 7-8.
[233] Giesking *et al* 2014: 7-8.
[234] Giesking *et al* 2014: 8.
[235] Parker *et al* 2007: 904.

Town because "people organize themselves and are organized to form distinctive sociocultural spatial clusters".[236] Spatially, sociocultural idiosyncrasies characterise "the 'sort of people' who reside within the 'types of places' so classified".[237] This created a deep sense of unease as this space belonging to "everyone" made "everyone" a potential victim of the crime that took place there. This collective "everyone", however, does not extend to townships.[238] This in large reflects that certain "public" spaces are differentiated from others "in terms of their ascribed economic and symbolic functions and the meanings that different groups attempt to assign them in the course of a conflict",[239] This speaks also to "the role that the space plays in class strategies for reproduction"[240] as it is also a "critical element: those spaces that function as recreational and leisure areas for the new middle-class carry with them different political dynamics than those that serve lower-income groups".[241]

When thinking about the co-constituting relationship between the places that class make and the classes that place make Simon Parker, Emma Uprichard and Roger Burrows refer to Michael Savage *et al* who wrote:

> One's residence is a crucial, possibly the crucial identifier of who you are. The sorting processes by which people chose to live in certain places and others leave is at the heart of contemporary battles over social distinction. Rather than seeing wider social identities as arising out of the field of employment it would be more promising to examine their relationship to residential location.[242]

Life in Cape Town is spatially expressed through race, with whites being the socioculturally dominant group. What is notable in Uyinene's case is that there is little or no mention of her race, only her ethnicity and even that was only touched on briefly. Neither the media nor Judge Salie-Hlope acknowledged the significance of the fact that she is black. In this case, it was class solidarity that was glaringly obvious. The social status segregation of Cape Town suburban areas uses spatial distance to minimise interaction with lower class communities in "public" spaces. Yes, it was the

[236] Parker *et al* 2007: 905.
[237] Parker *et al* 2007: 114.
[238] Giesking *et al* 2014: 10.
[239] Giesking *et al* 2014: 10.
[240] Giesking *et al* 2014: 10.
[241] Giesking *et al* 2014: 10.
[242] Parker *et al* 2007: 904.

shock of her murder happening in a very everyday place, but it was also the shock that the location of the everyday place was a leafy middle-class white suburb.

While the demographics in Cape Town have changed in the past few years with the increased presence of black students occupying the formerly predominantly white campus, the lines of differentiation have somewhat shifted to class and thus the location of a group in certain neighbourhoods limits encounters involving members of differently located group. She lived and studied and pursued hobbies in Claremont. This is significant in "that residential differentiation should be interpreted in terms of the social relations within capitalist society, since segregation brings about differential access to the scarce resource".[243] Neoliberal whites rallied behind the Mrwetyana family illustrating the power that place plays in influencing the pattern of social relations.[244] An individual's life chances are determined by many things an import one is schooling which is also dependant on the neighbourhood you live in.[245]

2.6 Life Esidimeni

On 29 September 2015 the Gauteng Department of Health (Department) terminated its contract with Life Esidimeni, a mental health care facility, which had been in operation for over thirty years by a formal notice authorised and signed by the Head of Department, Dr Tiego Ephraim Selebano. On 21 October 2015, Ms Qedani Mahlangu, then member of the Executive Council, announced the formal end of the contract of service claiming that that it was a collective decision to terminate, which Dr Selebano denied stating that she had intimidated him.[246] The six-month notice provided that all mental health care users, estimated at 1711, would be moved out of Life Esidimeni facilities by 31 March 2016 but was later extended to 30 June 2016. That October, the Department immediately started mass haphazard discharges of

[243] Morgan 1984: 307
[244] Morgan 1984: 306.
[245] Morgan 1984: 307.
[246] In The Arbitration Between Families of Mental Health Care Users Affected By The Gauteng Mental Marathon Project and National Minister of Health of the Republic of South Africa, Government of the province of Gauteng, Premier of the province of Gauteng and Member of the executive council of health: province of Gauteng rehearsed before Justice Dikgang Moseneke. Hereafter referred to as the Award. Par. 23.

patients to hospitals, non-governmental organisations handpicked by the Department or to their family homes.[247]

The Department alleges that the termination of the contract was in line with the National Mental Health Policy Framework and Strategic Plan 2013-2020.[248] The move of mental health care users out of Life Esidimeni was part of the Gauteng Mental Health Marathon Project;[249] a project intended to deinstitutionalise mental healthcare and develop community-based services located near to loved ones and to ease budgetary constraints as well as concerns about the duration of the contract with Life Esidimeni.[250] Ms Barbara Creecy, a member of Executive Council for Finance, reviewed management letters from the Auditor-General for the years 2013/14 to 2016/17 and was unable to find any reference to or concern over the Life Esidimeni contract and an order to save costs as claimed by Ms Mahlangu and Dr Selebano which formed one of the grounds for the termination of the contract with Life Esidimeni.[251]

Attempts were made to dissuade the Department from moving the patients out of Life Esidemeni, by Ms Mahlangu, Dr Selebano and the former head of the Mental Health Directorate (Directorate), Dr Makgabo Manamela continued with the mass removals without proper consultations with the families and professional clinical bodies within the Department.[252] The non-governmental organisations lacked the resources and infrastructure to accommodate the mental health care users and the mental health care users were not prepared for the move as the move was rushed causing them to leave the Life Esidimeni facility without proper assessment from clinicians and other health care practitioners and without adherence to the clinical protocols required to discharge and relocate patients. The move had a detrimental impact as the mental health care users were not assimilated into their new environments which were mostly

[247] Award: par. 24.
[248] Award: par. 29.
[249] Award: par. 6.
[250] Award; par. 27.
[251] Award: par. 32.
[252] Award; par. 25.

isolated and far from surrounding communities[253] and some over 160km away from their families.[254]

Professor Makgoba, the Health Ombud, released the Ombud's Report which found that more than 95 per cent of the deaths happened at non-governmental organisations and that the highest number of deaths occurred at five of these organisations.[255] These were Precious Angels, Cullinan Care and Rehabilitation Centre, Siyabadinga/Anchor, Mosego/Takalani and Tshepong/Hephzibah. These organisations are not in particularly higher income areas. The three key risk factors for the Life Esidimeni health care users identified by Professor Makgoba were: "transfer to non-governmental organisations rather than transfer to hospital; advanced age; and being female".[256]

Professor Makgoba observed that there were no clear selection criteria for the non-governmental organisations including no requirements for premises, staff, qualifications or experience, but the Department had told these organisations in the province "this is an opportunity to provide empowerment to people who can… modify their homes in order to accommodate patients". Ms Jacobus, the deputy director of mental health services, who reported to Dr Manamela, testified that the normal assessment processes of conducting pre-audit visits and then non-governmental organisations audits were not completed during the Marathon Project. She was instructed by Dr Manamela to prepare licences even though the non-governmental organisations did not comply with the licensing requirements which she admits was unlawful and knowingly fraudulent. Dr Manamela issued all licences despite lacking the legal authority to do so and these licences were re-issued by Dr Selebano after the closure of the non-governmental organisations concerned. The licences were all backdated to 1 April 2016 regardless of the date of the signature and contained incorrect addresses and incorrect mental health care user classifications. Not all of the non-governmental organisations were licensed and those that were, were licensed for their planned number of beds and not for beds actually available and some for more patients than they could accommodate; other non−governmental organisations did not

[253] Award: par. 31.
[254] Award: paras. 117-122.
[255] Award: par. 42.
[256] Award: par. 91.

even have premises or any beds at the time they received a licence from the Department and accepted more patients than they were licenced for.[257]

In March 2016 there was a High Court litigation process between the Department and the South African Depression and Anxiety Group in which the Department was successful and continued to transfer mental health care users from Life Esidimeni to non-governmental organisations at a rate of roughly sixteen per month between October 2015 and April 2016. On 8 April 2016 meeting in the member of the Executive Council's office resolved to move 950 mental health care users to non-governmental organisations by the end of that month. Five-hundred were transferred in May 2016 and 800 patients were transferred June 2016. Some families testified that they were told that the transfers would happen but not when or where their loved ones would be moved while others had not been informed of the moves at all. Life Esidimeni itself lacked sufficient information regarding where individual mental health care users would be transferred to which made them difficult for the families to track. During the transfer of the mental health care users, non-governmental organisations began to select patients and move them in their own transportation as there was no written plan for the transportation of patients in Departmental vehicles.[258]

This chaotic move resulted in medication, clinical records and personal belongings remaining behind. Dr Mkhatshwa from Life Esidimeni testified that each mental health care user left the facility with a medical file containing their photo, identity document and a discharge summary. However, their full medical records were not included and the Department was instructed to make photocopies of them but, however, failed to do so. Professor Makgoba attested that "the mental health care users were transferred with summary notes and records that could have been interpreted by a 'health related qualified person'" but many non-governmental organisations claimed that the mental health care users arrived without medical records.[259] This created difficulties in accessing hospitals when the mental health care users became sick as they lacked proper identification documents required for treatment. Disturbingly, clinicians, doctors or psychiatrists were not available on-site at any of the non-governmental organisations. Additionally, there were problems with accessing medicine in non-

[257] Award: paras. 45-48.
[258] Award; paras. 50-53.
[259] Award: par. 56.

governmental organisations as clinical protocols for identifying, storing and labelling medication were breached due to instances where no qualified health care professional was present to prescribe and provide identified medication in the correct dosage to patients.[260]

Dr Manamela and Mr Mosenogi, the leader of the Gauteng Mental Health Marathon Project, devised the plan for the mass transferrals of the mental health care users from Life Esidimeni on the instruction of and with the support of Ms Mahlangu and Dr Selebano with neither proper notice nor the consent of the patients and their families. The transfers were inconceivably cruel and inhuman with some patients being bound by the hands, feet or both during their relocation.[261]

In my opinion the Ombud's Report correctly found that all the mental health care users died under unlawful circumstances, which the state admitted. The state further admitted that the mental health care users were placed at non-governmental organisations at its request and under its authority and that while the non-governmental organisations acted as agents of the state against payment of subsidies and remuneration, the state acted in a negligent and callous manner which was contrary to statutory regulations as it continued to owe a duty of care to the mental health care users and their families. Justice Moseneke held that "in a blatantly unlawful and life threatening way, the state purported to outsource its constitutional and statutory duties to ill-equipped and ill prepared non-governmental organisations and devastation of multiple deaths and torture ensued".[262]

On 26 March 2016 at Takalani, the first mental health care user, Ms Deborah Phetla, died and a post-mortem revealed that her stomach contained brown paper bag and plastic.[263] A further fifty-one people had died by 1 August 2016. On 11 August 2016 the provincial legislature broached a question to Ms Mahlangu regarding the Gauteng Mental Health Marathon Project and she failed to mention the deaths which Justice Moseneke found reflected a complete disregard for the severity of the deaths.[264] As a result of their move out of Life Esidimeni facilities after 1 October 2015, 144 mental

[260] Award: par. 58.
[261] Award: par. 59.
[262] Award: par. 79.
[263] Award: par. 80.
[264] Award: par. 82.

health care users died and forty-four mental health care users are still missing to date.[265] 1418 other mental health care users survived even though they were tortured, traumatised and were exposed to life threatening conditions. They were transferred back to Life Esidimeni facilities for further treatment.[266]

2.6.1 Arbitration

Former Deputy Chief Justice Dikgang Moseneke was the single Arbitrator in the Life Esidimeni Arbitration Award between families of mental health care users affected by the Gauteng Mental Marathon Project as claimants and National Minister of Health of The Republic of South Africa, Government of The Province of Gauteng, Premier of The Province of Gauteng and Member of The Executive Council of Health: Province of Gauteng as respondents. Justice Moseneke was tasked with laying the legal foundation for granting the Award for the Arbitration.[267] Subject to a written arbitration agreement between the parties concluded on 8 September 2017 that was signed on 3 October 2017 and subject to the provisions of the Arbitration Act,[268] Recommendation 17 of the Health Ombudsperson's "Report into the circumstances surrounding the deaths of mentally ill patients: Gauteng Province"[269] established the Life Esidimeni Arbitration. A pre-arbitration minute, in which the Arbitrator appointed two advocates, namely Adv. Nontlantla Yina and Adv. Patrick Ngutshana, to serve as evidence leaders, was settled which regulated the exchange of pleadings, procedural matters, admission of evidence and the inclusion of extensive bundles of documents.[270] The arbitration process was intended to afford the affected families the space to mourn or grieve and have "closure" after uncovering the full circumstances of the death or survival of their loved ones and to give the state decision-makers an opportunity to account for the deaths and torture of the mental health care users who were in their care and tender public apologies.[271] The cause of these proceedings follows.

---

[265] Award; par. 2.
[266] Award; par. 112.
[267] In The Arbitration Between Families Of Mental Health Care Users Affected By The Gauteng Mental Marathon Project and National Minister of Health of the Republic of South Africa, Government of the province of Gauteng, Premier of the province of Gauteng and Member of the executive council of health: province of Gauteng rehearsed before Justice Dikgang Moseneke. Hereafter referred to as the Award.
[268] 42 of 1965 as amended.
[269] Hereafter referred to as the Ombud's Report. 1 February 2017.
[270] Award; par. 3.
[271] Award: par 11.

The arbitration proceedings, which sat for forty-five days including two days for the presentation of legal arguments, were open to the affected families, the public and all media, started on 9 October 2017 and ended on 9 February 2018. sixty witnesses took to the stand and gave evidence under oath, including twelve senior state officials.[272] The managing director of Life Esidimeni at the time of the Gauteng Mental Health Marathon Project, Dr Morgan Mkhatshwa, also testified. Other witnesses were three managers or owners of non-governmental organisations where the mental health care users were moved to, six expert witnesses, twenty-two family members of the deceased persons and nine family members of the surviving victims. During the proceedings 173 documentary exhibits were admitted to the record, SECTION27 submitted fifty-nine affidavits in relation to the witnesses who chose not to testify orally and Legal Aid South Africa handed in forty-two affidavits.[273]

Subsequent to the pleadings and the arbitration agreement, the Arbitrator was given jurisdiction to make a binding award based on either the agreed quantum of compensation or in line with equitable redress deemed appropriate to facilitate closure for the affected families as a category or individually.[274] The claimants claims for damages exceeded common law damages and flowed from what they contended were severe breaches of the constitutional rights of the mental health care users and their families by the government.[275]

There were three categories of claimants in this matter before Justice Moseneke as the Arbitrator. The first category was represented by Advocate Adila Hassim and Advocate Nikki Stein of SECTION27 which was made up of sixty-three claimants whose family members died after they were moved out of Life Esidimeni into hospitals, non-governmental organisations or their homes as part of the Gauteng Mental Health Marathon Project despite their families' objections.[276] These claimants sought relief in the form of:

---

[272] Namely the former Gauteng Province Head of Department of Health, Dr Tiego Ephraim Selebano; then acting Head of Department, Dr Ernest Kenoshi; former member of the Gauteng Province Executive Council for Health, Ms Qedani Dorothy Mahlangu; a member of the Executive Council of Health, Dr Gwen Ramokgopa; a member of the Gauteng Province Executive Council for Finance, Ms Barbara Creecy; the Premier of the Gauteng Province, Mr David Makhura; and the National Minister of Health, Dr Aaron Motsoaledi.
[273] Award: par. 4.
[274] Award; par. 209.
[275] Award: par 178.
[276] Award: par. 14.

(a) Compensation for funeral expenses in the amount of R20 000;

(b) Compensation for emotional shock and psychological injury in the amount of R200 000;

(c) Compensation for constitutional damages in the amount of R1 500 000 of which R1 000 000 is claimed for each claimant and R500 000 is claimed to be paid into the mental health system in Gauteng as a donation by the families in memory of each deceased, to improve the care of mental health care users in the province;

(d) Counselling and support services for each claimant and up to three members of each claimant's family, the nature and duration of the services to be determined through an individual and or family assessment by a psychologist. [277]

The second category of claimants was represented by Advocate Dirk Groenewald of Hurter Spies Attorneys and it was made up of four families whose family members died during relocation from Life Esidimeni as a result of the Gauteng Mental Health Marathon Project.[278] These claimants sought relief in the form of:

(a) Funeral expenses in amounts ranging from R4000 to R40 000

(b) General damages of R150 000 under the common law for the emotional shock and psychological injury the claimants have suffered.

(c) Constitutional and punitive damages of R1 500 000 to vindicate the fundamental rights of the claimants and their families, who have died and to deter and prevent future infringements of the fundamental rights. Of the amount claimed, R1 250 000 is to be paid directly to each of the claimants who each in turn donate R250 000 to be paid to the Office of the Health Ombud subject to the money being used; for the investigation of complaints lodged by the public, and that the Ombud makes public, within a year of the Award being made, how the donated amount has been utilised. [279] [280]

The third category of claimants was up of sixty-eight mental health care users who survived the relocation out of Life Esidimeni as a result of the Gauteng Mental Health Marathon Project but were *"inter alia* '*caused trauma and morbidity'"* and their

[277] Award: par. 15.
[278] Award: par. 16.
[279] Award: par 17.
[280] In this paragraph the claimants also sought: (d) In another form of equitable redress, the claimants ask that the Award require the Government to submit the record of the proceedings to the South African Police Service and the Specialised Investigation Unit to assist in their investigation; and that the Gauteng Department of Health (Department) must make public a plan and or strategy, within three months of the Award, through which its employees must be made aware of their constitutional, statutory and ethical obligations toward patients and mental health care users, in particular.

families.[281] They were represented by Advocate Lilla Crouse and Advocate Nzame Skibi of Legal Aid South Africa.[282] These claimants sought relief in the form of:

> (a) R1 000 000 in respect of general damages for shock, pain and suffering for each of the mental health care users.
> (b) For special damages of the family of each mental health care user:
> (i) R5 000 for specific damages for the replacement of clothing and other valuables lost during the Marathon Project;
> (ii) R50 000 for future medical, psychotherapy and counselling expenses;
> (iii) R1 000 for costs incurred to locate mental health care users after they were discharged from Life Esidimeni facilities;
> (c) R1 000 000 for constitutional damages.[283]

The respondent against whom the claims were made was the Government of the Republic of South Africa as represented by the National Minister of Health, the Premier of Gauteng and the member of the Executive Council of the Gauteng Department of Health. They were represented by Advocate Tebogo Hutamo of Werksman Attorneys in the proceedings. The government agreed to a payment of R200 000 for funeral expenses and general damages under the common law, but refused payment of constitutional damages as sought by the claimants.[284]

Justice Moseneke found that after evaluation of the evidence, the termination of the service contract with Life Esidimeni caused the torture and death of the mental health care users and that the reasons tendered by Ms Mahlangu and Dr Selebano and their Department were untrue, irrational and a clear breach of the law and the Constitution. Additionally that the claims of the government that budgetary constraints were also the cause of the termination of the contract were false.[285] In reaching just and equitable redress Justice Moseneke considered the very serious nature of the breach of the constitutional obligations of the state and its servants and the "pain and suffering, stress, trauma and morbidity" caused by the decision.[286] Ms Mahlangu, Dr Selebano and Dr Manamela refused to stop the mass transfer of mental health care users to

[281] Award: par. 18.
[282] Award: par. 18.
[283] Award: par. 19.
[284] Award: par. 20.
[285] Award: par. 179.
[286] Award: par. 182.

non-governmental organisations not fit for purpose knowing all the facts and risks and disregarded the lawful request and demands of the claimants.[287]

Justice Moseneke held that the claims of the claimants in the arbitration for compensation could not simply be construed in common law terms due to the blatant violations of constitutional guarantees by the government that led to agonising devastation for families of the deceased, survivors and their families. He referred to the government "breaching the rule of law, for disregarding protections provided by legislation that is meant to give effect to constitutional guarantees or a claim arising from a breach of international obligations on Mental Health care" and there being no equitable redress in common law regarding this.[288] He dismissed the attempt of the government to only take accountability for only common law damages for psychological injury and shock to the amount of R180 000 and evade the plethora of violations of the law and the Constitution. He held that in seeking equitable redress in the form of compensation it could not be true that the parties envisaged such redress to be found strictly in the common law upon concluding the agreement in light of the complexity of the nature of the facts; and that to achieve equitable redress and closure for the mental health care users and their families, the Arbitrator's power could not be limited to common law claims.[289] He chose not to treat each category of claimants differently and made a uniform award for each claimant party to the arbitration as he maintained that such a differentiation "would be treacherous, difficult to make and impracticable given the high number of claimants and the variety of circumstances under which some users died and other users who are survivors of torture".[290]

In the binding award, for the causes of the death of 144 mental health care users and the pain, suffering and torture of 1418 mental health care users who survived and their families, the Arbitrator ordered the government to pay full funeral costs amounting to R20 000 to both categories of claimants whose loved ones died both during the transfer from Life Esidimeni and afterwards as a result of the Marathon Project as agreed; the government was ordered to pay general damages for shock and

[287] Award: par. 99.
[288] Award; par. 217.
[289] Award: paras. 218-219.
[290] Award: par. 220.

psychological trauma amounting to R180 000 to all categories of claimants;[291] and constitutional damages amounting to R1million to each category of claimants as compensation for the governments wanton and flagrant breach of section 1(a), (c) and (d), section 7, section 10, section 12(1)(d) and (e), section 27(1)(a) and (b) and section 195(1) (a), (b), (d), (e), (f) and (g) of the Constitution and the breach of multiple sections of the National Health Act 61 of 2003 and the Mental Health Care Act 17 of 2002. All of these amounts were to be paid in a lump sum not later than 3 months after the publication of the award as per the arbitration agreement or not later than 19 June 2018. In addition to the order to pay the previous amounts and all party legal costs for all claimants including the cost of one counsel, the government was ordered to:

> 7. (a) Pursuant to the undertaking, by the member of the Executive Council for Health, Gauteng Province, Dr Gwen Ramokgopa, the Government is ordered to provide to the Health Ombud (appointed in terms of section 81 of the National Health Act 61 of 2003) and the claimants listed in Annexures A, B and C or their representatives the recovery plan whose purpose is to achieve systemic change and improvement in the provision and delivery of mental health care by Department of Health in the Province of Gauteng. The parties to these proceedings are permitted to share the recovery plan with interested members of the public. (b) The Government is ordered to report to the Health Ombud and to the claimants within 6 (six) months of the publication of this this Award, and thereafter every six months until the conclusion of the recovery plan.[292] [293]

As noted by Justice Moseneke, each individual and their families' human dignity depended on strict adherence to the constitutional values of democracy. He further held that any departure from the right to human dignity is reminiscent of colonialism and apartheid.[294] The families of the mental health care users could not afford to send their loved ones to private hospitals or health care facilities. The centrality of location

[291] This is also provided for by paragraph 226 in section 5. (a) Within 30 days of the date of the publication of this Award, the Government must make available the services of qualified mental health care professionals who must assess the counselling and support needs of each of the claimants listed in Annexure A, B and C and up to three members of each claimant's family require.
[292] Award; par. 226.
[293] Under this paragraph the government was also ordered to: 6. Pursuant to the arbitration agreement between the parties, the Government is directed to construct at its exclusive expense and within 12 months from the date of the publication of the Award a monument at an appropriate and prominent location to commemorate the suffering and loss caused by the Gauteng Mental Health Marathon Project (Marathon Project) and to serve as a reminder to future generations of the human dignity and vulnerability of mental health care users. The construction of a monument speaks to the symbolism of space beyond the material realm, which will be explored more in Chapter 5.
[294] Award: par. 183.

of Life Esidimeni in Waverley made it affordable to visit their loved ones and easily accessible. Waverley is a leafy suburb in an established area just northeast of the central business district in Pretoria. It is made up of "well-constructed residences on large stands" with many forms of public transport accessible to it.[295] As testified by the families and accepted by Justice Moseneke, it was the act of displacing the mental health care users that caused their torture and death.[296] The mental health care users were '(dis)placed' at all scales with some of them being moved up to 200km away from their families in less established areas. This illustrates a link between displacement from established suburban areas and vulnerability.

2.6.3 Ableism and place

As illustrated by Life Esidimeni where patients were moved haphazardly and not to the nearest facilities, matters of disability are expressed spatially through location and position in the web of social and political power which perceives disabled people as burdensome and expendable. The spatial dimension of disabilities shaping and being shaped by the environment has to do with ableism and exclusionary spaces which do not allow for difference. Ableist spaces result in the "estrangement of disabled bodies in the built environment" and the careless treatment of disabled people. [297]

A good point of departure in understanding the ways in which disability is caught in the web of power is to address the matter of ableism. The Center for Disability Rights is not-for-profit organisation for people with all types of disabilities. Leah Smith, from this Center, describes ableism as:

> A set of beliefs or practices that devalue and discriminate against people with physical, intellectual, or psychiatric disabilities… Ableism is intertwined in our culture, due to many limiting beliefs about what disability does or does not mean, how able-bodied people learn to treat people with disabilities and how we are often not included at the table for key decisions.[298]

Injustices in housing, access to health care and other forms of injustice that affect and undermine the personhood and quality of life of disabled people are not only social injustice, but also spatial injustice. Lisa Stafford describes spaces disempowering

[295] Wikipedia "Waverley, Pretoria", https://en.wikipedia.org/wiki/Waverley,_Pretoria (accessed 20 October 2023).
[296] Award: par. 198.
[297] Landzelius (n 21 above) 287.
[298] Smith "#Ableism", http://cdrnys.org/blog/uncategorized/ableism/ (accessed 20 October 2023).

disabled people as denying "the right to be in space" and ableist spaces as those that function "through hegemonic social and economic systems that maintain inequality and exclusion by preventing access to, and the use of, socially-valued resources that are part of the fabric of life".[299] Thus a battle for the rights of disabled people must be spatial.[300] Strafford further contends that:

> Space isn't neutral, because a person's right to be in space and participate fully in everyday life is influenced by dominant ideologies and structural arrangements. In addition, thinking about justice spatially helps us to understand and address the interconnectedness of social oppressions: who you are and where you live should not determine whether you live and thrive.[301]

As shown in Life Esidimeni, mental health care is neglected in South Africa. Janine Bezuidenhoudt attributes the exacerbation of unsuccessful mental health care interventions in this country to many factors including "infectious diseases, harsh economic circumstances and poor living conditions" which are allocated priority resources resulting in the underfunding of mental health care.[302] Our history of neglecting vulnerable people has been addressed by the creation of new policies; however, this does not always translate into the betterment of the material conditions of these people. In 2010 it was reported that South Africa had 1.58 psychosocial providers for 100 000 people which the World health Organisation deemed inadequate. Public health care hospitals specialising in psychiatric care for mentally ill patients are largely under staffed or lack professionals with proper training and are inaccessible despite being priority services. This directly impacts vulnerable populations as an estimated 75 per cent of people requiring mental health care are not

[299] Stafford "Ableism and the struggle for spatial justice", https://www.opendemocracy.net/en/transformation/ableism-and-struggle-spatial-justice/ (accessed 20 October 2023).
[300] Stafford "Ableism and the struggle for spatial justice", https://www.opendemocracy.net/en/transformation/ableism-and-struggle-spatial-justice/ (accessed 20 October 2023).
[301] Stafford "Ableism and the struggle for spatial justice", https://www.opendemocracy.net/en/transformation/ableism-and-struggle-spatial-justice/ (accessed 20 October 2023).
[302] Bezuidenhoudt "Why South Africa is failing mental health patients and what can be done about it", https://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445 (accessed 20 October 2023).

able to access the necessary services and assistance.[303] Bezuidenhoudt raises concerns that "indigenous knowledge systems for primary prevention, such as making use of traditional healers" should be considered in psychological treatment models in the Global South.[304] The ruling policy of the white minority led apartheid policy proved to be the most detrimental to the mental and physical health of poor and rural black South Africans.[305] To this reality John Dommisse raised the question whether Western psychiatrists and medical doctors can "be objective enough to see how our own political system discriminates against, and deprives, the poor, the black and other sections of our population of adequate medical and psychiatric care-especially in South Africa?"[306] Dommisse refers to 1983 paper written by professor of epidemiology Mervyn Susser and Violet Cherry in which they found that:

> The Republic of South Africa illuminates the meeting-place of politics and health. Blacks provide labour, but they are excluded from political power, economic power, and land-ownership, as well as being socially segregated… Blacks is itself a reflection of the body politic… sociopolitical disadvantage, overwhelm race and culture. One might venture that external support for a government committed to apartheid helps to sustain the existing social structure as well as its consequences for health.[307]

Apartheid policies on influx control, pass systems and the relocation of black people to homelands and townships caused an inability to travel to get adequate healthcare in the city as these are located on the periphery of the city. The intentional psychosocial harmfulness of apartheid was and continues to be devastating to the health of South Africans due to psychiatry almost not existing in peripheral areas especially rural areas.[308] Considering issues of relocation and forced removals, psychiatrist Stan Platman and nurse Vera Thomas investigated psychiatric facilities in South Africa which resulted in their finding that "the situation in the mental health field deserves special attention because in no other medical field in South Africa is the contempt for the person, cultivated by racism, more concisely portrayed than in

[303] Bezuidenhoudt "Why South Africa is failing mental health patients and what can be done about it", https://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445 (accessed 20 October 2023).
[304] Bezuidenhoudt "Why South Africa is failing mental health patients and what can be done about it", https://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445 (accessed 20 October 2023).
[305] Dommisse 1985: 501.
[306] Dommisse 1985: 503.
[307] Dommisse 1985: 504.
[308] Dommisse 1985: 504-507.

psychiatry".[309] In 1997 the World health Organisation conducted a report which found that the apartheid government's policies used politics to abuse psychiatry by making mental health services inadequate for black people not only compared to those providing for white people but also in meeting basic human rights.[310]

Discrimination in mental health services under apartheid served a dual; firstly to remove black people from society and secondly to deny them these services.[311] In a public seminar presented in 2007, Alban Burke connected place to psychiatry by explaining that "forced removals and "dumping" of millions of black South Africans into small, disconnected, barren, poor reserve areas, bereft of adequate medical, psychiatric and public health services caused, amongst various other, high mental-illness rates"; he furthered this by expressing that "townships and disadvantaged rural communities had to cope without any mental health service" while a quarter of the budget for the mental health system was allocated to white people.[312] This practice of inaccessibility of health care in and around townships as well as extreme budget cuts to whatever health care facilities exist founded during apartheid is still present today and Life Esidimeni is an illustration of the endurance of apartheid era disregard for people with disabilities.

2.7 Place, violence and apartheid

In thinking of the ways in which the body crosses over the constructed spatial boundaries of the private and the public and the intimate and the systemic, I turn to Jennifer Fluri and Amy Piedalue.[313] These two authors explore the manners in which oppressions intersect in constructing vulnerability to violence. Their geographic exploration of embodied violence illuminates the ways in which raced, classed, sexualised and gendered bodies experience vulnerabilities that are ignored or rendered invisible through the collusions of structural and institutionalised violence through the manipulation and legitimisation of existing marginalisation of

[309] Dommisse 1985: 508.
[310] Sashidhara 1980: 171.
[311] Burke 2007: 3.
[312] Burke 2007: 5.
[313] Fluri & Piedalue 2017: 536

communities.[314] A geographic perspective on gendered violence, race, and culture makes visible connections between intimate forms of violence and systemic, institutional, state and structural violence. The spatiality of violence highlights that mutually constitutive forms of violence and resistance are intersectional.[315]

Simon Springer argues for a transformative approach to violence through a radical rethinking of place. He provides that violence can be "understood as an unfolding process, arising from the broader geographical phenomena and temporal patterns of the social world".[316] He is of the opinion that the structural violence of poverty and inequality stem from the political economies of neoliberalism. Relational geographies and political and economic interests give rise to the formation of violence.[317] A geographical understanding of violence entails the understanding that violence has a bearing on social space and experiential place as they establish each other and (re)produce space. Violence is only one of the contours of place but place is the site where violence is most easily visible. Springer posits that violence is produced by "cultural performances whose poetics derive from the sociocultural histories and relational geographies of the locale".[318] This must be born in mind as our attitudes about particular 'other' geographies often influence how we feel about the people who inhabit them in (post)apartheid South Africa.[319]

Apartheid geography regulated and disciplined people through spatial violence in a structural and systemic manner that translated into interpersonal violence. These forms of violence can be present at a specific location only due to structural and cultural performances of discipline. Violent spatial practices became normalised because of the imbalance of power between the dominant white minority and marginalised communities. As a racist cisgender heteropatriarchal practice of political, social and spatial control, the basis of separateness was not limited to specific places.

James Tyner asks a very pertinent question for interrogating place and violence: "how does violence shape our perceptions and conceptions of particular places? In turn, how do these places—homes and schools, streets and communities—inform our

[314] Fluri & Piedalue 2017: 536-537.
[315] Fluri & Piedalue 2017: 538.
[316] Springer 2011: 91.
[317] Springer 2011: 95.
[318] Springer 2011: 92-93.
[319] Springer 2011: 93-94.

understanding of violence?"[320] Tyner refers to Michel Foucault who wrote that discipline is a form of power that entails "a whole set of instruments, techniques, procedures, and levels of applications".[321] In this sense, the conditioning of social relations under apartheid was fluid disciplinary practices taking 'place' at specific locations through conditioned behaviour that was deemed appropriate. Under apartheid this was reflected through spatial discipline such as who belonged where and whose presence was appropriate there. This required two groups: the group wielding the power and the 'other' group faced with the power. Again, this relationship relied upon specific relations at specific places which were the "unwritten codes of conduct" of a place that were "coded by dominant embodied conceptions of 'race', sex, gender".[322] When applying this, under apartheid place was not merely space that had been imbued with meaning, place was in fact space that had been disciplined.[323]

Moving from disciplinary power, which is contestable, Tyner turns to violence which he contends "removes the possibilities for active subjects to reinscribe themselves; it removes the possibility for resistance".[324] He sees violence as integral to producing place from the discipline of space.[325] He then refers to Alex Alvarez and Ronet Bachman who understand violence as being seen as justified by the perpetrator based on the idea that the victim has breached the social and cultural codes of appropriate behaviour. In this sense, violence is seen as a legitimate means to achieve the maintenance of dominance through "social control".[326] As a spatial practice, apartheid maintained social and cultural control through the violent division of space that assured the absence of marginalised communities in valued places.[327]

2.8 Conclusion: geography of harm

Subjectivity is geographically situated within history, thus any discussion of geopolitics in (post)apartheid South Africa must address apartheid due to the irrefutable link between marginalised communities and geography in our country. The Group Areas

[320] Tyner 2012: 3.
[321] Tyner 2012: 19.
[322] Tyner 2012: 19-20.
[323] Tyner 2012: 19-20.
[324] Tyner 2012: 19-20.
[325] Tyner 2012: 19-20.
[326] Tyner 2012: 19-21.
[327] Tyner 2012: 21.

Act and apartheid geography should be seen as the violent origin of place that applied legal classifications to segregate affluent and developed white spaces from homelands, informal settlements and townships. The intention for this:

> …was for legal rights to accrue to certain people based location and race. These legal rights include equal distribution of education, police and crime prevention, public transport and adequate food, housing and employment which form the basic needs of urban life.[328]

Places are, in the broadest sense, locations imbued with meaning that are sites of everyday practices. Everyday practices of racism, sexism, homophobia and ableism create social division which impacts the way some people can move through space. Apartheid connected a place with particular types of identity which it proceeded to shield from the threat of what existed beyond and outside of it.[329] NPA Western Cape spokesperson Eric Ntabazalila's response to the three murdered teens speaks loudly to the bodily inscription of social relations and its material impacts. Zoliswa's murder was the most gruesome of the teens, fuelled by homophobia and yet he argued for her murderers to receive shorter sentences than the murderers of the other teens and encouraged the longest sentencing for Franziska's murderer.

Understanding that subjectivity is spatially expressed is paramount in a geographical analysis of (post)apartheid South Africa. This expression was inherited from apartheid and takes *place* at all scales. What is notable in these cases is that place is brought up in all the judgements. In Zoliswa's case it begins on the small scale of the ablution facility of the tavern and grows to the streets. In Franziska's case it is the public place of the forest. In Uyinene's case it is lower scale of the post office. In Life Esidimeni's case it is the scale of multiple buildings across the Gauteng province down to the intimacy of a bedroom. Also notable is the place and scale of the courts, what stands out to me is the curious NPA decision to nominally change the Khayelitsha magistrate's court into a high court instead of having the matter heard in the actual High Court and what that means about the value of Zoliswa's life and the lives of her community members.

[328] N Goba 'The architecture of non-grievability: a critical race spatial analysis of the continuance of apartheid spatial planning into (post)apartheid South Africa' unpublished LLM dissertation, University of Pretoria, 2018 13

[329] Cresswell 2009: 8.

Despite the similarities in place and history, the disparities in the manner in which the cases of the young women were handled speaks loudly to the territorial inscriptions of spatial injustice in Cape Town. Regulated spaces around the country continue to culturally construct the poor black majority, sexual minorities and disabled people as subhuman ‘others’. The situatedness of violence is a result of intergenerational social, spatial and political processes. What becomes apparent upon linking place to race, gender, class, ableism and sexuality is that places contain within them complex webs of power which in turn create different choreographies of the out-of-placeness of violence, poverty, death and neglect.

This leads me to ask how might subjectivity, space/place, the body and harm/violence be framed theoretically and what is the usefulness of such an endeavour? In the following chapter I set out the theoretical framework of this thesis.

CHAPTER THREE

JUDITH BUTLER AND GIORGIO AGAMBEN: THE SPATIAL EXPRESSION OF GRIEF AND LIFE

> The epistemological capacity to apprehend a life is partially dependent on that life being produced according to norms that qualify it as a life or, indeed, as part of life. In this way, the normative production of ontology thus produces the epistemological problem of apprehending a life, and this in turn gives rise to the ethical problem of what it is to acknowledge or, indeed, to guard against injury and violence.
>
> —Judith Butler[330]

3.1 Introduction

The main theoretical framework informing this thesis is Judith Butler's concept of "grievability" as expounded in their works *Precarious Life: The Powers of Mourning and Violence* and *Frames of War: When is Life Grievable?* as well as Giorgio Agamben's concept of "bare life" as expounded in *Homo Sacer: Sovereign Power and Bare Life*. I rely on these works to conduct a critical race spatial analysis of apartheid geography and apartheid legal classifications that were racially and territorially inscribed to achieve spatial purity; a cleansing or removal of those seen as 'other' in service of the ideal of a racist white supremacist Afrikaner utopia.[331] Colonial and apartheid geography relied upon a white supremacist identity that had to be managed through the generation of various types of space: advantageous spaces for superior white people and marginal spaces for inferior 'others'. Their exploration of the ability of illegitimate state and political power to deny the fundamental human rights of entire populations through domination and the restructuring of spatial arrangements allows me to connect illegitimate white minority rule to racial segregation in South African rural and urban areas and the endurance of apartheid geography and its dehumanisation.[332]

In this chapter I expand upon the concepts of grievability as put forward by Judith Butler and bare life as put forward by Giorgio Agamben which both relate to the

[330] Butler 2009: 3.
[331] Foucault 1984: 3-4.
[332] I explore this further in Chapters 4 and 5.

question of the human and of life and I situate these concepts within spatial theory within the South African context.

Firstly, I explore the works of Butler to foreground their theories of precariousness and grievability. Butler is significant for my research because their body of work offers trenchant philosophical insights into the conditions under which we acknowledge or fail to acknowledge the full humanity of others, ascribe value to certain lives and the increased violence to which certain people/populations are exposed based on this value or non-value.

Secondly, I explore the work of Agamben to foreground his figure of *homo sacer* and his theory of bare life. My use of Agamben in my research is careful and aware of the criticisms of his work.[333] Without throwing the idiomatic baby out with the bathwater, these concepts give me insight into manner in which humanity can be assigned or denied socially and politically. This leads me to another concept of importance in research, that of inclusion and exclusion within the normal operations of the juridical order.

Thirdly, I explore the limits and usefulness of bare life through various rebuttals to its application. Recent literature has emerged which has challenged Agamben through rigorous debates concerning his indifference towards considerations of race, slavery and colonialism in his work and his Eurocentrism.[334] I explore critiques that can allow me to (re)consider Agamben in alignment with my research goals.

Fourthly, I situate Butler and Agamben within the South African context of townships, my aim is not to make direct comparisons but rather to centre the relationality.

Lastly, I make my closing remarks.

As this chapter focuses on theory, the etymology of certain words will appear throughout the chapter to flesh out fully the concepts I explore. I do this because tracing what words mean and how they have developed reveals new possibilities for

[333] See Jaime Alonso Caravaca Morera's "About Homo Sacer, Bare Lives and Abandonment: the Case of Transsexuality in Thanatopolitics" for a reading of *homo sacer* within a transgender rights lens.
[334] See Patricia Owens "Reclaiming 'Bare Life'?: Against Agamben on Refugees" for a critique of refugees being reduced to bare life which appears in the political thought of the West. See Alexander Weheliye below.

their use and in turn new possibilities for the use of these concepts. The Merriam-Webster Dictionary defines etymology as:

> The history of a linguistic form (such as a word) shown by tracing its development since its earliest recorded occurrence in the language where it is found, by tracing its transmission from one language to another, by analysing it into its component parts, by identifying its cognates in other languages, or by tracing it and its cognates to a common ancestral form in an ancestral language.[335]

Acquiring more knowledge about a word's origin, development and transmission relates to how a concept can be accepted, expanded because of its limitations, problematised and examined within a broader analysis.

It is important for me to recognise that as a black middle-class queer woman my reading of Agamben and Butler is informed by my experiences and lived reality.

3.2 Judith Butler

Of Butler's many works, the two I mention above are central to my understanding of what is considered a "livable life" and what is considered a "grievable death" and how these were expressed spatially through apartheid geography that persists into (post)apartheid South Africa. Written after the bombing of the Twin Towers on September 11 2001 and the violent war waged against Afghanistan by the U.S. in response, as well as the conditions of the 680 inmates, at the time, detained in Guantanamo Bay for being a risk to the U.S., Butler considers an ethics which endeavours to not accept violence and aggression as the norm of political life, but rather non-violence based on the respect of human life. Butler proposes that the production of a normative human creates exclusionary conceptions of the value of life and that those lives deemed less valuable or not valuable at all are more likely to experience violence. These conceptions inform which particular lives count as lives and which particular deaths count as deaths; thus that certain forms of grief and suffering are nationally recognised and must be mourned and that without the capacity to mourn, we lose a sense of life that is needed in order to oppose violence and injustice.[336] In this regard it is important to consider the categories of identities or

[335] Etymology https://www.merriam-webster.com/dictionary/etymology accessed 6 May 2022.
[336] Butler 2004: XIV-XV.

"groups" and the social value ascribed to them that were concretised by the Group Areas Act.[337]

3.2.1 Precariousness and Precarity: a theory of human fragility

According to Butler norms, practices and conventions establish a living being as a recognisable subject and once that subject is recognisable the possibility of recognition is created.[338] A life must first be intelligible as a life to produce those norms.[339] Intelligibility conditions and produces recognisability and said recognisability leads to recognition. Butler states that recognition is a reciprocal act requiring at least two subjects. In this sense apprehension must be "…understood as a mode of knowing that is not yet recognition, or may remain irreducible to recognition".[340] Thus not every being apprehended as "living" is recognised as a life. In this regard Butler expounds that "a living figure outside the norms of life not only becomes the problem to be managed by normativity, but seems to be that which normativity is bound to reproduce: it is living, but not a life".[341]

Butler poses the question "what is a life" and what is the "being" of life? I understand this as an ontological question of the constitution of and the production of "being" through systems of power where "being" requires a body.[342] The body is both public and private, it exists within a network of social relations; it bears an inscription of others and my own.[343] As something existing in the public sphere the body is exposed to violence.[344] Social and political forces produced over time give the body over to others and social and political norms. Ontologically a "being" is dependent on norms for recognition as a subject; because these normative conditions are produced within operations of power, they can shift, change, weaken and also alter each other over time.[345]

---

[337] Precarity and nongrievability of populations will be discussed further in the following chapter in relation to the Population Registration Act.
[338] Butler 2009: 5.
[339] Butler 2009:7.
[340] Butler 2009: 6-7.
[341] Butler 2009: 8.
[342] Butler 2009:1-3
[343] Butler 2009:4.
[344] Butler 2004: 26.
[345] Butler 2009:1-4.

Reflecting on the injurability of lives not apprehended as living in the full sense as explored in *Precarious Life*, Butler refers to the "framing" of war, and by extension violence.[346] These frames are "the ways of selectively carving up experience as essential to the conduct of war. Such frames do not merely reflect on the material conditions of war, but are essential to the perpetually crafted *animus* of that material reality".[347] Epistemological frames are required in order for a life to be apprehended. Epistemologically a "being" must be produced according to qualifying norms in order to be apprehended as a life. Frames also generate specific ontologies of the human subject; these ontologies create "'subjects' who are not quite recognizable as subjects, and there are "lives, that are not quite—or, indeed, are never-recognized as lives".[348] The quandary is that the frames are themselves operations of power through which we either apprehend or fail to apprehend the lives of others as "injurable" or "lose-able", the injurabilty of certain lives is imbricated with political implications. [349] Injurability and aggression are two points of departure for political life.[350] Violence is a primary way in which human vulnerability to other humans is exposed. Consequently vulnerability is a part of bodily life that is exacerbated by social and political conditions.[351] A political being is one that participates in public discussions on public policy and politics in the public sphere. In terms of injurability, exposure to violence and physical vulnerability are always a risk when participating in the public sphere. If one participates in the public sphere one is a political being falling within the conditions/scope of a human, a human, a livable life.[352]

I would like to consider the etymology of precariousness and precarity. Etymology as a starting point does not intend to fix these terms to an origin or inflexible definition, but rather reveals the possibilities for their use.

[346] Butler 2009: 1.
[347] Butler 2009: 26.
[348] Butler 2009:3-4
[349] Butler 2009:1-3.
[350] Butler 2004: XII.
[351] Butler 2004: 28-29.
[352] Butler 2004: 19.

Precarious comes from Latin precārius meaning "given as a favour, depending on the pleasure or mercy of others, of questionable force or permanence, uncertain".[353] Its current usage according to Merriam-Webster Dictionary is defined as:

1. dependent on chance circumstances, unknown conditions, or uncertain developments
2. characterised by a lack of security or stability that threatens with danger.
3. depending on the will or pleasure of another.[354]

Precariousness is the suffix "-ness" of precarious as defined in the Cambridge Dictionary as:

1. the dangerous state of not being in a safe position or not being held in place firmly.[355]

The etymology of precarity is English and it is the back-formation from precarious with "-ity" and it is defined by Dictionary.com as:

1. a state of existence in which material provision and psychological wellness are adversely affected by a lack of regular or secure income.[356]

Written in the aftermath of 11 September 2001 and U.S. President Bush's response to the attacks with more violence, Butler approaches precariousness as a theory of human fragility that rests upon an understanding that non-violent ethics requires a continuous struggle against all forms of aggression. Butler refers to Emmanuel Levinas' figure of the "face" which "rests upon an apprehension of the precariousness of life, one that begins with the precarious life of the Other".[357] The "face" represents the twofold meaning of apprehending precariousness: I am not precarious without *you* and you are not precarious without *me*. The "face" communicates what is human, what is precarious and what is injurable while not being limited to a human face. *You* are injurable because of my aggression and *I* am injurable because of your aggression.

---

[353] Merriam-Webster Dictionary "Precarious", https://ww.com/dictionary/precarious#:~:text=Latin%20prec%C4%81rius%20%22given%20as%20a,meaning%20defined%20at%20sense%203 (accessed 30 October 2023)
[353] Cambridge Dictionary "Precariousness", https://dictionary.cambridge.org/dictionary/english/precariousness (accessed 30 October 2023) .
[354] Merriam-Webster Dictionary "Precarious", https://www.merriam-webster.com/dictionary/precarious#:~:text=Latin%20prec%C4%81rius%20%22given%20as%20a,meaning%20defined%20at%20sense%203 (accessed 30 October 2023)
[355] Cambridge Dictionary "Precariousness", https://dictionary.cambridge.org/dictionary/english/precariousness (accessed 30 October 2023)
[356] Dictionary.com "precarity", https://www.dictionary.com/browse/precarityaccessed (30 October 2023).
[357] Butler 2004: XVII-XVIII.

The “face” requires two people and recognition requires at least two people; this recognition is integral to subject formation.[358] That is to say that life is apprehended because it is precarious thus to apprehend precariousness is to apprehend something living.[359]

For Butler, precariousness is an ontological and existential state that describes the common, but uneven distribution of human physical fragility. It is based upon the understanding that human life can easily be lost. Social, political, economic and other norms make life precarious. Exposure to these norms increases precariousness for some not falling within those norms and decreases precariousness for those falling within these norms, which allow the body to “persist and flourish”.[360]

Precariousness focuses attention on the capricious relations that advance human patterns of interdependence and cooperation. The precariousness of these social relations means that one’s life is constantly exposed to the whims of others.[361] Indeed then precariousness is also the “tension between the fear of undergoing violence and the fear of inflicting violence”.[362] This precariousness, this reliance on and exposure to others facilitates either life or death. Hence precariousness is an inescapable condition of life arising at birth and ending at death and possibly beyond.[363] This ongoing tension establishes an ethics of non-violence.[364]

What is interesting is that in *Precarious Life* Butler makes no mention of “precarity”, only precariousness and goes on to mention precarity in *Frames of War* that both concepts intercept. In *Frames of War* they link the ontological and existential concept of precariousness with precarity, a concept that is explicitly political and places an obligation on us.[365] Both concepts define life as inescapably precarious due to our physical vulnerability; always open to injury, violence and death. Butlers sees precarity as calling us to ask questions about precariousness: what are the circumstances under which we apprehend or fail to apprehend the precariousness of life?[366] Butler notes

[358] Butler 2004: XVII-XVIII.
[359] Butler 2009: 13.
[360] Butler 2009: 2-3
[361] Butler 2009: 14.
[362] Butler 2004: 137.
[363] Butler 2009: 14.
[364] Butler 2004: 139.
[365] Butler 2009: 3
[366] Butler 2009: 2.

that precarity is simultaneously a "material and a perceptual issue";[367] materially the failure to regard a life as living leads to the materialisation of being made to "bear the burden of starvation, underemployment, legal disenfranchisement, and differential exposure to violence and death"[368] and at the same time bearing these material conditions itself creates the failure to regard those lives as living—material reality is influenced/created by whose lives count as lives and at the same time influences/creates whose lives don't count as lives.[369] The political conditions inducing the differential exposure of certain populations to injury, violence, systemic neglect and death due to "failing social and economic networks of support"[370] as a result of arbitrary state violence delineates the political concept of precarity. These political conditions intensify and increase precariousness for specific populations.[371][372] In Butler's words:

> Such populations are at heightened risk of disease, poverty, starvation, displacement, and of exposure to violence without protection. Precarity also characterises that politically induced condition of maximized precariousness for populations exposed to arbitrary state violence who often have no other option than to appeal to the very state from which they need protection. In other words, they appeal to the state for protection, but the state is precisely that from which they require protection.[373]

Their lives are not regarded as grievable:

> For populations to become grievable does not require that we come to know the singularity of every person who is at risk or who has, indeed, already been risked. Rather, it means that policy needs to understand precariousness as a shared condition, and precarity as the politically induced condition that would deny equal exposure through the radically unequal distribution of wealth and the differential ways of exposing certain populations, racially and nationally conceptualised, to greater violence.[374]

For Brett Neilson and Ned Rossiter, precarity has emerged as a key concept for political thought and struggle when used to encompass intersubjective life and

[367] Butler 2009: 25.
[368] Butler 2009: 25.
[369] Butler 2009: 25.
[370] Butler 2009: 25.
[371] Butler 2009: 25-26.
[372] I explore the differential exposure of certain populations to state violence and the intersection with racialised, gendered and geopolitical forces that make some lives more vulnerable than others more in Chapter 4.
[373] Butler 2009: 25-26.
[374] Butler 2009: 28.

affective social relations. Their understanding is that precarity refers to a condition where one's ability to construct a stable life and determine one's fate becomes uncertain; while also being the precondition for creating new forms of sociality and production.[375]

When we fail or refuse to meet the demand placed upon us to recognise the full humanity of all populations and act in accordance with the recognition of our shared condition of precariousness and safeguard each other from death and violence, we abandon entire populations to the realm of:

> Lives that are not quite lives, cast as "destructible" and "ungrievable"…"lose-able"…already lost or forfeited… cast as threats to human life as we know it rather than as living populations in need of protection from illegitimate state violence, famine, or pandemics.[376]

Precarity is a potentiality, a provocation and a refusal. It is the recognition of the social and political work demanded of us to (re)configure our individual and collective identities in the face of the exploitation, destruction and domination of targeted populations.

3.2.2 Grievability: livable life and a grievable death

In *Frames of War* Butler reflects on insights from *Precarious Life* in which being apprehended as living "within certain epistemological frames" in situations of war and extreme violence regulates "affective and ethical dispositions" towards fully conceiving injury and loss as animating lives.[377] Grievability sheds light on whose lives are regarded as valuable.[378] In order for life to be livable it must be supported and requires social and political conditions that enable it.[379] In answering the question of the human Butler asks three questions. Firstly, "who counts as human?"; secondly, "whose lives count as lives?"; and lastly, "what makes for a grievable life?".[380] The importance of these questions is what might be done with grief politically. Grievability, they say, when experienced makes life more livable.[381]

[375] Neilson & Rossiter 2006:10.
[376] Butler 2009: 31.
[377] Butler 2009: 1.
[378] Butler 2009: 25.
[379] Butler 2009: 21.
[380] Butler 2004: 20
[381] Butler 2009: VIII.

In their book published in 2000, *Antigone's Claim*, Butler refers to the significance of Antigone of Sophocles' play. The character of Antigone is forbidden to bury her late brother Polynices under the law of the king Creon. Under an edict prohibiting his proper burial, Creon, Antigone's uncle, declares Polynices an infidel whose body should be laid "bare, dishonoured and ravaged".[382] Antigone defies this edict and gives her brother a proper burial where she mourns for him in public.[383][384]Antigone's defiance lays claim to grief. In her act of burying her brother with honour she claims the legitimacy of her great loss. In Butler's intricate exposition of grief, they say that where the loss of a being is not legitimated and not honoured, that being is "neither dead nor alive, figuring the nonhuman at the border of the human".[385] Beyond that Butler relays the significance of the relational ties between Antigone her brother—relational ties that can be extended to apply to us all—and that grieving honours those relational ties making not only a life, but a livable one.[386]

I would like to consider the etymology of mourning and grief. Etymology as a starting point does not intend to fix these terms to an origin or inflexible definition, but rather reveals the possibilities for their use and serves as an opening for reimagination.

The English etymology of mourning appeared in the 13th century meaning the "state of sorrow over the death or departure of a loved one [and] the passionate and demonstrative activity of expressing grief".[387] According to Wikipedia "mourning is the expression of an experience that is the consequence of an event in life involving loss, causing grief, occurring as a result of someone's death, specifically someone who was loved although loss from death is not exclusively the cause of all experience of grief… mourning can be personal and collective".[388]

Mourning requires acknowledgement and acceptance of loss. It reveals the ties we have to each other and how these ties constitute who we are.[389] Without the capacity

[382] Butler 2000: 7
[383] I expand on the power of public mourning in (re)imagining space later in thesis in Chapter 5.
[384] Butler 2000: 5-8.
[385] Butler 2000: 8.
[386] Butler 2000: 78-79. While *Antigone's Claim* was published in 2000 and makes no mention of "grievability" rather "ungrievable", the exposition of grief and grieving make way for it.
[387] Vocabulary.com "mourning", https://www.vocabulary.com/dictionary/mourning (accessed on 30 October 2023).
[388] Wikipedia "mourning", https://en.wikipedia.org/wiki/Mourning (accessed 30 October 2023).
[389] Butler 2004: 21-22.

to mourn we lose that sense of life needed to oppose violence.[390] Vulnerability relies on existing norms of recognition attributed to a human subject; thus vulnerability is precondition for humanisation, but this vulnerability must be recognised. The violence, loss and vulnerability one experiences must be mourned.[391] The English etymology of grief appeared from the early 13th century meaning:

> Hardship, suffering, pain, bodily affliction.[392]

According to the Cleveland Clinic grief is:

> Grief is the experience of coping with loss. Most of us think of grief as happening in the painful period following the death of a loved one. But grief can accompany any event that disrupts or challenges our sense of normalcy or ourselves. This includes the loss of connections that define us.[393]

Grief as a bodily affliction understands that I am a bodily being given over to others and that others are other beings given over to me. In this way understanding grief as an aspect relating to a person's social relations, one could say that dispossession of the self and others is a means to apprehend who one is.[394] In *Precarious Life* Butler later describes grief as "an implicit understanding that the life is grievable, that it would be grieved if it were lost, and that this future anterior is installed as the condition of its life. In ordinary language, grief attends the life that has already been lived, and presupposes that life as having ended".[395]

Butler argues that unfamiliarity and difference sever the ties of identification and the meaning of what it is to belong to a human community. Difference, she holds, is thus a crucial element by which a human life is not apprehended as "grievable".[396] The obituary is a nation-building instrument for the public distribution of "grievability" that is aimed at generating national self-recognition. When a life that is not mirrored in our

---

[390] Butler 2004: XVIII-XIX.
[391] Butler 2004: 19.
[392] Online Etymology Dictionary "grief (n)", https://www.etymonline.com/word/grief (accessed 30 October 2023).
[393] Cleveland Clinic "grief", https://my.clevelandclinic.org/health/diseases/24787-grief (accessed 30 October 2023). Cleveland Clinic was described as "at the forefront of modern medicine when it was first organized as a multi-specialty group practice in 1921. From a small outpatient clinic, it has grown to become the world's first integrated international health system" and one of its speciality treatment services is grief, bereavement and recovery support.
[394] Butler 2004: 28.
[395] Butler 2009: 15.
[396] Butler 2004: 38.

collective imagination as a relatable or relational self is lost, it does not qualify as a life and is thus not a loss nor worth noting. The death is eclipsed by whatever public discourse follows, it is simply ungrievable.[397] Butler argues that one of the catalysts for mourning is acceptance that the loss one has suffered may possibly change one forever. Butler further expands loss to being dispossessed from a place or community;[398] that a sense of loss, of human vulnerability, returns us to a shared responsibility for one another's physical lives.[399] The public sphere as the domain where speaking subjects can participate in public policy and politics is constituted by what can appear. Appearance thus can regulate and constrain the public sphere and decide whose lives count as lives and whose deaths count as deaths.[400]

Grief brings to the fore the relational ties between us that bind us as a political community and foregrounds our ethical responsibility to one another.[401] The body has a public dimension formed by social life. Political movements claim bodily integrity and self-determination as a means of autonomy over our bodies.[402] As the site of human vulnerability, the body exists within a field of power that operates through differential norms of recognition.[403] These norms govern who will be a "grievable" human and produce permissible and celebrated public grieving. The public sphere is thus constituted by permissible and prohibited forms of public grieving.[404] Insensitivity to human suffering and death is a continuation of violence and the mechanism through which public "grievability" is prohibited and dehumanisation is accomplished.[405] Those not regarded as humans but as 'other' are neither alive nor dead, they are laid bare: constantly exposed to violence.[406] The social conditions of a living being between birth and death is the location of where the value of life appears. To this Butler says "grievability is a condition of a life's emergence and sustenance", making "grievability" the foundation of a life that matters, of a life with value—of life.[407] . The ontological and epistemological quandaries raised by frames of recognition as Butler has put

[397] Butler 2004: 32-35.
[398] Butler 2004: 21-22.
[399] Butler 2004: 30.
[400] Butler 2004: XVIII-XXI.
[401] Butler 2004: 22.
[402] Butler 2004: 25-26.
[403] Butler 2004: 44.
[404] Butler 2004:37.
[405] Butler 2004: 148.
[406] Butler 2004: 33.
[407] Butler 2009: 14-15.

forward relate to my chosen instantiations in Chapter Two. The framing of the deaths of the young girls stands out to me as they represent Butler's three questions "who counts as human?", "whose lives count as lives?" and "what makes for a grievable life?" Firstly, their obituaries indicate who counts as human; secondly, how the court cases were conducted indicates whose lives counts as lives; lastly, the scale of the courts indicates whose deaths count as deaths and what makes for a grievable life. Uyinene and Franziska are described as some iteration of "lovely young girls" who had "potential" these are frames of recognition which create a connection between the public and the individual, they are not some distant unknown other, there are relational ties between us. On the other hand, Zoliswa and the mental health care users in Life Esidimeni are not accorded frames of recognition because we know nothing about them and as such we have no connection to them.

Grievability precedes and makes possible the apprehension of the living being as living. The apprehension of grievability precedes and makes possible the apprehension of precarious life as exposed to non-life.[408] Permissible and celebrated public mourning and grieving is indicative of a grievable human. The prohibition of public grieving is an attempt to derealise a life.[409] Returning to Antigone, one can say grief as the foundation for ethical responsibility builds a political community by emphasising the relational ties between us.[410] Grief is thus a unifying politics, an identification with suffering.[411] To grieve is to politicise grief, it establishes one within a political and legal framework.[412] Lives are supported and maintained differently: certain lives will be fiercely protected and the violation of their sanctity will mobilise many to action while other lives will not find such support or even qualify as "grievable". The cultural frames for our conception of the human set limits to the type of losses we affirm as loss. Is the loss of someone not naturalised as human but 'other' a loss? To this Butler asks "what and where is the loss and, how does mourning take place?"[413] When humans are not regarded as humans based on their sexuality, race, gender or ableness, they cannot simply be inserted into the existing ontology. From the perspective of violence, those who have been relegated to the periphery of 'human'

[408] Butler 2009: 15
[409] Butler 2004: 37.
[410] Butler 2004: 22.
[411] Butler 2004: 30.
[412] Butler 2004: 25-30.
[413] Butler 2004: 32.

and collective imagination cannot be violated; and if they cannot be violated, they cannot be mourned. They cannot be killed since they never seemed to truly live. Without the capacity to mourn and grieve we lose that sense of life needed to oppose violence.[414] As Butler said:

> For populations to become grievable does not require that we come to know the singularity of every person who is at risk or who has, indeed, already been risked. Rather, it means that policy needs to understand precariousness as a shared condition, and precarity as the politically induced condition that would deny equal exposure through the radically unequal distribution of wealth and the differential ways of exposing certain populations, racially and nationally conceptualized, to greater violence.[415]

Grief is a bodily experience. Where is the grief stored and how can a human body hold grief and how are we internally rearranged to hold so much grief? How much grief is stored in the bodies—material, immaterial, individual and collective—of marginalised communities? Grievability is compositional and decompositional, it is the coming together and falling apart of objects and subjects and states of being and emergent materialities.

3.3 Giorgio Agamben

Giorgio Agamben's bare life expresses our subjection to political power. A query into the origin of the sacredness of life is a query of human existence. Only if we understand the theoretical implications of bare life will we be able to solve the question of ontology.[416] The aim is to explore what happens when the concept of bare life (and the figure of *homo sacer*) is engaged in the South African context.

3.3.1 *Zoē* **ζωή** and *bios* **βίος**

In exploration of the origin and meaning of the complex term "life", Agamben refers to the Greeks who had two terms with a shared etymology, but dissimilar meanings, structures and forms, through which to understand "life": "***zoē,*** which expressed the

[414] Butler 2004: 32.
[415] Butler 2009: 28.
[416] Agamben 1998: 102.

simple fact of living common to all living beings (animals, men, or gods), and *bios,* which indicated the form or way of living proper to an individual or a group".[417]

In the George Abbott-Smith Greek Lexicon *bios* (βίος) is defined as:

1. period or course of life, life;

2. living, livelihood, means.[418]

And *zoē* (ζωή) is defined as:

1. of natural life; of the life of one risen from the dead;

2. Of the life of the kingdom of God, the present life of grace and the life of glory which is to follow.[419]

According to Blue Letter Bible Lexicon search for Greek words bios (βίος) is defined as:

1.life;
2. life extensively;
3. the period or course of life;
4. that by which life is sustained, resources, wealth, goods.[420]

And *zoē* (ζωή) is defined as:

1.life;
2.the state of one who is possessed of vitality or is animate;
3.every living soul.[421]

Agamben notes that in their theories of life, Plato and Aristotle were more concerned with "a qualified life, a particular way of life" and not the simple fact of living of *zoē*.[422] It was *bios* that could enter the *polis* and be considered a qualified life (a political life).[423] In the *Philebus* Plato mentions three ways of life, and in the *Nichomachean Ethics* Aristotle also makes the distinction between three ways of life "the

[417] Agamben 1998: 1.
[418] 979 βίος https://greeklexicon.org/lexicon/strongs/979/ (accessed 30 October 2023).
[419] 2222: ζωή https://greeklexicon.org/lexicon/strongs/2222/ (accessed 30 October 2023).
[420] Blue Letter Bible "βίος", https://www.blueletterbible.org/lexicon/g979/kjv/tr/0-1/ (accessed 30 October 2023).
[421] Blue Letter Bible "ζωή", https://www.blueletterbible.org/lexicon/g2222/kjv/tr/0-1/ (accessed 30 October 2023).
[422][422] Agamben 1998: 1.
[423] Agamben 1998: 1-2.

contemplative life of the philosopher *(bios theoretikos)* from the life of pleasure *(bios apolaustikos)* and the political life *(bios politikos)".*[424]

In *Politics* Aristotle identifies two realms: the private and the public. The private realm is disconnected from the *polis* and is restricted to the home (*oikos*) as simply reproductive life.[425] Aristotle defining the perfect community as:

> Opposing the simple fact of living *(to zen)* to politically qualified life *(to eu zen): ginomene men oun tou zen heneken, ousa de tou eu zen,* "born with regard to life, but existing essentially with regard to the good life.[426]

This was interpreted by Agamben as meaning "being born *(ginomene)* in being *(ousa),* but also as an inclusive exclusion (an *exceptio)* of ***zoē*** in the ***polis".***[427] To me I understand this as meaning not only is ***zoē*** simple fact of living, it must be excluded from the *polis* and that emphasis is essential. Aristotle defines man as by nature a *politikon zoon* meaning a political animal; emphasising that "political" is not "an attribute of the living being as such, but rather a specific difference that determines the genus *zoon*".[428] However, in *Politics* Aristotle still acknowledged that ***zoē***, natural life (*to zen*), could in fact be good when he wrote:

> Men also come together and maintain the political community in view of simple living, because there is probably some kind of good in the mere fact of living itself… as if it were a kind of serenity and a natural sweetness.[429]

Political thinker Hannah Arendt paid sustained attention to the distinction between ***zoē*** and *bios*. In *The Human Condition* Arendt states that political life is *the* condition of the human condition. The human condition is that of plurality, that we "live on the earth and inhabit the world" together.[430] The Romans expressed this condition of political life using the words "to live" and "to be among men" (*inter homines esse*) and "to die" and "cease to be among men" (*inter homines esse desinere*) as synonyms".[431] Arendt introduces the term *vita activa*, active life consisting of things produced by human

[424] Agamben 1998: 1.
[425] Agamben 1998: 2.
[426] Agamben 1998: 2.
[427] Agamben 1998: 7.
[428] Agamben 1998: 2.
[429] Agamben 1998: 2..
[430] Arendt 1998: 7.
[431] Arendt 1998: 7-8.

activities, by distinguishing it from *vita contemplative*, contemplative life.[432] Action as *vita activa* is the "conditions under which life on earth has been given to man".[433] *Vita activa* is the standard translation of Aristotle's *bios politikos*. In the medieval philosophy of Augustine, who Arendt argues believed in the singularity of human existence, the original meaning of the term he used was *vita negotiosa* or *actuosa*: "a life devoted to public-political matters".[434]

Arendt explains Aristotle's three ways of life which she believes were concerned with the neither necessary nor merely useful "beautiful" things of life which are:

> The life of enjoying bodily pleasures in which the beautiful, as it is given, is consumed; the life devoted to the matters of the polis, in which excellence produces beautiful deeds; and the life of the philosopher devoted to inquiry into, and contemplation of, things eternal, whose everlasting beauty can neither be brought about through the producing interference of man nor be changed through his consumption of them.[435]

Just as Aristotle does, Arendt recognised Greek life as divided into two realms: the private realm and the public realm. Labour and work establish the private realm as they are devoted to keeping one's self alive where "freedom is ruled out".[436] Labour represents biological processes of the human body to meet necessities in order to remain alive including providing food, shelter, care and sex through coercion,[437] and work represents "artificial" worldly things acquired through compensation for economic activity.[438] Neither labour nor work could constitute bios as they "served and produced what was necessary and useful, they could not be free, independent of human wants and needs" and they are thus *zoē*.[439]

Action represents a political activity.[440] As such it established the public realm as *bios politikos* which requires action through an autonomous way of life free from biological necessities and the free choice for political organisation in order to sustain human affairs.[441] Of the plethora of human activities, Arendt identifies only two human

[432] Arendt 1998: 9.
[433] Arendt 1998: 7.
[434] Arendt 1998: 12.
[435] Arendt 1998: 12-13.
[436] Arendt 1998: 12.
[437] Arendt 1998: 7-12.
[438] Arendt 1998: 7-12.
[439] Arendt 1998: 13.
[440] Arendt 1998: 9.
[441] Arendt 1998: 13.

activities which are political and align with Aristotle's *bios politikos*: action (*praxis*) and speech (*lexis*), which are always between humans and directed toward them with the aim of generating human relationships;[442] she emphasised that:

> Human plurality, the basic condition of both action and speech, has the twofold character of equality and distinction. If men were not equal, they could neither understand each other.[443]

The Greeks thought of the *polis* as a place where free people could live together so as to act. Fundamental to being political and living in a *polis* was that resolving matters and making decisions was done through "words and persuasion and not through force and violence".[444] Thus the Greek understood that force and violence were characteristic to life outside of the *polis* and prepolitical measures of dealing with people in the private realm such as the household where the head of the home and family did not use words or persuasion but "rules with uncontested, despotic powers".[445]

Arendt's distinction between *bios* and ***zoē*** is movement, which that of ***zoē*** is:

> The ever-recurrent cyclical movement of nature… the movement of the living organism, the human body not excluded… the circle of nature herself, where no beginning and no end exist and where all natural things swing in changeless, deathless repetition. Nature and the cyclical movement into which she forces all living things know neither birth nor death as we understand them.[446]

And of the movement of *bios*:

> Birth and death presuppose a world which is not in constant movement…without a world into which are born and from which they die, there would be nothing but changeless recurrence, the deathless everlastingness of the human as of all other animal species. The word "life," however, has an altogether different meaning if it is related to the world and meant to designate the time interval between birth and death… it follows a strictly linear movement whose very motion nevertheless is driven by the motor of biological life which man shares with other living things and which forever retains the cyclical movement of nature. The chief characteristic of this specifically human life, whose appearance and disappearance constitute worldly events, is that

[442] Arendt 1998: 25.
[443] Arendt 1998: 175.
[444] Arendt 1998: 26.
[445] Arendt 1998: 26-27.
[446] Arendt 1998: 96.

> it is itself always full of events which ultimately can be told as a story, establish a biography; it is of this life, *bios* as distinguished from mere ***zoē***.[447]

Arendt's distinction between the movements expresses navigating this world from which we all enter and exit, focusing on *vita activa* and the action and speech required to "be among men".[448] Agamben's text differs from Arendt's in that he focuses on what ***zoē*** is not while Arendt's focus is on what *bios* is. Agamben refers to ***zoē*** as the exclusion from the *polis* and later translates that to bare life, emphasising that this exclusion is what constitutes Western politics. The exposure of the body to social and political forces and norms which increase its precariousness and do not allow it to persist and flourish is ***zoē***. ***Zoē*** represents the ontology of "being" that is always given over to others. Epistemologically, as a "being" falling outside the norms required to be apprehended as a life, ***zoē*** is not a life; the converse can be said of *bios*.

Reflecting back on the Greek Lexicon, Blue Letter Bible and Arendt's biography *bios* is a "life story" which can only be accorded to a human life and as such requires an obituary as it is included in the public sphere. The political good life of *bios* can be compared to a national self-recognition.[449] *Bios* (*politikos*) has permissible and celebrated public grieving which is an act realising a human subject. Reflecting on Wiktionary and the Lexicon ***zoē*** is a life risen from the dead which can be said of even animals; there is no mention of quality of life rather property which is substance and does not reflect a human life. ***Zoē*** is prohibited from public grieving which is an act of derealising a human subject. It is when ***zoē*** enters the political sphere that bare life is politicised.[450]

3.3.2 *Homo Sacer* and bare life

The decision on the value (or nonvalue) of life corresponds to Agamben's bare life, which expresses our subjection to political power.[451] The ideal of political power, as Agamben understands it, is concerned with "not simple natural life, but life exposed to death (sacred life) is the originary political element*".*[452] He refers to a person subject to such a life as *homo sacer* (sacred man). What defines the status of *homo sacer* is

[447] Arendt 1998: 97.
[448] Arendt 1998: 7-8.
[449] Butler 2004: 34.
[450] Agamben 1998: 4.
[451] Agamben 1998: 80-81.
[452] Agamben 1998: 55.

the violence to which he finds himself exposed. This violence is classifiable neither as "sacrifice nor as homicide, neither as the execution of a condemnation to death nor as sacrilege".[453]

Agamben describes the Latin word *sacer* as meaning "sacred and damned".[454] Agamben turns to William Robertson Smith's book *Lectures on the Religion of the Semites* in which Smith considers the ambiguity of the term *sacer* with the notion of taboo writing:

> Alongside of taboos that exactly correspond to rules of holiness, protecting the inviolability of idols and sanctuaries, priests and chiefs, and generally of all persons and things pertaining to the gods and their worship, we find another kind of taboo which in the Semitic field has its parallel in rules of uncleanness. Women after child-birth, men who have touched a dead body and so forth are temporarily taboo and separated from human society, just as the same persons are unclean in Semitic religion. In these cases the person under taboo is not regarded as holy, for he is separated from approach to the sanctuary as well as from contact with men.[455]

Agamben refers to the second edition of Smith's *Lectures* titled "Holiness, Uncleanness and Taboo", in which he writes that "separating the Semitic doctrine of the holy from the impurity of the taboo-system" is impossible.[456] For Smith in this Semitic doctrine there is a ban:

> Another Hebrew usage that may be noted here is the ban… by which impious sinners, or enemies of the community and its god, were devoted to utter destruction. The ban is a form of devotion to the deity, and so the verb "to ban" is sometimes rendered "consecrate"… or "devote"… But in the oldest Hebrew times it involved the utter destruction, not only of the persons involved, but of their property… Such a ban is a taboo and, as with taboo, the danger arising from it is contagious; he that brings a devoted thing into his house falls under the same ban itself.[457]

Taboo refers to impure persons who must, even temporarily, be separated from human society and denied contact with men and from entering the sanctuary, since they are regarded as unholy, in order to protect "things pertaining to the gods and their worship" as Smith wrote.[458] Reading taboo together with the ban, the impure unclean

[453] Agamben 1998: 52-53.
[454] Agamben 1998: 78.
[455] Agamben 1998: 76.
[456] Agamben 1998: 76.
[457] Agamben 1998: 77.
[458] Agamben 1998: 76.

persons, the sinners, were to suffer “utter destruction”, including their property, under the ban which was done as an act of devotion to the gods. The ban is an iteration of a taboo. Taboo is a separation from the community and the sanctuary while the ban is utter destruction and if one were to bring a banned person into their home they too would suffer utter destruction.

According to Agamben, Pompeius Festus was the first to tie the archaic Roman figure of sacredness to human life, *homo sacer*, in his treatise *On the Significance of Words* when he wrote:

> The sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide; in the first tribunitian law, in fact, it is noted that "if someone kills the one who is sacred according to the plebiscite, it will not be considered homicide." This is why it is customary for a bad or impure man to be called sacred.[459]

Of *homo sacer*’s specificity Festus expands is:

> The unpunishability of his killing and the ban on his sacrifice.[460]

Agamben refers to another scholar who read the Latin term *sacer* together with taboo, W. Ward Fowler, and wrote:

> *Sacer esto* is in fact a curse; and *homo sacer* on whom this curse falls is an outcast, a banned man, tabooed, dangerous.[461]

Still exploring the “double meaning” of the Latin term *sacer*, namely “sacred and damned”,[462] Agamben turns to Alfred Ernout-Meillet’s *Dictionnaire etymologique de La langue latine* which makes direct reference to *homo sacer:*

> *Sacer* designates the person or the thing that one cannot touch without dirtying oneself or without dirtying; hence the double meaning of ‘sacred’ or ‘accursed’ (approximately). A guilty person whom one consecrates to the gods of the underworld is sacred.[463]

[459] Agamben 1998: 71.
[460] Agamben 1998: 73.
[461] Agamben 1998: 79.
[462] Agamben 1998: 78.
[463] Agamben 1998: 79.

The conjunction of unpunishishability of killing and the exclusion from sacrifice gives rise to *sacratio*: consecration to the gods of the underworld. This unpunishishability is *impune occidi*, being killed with impunity.[464] Agamben observed that *consecratio*, the act of making sacred, transforms an object from *ius humanum* to the *ius divinum*—of the Roman juridical and religious order—from the profane to the sacred, *homo sacer* is a person cast away from the jurisdiction of the human yet not ushered into the realm of divine law.[465] Exception from *ius humanum* is an exception from murder, the law of homicide Agamben attributes to Numa Pompilius:

> *Si quis hominem liberum dolo sciens morti duit, parricidas esto,* "If someone intentionally kills a free man, may he be considered a murderer".[466]

Festus's ban on his sacrifice is an exception from *ius divinum*, namely ritual killing invoking the sacredness of the victim:

> *Neque fas est eum immolari* ("it is not licit to sacrifice him").[467]

Being excluded from consecration and thus *ius divinum*, killing *homo sacer* did not constitute sacrilege, unlike the killing of *res sacrae* which is the sacred things:

> *Cum cetera sacra violari nefas sit, hominem sacrum ius fuerit occidi,* "While it is forbidden to violate the other sacred things, it is licit to kill the sacred man").[468]

Neque fas est eum immolari excluded *sacratio* from the religious realm, leading to Agamben's interpretation of *sacratio* being an autonomous figure.[469] Being excluded from *ius humanum* and *ius divinum*, Agamben referred to *sacratio* as a "double exception" as it was not of the realm of the profane nor of the realm of the sacred.[470] This double exclusion means *homo sacer*:

> Belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed. *Life that cannot be sacrificed and yet may be killed is sacred life.*[471]

[464] Agamben 1998: 73.
[465] Agamben 1998: 81-82.
[466] Agamben 1998: 81.
[467] Agamben 1998: 81.
[468] Agamben 1998: 82.
[469] Agamben 1998: 74-81.
[470] Agamben 1998: 82.
[471] Agamben 1998: 82.

Homo sacer is included in the juridical order through his exclusion. The double exclusion exposes *homo sacer* to heightened violence: he may be killed by anyone and killing him is neither sacrifice nor murder, unsanctionable by neither human nor divine law.[472]

Reading Festus, Smith and the double exception together, *homo sacer* is the impure man called sacred who can be killed with that killing being considered neither homicide nor sacrifice, who falls outside of both *ius humanum* and *ius divinum* and belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed, who is a taboo and can be separated from human society and who may suffer utter destruction under the ban. *Homo sacer* falls within the limited sphere of human that is maintained through a relation of exception. Agamben refers to this sphere as the sovereign decision in which law can be suspended in a state of exception, which includes *homo sacer*.[473] The political sphere of sovereignty was constituted through a double exclusion, which takes the form of a zone of indistinction between sacrifice and homicide:

> The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life-that is, life that may be killed but not sacrificed-is the life that has been captured in this sphere.[474]

In the state of exception, the sovereign decides which juridical rules are valid and these rules require a frame of life to which it can be applied and that must submit to these regulations, experience the force of law.[475] In requiring a frame of life to which juridical rules are to be applied in a state of exception, sovereignty is the originary structure in which law refers to life and includes it in itself by suspending it.[476] The exception is the originary form of law.[477] In order for the law to be suspended, the law must operate in relation to something, an exteriority, which is the exception. Agamben refers to this as the "*relation of exception*" and this refers to when something is included solely through its exclusion.[478] The exception is a form of exclusion where

[472] Agamben 1998: 82.
[473] Agamben 1998: 83.
[474] Agamben 1998: 83.
[475] Agamben 1998: 16.
[476] Agamben 1998: 28.
[477] Agamben 1998: 26.
[478] Agamben 1998: 18.

that which is being excluded maintains itself in relation to the rule in the form of the rule's suspension, Agamben explains it:

> The rule applies to the exception in no longer applying, in withdrawing from it.[479]

The relation of the exception is a relation of ban; and the ban is a form of relation. To be banned is not to be set outside the law, it is being abandoned by the law, exposed and threatened. When law includes life in itself by suspending it, it is impossible to determine whether one who has been banned is inside or outside of the juridical order.[480]

As the originary structure in which law refers to life, sovereignty belongs to the law. The most ancient recorded formulation of the principle of the sovereign belonging to the law appeared in the text of Pindar's fragment 169 reconstructed by Boeck which reads:

> The *nomos*, sovereign of all,
>
> of mortals and immortals,
>
> Leads with the strongest hand,
>
> Justifying the most violent.
>
> I judge this from the works of Hecules.[481]

Nomos being the body of law that governs human behaviour, the power that divides violence from law and separates the realm of beasts from the realm of men defines sovereignty; it is the meeting of the Greek words *Bia* and *Dike*, violence and justice, that contains within it the use of violence to achieve justice. Agamben's reading of Pindar describes this meeting as:

> The sovereign *nomos* is the principle that, joining law and violence, threatens them with indistinction.[482]

Agamben expands on the impact of Pindar's fragment on sovereignty writing that:

---

[479] Agamben 1998: 18.
[480] Agamben 1998: 28-29.
[481] Agamben 1998: 30.
[482] Agamben 1998: 31.

> The sovereign is the point of indistinction between violence and the law, the threshold on which violence passes over into law and law passes over into violence.[483]

The sovereign defines exceptions but does not relinquish physical control of those exceptions. *Homo sacer*'s relation to *nomos* is that he exists between *Dike* and *Bia*, between man and beast, where violence passes over into law and law passes over into violence. As the originary figure of life taken into the sovereign ban and excluded from both penal law and sacrifice, *homo sacer* represents the inclusive exclusion which constituted the original political sphere: ***zoē*** and *bios*.[484] The state of exception reduces the excepted subject to ***zoē***, as condemnable and cast aside; thus bare life is the locus of sovereign power. Originally situated at the margins of the political order, as the counterpart to and target of sovereign power, bare life is not ***zoē*** but rather what remains in the wake of the destruction of *bios*; that which has not fully been removed from the realm of law. In Agamben's words:

> Bare life is not simply natural reproductive life, the *zoē* of the Greeks, nor *bios*, but rather a zone of indistinction and continuous transition between man and beast.[485]

The humanity of living man is decided at the "politicisation" of bare life.[486] The figure of *homo sacer,* which is governed bare life, is "human life… included in the juridical order solely in the form of its exclusion (that is, of its capacity to be killed)".[487] And the "politicisation" of life shifted the threshold beyond which life ceases to be politically relevant, becomes only "sacred life" and can as such be eliminated without punishment.[488]

Agamben cites Michel Foucault who said "for a long time, one of the characteristic privileges of sovereign power was the right to decide life and death".[489] For Agamben Western politics is founded upon that which it excludes from politics—the natural life that is simultaneously set outside the domain of the political but nevertheless implicated in *bios politicos.* Human life is politicised through abandonment to an unconditional power of death, that is, the power of sovereignty. It is this abandonment

[483] Agamben 1998: 32.
[484] Agamben 1998: 83.
[485] Agamben 1998: 105.
[486] Agamben 1998: 139.
[487] Agamben 1998: 8.
[488] Agamben 1998: 139.
[489] Agamben 1998: 87.

of natural life to sovereign violence that produces bare life. Bare life is the politicised form of natural life. Being neither *bios* nor *zoē*, bare life emerges from within this indistinction and can be defined as "life exposed to death".[490]

William Southerland's interpretation of Agamben's *homo sacer* considers sovereign power dependent on the biological precarity of its subjects. For him this governance "is both biopolitical and thanatopolitical, administration of the physical life and physical death of the exception".[491] Southerland's position is that bare life is that which exists when ***zoē*** is "removed" from *bios*. In this position, *homo sacer* is the death of *bios* that continues to live the life of ***zoē***.[492] In his interpretation it is the sovereign who excludes *homo sacer* simultaneously "from the sphere of law and fully subsumed within and fully subject to it".[493]

Agamben relies on Foucault, who then argues the threshold of the modern era is the moment when ***zoē*** is included in the mechanisms of state power and politics becomes *biopolitics*.[494] Speaking of the modern state as the sovereign, Agamben argues that including bare life into the political realm produces a biopolitical body which is a constituting act of sovereign power, binding power and bare life to one another.[495]

Achille Mbembe refers to Hannah Arendt's *Origins of Totalitarianism* in which she writes "race is, politically speaking, not the beginning of humanity but its end…not the natural birth of man but his unnatural death"[496] to argue that the politics of race of Western political thought and practice imagines the rule over people based on their inhumanity and otherness and is what he calls "the politics of death".[497] For Mbembe "the exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power"[498] thus his interpretation of bare life is that it is the divestment of political status.[499]

[490] Agamben 1998:90.
[491] Southerland 2016: 3-5.
[492] Southerland 2016: 4-5.
[493] Southerland 2016: 1.
[494] Agamben 1998: 3.
[495] Agamben 1998: 6.
[496] Mbembe 2003: 17.
[497] Mbembe 2003: 17.
[498] Mbembe 2003: 12.
[499] Mbembe 2003: 12.

Bare life has the peculiar privilege of being that whose exclusion founds the city of men.[500] This is a significant insight that can find parallels in the psyche of the apartheid regime: founding Afrikaner nationalism, white supremacy, apartheid geography and population registration on excluding black people. I expand on this below.

3.4 Life: reclaiming flesh and animating that which has been laid bare

My use of Agamben in this thesis agrees with his insight, despite the limitations in his theory of bare life. Thus, I explore bare life or "life" with the aim of exploring it and perhaps developing it in a different or new direction.

3.4.1 Where Butler and Agamben meet and diverge: precarity and grievability as a response to bare life

Agamben refers to the figure of *homo sacer* who "may be killed and yet not sacrificed", while Butler refers to Hegel and Klein pointing out the apprehension of the precariousness of another's life and their physical vulnerability to violence incites the desire to destroy them.[501] Emmanuel Levinas also expresses the desire to kill the "face" because of its precariousness.[502] Examined in tandem it becomes clear that all human subjects do not occupy the space of humanity equally.

In examining the link between bare life and politics, Agamben refers again to Aristotle's *Politics* in which he said language is required for proper position in the *polis* when he wrote "among living things, only man has language".[503] Agamben asks two questions: "in what way does the living being have language?"[504] and "in what way does bare life dwell in the *polis*?"[505] this leads him to further observations:

> The fundamental categorial pair of Western politics is not that of friend/enemy but bare life/political existence, zoē/bios, exclusion/inclusion. There is politics because man is the living

[500] Agamben 1998: 7.
[501] Butler 2009: 2.
[502] Butler 2009: 2.
[503] Agamben 1998: 7.
[504] Agamben 1998: 8.
[505] Agamben 1998: 8.

> being who, in language, separates and opposes himself to his own bare life, at the same time, maintains himself in relations to that bare life in an inclusive exclusion.[506]

From my apperception Butler refers to the proper positioning in the *polis* as identification and the *polis* as the public sphere. Positive identification (one that does not dissent) establishes one as a viable speaking subject who can participate in larger public discussions of the value of policies and politics. Politically forbidding self-determining practices is the foundation for eliminating public life. Public speaking is regulated by the threat of having to live in an uninhabitable and unacceptable identification. Uninhabitable identification thus takes away one's status a viable speaking subject and thus one's participation in public discussions. With this I seize identification as not only regulating who is a viable speaking subject, but indeed what is a livable life and what is an unlivable life.[507] Butler's speaking corresponds directly with Aristotle's language. In this way the speaking subject is the living being who has language and is thus a man with a good life—a livable life. Contrariwise an unspeaking subject has no language and is a living being that has only a voice—an unlivable life. To Agamben's categorial pair I insert "speaking subject/unspeaking subject". Positive identification as a process produces a viable speaking subject which is properly located in the *polis* by language reflecting the good life of *bios*; *bios* is thus a livable life which can participate in the public sphere. Consequently, an uninhabitable identification is a process which produces an unviable speaking subject or which takes away the viability of a speaking subject and reduces one to ***zoē***; making ***zoē*** a subject that cannot speak or participate in the public sphere meaning ***zoē*** is an unlivable life.[508] These are the workings of politics and power: regulating what can appear and what can be heard.[509]

The public sphere is constituted by what can appear, making appearance that which establishes reality and that which is not reality, which lives can be considered livable lives and which deaths can be considered grievable deaths. This makes me wonder if the regulation of the public sphere through prohibiting what can appear is related to or can be linked to expulsion from the city? The categorial pairs bare life/political existence and exclusion/inclusion are preceded by Agamben's explanation of the

[506] Agamben 1998: 8.
[507] Butler 2004: XVII-XX.
[508] Butler 2004: XIX-XXI.
[509] Butler 2004: 147.

inclusive exclusion of bare life in which he writes “in Western politics, bare life has the peculiar privilege of being that whose exclusion founds the city of men”.[510] Bare life and politics are co-constitutive: in order for man to set himself apart in language from living beings, from bare life, there must be a bare life from which he sets himself apart and “maintains himself in relation to that bare life in an inclusive exclusion”.[511] Thus where a living being exists that must politicise itself and transform itself into a good life that is not bare life, that is where there is a possibility to transform that which is politics.[512] The politicisation of bare life decides the humanity of living man.[513]

As Butler writes where the human is not identified through some public representation or appearance, the lack of representation creates a possibility. In order for the human to be identified, for humanisation to take place, there must one from whom I am different, whom I disidentify with, the inhuman. Where something is identified within the realm of appearance it must be challenged as not recognisably human. This creates a conflict that collapses identification; in Butler’s words, “disidentification is part of the common practice of identification itself”.[514]

Speaking of the reproduction of sacred life Agamben refers to Arendt

> The refugee must be considered for what he is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation-state, from the birth-nation to the man-citizen link, and that thereby makes it possible to clear the way for a long-overdue renewal of categories in the service of a politics in which bare life is no longer separated and excepted, either in the state order or in the figure of human rights.[515]

In what Butler puts forward with their term “unreal”, lives that are considered unreal cannot be injured by violence and their lives cannot be negated by violence since their lives are already negated.[516] This aligns with the killing of *homo sacer* being neither murder nor sacrifice. Derealisation is a violence suffered by the unreal, it is a state of

[510] Agamben 1998: 7.
[511] Agamben 1998: 8.
[512] Agamben 1998: 7.
[513] Agamben 1998: 8.
[514] Butler 2004: 144-147.
[515] Agamben 1998: 134.
[516] Butler 2004: 33.

being neither alive nor dead. The figure of *homo sacer* is the "unreal" and as such incites the desire to be killed.[517]

As I noted earlier, Butler identifies the body as both public and private.[518] One might ask whether the public sphere of the body—in which we struggle to claim it as our own because it is given over to other, to the world—is related to bare life? This public sphere, the *polis*, is defined by Aristotle as "the opposition between life (*zen*) and good life (*eu zen*)".[519] Butler addresses the state of suspension between life and death saying those in this state are already not fully living; violence committed against them is remarkable in that it is unremarkable.[520]

Butler and Agamben meet in their exploration of the categories human, not-quite-human and nonhuman and situating these categories within, without and against the law and politics. they diverge in what can be done with this exploration. Agamben's figure of *homo sacer* and bare life disavow agency, autonomy and recognisability, while Butler sees the lack of recognisability as in fact recognisable by the unrecognised ungrievable lives. Let me expand on this. By this I mean that reduction to *zoē* is an act un-aliving if *bios* is the living proper of a group or individual. Butler's grievability—and precariousness by extension—is an aliving project.

While relegated to the realm of having never lived, the unrecognisable ungrievable lives are in fact able to understand that their lives are not considered full or meaningful or lives at all and this leads to outrage which has enormous political potential.

3.4.2 Reclaiming colour: bare life and black skin

Lauded for one of the most sustained critiques of Agamben's "bare life" achieved by situating his argument principally within feminist and black studies, Alexander Weheliye writes in *Habeas Viscus*:

> Focusing on the layered interconnectedness of political violence, racialisation, and the human, I contend that the concepts of bare life and biopolitics, which have come to dominate contemporary scholarly considerations of these questions, are in dire need of recalibration if we want to understand the workings of and abolish our extremely uneven global power structures… that are predicated upon hierarchies of racialised, gendered, sexualised,

[517] Butler 2004: 33.
[518] Butler 2004: 26.
[519] Agamben 1998: 7.
[520] Butler 2004: 36.

> economised, and nationalised social existence. Although my argument resides in the same conceptual borough as Agamben's bare life, Foucault's biopolitics, Patterson's social death, and, to a certain extent, Mbembe's necropolitic it differs significantly from them, because, as I show later, these concepts, seen individually and taken as a group, neglect and/or actively dispute the existence of alternative modes of life alongside the violence, subjection, exploitation, and racialisation that define the modern human.[521]

Habeas Viscus, meaning "you shall have the flesh",[522] responds to bare life not by dislocating it but by exploring the social (after)life experienced by the modern human of racialisation, subjugation and exploitation.

Weheliye writes: I construe race, racialisation, and racial identities as ongoing sets of political relations that require, through constant perpetuation… the barring of nonwhite subjects from the category of the human as it is performed in the modern west" and not simply a biological descriptor .[523] Racialising assemblages as Weheliye phrases it means "on the one hand, to signal how violent political domination activates a fleshly surplus that simultaneously sustains and disfigures said brutality, and, on the other hand, to reclaim the atrocity of flesh as a pivotal arena for the politics emanating from different traditions of the oppressed".[524] Weheliye writes that the flesh is the "living, speaking, thinking, feeling, and imagining…ether that holds together the world of Man while at the same time forming the condition of possibility for this world's demise".[525] What he explains here captures what both Agamben and Butler consider foundational to subjectivity and personhood and racialises it. Weheliye's contention is that social and political markers cannot be transcended as Agamben attempts to do with bare life, that bare life cannot "[eradicate] divisions among humans along the lines of race, religion, nationality, or gender".[526]

Agamben writes that bare life is the body of *homo sacer*, which is always at risk in political conflict. The law requires a body in order for there to be a bearer of rights and as such cannot operate without a *corpus*. He considers this the "law's desire to have a body".[527] In a democratic state the law is obliged to take responsibility for the well-

[521] Weheliye 2014: 1-2.
[522] Weheliye 2014: 2.
[523] Weheliye 2014: 2-3.
[524] Weheliye 2014: 2.
[525] Weheliye 2014: 40.
[526] Weheliye 2014: 34.
[527] Agamben 1998: 124-125.

being of this body.[528] From this it can be deduced that when democracy is abandoned so, too, is that obligation to care for the body: c*orpus is a two-faced being, the bearer both of subjection to sovereign power and of individual liberties.*[529] Agamben takes note of Thomas Hobbes's *De homine* in which he states that man has two bodies, a political body and a natural body and that the political body is the "body of the city".[530]

The differentiation between which Homo sapiens can lay claim to full human status and which cannot is a white supremacist production of social organisation that institutionalises a hierarchy of human difference through the socio-political machinations of racialisation resulting in what Weheliye describes as full humans, not-quite-humans and nonhumans, in which blackness is barred from full human status.[531] Weheliye's contention is that bare life and biopolitics are rooted in absolute biology and do not recognise or acknowledge the monumental impact race and racism have on the formulation of the modern human, *habeas corpus* and the law in general; and that modern man is always subject to racialisation.[532] Weheliye speaks of the liberal humanist figure Man, the western modern human, who is obviously white, who is the master-subject and must be overcome through a focus on a would-be humanity conceptualised through the lens of subjects actively excluded from this figure.[533] Weheliye explains that *habeas viscus* addresses the human produced by political violence and the law's complicity in dehumanisation through deciding who is worthy of personhood, *habeas*, and legal recognition. In this way we can acknowledge that the law is complicit in racialisation.[534]

Weheliye turns to Frantz Fanon's concept of sociogeny in which socially produced phenomena are associated with specific populations as if those populations are biologically, ontogenetically, predisposed towards those phenomena, which has an impact on the production of race and racism.[535] He then refers to Sylvia Wynter who takes on Fanon's sociogeny, to approach the study on human life, and expands it to what she calls "sociogenetic", in which sociogenic phenomena, emphasising race, as

[528] Agamben 1998: 124-125.
[529] Agamben 1998: 125.
[530] Agamben 1998: 125.
[531] Weheliye 2014: 3.
[532] Weheliye 2014: 4.
[533] Weheliye 2014: 8.
[534] Weheliye 2014: 11.
[535] Weheliye 2014: 25-27.

Weheliye states "become anchored in the ontogenic flesh".[536] In the "colonial encounter" the operation of sociogeny is that the white colonial subject considers his/herself as the "fullness and genericity of being human [western Man]" and the black colonial subject as the "he-or-she-which-is-not-quite-human".[537] In *Towards the Sociogenic Principle,* Wynter writes of sociogeny that it "reveals that the cultural construction of specific "qualitative mental states" (such as the aversive reaction of white Europeans and of blacks ourselves to our skin colour and physiognomy), are states specific to the modes of subjective experience defining what it is like to be human within the terms of our present culture's conception of what it is to be human".[538]

Sociogeny binds bare life to the flesh of certain Homo sapiens so that their "expulsion from humanity"[539] and killing is a result of their biological inferiority and is necessary for the body politic as they are "dysselected within the racial order".[540] The operation of sociogeny and racializing assemblages in this regard is homo sacerisation and justifies the banning of *homo sacer* because *homines sacri* "legally and ideologically reside beyond the scope of the political community".[541]

Like the hardened outer skin of a succulent, bare life claims to know no hierarchy of human differentiation, but at its fleshy centre bare life is not only the product of hierarchies of racialised, gendered, sexualised, economised, and nationalised social existence, it is complicit in perpetuating these hierarchies. As the ether and the modern assemblage of racialisation, the fruit of the flesh is its:

> [Insistence] on the importance of miniscule movements, glimmers of hope, scraps of food, the interrupted dreams of freedom found in those spaces deemed devoid of full human life.[542]

Weheliye demands a return to the body to disrupt bare life. What he raises is significant for understanding how racialised brutality is included in the operation of the normal juridico-political order in a manner that is not as exceptional as Agamben conceives it. He refers to the state of exception created by racial slavery which made use of the

[536] Weheliye 2014: 25-27.
[537] Weheliye 2014: 26.
[538] Duran-Cogan & Gomez-Moriana 2001: 46.
[539] Weheliye 2014: 69.
[540] Weheliye 2014: 69.
[541] Weheliye 2014: 72.
[542] Weheliye 2014: 12.

operations of legal and political means to "physiologically subdue and exploit, erasing the *bios* of those subjects that were subject to its workings" where killing was not the primary objective.[543] I am very careful not to compare or conflate racial slavery in the US with apartheid nor plantations to black territories including townships, not at all, I am concerned with the machinations of "continuous and nonexceptional modes of physiological and psychic violence exerted upon black subjects" which historically affixes a different mode of bare life to certain bodies.[544][545]

In order to transcend race, Weheliye explains that there must be a "philosophical *unseeing of racialising assemblages*" that even in attempts to supersede the biopolitics of race in fact produces racial classification.[546] This is what Butler is discussing in what I call their aliving project when they write that the act of recognising oneself as unrecognisable and ungrievable is a pathway to being recognisable and grievable. Butler speaks of disidentification being a form of identification.

As I discuss above, Butler writes about the "being" which requires a body and exists within a network of social and political relations and norms, which affirm who counts as human and whose lives count as lives. While finding limits to Butler's exploration of the notion of the human, which he writes does not engage the interconnectedness and relationality of race, gender, coloniality, slavery and political violence, I believe that Weheliye can assist me to situate grievability within black studies.[547] Weheliye additionally poses the question of why it is that certain subjects are structurally more susceptible to extreme brutality, which allows me to situate precarity within a specifically black context.

Reading Butler and Weheliye together despite their apparent tension allows me to forge a way of expressing/understanding a continuous nonexceptional social and political brutality induced by a different iteration of bare life which specifically targets black people that can be placed within the South African context to understand

[543] Weheliye 2014: 37.
[544] Weheliye 2014: 38. I explore this further in Chapter 5.
[545] For further reading on the conversation on the absence of considerations of race and gender in Agamben's analysis read Ewa Płonowska Ziarek' "Bare Life on Strike: Notes on the Biopolitics of Race and Gender" in which she writes, "Agamben's analysis of this aporia from antiquity to modernity misses two crucial issues: the question of resistance and the negative differentiation of bare life along racial, ethnic, and gender lines".
[546][546] Weheliye 2014: 65.
[547] In Chapter 5 I will take this further to situate grievability within black geographic thought.

exclusion from the category of the human, which Afrikaner nationalists created to rationalise extreme racialised subjugation.

3.4.3 Potentiality

Precarity as an ontological problem/question is significant for understanding the vulnerability of certain populations which is created by the sovereign. Precariousness/precarity *is* inclusive exclusions.

The figure of *homo sacer* relies on a practice of exclusion.[548] *Homo sacer* is governed by bare life and is defined by the violence to which he is exposed. This exposure to violence and vulnerability is precariousness; thus making *homo sacer* a precarious figure. If the figure of *homo sacer* is physically vulnerable and vulnerability is the precondition for humanisation, but its vulnerability is not recognised then no existing norms of recognition are attributable to it and it cannot be a human subject. How might we recognise the vulnerability of *homo sacer* and humanise the figure?[549] Bare life's inclusive exclusion is entering the juridical order through exclusion—the creation of legal precariousness. Precarity is the politicisation of precariousness; thus precarity can be used for political mobilisation.

Homo sacer can be killed by anyone, but the why and how are not the concern of the sovereign. The sovereign is concerned with preserving the state. The apartheid government was concerned with preserving the state as well as oppressing the black majority to create a figure of *homo sacer* governed by bare life. *Zoē* and bios are separated by the walls of the city. As such bare life and political life are separated by the walls of the city. Expressed spatially this means that space was created to preserve the sovereign, which was the white nationalist state, and relegate black people to bare spaces through killing by executive, legislative and juridical measures. As such, good spaces operate to preserve the state and bad spaces operate to create a South African figure of *homo sacer* governed by bare life. So bare life helps to understand the political even biopolitical power of the apartheid government and its mission to preserve the white nationalist state. The apartheid government, however, was concerned with the how and human of the killing of *homo sacer* and the killing was

[548] Butler 2004: 38.
[549] Butler 2004: 42-43.

done by state; not in a legislative sense, but through police surveillance and undue violence.

So how does grievability respond to this? It is the intricate articulation of way of reanimating life. It understands the violence of the state, calls for a nonviolent way for the state to act (respond), it questions what life and humans are, identifies how people are dehumanised or not regarded as human at all and on what grounds, challenges the humanisation of some and dehumanisation of others and then is a starting point for considerations on the way forward—a reimagined future world. Expressed spatially grievability is the apt response to the apartheid government demarcating advantageous spaces for white people to preserve the Afrikaner white nationalist state while demarcating the least advantageous spaces to black people in order to kill (and perhaps even sacrifice) us.

Butler considers that "the prohibition on certain forms of public grieving itself constitutes the public sphere on the basis of such a prohibition".[550] By this I understand that relegation of bare life/*zoē*/*homo sacer* to being outside the public sphere in fact creates a public sphere. Thus if there is a public sphere which it/they are part of, then there can be no bare life/*zoē*/*homo sacer*.

In *The Human Condition* Arendt states that the *polis* was the meeting place of equals where one neither ruled nor was ruled over; it was a place of freedom where one was removed from the inequality of rulership.[551] The concept of equals in the polis referred to living among and being concerned only with one's peers. It is thus inferred that outside of the *polis* existed "unequals" who she stated were factually "always the majority of the population in a city-state".[552]

To Butler's understanding, Levinas' "the face" of the "Other", places an ethical obligation on us; he writes:

> The approach to the face is the most basic mode of responsibility… it is the other before death, looking through and exposing death. Secondly, the face is the other who asks me not to let him die alone, as if to do so were to become an accomplice in his death. Thus the face says to me: you shall not kill… my ethical relation of love for the other stems from the fact that the self

[550] Butler 2004: 37.
[551] Arendt 1998: 30-32.
[552] Arendt 1998: 32-33.

> cannot survive by itself alone, cannot find meaning within its own being-in-the-world… To expose myself to the vulnerability of the face is to put my ontological right to existence into question. In ethics, the other's right to exist has primacy over my own, a primacy epitomized in the ethical edict: you shall not kill, you shall not jeopardize the life of the other.[553]

Precarity decreases grievability, which can be linked to bare life. Bare life is heightened precariousness, both social and political. So the question is what moral or ethical obligation does this place upon us? If the killing does not amount to murder and the death is not considered/apprehended/recognised as the death of a human and cannot be grieved, what kind of response is expected of/from us?

Grievability places an obligation upon us. *Homo sacer* is that who can be killed. The face places an obligation upon us as well; the obligation that to not assist that who can be killed, that whose existence animates our existence, makes us an accomplice. As Agamben writes: we may all be reduced to bare life and might all be *homo sacer* to someone and we might reduce another to bare life and make them *homo sacer*. Butler writes that we are always precious to someone else and they are precious to us. Levinas writes of "the face". So the face demands that we act, to reduce precariousness and not expose another, the other, to violence and death unless we too want to be held in some manner of accountability for that death. Grievability also functions to create a foundation for resistance.

A narrow application of the state of exception allows us to identify a specific biological body in a specific place to reduce to bare life. As discussed above, the sovereign relies on the precarity of its subjects, even if only a portion. How we frame those specific biological bodies either places an obligation on us to act in defence of them or makes their exposure to violence routine and unremarkable. Sitting in rubble of apartheid, do we take up that obligation?

3.5 The application of "the camp"/ state of exception in the geographical context of South Africa

In the theories analysed by Agamben and Butler, there are various examples of overlapping between the acts of the executive and legislative powers. Paul Maylam

[553] Butler 2004: 131-132.

avers that urban segregation was a spatial form of political domination and control and refers to Jennifer Robinson to demonstrate "the significance of the African location as a strategy for building state power".[554] I turn to grievability and bare life to explore the uneven distribution of human fragility in the spatial expression of life South African life.[555] Applying Agamben's bare life to the South African context necessitates a very careful interpretive balance, which I hold myself to, to consider the inclusion of race in the juridical order through its exclusion and the exclusion of race in the juridical order through its inclusion. Race exists in apartheid legislation and geography through inclusive exclusion. The anti-black agenda of the apartheid government was to include antiblackness into the juridical order through apartheid legislation in order to achieve exclusion from the *polis*. In this way we might understand that the Urban Areas Act and the Group Areas Act are the spatial expression of non-grievability.

While there are insights that I receive, I must consider the limitations of Agamben's theory of sovereignty, biopolitics, the state of exception and the camp when considering black people and the Global South. But within these limitations so must be considered the potentiality.

3.5.1 Suspended rights: what the law can capture

In reading Agamben, Butler asserts "that a subject deprived of rights of citizenship enters a suspended zone, neither living in the sense that a political animal lives, in community and bound by law, nor dead and, therefore, outside the constituting condition of the rule of law".[556] Butler links these conditions of suspended life and suspended death to bare life and *bios politicos*. Butler states that power functions differently to target and manage certain populations and to delegitimise the humanity of subjects who might potentially belong to a community bound by commonly recognised laws. In this sense they argue that Agamben foresaw the possibility of political arrangements in which we are all reducible to bare life, the biological minimum. Butler also provides that under these suspended conditions state sovereignty works by differentiating populations on the basis of ethnicity and race and

[554] Maylam 1995: 19
[555] See Johan van der Walt *Law and Sacrifice Towards a Post-apartheid Theory of Law* p124-129.
[556] Butler 2004: 67.

the systematic management and delegitimisation of populations. This sovereignty is accountable to no law and extends beyond its own power. [557]

Butler refers to the prisoners indefinitely detained in Gauntanamo Bay, who were detained by the U.S. Department of Defense in conjunction with the Department of Justice in 2002 following the war against Afghanistan, and the manner in which their legal and political status was suspended due to their positioning outside of normative conceptions of the human; further that this suspension rendered their lives "unlivable lives".[558] While purporting to have imprisoned the prisoners in a manner consistent with the Geneva Conventions, as prisoners of war, the U.S. removed the prisoners from the realm of "subjects" by stripping them of their legal rights to protection from international law, including rights to counsel, means of appeal, and repatriation, and as such they are not "prisoners" in the true sense. Butler writes that "they are not subjects in any legal or normative sense" and as such they do not count as human. [559] Further Butler states that the policy of "indefinite detention" and the guidelines for the prisoners to be tried by military tribunals allowed the state to suspend the law and create new ones to serve its interests and disregard the separation of powers indefinitely.[560] Through the suspension of the law "a new exercise of state sovereignty, one that not only takes place outside the law, but through an elaboration of administrative bureaucracies"[561] is created which effectively extends power of the state and allows the state to determine the "limit and scope of legal jurisdiction itself" as the sovereign.[562]

In *State of Exception* Agamben, too, considers the conditions of the prisoners detained in Guantanamo Bay and emphasises that they are the "objects" of a *de facto* rule since they are neither prisoners of war under the Geneva Conventions nor imprisoned under U.S. laws which "radically erases any legal status of the individual, thus producing a legally unnameable and unclassifiable being"[563] and where "bare life reaches its maximum indeterminacy".[564] He expands on the erasure of legal status saying that it

[557] Butler 2004: 67-68.
[558] Butler 2004: XV.
[559] Butler 2004: XVI.
[560] Butler 2004: XVI.
[561] Butler 2004: 51.
[562] Butler 2004: 51.
[563] Agamben 2005: 3.
[564] Agamben 2005: 4.

is a “preliminary condition for any definition of the relation that binds and, at the same time, abandons the living being to law”.[565] He calls this a “state of exception” where there is “a suspension of the juridical order itself, it defines law’s threshold or limit concept”[566] In *Homo Sacer* Agamben expresses the state of exception in simpler terms as “a temporary suspension of the rule of law on the basis of a factual state of danger”.[567]

Butler expands on Michel Foucault’s 1979 writing on governmentality, they explain:

> Governmentality is broadly understood as a mode of power concerned with the maintenance and control of bodies and persons, the production and regulation of persons and populations, and the circulation of goods insofar as they maintain and restrict the life of the population. Governmentality operates through policies and departments, through managerial and bureaucratic institutions, through the law, when the law is understood as “a set of tactics,” and through forms of state power, although not exclusively. Governmentality thus operates through state and non-state institutions and discourses that are legitimated neither by direct elections nor through established authority. Marked by a diffuse set of strategies and tactics, governmentality gains its meaning and purpose from no single source, no unified sovereign subject. Rather, the tactics characteristic of governmentality operate diffusely, to dispose and order populations, and to produce and reproduce subjects, their practices and beliefs, in relation to specific policy aims.[568]

Normative conceptions of the human produced through exclusionary processes have legal and political implications. Legal and political status can be suspended. This means that those with suspended status do not count as human and do not count as subjects in any legal or normative sense. When legal status and political status are suspended “unlivable” lives are produced.[569]

On 30 November 1973 the General Assembly of the United Nations adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid in resolution 3068, which entered into force 18 July 1976.[570] In consideration of the Declaration of Human Rights, which states that all human beings are born free

[565] Agamben 2005: 1.
[566] Agamben 2005: 4.
[567] Agamben 1998: 169.
[568] Butler 2005: 51-52.
[569] Butler 2004: XV-XVI.
[570][570] International Convention on the Suppression and Punishment of the Crime of Apartheid 1973. Hereinafter called the Convention on Apartheid.

and are equal in dignity and are all entitled to the freedoms and rights set out in the Declaration, the Convention on Apartheid labelled apartheid a crime against humanity in Article I and defines the crime of apartheid in Article II:

Article I

1. The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

Article II

For the purpose of the present Convention, the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

On 17 July 1998 the United Nations adopted the Rome Statute of the International Criminal Court which established a permanent independent international criminal court, with jurisdiction over the most serious crimes of concern to the international community as a whole.[571] Article 7 of the Rome Statute defines a "crime against humanity" and the "crime of apartheid":

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.

2. For the purpose of paragraph 1:

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

[571] United Nations Rome Statute of the International Criminal Court 1998. Hereinafter called the Rome Statue.

Weheliye explains that under conditions of political violence, suffering becomes a precondition for subjects excluded from the "law, the national community, humanity".[572] Weheliye argues that entities such as the United Nations and the International Criminal Court inadvertently limit what can be acknowledged as legal injury and who is conferred full personhood through these set definitions of crimes in what he called the acknowledgement of "particular forms of wounding" and "certain types of physical violence".[573] An instantiation he makes use of is a resolution passed by the United Nations High Commissioner for Refugees in 2008 which includes rape and other specific forms of sexual violence as falling within the definition of war crimes. Weheliye's contention is that various other forms of sexual violence not included in this definition denies victims access to inclusion and equality as they cannot claim legal injury and in turn personhood as a part of the humanity against which the crime was committed. This limit imposed by the definitions limits the scope of the law and many atrocities remain outside the scope of the law.[574] Weheliye adds that within these definitions "the entry fee for legal recognition is the acceptance of categories based on white supremacy and colonialism, as well as normative genders and sexualities".[575] He fears a racialising juridical assemblage that positions black and native subjects as not-quite-human and that "the law, whether bound by national borders or spanning the globe, establishes an international division of humanity, which grants previously excluded subjects limited access to personhood as property at the same time as it fortifies the supremacy of [white/western] Man".[576]

The Rome Statute defines a "crime against humanity" as a "widespread or systematic attack directed against any civilian population, with knowledge of the attack". While similar, the "crime of apartheid" defined in the Rome Statute refers to acts "committed in the context of an institutionalised regime of systematic oppression and domination…with the intention of maintaining that regime"[577] and in the Convention on Apartheid it is acts "committed for the purpose of establishing and maintaining domination…and systematically oppressing".[578] I am compelled to take up Weheliye's

[572] Weheliye 2014: 75.
[573] Weheliye 2014: 76.
[574] Weheliye 2014: 75-76.
[575] Weheliye 2014: 77.
[576] Weheliye 2014: 79.
[577] United Nations Rome Statute of the International Criminal Court 1998: Article 7 par.2.
[578] Convention on Apartheid Article II.

contentions on the "entry fee for legal recognition"[579] and the broad ambit of atrocities falling outside the scope of the law. The Convention on Apartheid refers to acts committed by one racial group over any other racial group, invoking discriminatory policies and practices in southern Africa while not naming white supremacy and anti-blackness in South Africa specifically. The Rome Statute's delineation of apartheid, also referring to acts committed by one racial group over any other racial group/s, is significant as it acknowledges that it is an institutionalised regime of a sovereign state. Paragraphs (c) and (d) of Article II of the Convention on Apartheid legislative and other measures intended to prevent participation in the political, social and economic life of the country; the denial of basic human rights and freedoms; denial of the right to nationality; denial of the right to freedom of movement and residence; the division of the population along racial lines; the creation of separate reserves and ghettos; the expropriation of land and more. In 1984 Nicolaas Olivier noted that South African policies on urban black people were formulated in accordance with former South African Prime Minister Dr H. Verwoed's two principles:

> —In the first place that urban Blacks are present only temporarily in (so-called) white urban areas and thus have no claim to property and citizenship rights in white areas; and
>
> —secondly that determination of policy and control is in the hands of the central government.[580]

As Minister of Native Affairs from 1950 and Prime Minister from 1958 to 1966, Verwoed intensely directed policy towards black people. What apartheid came to mean within the National Party and its policy aims was "the maintenance and protection of Afrikanerdom, white power and the white race";[581] creating a fictitious "factual state of danger" that was long-term in order to contort and distort the law. The "state of danger" that Afrikanerdom and racial purity were under threat by "miscegenation" manifested in rapid legislation.[582] The National Party was very responsive with legal controls to institute invasive regulations by the state. This speaks to the convergence of governmentality and sovereignty that Butler speaks of, the operation of administrative power that turns to the law as a mechanism of the state to:

[579] Weheliye 2014: 77.
[580] Olivier 1984: 356-357.
[581] Beinart 2001: 147.
[582] I discuss this further in the following chapter with reference to the legislation.

> Use in the service of constraining and monitoring a given population; the state is not subject to the rule of law, but law can be suspended or deployed tactically and partially to suit the requirements of a state that seeks more and more to allocate sovereign power to its executive and administrative powers.[583]

In the National Party's task to preserve and protect the state, the state assigned itself the power to make decisions along racial lines regarding who is less than human and is without entitlements to legal rights and absorbed that into the juridical order.

3.5.2 South African application: "the camp" exceeds the township, but can the township capture "the camp"?

The issues of land, property and belonging internationally do not address the specific context of either South Africa or townships, but they provide me with a starting point for a theoretical framing that is suitable for the purposes of this thesis. Spatial power and domination produce the outside world and spatialise difference resulting in the ways black people can or cannot occupy space.[584] From this it is clear that social injustices are expressed spatially in uneven geographies and the production of space.[585]

For Agamben, the concentration camp is the absolute space of sovereign control over bare life, and the camp, he then asserts, is everywhere. He writes:

> What happened in the camps so exceeds the juridical concept of crime that the specific juridico-political structure in which those events took place is often simply omitted from consideration. The camp is merely the place in which the most absolute *conditio inhumana* that has ever existed on earth was realized: this is what counts in the last analysis, for the victims as for those who come after. Here we will deliberately follow an inverse line of inquiry. Instead of deducing the definition of the camp from the events that took place there, we will ask: What is a camp, what is its juridico-political structure, that such events could take place there?[586]

Agamben refers to jurist Werner Spohr, who was close to the Nazi regime and their conception of the concentration camp, who considered a state of exception "the suspension of fundamental rights".[587] Agamben refers to the camp as "the space that

[583] Butler 2004: 55.
[584] McKittrick 2011: 245.
[585] McKittrick 2011: 247.
[586] Agamben 1998: 166.
[587] Agamben 1998: 168.

is opened when the state of exception begins to become the rule".[588] By this Agamben ties the state of exception to spatial arrangements, which makes the camp the spatial expression of the suspension of the rule of law and independence from the juridical order. It is helpful to understand the camp as the space where fundamental rights are suspended which remains "outside the normal order".[589] Agamben writes:

> The camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space. What is excluded in the camp is, according to the etymological sense of the term "exception" *(ex-capere), taken outside,* included through its own exclusion. But what is first of all taken into the juridical order is the state of exception itself.[590]

The usefulness of understanding the camp as the space of the state of exception is to be able to tie space to the suspension of fundamental human rights.

South African application of the camp does not mean inserting townships into the ontology of the camp, or to starkly assert that townships under apartheid were regions of exception; it is to consider that black people were forcibly physically removed from the polis, relegated to an external space that was excluded by being taken into the juridical order. In this context, "free to be killed by anyone" means to be subject to inhumane administrative (legislative and judicial) power. Exclusion from the polis is the operation of sovereign biopolitics. Exclusion from the polis is a spatial practice that suspends fundamental human rights; the result of which simultaneously shapes and is shaped by race.

In his book *Twentieth Century South Africa* historian William Beinart identified that the broader conception of apartheid quickly materialised in legislation in part due to the segregationist policy of its predecessor that the National Party used as a framework. Beinart explains that there are seven pillars upon which apartheid rested:

1. starker definition of races;
2. exclusive white participation and control in central political institutions (and repression of those who challenged this);
3. separate institutions or territories for blacks;
4. spatial segregation in town and countryside;
5. control of African movement to cities;

[588] Agamben 1998: 169.
[589] Agamben 1998: 168-169.
[590] Agamben 1998: 169-170.

6. tighter division in the labour market; and
7. segregation of amenities and facilities of all kinds from universities to park benches.[591]

What is apparent is that these pillars instructed that pieces of land (territories) intended for black people be placed outside the juridical order, but included through their exclusion.

Gerhard Mare holds that the allocation of individuals into race groups informed the organising of collective white identity through similar or shared characteristics.[592] This allocation of race was crucial in the formation of social identities in which people distinguished themselves from others or as he said "the making of boundaries between 'us' and 'them'".[593] The essence of social identity is to create a status hierarchy.[594] These hierarchies were reflected in apartheid policies and practices of racial and racist domination.[595] These race categories shaped the life chances of those not identified as white.[596]

Jennifer Robinson stressed that township regulations were a form of surveillance as almost all aspects of black urban life were subject to some or other form of control.[597] Robinson focuses on the "Location", an administrative apparatus received from colonialism, that had an "orderly layout" for the purposes of governing populations.[598] Referring Port Elizabeth's housing policy, the Location strategy purported to provide "fair and reasonable treatment"[599] for the black population which had more sinister and detrimental impacts:

> Providing housing in the Location was also meant to achieve a measure of political control and domination which slum areas did not allow. The control functions of the Location were one of the main arguments employed by the Council in its resistance to the central government's influx control policy. The Location Regulations provided for the registration of all location residents, and laid down rules requiring visitors to report their presence in the area to the Superintendent. Residents were obliged to produce residence certificates when requested. Thus, the council argued, such provisions together with the exercise of administrative discretion in allowing

[591] Beinart 2001: 148.
[592] Mare 2001: 76.
[593] Mare 2001: 77.
[594] Mare 2001: 75-77.
[595] Mare 2001: 83.
[596] Mare 2001: 80.
[597] Maylam 1995: 31.
[598] Robinson 1991: 1.
[599] Robinson 1991: 4.

> admission to the location had the potential to control influx, so long as alternative areas of urban residence were eliminated.[600]

Segregation was a form of spatial control over residential space by central and local state's efforts to control the black underclasses in urban areas. Paul Maylam writes that this control took various forms, one of which was the Housing policy that was aimed towards the provision of shelter and also towards the subjugation of urban residents. A local state apparatus responsible for 'native administration' was established in each of the major urban areas to further regulate the lives of those that fell under its power. Influx control and the pass laws regulated access to controlled, segregated spaces within the city and thus to the city itself. In some cities urban policymakers and planners tried to establish 'superior' housing areas for the aspirant black middle-class. Langa in Cape Town was established during the 1920s as a 'respectable' township and it was still the most middle-class of Cape Town's African communities. Lamontville, to the south of Durban was designed as 'a model village',[601] to be reserved for the 'better type of native' in the 1930s.[602] The Dube home ownership scheme In Soweto, which was established in the 1940s, was also aimed at the urban African middle-class.[603]

Accommodating the black underclasses in segregated townships was the ideal of white local government discourse and was thus the key institution of segregation and apartheid. But the heavy capital investment that it would have required impeded its full realisation and little went into black housing. Housing shortages resulted in the rapid growth of shack settlements which imposed a minimal financial burden on the local authority, but posed enormous problems of social and political control. Paul Maylam went on further to contend that "influx control showed up perhaps the most fundamental contradiction of urban apartheid—the contradiction between the inclusionary and exclusionary imperatives of the system".[604]

[600] Robinson 1991: 4.
[601] Maylam 1995: 30.
[602] Maylam 1995: 30.
[603] Maylam 1995: 29-30.
[604] Maylam 1995: 35.

3.5.3 Usefulness and limitations

The concepts of grievability and bare life find spatial expression in the biopolitical mechanism and tactics of the apartheid state and its predecessors in which the full social and political lives of those not racially identified as white were "suspended". Their ban from the city was founded on them existing outside the norms of life, on them existing between *zoē* and *bios politicos*. The intentional geographical arrangements of segregation were intended to demarcate the thresholds beyond which life ceased to have social and political value—rendered ungrievable and constantly exposed to violence.

In *Homo Sacer,* Agamben writes that the camp is "the most absolute biopolitical space"[605] in which the human beings were reduced to bare life. In questioning how it came to be that such atrocities could take place we are invited to:

> Investigate carefully the juridical procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime.[606]

However, what presents as a limit in Agamben's analysis is his position that disregards race in the operation of biopolitics:

> It is impossible to grasp the specificity of the National Socialist concept of race—and, with it, the peculiar vagueness and inconsistency that characterize it—if one forgets that the *biopolitical body* that constitutes the new fundamental political subject is neither a *quaestio foeti* (for example, the identification of a certain biological body) nor a *quaestio iuris* (the identification of a certain juridical rule to be applied), but rather the site of a sovereign political decision that operates in the absolute indistinction of fact and law.[607]

Further that:

> A concept such as the National Socialist notion of race…functions as a general clause… that does not refer to any situation of external fact but instead realizes an immediate coincidence of fact and law.[608]

[605] Agamben 1998: 171.
[606] Agamben 1998: 171.
[607] Agamben 1998: 171.
[608] Agamben 1998: 172.

Weheliye refers to Ruth Wilson Gilmore's intervention to Agamben's analysis of racism:

> Racism is the ordinary means through which dehumanisation achieves ideological normality, while, at the same time, the practice of dehumanising people produces racial categories…This culture, in turn, is based on the modern secular state's dependence on classification, combined with militarism as a means through which classification maintains coherence.[609]

Weheliye considers bare life and biopolitics alternative terms for racism that purport to encompass "a sphere more fundamental to the human than race".[610] There can be no sphere more fundamental to the human than *race*. What Weheliye refers to as "barring of subjects that belong to the Homo sapiens species from the jurisdiction of humanity" requires an "other" from whom I am recognisably different.[611] First we must be differentiated through race and then racism operates through the hierarchical organisation of race and exclusion.

Agamben's Muselmann, the most extreme embodiment of bare life, who no longer belongs to the world of men, still does not precede racialisation. Agamben writes that Muselmann "was not only, as Jewish life that does not deserve to live, destined to a future more or less close to death" and in that sentence opens a contradiction: Jewish people were racialised as non-white which is the identification of a certain biological body.[612] Racialisation cannot be escaped, just as Muselmann could not escape it; he was biologically racialised and politically racialised. Weheliye's contention is that racialised given is always the western man, the jurisdiction of humanity is always white and we cannot escape it. Agamben refers to the state of exception being temporary, however, a narrow application allows us to escape this temporariness and identify specific bodies in specific places. Within the apartheid regime there was the identification of a certain biological body and the identification of a certain juridical rule to be applied to it.

Keith Breckenridge argues that the Population Registration Act of 1950[613] was the cornerstone of the apartheid state that paved the way for the Group Areas Act. It was

[609] Weheliye 2014: 72.
[610] Weheliye 2014: 72-73.
[611] Weheliye 2014: 72-73.
[612] Agamben 1998: 185.
[613] Population Registration Act 30/1950.

population registration that created the categories Coloured, Indian, White and Black.[614] The Population Registration Act required every South African to secure an Identity Card that had a photograph, recorded an address, an identity number and a racial classification. The minister of the Interior, Eben Dönges, who was an integral part of the population registration project, said that the most important part of the Identity Card was 'the identity number' which contained a person's year of birth and their race.[615] Dönges called the population register the 'Book of Life' the project that Breckenridge viewed as "biopolitical surveillance" by the state.[616] The minister of the Interior reported to parliament that by early 1958 the register contained the names of 95 per cent of Coloured, Indian and White people who were coerced into applying for the cards by making them requirements to access social benefits.[617] In 1967, under the Population Registration Amendment Bill Second Reading 17 March, the population register was transferred to the Department of the Interior allowing the government to allocate all South Africans to one of the four racial groups without their knowledge.[618] The biopolitical project of the Book of Life that emerged after 1967 was a very different instrument from its predecessor the population register and the Identity Card; it intended for surveillance and control of all citizens through "the recording of births, deaths, marriages, divorces, widowing, naturalisations, applications for passports, drivers' licences, firearms, immunisations, professions and education".[619]

In this decision to take direct control of the biological life of the nation, the apartheid government took on the structure of the nation-state, which Agamben defines as having three elements: *land, state, birth.*[620] The Book of Life and the Population Registration Act were the inscription of bare life, "the *birth* that thus becomes *nation*" which ruptured the old *nomos*.[621]

[614] Breckenridge 2014: 225-226.
[615] Breckenridge 2014: 227.
[616] Breckenridge 2014: 228.
[617] Breckenridge 2014: 230.
[618] Breckenridge 2014: 231-232.
[619] Breckenridge 2014: 234-236.
[620] Agamben 1998: 174-175.
[621] Agamben 1998: 175.

3.6 Conclusion: situating the human within, beyond and against the law(-space)

Normative conceptions of the human produced through exclusionary processes have legal and political implications. Legal and political status can be suspended. This means that those with suspended status do not count as human and do not count as subjects in any legal or normative sense. When legal status and political status are suspended, "unlivable" lives are produced.[622] As marginalised people falling outside the normative conceptions of human, the social vulnerability of our bodies are exposed to violence merely by existing in public.[623]

I explored Butler and Agamben in tandem and in juxtaposition. Drawing on these theorists, I argue that grievability and the inclusive exclusion of bare life can be reconciled in a broader analysis of white supremacy and Afrikaner nationalism and the operation of political power: they can only exist with the production of a human subject, one with a socially and politically valuable life; and a subject that does not count as a human life, a subject with increased exposure to violence. The subject that does not count as a human life within the South African context is always racialised as black. This process is the inclusion of race and racism into the normal operation of juridico-political order through its exclusion and is the legitimisation of illegitimate brutality against black people.

The usefulness of the notion of bare life lies in its exposition of modern states political power. I relate this with apartheid's authoritarian political power, and how it was used to organise space. Grievability is the work/task of meaning making; the inventing and reinventing of true community and systems that create and provide care. Grievability is the starting point for (re)imagining space beyond the material realm. If we understand grievability as a material reality that influences space and is influenced by space and we understand that minimising precariousness makes lives more grievable, then applying grievability to space places an ethical obligation on us to achieve or at least strive for spatial justice not only in terms of material conditions but as a tool to make lives more valuable and spaces more livable.

Returning to my stories in the previous chapter, space is imbued with meaning and these meaning spans across race, gender, sexuality, class and disability individually

[622] Butler 2004: XV-XVI.
[623] Butler 2004: 20.

and simultaneously; and links these categories of identity to violence, death and neglect. To connect it with this chapter, the narratives of Franzisca, Uyinene, Zoliswa and the inhabitants of Life Esidimeni reflect the human, the non-human and the in-between, the grievabile and the ungrievable. They represent an opening for connecting these reflections on specific instances of violence, death and neglect to the epistemological and ontological questions of the human, fundamental human rights and the suspension of rights. This illuminates the endurance of apartheid geography: when spaces have maintained the racialised structure of brutality that is apartheid geography, the human, the non-human and the in-between will continue to be (re)produced by space and (re)produce space.

The concepts of grievability and bare life are helpful in understanding space as the site of recognising life and its political and social value. Apartheid geography created raced, gendered and classed geographical boundaries that exposed and made certain people more vulnerable to violence. The social policy of apartheid made unexpected violence and loss the norm of social and political life for black people. In the following chapter I expand on the "human" which had to be (re)produced by the apartheid regime to oppress and exploit and that racial groups had to be included in legislation in order to achieve legislating people out of existence through space.

In the following chapter I address apartheid legislation. What I receive from Agamben is an additional query to be explored in the following chapter: what is a township and what is its juridico-political structure that such atrocities could take place there? How might we theorise modern hierarchical governance in South Africa if we took apartheid as the point of departure? What then if apartheid represented the biopolitical *nomos* of South African modernity?

CHAPTER 4

THE CONCRETISATION OF RACE THROUGH THE CONTINUITIES OF BOTH THE NATIVES URBAN AREAS ACT[624] AND THE GROUP AREAS ACT[625]

> Rather, the tactics characteristic of governmentality operate diffusely, to dispose and order populations, and to produce and reproduce subjects, their practices and beliefs, in relation to specific policy aims.
>
> —Judith Butler[626]

4.1 Introduction

This chapter should be read bearing in mind that my positionality has and continues to inform my experiences and my reality even where it is not discussed explicitly. It is important for me to recognise that as a middle-class black woman, my experience of space does not mirror the reality of a majority of black South Africans.

In Chapter Two I unpacked examples of harm, poverty, death and neglect in specific places reulsting from racialised, gendered, heterosexist, classed and ableist geographical boundaries in order to show that the legacy of harm of apartheid geography has endured. in Chapter Three I set out my theoretical framework of this thesis and referred to Butler's pracariousness and grievability as well as Agamben's bare life and homo sacer. This chapter is informed by both of these chapters and should be read in line with them.

Race was an integral part in creating space in the country because of the Urban Areas Act and Group Areas Act which functioned both socially and legislatively. Was it not for the Group Areas Act the Population Registration Act[627] would not have been implemented and without the implementation of race the Group Areas Act would not have been implemented successfully. Thus, space creates or delineates race and race creates and delineates space.

[624] Natives (Urban Areas) Act 21 of 1923. Hereafter referred to as the Urban Areas Act.
[625] Group Areas Act 41 of 1950. Hereafter referred to as the GAA.
[626] Butler 2004: 52.
[627] Population Registration Act 29 of 1950. Hereafter referred to as the Population Registration Act.

In this chapter I address whether the violent, dehumanising and ostracising natures of both the Urban Areas Act and the Group Areas Act concretised race in ways that have endured materially, legally and politically to better understand that social injustices are expressed spatially as seen by the relegation of black people to geographically separate unserviced, impoverished, economically excluded areas on the urban periphery; and the extent to which the repetition of the naturalisation of difference under apartheid through geographic legislation reinforced and invigorated racial categories.

In section two I explore the Urban Areas Act as a significant moment in racial segregation laws in the country, the Union at the time. I investigate momentous shifts in the spatial configuration of the country it ushered in. I trace its early conception leading up to its enactment followed by its later amendments and how all the iterations of this Act provided the framework of the Group areas Act.

In section three I explore the Group Areas Act as the most significant legislation that shaped space and race and as the heart of the apartheid project. As what was described in House of Assemble debates, the Group Areas Act played the most pivotal role in giving effect to the Nationalist promise of "apartheid". I trace its early conception leading up to its enactment followed by the most significant amendments and how all the iterations of this Act were the grand crescendo of the Nationalist agenda.

In section four I reflect on Chapters Two andThree and make my closing remarks.

4.2 Natives Urban Areas Act

4.2.1 Conception of the Act[628]

For Edward Said, colonising power and the imaginative geographies of Eurocentric orientalism, the cultural construction of the colonized 'other' as subordinate and inferior beings, are expressed poetically and politically in defined and regulated spaces.[629] Imperialism, he writes, is "thinking about, settling on, controlling land that you do not

[628] A historical exposition of segregationist legislation pre-1923 extends beyond the bounds of my research and as such I will not explore such legislation beyond what is necessary to foreground the Urban Areas Act.
[629] Springer 2011: 93.

possess, that is distant, that is lived on and owned by others".[630] Said defines colonialism as a project of dispossession and reterritorialisation that required European empires to do "something about its indigenous residents".[631] Laws populated empires with legal subjects that were positioned against each other through shifting conceptions of freedom and uneven and unequal rights. [632]

Alan Mabin provides that from as early as the 1850s allocation of land to segregated 'locations' for people other than the dominant whites and "those whom they wanted close to their own places of residence" began to gather momentum in South Africa.[633]

Alan Mabin and Dan Smit agree that from at least the nineteenth century South Africa's founding principles of urban planning was the determination to dictate the pattern of black settlement in urban environments as towns were conceived of as white spaces, which unlike other settler colonies, made no provision for separate housing for different ethnic groups at first.[634]

The Union of South Africa was established in 1910 and "consolidated the interests of the white population over the black community".[635] Prior to the Union, Africans were entitled to buy land anywhere in the Cape and Natal.[636]

The Union Government of General Botha reached an agreement with provincial authorities that uniform segregation was needed in 1912 and a Bill was drafted in that year, but the Department of Native Affairs advised against proceeding with it stating that:

> It has been felt by successive ministers of native Affairs that such legislation must be complementary to the general policy of the Government… the Urban areas Bill must bide its time.[637]

The Natives Land Act 27 of 1913 defined a "native" as "any person, male or female, who is a member of an aboriginal race or tribe of Africa; and shall further include any

[630] Mawani 2016: 111.
[631] Mawani 2016: 112.
[632] Mawani 2016: 111.
[633] Mabin 1992: 408
[634] Mabin & Smit 1997: 198-199.
[635]MacMaster 2009: 288.
[636] Omar 1989: 517.
[637] Davenport 1971: 8.

company or other body of persons, corporate or unincorporate, if the persons who have a controlling interest therein are natives".[638]

Prior to World War I ad hoc regulations from previous colonial dispensations were being used by local authorities to manage their municipal jurisdictions. An urban corollary for the Land Act which had been formalised prior to the War for a uniform native policy was sought after by both local authorities as well as national officials. Paul B Rich notes that from the archives of the Native Affairs Department, the draft bill of 1913 was not expressly segregationist. Rather, the emphasis of the 1913 Land Act was intended to equip municipalities with the authority to manage their own respective 'native' population and not necessarily application to urban areas.[639] Ellen Hellmann is of the view that the Land Act set "the basic pattern of segregation"[640] in the country and prevented black people from acquiring land from anyone other than fellow black people except with the approval of the Governor-General. This Act was applied throughout the Union and specifically operated with the exception of urban areas.[641] Margot Strauss shares Hellmann's sentiments that the Land Act was deliberately segregationist and that by restricting the lawful purchase, leasing and occupation of land to rural areas it laid the foundation for land dispossession "by demarcating the spaces within which black residents could legally settle".[642] This necessitated a policy directed towards the growing urban black population.

The framework for racial segregation within which South Africa was to be governed required a national policy for the administration of housing for the urban black population. Following World War I towns had been altered by rapid urbanisation and industrialisation which resulted in increased accommodation of black people as well as coloured, Indian and white people.[643]

An influenza epidemic ravaged urban areas occupied by black people in 1918. The Department of Native Affairs relayed a concern that the conditions under which black people lived in urban centres posed a threat to the health of the larger population, beyond just black people. This outbreak goaded increased interest in urban areas

[638] Natives Land Act 27 of 1913 sec. 10. Hereafter referred to as the Land Act.
[639] Rich 1978: 181
[640] Hellmann 1949: 233.
[641] Hellmann 1949: 232-233.
[642] Strauss 2019: 146.
[643] Strauss 2019: 143.

legislation. The Department was assisted in this regard by two newly established bodies, the statutory Native Affairs Commission established under the Native Affairs Act of 1920 and Colonel C. F. Stallard's Transvaal Local Government Commission.[644]

A new Bill was released by the Department of Native Affairs in 1918 proposing urban areas for the first time. This Bill encouraged African freehold rights in urban locations and proposed to give independent powers to magistrates to inspect the administration of the law by the urban local authorities in locations and ensure that "good order and proper standards of comfort and cleanliness"[645] were present for the welfare of locations. It proposed to let local authorities set aside for African use any areas occupied by natives at the time of commencement of the Act and the power to add to them if necessary. Under this Bill black people could be compelled to live in locations by the Governor General. Black people living on their employers' property were exempt from being compelled.[646][647] Concepts that would later become part of the South African location system were introduced in the Bill such as the separate native revenue account and government representatives in the form of advisory boards.[648] The Bill provided that existing trading rights inside and outside locations were to remain intact with whoever held them and recognised the right of black people to buy property in towns and contained a provision that:

> Any local authority may set aside any location or portion of a location for the purpose of sub-division into building lots for sale or lease to natives on such terms and conditions as may be prescribed.[649]

Rodney Davenport noted that the Department had concerns about the growth of black urbanisation and the Department expressed these concerns stating:

> Assuming that the ideal to be arrived at is the territorial separation of the races there must and will remain many points at which race contact will be maintained, and it is the towns and industrial centres…It is in the towns that the native question of the future will in an ever-increasing complexity have to be faced.[650]

[644] Davenport 1971: 13.
[645] Davenport 1971: 9.
[646] Davenport 1971: 8-9.
[647] Davenport 1969: 98.
[648] Davenport 1971 9. Rodney Davenport draws attention to the peculiar lack of definitions of the boards by the Bill and the potential impact of that omission.
[649] Davenport 1971 9.
[650] Davenport 1971: 9-10.

In line with this concern the Department granted local authorities the power to restrict the presence of black people in towns in two ways:

> By empowering them to exclude 'any natives who are unable to give proof of their means of honest livelihood', and by granting them the power to register service contracts.[651]

The economic depression after the war and dissatisfaction from Black South Africans and other extra-parliamentary groups made the SAP's rule more difficult. The main reason for black anger was Smuts' acceptance of the Stallard report that stated:

> It should be a recognised principle that natives (men, women and children) should only be permitted within municipal areas in so far and for as long as their presence is demanded by the wants of the white population. The masterless native in urban areas is a source of danger and a cause of degradation of both black and white. If the native is to be regarded as a permanent element in municipal areas there can be no justification for basing his exclusion from the franchise on the simple ground of colour." (This report later led to the passing of the Natives (Urban Areas) Act no 21 of 1923).[652]

Prime Minister Smuts was noted to have expressed that the Native Urban Areas Bill was "the most widely debated piece of legislation in South Africa's history". Over a period of almost four years the Native Affairs department followed by the 1920 Native Affairs Committee[653] visited and corresponded with selected constituencies to solicit responses to the Bill. Local residents consulted with more notable local authorities which resulted in formally drafted submissions. The local authorities of the Orange Free State were able to effect one of the more critical revisions of the Native Urban Areas Bill before it reached the second parliamentary reading in this manner.[654]

The Stallard Commission was appointed in 1919 and Local Government was one of its most contentious matters. The question was who was meant to provide low rent accommodation for black people since they were not allowed to buy their own property and what impact would this have on white rate-payers? Colonel Pritchard, Director of Native Labour, appeared before the Commission where he explained that "Local Councils were the chief bodies responsible for locations under sec. 147 of the Act of Union, thus reversing a general presupposition that it was the main responsibility of

[651] Davenport 1971: 9.
[652] 'National Party (NP)' https://www.sahistory.org.za/article/national-party-np accessed 15 March 2021
[653] Hereafter referred to as the NAC.
[654] Parnell 1998: 147-148.

the Provincial Councils".[655] The Stallard Commission had to restrict the number of black people entering urban areas as far as possible in order to reduce expenditure on their locations. Rich emphasises that this was because "an extension of the right of Africans to own property in urban areas meant a decline in the value of these improvements as they represented a large influx of people with low spending power".[656] C. T. Loram and Alex Roberts, chairpersons of the NAC at the time, were responsible for drafting the Urban Areas Bill. Loram, as said by Edgar Brookes, was responsible for the actual drafting of the 1923 Urban Areas Bill which initially contained provision for black people to own land freehold in urban areas. This provision in the Bill was said to have lacked the interests of the greater white population, who in the end determined the quandary of urbanisation.[657]

The interests of the Stallard Commission to restrict entrance into urban areas and the NAC, under Loram and Roberts, which provided for freehold land ownership in urban areas for black people, required a conference for reconciliation. On 10, 11 and 12 August 1921 the two bodies, together with the Native Affairs Department met in Johannesburg. The conference attempted to compromise and it was concluded that there was a statutory duty for municipal bodies to provide adequate housing accommodation for their black populations, however, it was acknowledged that "the existence of a redundant black population in municipal areas is a source of the gravest peril and *responsible in a great measure* for the unsatisfactory condition prevailing".[658] The NAC's support of African property rights could not withstand the Stallard Commission's arguments which ultimately succeeded. The Select Committee on the Urban Areas Bill found that within the NAC, Roberts favoured freehold tenure but was "ready to accept some form of leasehold" while Loram "definitely favoured leasehold". The Stallard Commission's success also had to do with the support "of White labour behind them as well as the urban commercial bourgeoisie".[659]

Threatened by a permanently urbanised African population, M. G. Nicholson, a member of the Stallard Commission voiced concerns at meeting of the Transvaal

[655] Rich 1978: 187.
[656] Rich 1978: 187.
[657] Rich 1978: 183.
[658] Rich 1978: 188.
[659] Rich 1978: 187-188.

Municipal Association in 1922 in which he criticised the provisions of the draft Urban Areas Bill as it had emerged from the NAC:

> One can easily imagine… a native village being established on the outskirts of a town and ostensibly at the commencement for workers of that town only, but in the course of time the inhabitants far outnumbering those of the town itself and demanding an outlet for their activity, thereby competing with the town's inhabitants in every sort of business, trade and occupation.[660]

The threat of black urban influx and the burgeoning of a black middle-class with property rights lost out in the Select Committee on the Urban Areas Bill with shared sentiments to that of Nicholson.[661] Richard Feetham, a member of the Select Committee, moved an amendment to the original Urban Areas Bill on 16 April 1923. This amendment was to remove the right of black people to "acquire for residential purposes the ownership or lease of lots"[662] and it was replaced with only the right to leasehold. Feetham explained to Howard Pim[663] in an interview:

> It would have been no use trying to satisfy native sentiment in favour of ownership… at the cost of exacting antagonism of municipal authorities and making the bill unworkable.[664]

Development of segregation in South Africa was founded in urban areas where the application of the Stallard doctrine to exclude black people from urban areas except in so far as their presence was to serve white people was applied. This doctrine was as briefly discussed an ideological response to a perceived economical threat to the livelihoods of white labour and urban commercial capital within the white polity.[665]

Susan Parnell argued that the Native Urban Areas Bill was manipulated and counted three aspects of twentieth-century segregationist policy which arose from this manipulation:

> First, the formal urban codification of the racial categories of 'African' and 'coloured' arose from clarification of the ambiguity of which segregationist laws the NUAA would supersede. Second, the stabilisation of the African workforce is shown to have been an overt objective of the policy

[660] Rich 1978: 189.
[661] Rich 1978: 189.
[662] Rich 1978: 189.
[663] Who was the founder member of both the Joint Council of Europeans and Africans and the South African Institute of Race Relations.
[664] Rich 1978: 189-190.
[665] Rich 1978: 190-191.

> makers and not an unintended consequence of segregationist legislation, as has been otherwise suggested. Finally, the oppressive mechanism of financing African locations through a municipal brewing monopoly emerged from the refusal of the central government to finance locations.[666]

Municipal and provincial legal restrictions on urban segregation were revoked by the national application of the Urban Areas Act. The consequence of this in the Orange Free State and Transvaal was coloured people were given equal legal status as white people giving them "free residential locational choice", additionally the ability of coloured land owners to vote in town elections.[667] Fearing what they believed to be the introduction of draconian legislations enforcing social, residential and political segregation against coloured people, the African Peoples' Organisation,[668] a coloured political organisation, rejected being grouped in with black people which would have resulted in their incorporation under the Natives Urban Areas Bill. In Bloemfontein the APO appealed to the Town Council trying to secure a guarantee of freehold under the old Orange Free State Law 8 of 1893 (the title of which was Coloured People in Towns and Villages)[669], a right they had up till then been denied.[670] According to South African History Online, article 8 of Law 8 of 1893 provided that:

> The expression 'Coloured person' appearing in this Law shall be interpreted and taken, unless the context clearly forbids it, to apply to and include a man, or men, as well as a woman, or women, above the age or estimated age of sixteen years, of any Native tribe in South Africa, and also all Coloured persons, and all who, in accordance with law or custom, are called Coloured persons, or are treated as such, of whatever race or nationality they may be.[671]

Parnell states that the APO before the Town Council detailed that "coloured people, though yellow in colour, possess the intellectual and brain development of the white man".[672] Additionally, that since coloured people had made no attempts to move into white suburban areas in Bloemfontein, they were aware of their status and "their place".[673] White people across the province supported the principle of total segregation

[666] Parnell 1998: 147-148.
[667] Parnell 1998: 148-149.
[668] Hereafter referred to as AOP.
[669] The title of this Law was found in the Union Gazette Extraordinary No. 33 of 1936.
[670] Parnell 1998: 149.
[671] '35. Colour Legislation in the Orange River Colony' https://www.sahistory.org.za/archive/35-colour-legislation-orange-river-colony accessed 10 June 2021
[672] Parnell 1998: 148-149.
[673] Parnell 1998: 148-149.

which provided that only they themselves could enjoy full urban privileges and thus rejected the APO's request for freehold. The Orange Free State and the central government reached an agreement that coloured people in the province would enjoy improved standards of citizenship with controlled self-governance under the auspices of town councils thus granting segregated but freehold suburbs. The result was that coloured people would be excluded from living in and owning property in selected portions of towns, while black people would be restricted to designated rural districts.[674]

The NAC was reserved about recommending the amendment of the 1918 Bill without adequate alternative provision made for coloured people; consequently the province slackened the extension of freehold to non-whites. Orange Free State officials were hard pressed to decide whether the appropriate way forward was to unfavourably equate coloured people with white people; or "place them in a separate category with urban rights over and above those historically allowed coloureds or Africans".[675] The latter option, while contested by staunch Orange Free State whites, was accepted as still unfavourable, however, a slightly more favourable discriminatory position. The NAC had implicitly exempted coloured people from urban segregation through its revised status of coloured people in the Orange Free State, which was opposed by Bloemfontein Officials. The 1918 Bill was carefully redrafted to avoid conflict between central and local state. This redraft stated that "only legislation pertaining to Africans was revoked, while the position of coloureds remained unchanged".[676] Parnell expands on this writing "by this action, however, coloured people not only received one of several blows to their citizenship rights *vis-a-vis* whites, but the process of 'coloured' race-creation received new impetus".[677]

The Urban Areas Bill introduced a principle of racial differentiation that the Ladybrand delegate to the Provincial Council stridently opposed arguing that no distinction should be recognised between coloured people and other non-whites; rather they should face a strict exclusion from any and all urban rights as he considered them "bastards".[678] The idea of coloured people attaining freehold tenure and trading rights created

[674] Parnell 1998: 149.
[675] Parnell 1998: 149.
[676] Parnell 1998: 148-149.
[677] Parnell 1998: 148-149.
[678] Parnell 1998: 148-149.

heightened anxiety in the Bloemfontein Location Superintendent that this could lead to coloured people challenging the protected economic position of the Boers.[679] The Urban Areas Bill provided municipalities the mechanism to thwart racial mixing of white people and black people in slums which furthered the imperative to preserve white racial purity that took place in the 1910s and early 1920s. Furthermore it advanced segregation between black people and coloured people in their respective residential quarters to thwart cross-racial mixing between the two groups through residential restrictions. Preserving white racial purity had long been an imperative, but the mixing of black and brown blood was believed by white "could stem the intrusion of black blood into the white race, even when white and coloured interbreeding persisted".[680]

4.2.2 Towards statutory racial segregation

The Urban Areas Act was first considered in 1912 before it was enacted in 1923.[681] It was then amended in 1930, 1937, and 1944, consolidated in 1945, and re-amended in 1945, 1946, 1947, 1952, 1955, 1956, 1957, 1963 and 1964. For the purposes of my research I will only focus on the original act and the acts of 1930, 1937, consolidation in 1945 and 1952.[682]

4.2.2.1 The Urban Areas Bill

The Housing Act was passed in 1920, which created the Central Housing Board, enhanced already entrenched segregation through public housing and its practice of only approving schemes for specific 'groups'. Neither of the governments in power during the 1920s carried through their proposals for more substantial segregatory powers successfully. according to Mabin under the Urban Areas Act local authorities were granted the limited potential power to restrict most indigenous people to townships and compounds. Yet many urban areas remained or grew to be more racially integrated.[683]

The Transvaal Local Government appointed the Stallard Commission to investigate the presence of black people in urban areas in 1922. The Urban Areas Act of 1923

[679] Parnell 1998: 150.
[680] Parnell 1998: 150.
[681] A historical exposition of segregationist legislation pre-1923 extends beyond the bounds of my research and as such I will not explore such legislation beyond what is necessary to foreground the Urban Areas Act.
[682] Where these Acts are not explicitly addressed in this section, they will appear in later sections of this chapter.
[683] Mabin 1992: 408.

was enacted based on the Commission's recommendations. According to its long title, the aim of the Urban Areas Act was to provide for "improved conditions of residence for natives in or near urban areas and the better administration of native affairs".[684]

Maylam explains that regional autonomy existed and each province or municipality formulated its own regulations to deal with the matter of controlling black people in urban areas and thus centralised state apparatus for controlling urban black people was undeveloped prior to 1923; although there were considerations of segregation. For instance in the late nineteenth century the local state in Durban was more focused on controlling urban black people than their urban segregation.[685]

According to Ellen Hellmann and Henry Lever there was an absence of systematic and co-ordinated structure for the urban black population which the Urban Areas Act sought to resolve. This Act sought to "require municipalities to make provisions for the housing, welfare and administration of [black] populations within their areas of jurisdiction".[686] In addition, local authorities were permitted to request the right to prevent black people from entering urban areas or to order them to remain in an urban area.[687] Finances relating to black affairs were to be kept in a separate Native Revenue Account and that the Department of Native Affairs, as part of the central government, would issue licenses to officials responsible for enforcing its laws and regulations.[688]

Davenport explains that between May 1922 and January 1923 the Urban Areas Bill was introduced at all Municipal Association conferences. As previously mentioned, it is noted that the Bill was most thoroughly and widely amended Bill in the history of legislative measures. By the debate of the second reading of the Bill by General Smuts, on Wednesday 7 February 1923, a foundation had been laid in for control of the influx of black people into towns and urban areas.[689] Smuts believed that urban control of natives could be achieved by giving towns the power to remedy their own social ills regarding urban black people with the support of the government, which would only intervene in circumstances of "culpable or prolonged neglect".[690] The Bill

[684] Long Title of the Urban Areas Act
[685] Maylam 1990: 58-62.
[686] Hellmann & Lever (eds.)1979: 137.
[687] Hellmann & Lever (eds.)1979: 137.
[688] Hellmann & Lever (eds.)1979: 143.
[689] Davenport 1971 16.
[690] Davenport 1971 16.

made provision for "better houses in native villages"[691] for "advanced natives"[692] who could "acquire their own plot of ground… and put up their own houses"[693] with the hope that this would incentivise black people, even those exempted from the obligation to move, to vacate so called "white" areas on their own having preference for native villages; to achieve "complete segregation of the native population out of the White area".[694] Smuts proposed that all proposals for the control of black people be left out of the Bill and be included in other separate legislative measures which would be referred to the Select Committee together after the second reading. General Hertzog held different views from Smut. Hertzog took a stance which abided by the Land Act 1913 in maintaining that urban areas were undoubtedly "white man's land" and that this principle could not be abandoned by the NAC.[695] In this regard he suggested that:

> The Commission should have had its attention drawn to that principle so that the native would have been given the opportunity of securing certain other rights, but it should have been made clear that on the white man's land the native could only be a temporary resident.[696]

On 14 February when the Bill appeared before the Select Committee on native affairs which threw out provisions regarding passes but the incorporated control provisions in the Urban Areas Bill which conferred the power to:

> Compel the registration of service contracts; to require African work-seekers to report their in proclaimed urban areas, and on their discharge to report again; to repatriate juveniles, run hostels for work-seekers, impose conditions on 'togt' labourers, deal with the unemployed, and apply sanctions against defaulters and document dodgers.[697]

The Urban Areas Bill retained the recommendation of freehold and was released together with a bill aimed at resolving issues with pass laws, the Native Registration and the Protection Bill and had the support of Smuts's Native Conference. Before the Bill reached the statute book, the ownership land and pass concessions were removed by the Select Committee.[698]

[691] Davenport 1971 16.
[692] Davenport 1971 16.
[693] Davenport 1971 16.
[694] Davenport 1971 16.
[695] Davenport 1971 16.
[696] Davenport 1971: 16.
[697] Davenport 1971: 17.
[698] Davenport 1969: 98.

The Urban Areas Act disappointed many middle-class black people who saw Loram's original provision as an opportunity to establish themselves as a propertied class in the urban townships. This included the leadership of the South African Native National Congress who, in Bloemfontein in May 1923, said they found the Act to be "a direct challenge to the loyalty of the Bantu and an insult of the most provocative character to the sense of fairness of the Bantu".[699]

4.2.2.2 The Urban Areas Act

Regional autonomy existed and each province or municipality formulated its own regulations to deal with the matter of controlling black people in urban areas and thus centralised state apparatus for controlling urban black people was undeveloped prior to 1923; although there were considerations of segregation. For instance in the late nineteenth century the local state in Durban was more focused on controlling urban black people than their urban segregation.[700]

The passing of the Urban Areas Act was a momentous shift in the twentieth century for establishing a racial framework for segregation.[701] It intended to deal with the conditions of urban black people, to provide urban local authorities the defined power of racial residential segregation of white people from black people. This intention is clear in the long title of the Urban Areas Act which reads:

> To provide for improved conditions of residence for natives in or near urban areas and the better administration of native affairs in such areas; for the registration and better control of contracts of service with natives in certain areas and the regulation of the ingress of natives into and their residence in such areas; for the exemption of coloured persons from the operation of pass laws; for the restriction and regulation of the possession and use of kaffir beer and other intoxicating liquor by natives in certain areas and for other incidental purposes.

From the long title the significance of the Act is that it spatially intended to: address black people in or near urban areas, control the contracts of service entered into by black people in certain areas, control the increase in the presence of black people in urban areas, exempt coloured people from carrying passes. Paul Maylam considers the Act's major intervention to be:

[699] Rich 1978: 190.
[700] Maylam 1990 58-62.
[701] Parnell 1998: 147.

> The business of managing the urban African labour force and ensuring its reproduction. The Act empowered municipalities to establish segregated locations for Africans, to implement a rudimentary system of influx control, and to set up advisory boards, bodies which would contain African elected representatives and which would discuss local issues affecting Africans, but without any power to change policy. The Act also required municipalities to institute native revenue accounts, into which would be paid all income derived from beer-hall sales, rents, fines and fees levied from Africans.[702]

The Urban Areas Act enabled the development of separate residential areas for black residents in the vicinity of urban areas. In particular, the Act regulated the housing spaces where black residents could legally settle by authorising urban local authorities to demarcate, plan and develop separate locations:

> S1. (1) Subject to the approval of the Minister after reference to the administrator, any urban local authority may—
>
> (a) define, set apart and lay out one or more areas of land for the occupation, residence and other reasonable requirements of natives… any land so defined and set apart is hereinafter called a location;
> (b) define, set apart and lay out any portion of a location or any other area of land as an area or areas wherein… natives shall be permitted to acquire the lease of lots for the erection thereon of houses or huts for their own occupation… called a native village. The provision of any law in force in the province concerned governing the establishment of townships shall not apply in respect of any area so defined and set apart;
> (c) provide one or more buildings or huts (hereinafter called native hostels) either within or without the limits of any location or native village for the accommodation of natives not living under conditions of family life.
> (d) Provide buildings or huts within any location or native village for the accommodation of native families

Sec. 12 sub-sec. (1) further defines another type of area reserved for black people which states:

> S12. (1) The Governor-General may by proclamation in the Gazette declare any urban area the local authority of which has, either before or after the commencement of this Act, made or has been required to make… any area, defined in such a proclamation, in which natives are congregated in large numbers for mining or industrial purposes to be an area (hereinafter called a proclaimed area) subject to the provisions of this section.

[702] Maylam 1990: 66.

The Act provided black people the lease of lots from municipalities to erect buildings as alternative housing outside urban areas, which legally controlled the spatial settlement of black families, in the form of native villages. It created precarious housing for single black men working in urban areas in the form of native hostels. These were measure of residential segregation without compromising access to cheap labour.

The Act provided for the (dis)location of long established families and communities. Sec. 5 dealt with expelling black people who lived within the limits of any urban area from those areas:

> S5. (1) Whenever the Governor-General deems it expedient, he may, by proclamation in the *Gazette*, declare that, from and after a date to be specified therein, all natives within the limits of any urban area or any specified portion thereof other than those exempted by sub-section (2) of this section, shall reside in a location, native village, or native hostel.

The intention to adopt the Stallard Report and keep black people in close enough proximity to tend to the master's needs and provide cheap accessible labour to boost the economy while enforcing residential segregation. Where white employers owned land within 5 kilometres (5 kilometres is the metric unit of distance equivalent to three miles) of a proclaimed area, the only black people permitted to reside on property on that land were employees. Employers were also required to provide housing for said employees not residing in locations. This was provided for in sec. 6 which states:

> S6. (1) except with the approval of the Minister, no owner, lessee or occupier of land situate outside an urban area within three miles of the boundary thereof shall allow any natives not exempted… to congregate, or any such native to reside upon such land or any native to occupy any dwelling thereon except in the case of a native who is in the *bona fide* employment of such owner, lessee or occupier.
>
> (2) the Governor-General may by proclamation in the *Gazette* increase the limit of three miles mentioned in sub-section (1) of this section up to five miles in the case of any particular urban area.

Effectively urban local authorities were extended great powers endorsed by the government to deal with their own social problems that were brought about by the influx of black people into their towns; with reduced intervention by the government unless it was absolutely necessary. Sec. 1 sub-sec. (2) addresses the matter of government intervention:

S1. (2) the approval of the Minister under sub-section (1) of this section may be withheld until he is satisfied in regard to the suitability of area and situation of the land set apart… and other necessary services for the location, native village or native hostel, as the case may be.

The Act provided the skeleton for subsequent urban areas legislation. Its enforcement depended on the proliferation of administrative rules. It provided the instances in which the Governor-General, the Minister and the urban local authority could make regulations respectively.[703]

The powers of the Governor-General to promulgate regulations which are significant for the application of this Act:

S23. (1) The Governor-General may make regulations, not inconsistent with this Act as to all or any of the following matters:—

(d) the exercise of the powers referred to in sub-section (1) of section twelve of this Act and all matters incidental thereto;

(e) the nature and management of the accommodation for natives seeking employment in proclaimed areas;

(h) any matter to be prescribed by the Governor-General under this Act,

and generally for the better carrying out of the objects and purposes of this Act.

Differing regulations may be made in different areas.

The powers of the Minister to promulgate regulations which are significant for the application of this Act:

S23. (2) The Minister may make regulations, not inconsistent with this Act and having the force of law in any urban area as to all or any of the following matters:--

(f) the facilitating and giving effect to any co-operative arrangement between urban local authorities under section twenty-four.

The powers of the Minister as expressed in sub-secs. (a) to (e) refer to African beer and the sub-secs. relating to a hierarchy of power are sec. 1 sub-sec. (2) and sec. 23 sub-sec. (f). Later the powers of the Minister with regards to urban local authorities are made clear in the paragraph:

[703] Davenport 1969: 99-100.

S1. (2) the approval of the Minister under sub-section (1) of this section may be withheld until he is satisfied in regard to the suitability of the area and situation of the land set apart; and

S23. (3) No regulation made under the authority of this sub-section shall be of force or effect until it has been approved by the administrator and by the Minister and has been promulgated in the manner prescribed for the promulgation of regulations under the law governing such urban local authority.

The powers of the urban local authorities to promulgate regulations which are significant for the application of this Act:

S23. (3) An urban local authority may, by resolution passed after at least seven days' notice thereof at a meeting at which not less than two-thirds of its members are present, make regulations not inconsistent with this Act, as to all or any of the following matters:--

(a) The terms and conditions of residence in locations, native villages and native hostels;
(b) the management and control of locations, native villages and native hostels and of the accommodation provide under paragraph (e) of sub-section (1) of section one and the maintenance of good order, health and sanitation therein;
(c) the employment of officers and other persons for the management and control of locations, native villages and native hostels and for the carrying out of any services required by the Act or the regulations thereunder to be performed by the urban local authority and the definition of the powers, duties and functions of such officers and other persons including the supervision by such officers and other persons of the housing of natives residing on private premises outside locations;
(e) the erection and use of dwellings, buildings and other structures in locations, native villages and native hostels, the removal or destruction of un-authorised or abandoned buildings or structures; and the building of schools and payment of grants in aid of native schools (including night schools);
(m) the fixing of hours between which it shall not be lawful for persons other than residents to be within a location, native village or native hostel except under the authority of a prescribed permit;
(n) the setting apart for the exclusive use of natives or non-natives of any public place or portion of a public place within the area of the urban local authority;

and generally for the better carrying out of the matters and purposes committed to the urban local authority under this Act.

Any urban local authority which has under its administration and control any native village or any area of land set apart for natives in which natives are permitted to acquire the lease of lots shall make regulations providing for the lessee of any lot being permitted to erect his own house or hut thereon. Such regulations may prescribe the requirements in respect of the design and dimensions of the house or hut and the materials of which it shall be built with which the lessee shall comply.

Once land for locations, native villages and hostels has been set apart and defined and it was determined that such land should not be within 5 kilometres of the boundary of an urban area, measures had to be put in place to prevent the emergence of settlements on the outskirts of urban areas. Urban local authorities had the power to appoint and assign licensed officers to manage any location, native village or native hostel. The management entailed the inspection, at a reasonable time, of the premises within the area of an urban local authority where black people were resident and accommodated, whether established under this Act or not, by officers appointed by the Minister. Sec. 11 dealt with such officers:

> S11. (1) Every urban local authority shall appoint one or more officers or assign one or more of its officers for the management of any location, native village or native hostel within its area. No officer so appointed or assigned shall assume the duty of such management until he has been licensed as prescribed.
>
> (2) The Minister may appoint one or more officers who shall at all reasonable times have the power to inspect any location, native village or native hostel, whether established under this Act or not, and any premises within the area of an urban local authority upon which natives are accommodated.

Sec. 11 worked in conjunction with paragraph (h) of sub-sec. (1) of sec. 12 and sec. 17. Together these provisions ensured that black people deemed unnecessary could be removed from an area within a prescribed period of time by the Governor-General acting on his own or by an urban local authority authorised by himself by proclamation in the Gazette. Removal from an area could result in a black person being sent to the place of their origin where they belong or in stricter measures detained.

Sec. 12 deals with the requirement to be removed and it reads:

> S12. (1) The Governor-General… may exercise in respect of that area, or may authorise any urban local authority to exercise in respect of the whole or any part of that area falling within its jurisdiction, such of the following powers as may be specified in the said proclamation or in any subsequent proclamation:--
>
> > (h) to require every native who, within a prescribed period after his arrival in the proclaimed area, or after the termination of a contract of service, or after the expiration of his license as a togt [daily paid labourer] or casual labourer or after discharge from imprisonment has failed to find employment, to depart therefrom within a specified time and not to return thereto within a specified period…

Sec. 17 addresses the manner in which the presence of unnecessary black people in urban areas or in any area proclaimed under sec. 12 should be dealt with, it reads:

> S17. (1) Whenever in any urban area or in any area proclaimed under section twelve any police officer, police constable, officer appointed under sub-section (2) of section eleven, or officer of a location, native village or native hostel has reason to believe or suspect that any native within the urban area or the proclaimed area as the case may be is habitually unemployed, or is by reason of his own default not possessed of the means of honest livelihood, or is leading an idle, dissolute or disorderly life… shall be brought before a magistrate, native commissioner or native sub-commissioner who shall require native to give a satisfactory account of himself.
>
> (2) In the event of any native so required to give a good and satisfactory account of himself failing to do so, the magistrate or native commissioner… inquiring into the matter may adjudge him to be an idle or disorderly person and order—
>
> (a) that he be removed from the urban area or proclaimed are as the case may be and sent to the place which he belongs, and that he do not return to the area from which he is removed within a period specified in such order; or
>
> (b) that he be... detained for a period not exceeding two years.

Mabin and Smit write that the Urban Areas Act entrenched the separation between planning for 'locations' and planning for the rest of urban South Africa as a technical exercise.[704] The planning setting out of locations actively planned and set out urban areas which were clearly intended for white people. As locations were proclaimed on the one hand white areas were proclaimed on the other hand.

Maylam holds that the Urban Areas Act provided mechanisms and institutions for "segregated township, influx control, fiscal segregation and the instrument of co-option (the advisory board)".[705] However, legislation allowed municipalities to choose whether or not to implement these provisions based on their individual means and interests and effectively rendered it toothless.[706] Sec. 1 provided that the proclamation of segregated areas could only be enforced if alternative accommodation could be provided for black people had been forced out of their existing residences. The provision and availability of that accommodation played a factor in the failure of many

[704] Mabin & Smit 1997: 198-199.
[705] Maylam 1995: 34.
[706] Maylam 1995: 34.

municipalities to implement the Act precisely because of the substantial financial burden of investing in and constructing locations. General Smuts was clear that the intention of the Act was not intended for government to bully municipalities into adopting it. Some municipalities were reluctant to adopt it as they feared greater responsibilities and financial burdens would be placed on them by the Act; as well as plain disinterest in the state of locations. As a result, there were only sixty-four locations throughout the country by 1927 and by 1937 there were 234 registered locations.[707] Another unforeseen challenge that arose from the choice of municipalities to implement the Act was that municipalities selectively implemented sections of the Act to meet their needs thus manipulating it and serving the purpose of influx control.

The long-term implications of the principal Act was the increase in state intervention in regulating the process of urbanisation which were gradually extended through amendments during the 1930s and 1940s; and it provided the Group Areas Act with a framework for compelling municipalities to enforce racial zoning through draconian measures.

4.2.2.3 Amendments of the Urban Areas Act[708]

The principal Act systematised the diverse laws and provided a uniform policy across the different provinces. While it made provisions for a regularised financial system in the form a revenue account, consultation processes in the form of advisory boards, restrictions on the brewing of African beer to name a few things. Its shortcoming was that it failed to actually control the influx of black people into urban areas; this was the function served by later amendments which were stricter on housing, regulating the labour market and greater influx control.

The Native (Urban Areas) Amendment Act was passed in 1930.[709] Compared to other amendments to the principal Act, this Act has fewer amendments to the sections of the principal Act. The Native Urban Areas Amendment Act gave urban local authorities the power to promulgate regulations requiring black people residing but not employed in the urban area to be removed therefrom. Furthermore the Governor-General was

[707] Davenport 1969: 100.
[708] Hereafter the Urban Areas Act 21 of 1923 is referred to as the principal Act.
[709] The Native (Urban Areas) Amendment Act 25 of 1930 shall hereafter be referred to as the Amendment Act of 1930.

given the power to extend curfew regulations in any urban area by proclamation in the *Gazette*.

The long title of Act 25 of 1930 reads as follows:

> To amend the law relating to natives in urban areas.

While few amendments in number, the significance of this Act are the measures it put in place. This Act provided for increased causes for the removal of black people from urban areas and proclaimed areas to locations, native villages or native hostels as well as harsher consequences for failure to comply.

Sec. 2 of this Act amended sec. 1 of the principal Act:

> 2. Sub-section (1) of section *one* of the principal Act is hereby amended—
>
> (b) by the addition of the following paragraph:
>
> "(f) in accordance with such regulations as may from time to time be prescribed under paragraph (*g*) of sub-section (2) of section *twenty-three,* require every native, not being a native belonging to any class specified in paragraphs *(a), (b), (c)* or *(d)* of sub-section (2) of section *five*, who resides in but is not employed in the urban area, to remove therefrom."

Paragraph (g) of sub-sec. (2) of sec. 23 of the principal Act refers to power of the Minister to make regulations prescribing the conditions and procedure for urban local authorities to effect the removal of black people in any urban area. Paragraphs (a), (b), (c) and (d) of sub-sec. (2) of sec. 5 of the principal Act refer to black people who are owners of immovable property within urban areas and their *bona fide* dependents, as well as black parliamentary voters in the Cape of Good Hope, all of whom cannot be removed from within urban areas and made to reside in locations, native villages or native hostels. Sec. 2 effectively narrowed the classes of black people exempted from removal from within the limits of any urban area or a portion thereof. This paragraph increased the power of the urban local authority to remove specifically black people living in an urban area but not employed therein, with the support of the Governor-General.

Sec. 3 of this Act amended sec. 5 of the principal Act:

> 3. Section *five* of the principal Act is hereby amended—

(d) by the addition of the following sub-sections:-

"(3) Any native (other than a native exempted under sub-section (2)) residing outside a location, native village or native hostel in an area proclaimed under sub-section (1) who, after having been served with a written notice, signed by an officer appointed by the urban local authority for the purpose, calling upon him to take up, within one month as from the first day of the month following the service of such notice, his residence in a location, native village or native hostel specified in such notice in which accommodation is available for him, resides, after the expiration of the said month, outside a location, native village or native hostel in any urban area the whole or any portion whereof has been proclaimed under sub-section (1), shall be guilty of an offence.

(5) Any owner, lessee, occupier or person in charge or control of any premises (other than a native hostel) situate in an area proclaimed under sub-section (1) and not included in any location or native village, who, without the authority of a licence issued in terms of sub-section (4), permits any native who is not exempted under sub-section (2) to reside on such premises or permits a number of natives in excess of the number authorized by any such licence to reside on such premises, shall be guilty of an offence.

(6) (a) …the Governor-General may, if he deem fit, by proclamation in the *Gazette* declare that, from and after a date to be specified therein, no native may enter that urban area for the purpose of seeking or undertaking employment or of residing therein otherwise than in accordance with conditions to be prescribed in such proclamation.

(b) Any native entering or residing in an urban area in contravention of the provisions of any such proclamation shall be guilty of an offence."

Sub-sec. (1) of sec. 5 of the principal Act refers to the removal of black people within the limits of any urban area or portion thereof to a location, native village or native hostel by proclamation in the *Gazette* by the Governor-General. Paragraph (a) of the newly inserted sub-sec. (6) provides that after due process of the urban local authority, the Governor-General may by proclamation in the Gazette declare that no black person may enter that local authority's urban area for the purpose of seeking or undertaking employment or residing therein other than in accordance with the conditions of the proclamation. Newly inserted sub-sections (3) and (5) and paragraph (b) of sub-sec. (6) add new conditions for the conviction of guilt of an offence. Effectively sec. 3 tightened restrictions on the presence of black people in urban areas, increased the powers of the Governor-General to evict and relocate black people to locations, native villages or native hostels and ushered in harsh consequences for failure to comply.

Sec. 4 of this Act amended sec. 6 of the principal Act:

4. Section *six* of the principal Act is hereby amended—

(a) by the deletion of sub-section (1) and the substitution of the following sub-section:--

"(1) Except with the written approval of the Minister, no owner, lessee or occupier of land situate outside an urban area within three miles of the boundary thereof shall allow natives to congregate upon or any native to reside upon or to occupy any dwelling on such land other than a native who is in his *bona fide* employment; nor shall natives congregate upon nor any native who is not in the *bona fide* employment of the owner, lessee or occupier thereof reside upon or occupy any dwelling on such land; "

Where sec. 6 of the principal Act did not apply to the list of exempted black people provided for by sec. 5, paragraph (a) of sec. 4 provides for the substitution of a new sub-sec. (1) into sec. 6 of the principal Act, which refers directly to the application of this section to black people employed in that area and paragraph (b) of sec. 4 of this Act substitutes a new sub-sec. (5) into sec. 6 of the principal Act which decreased the list of exempted black people. Effectively this is amendment imposed stricter control on the residence and congregation of black people in urban areas.

Sec. 7 of this Act amended sec. 12 of the principal Act:

7. Section *twelve* of the principal Act is hereby amended-

(a) by the insertion in sub-section (1), after paragraph *(c),* of the following paragraph (d)*:*--

(d) to prohibit any female native from entering the proclaimed area after a date to be specified in such proclamation without a certificate of approval from the urban local authority and to require any female native after having entered such area to produce such certificate on demand by an authorized officer:

Provided that—

(i) no such certificate shall be issued to any female native who is a minor in law without the consent of her guardian; and

(ii) subject to the necessary accommodation being available, a certificate shall upon application be issued to any female native who produces satisfactory proof that her husband, or in the case of an unmarried female her father, has been resident and continuously employed in the said area for a period of not less than two years.

A significance of sec. 7 of this Act is the insertion of paragraph (d) into sub-sec. (1) of sec. 12 which prohibits the presence of black women in proclaimed areas; under this amendment the Governor-General, by proclamation in the Gazette, could exercise on his own behalf or authorise an urban local authority to prohibit black women from entering proclaimed areas without a certificate of approval from the urban local authority, which had to be produced. This further curtailed the movement and surveillance of black women which had not been done before. This is dealt with later in this chapter. Also notable is sub-paragraph (ii) which states that the husband or father of a black woman must have been resident and continuously employed for a minimum period of two years.

Sec. 8 amended sec. 17 of the principal Act:

> 8. Section *seventeen* of the principal Act is hereby amended—
>
> (d) by the deletion of paragraph (a) of sub-section (2) and the substitution of the following paragraph:
>
> (a) that he be removed from the urban area or proclaimed area as the case may be and sent to the district to which he belongs, and that he do not within a period specified in such order return to the area from which he is removed or enter any other urban area or proclaimed area specified in such order;

Paragraph (a) of sub-sec. (2) of sec. 17 of the principal Act provided for the manner in which black people adjudged to being idle or disorderly persons were to be dealt with. Paragraph (a) of sub-sec. (2) of the principal Act stated that such persons were to be removed from the urban area or proclaimed area and sent to where they belong and that they should not return to said area from which they are removed within the specified time. That paragraph was deleted and substituted with a new paragraph (a) by paragraph (d) of sec. 8 of this Act. Under this new substitution, idle or disorderly persons were ordered to be removed and sent to where they belong; but not only were they not permitted to return to the urban area or proclaimed area as may be the case, they were not permitted to enter any other urban area or proclaimed area specified in such order. Effectively this substituted paragraph extended the application of this section to across jurisdictions allowing a magistrate or native commissioner to exclude black people from multiple urban areas and proclaimed areas as the case may be in a single order.

Sec. 13 of this Act amended sec. 23 of the principal Act:

> 13. Section *twenty three* of the principal Act is hereby amended—
>
> *(a)* by the deletion of the word "and" at the end of paragraph *(e)* in sub-section (2), the insertion of the word "and" at the end of paragraph *(f),* and by the insertion at the end of that sub-section of the following new paragraph:
>
> *"(g)* prescribing the conditions under which and the procedure whereby the removal of natives may be effected by any urban local authority under the provisions of paragraph (f) of sub-section (1) of section *one*.";
>
> (f) by the deletion of paragraph *(m)* of sub-section (3) and the substitution of the following paragraph:
>
> *"(m)* the prohibition or regulation of the entry into or sojourn in a location, native village or native hostel of any person not resident therein;"

Sub-sec. (2) of sec. 23 of the principal Act deals with the powers of the Minister to make regulations in any urban area. Paragraph (a) of sec. 13 of this Act inserts paragraph (g) into the principal Act and which endows the Minister with the power to prescribe when and how an urban local authority may remove black people resident in an urban area but not employed there to a location, native village or native hostel. Sub-sec. (3) of sec. 23 of the principal Act deals with the powers of the urban local authority to make regulations, after due process, in its jurisdiction. Paragraph (f) of this Act substitutes a new paragraph (m) into sub-sec. (3) giving the urban local authority the power to prohibit the entry, even temporarily, into a location, native village or native hostel. Effectively urban local authorities had the backing of the Minister to not only remove unemployed black people resident within the limits of an urban area, they also had the power to stop black people from entering into locations, native villages and native hostels after being removed.

Paragraph (m) of sub-sec. (3) of sec. 23 of the principal Act referred to the regulation by urban local authorities of the hours for lawful presence of black people not resident therein in locations, native villages and native hostels. This paragraph was deleted by sec. 13 which made no other mention of regulating time. Sec. 19 was a new insertion in the Act which introduced a curfew:

> 19. (1) The Governor-General may, by proclamation in the *Gazette,* at the request of any urban local authority, declare that no native, male or female, shall be in any public place within the

area controlled by such authority during such hours of the night as are specified in such proclamation unless such native be in possession of a written permit signed by his employer or by a person authorized by such employer to issue such a permit to such native or by some person authorized by the urban local authority to issue such permits or by the officer in charge of any police station within such area. Every such permit shall bear the date of issue thereof and the date and hours for which it purports to be available and shall be produced for examination on demand made by any peace officer or authorized officer.

(2) Any person who signs any such permit relating to a native or who issues any such permit to a native shall be guilty of an offence and liable on conviction to the penalties prescribed by section *twenty-five* of the principal Act unless he-

(a) is the employer of such native; or

(b) is authorized by such employer to issue such a permit to such native; or

(c) has been authorized by an urban local authority to issue such permits and has issued such permit in respect of the area controlled by such local authority; or

(d) was, when he signed or issued such permit, the officer in charge of a police station in the urban area in respect whereof such permit was issued.

(3) Any native contravening the provisions of any proclamation issued under sub-section (l) shall be guilty of an offence and liable on conviction to a fine not exceeding two pounds or in default of payment to imprisonment for a period not one month and on a second or subsequent conviction to a fine not exceeding ten pounds or in default of payment to imprisonment for a period not exceeding three months.

(4) A proclamation under sub-section (1) shall not apply—

(a) in any location or native village;

(b) to any native mentioned in paragraph (a) of subsection (2) of section *five* of the principal Act and in paragraphs (a) to (e) inclusive, of sub-section (2) of section *twelve* of the principal Act or to any female dependent upon him.

The curfew permitted urban local authorities to control the time during which black people, both men and women, could be in the urban areas of said authority by the proclamation of the Governor-General in the *Gazette*. It required the issuing of a written permit by someone duly authorised by the authority to issue such a permit or by their employer. The permit had to clearly state the date of its issue and the hours of its operation and had to be produced at the request of a duly authorised officer. Sub-sec. (2) declared it an offence to sign or issue such a permit to any black person

unless duly authorised to. Sub-sec. (3) declared that any black person present in an urban area during the night hours specified in the proclamation without such a written and signed permit issued by someone duly authorised to issue it to be guilty of an offence liable on conviction to either a fine or imprisonment in default of payment of a fine. Sub-sec. (4) made clear that this section did not apply in locations or native villages. Effectively this section curtailed the legal presence of black people in urban areas with the support of the government. By requiring black people to vacate urban areas at specified times, the failure of which was an offence, more legal measures were put in place to punish black people.

The Amendment Act of 1930 increased the powers of urban local authorities to control not only the residence of black people, but also their presence. These measures targeted the removal of black people from multiple urban areas cross-jurisdictionally, the ability to control the exact time of presence of black people in urban areas and even the ability to control the presence of black people in black areas. It also introduced a system of written documentation for lawful presence which functioned in a similar manner as the pass system.

The Natives Laws Amendment Act was passed in 1937.[710]At a conference of municipal representatives held in Pretoria in 1937, in which its provisions were discussed, General Smuts delivered a speech in which he said:

> You will remember that an amendment which was passed in 1930 gave powers to the municipalities to restrict the entry of unwanted Natives into their towns. This provision, however, has not been made use of generally. I am told that there are only 11 towns in South Africa who have so far availed themselves of the power to limit and control the entry of Natives into their locations. In these 11 towns where the system works, I am told that it works satisfactorily. But then the majority of our urban communities have so far not availed themselves of these powers. I do not know why—they may have difficulties of their own—but there is no doubt, the proper way to deal with this influx is to cut it off at the source and to say that our towns are full, the requirements met, we cannot accommodate more Natives and we are not going to accept more except in limited numbers.[711]

This Act had significantly more amendments to the principal Act than the Amendment Act of 1930. The significance of the Amendment Act of 1937 was the introduction of

[710] The Natives Laws Amendment Act 46 of 1937 shall hereafter be referred to as the Amendment Act of 1937.
[711] Hellmann 1949: 234

new powers to restrict and control the entry of black people into urban areas. It prohibited the sale of land in urban areas by white people to black people, except by permission from the Governor-General. It gave urban local authorities the power to keep record of all black people living in designated areas and it gave the Minister of Native Affairs the power to expel black people believed to be in excess of the requirement for labour. More stringent than the principal Act, which local authorities were unhurried to implement, under this amendment were compelled to enforce expulsion.[712]

The long title of the Amendment Act of 1937 reads as follows:

> To amend the laws relating to natives in urban areas, to the regulation of the recruiting and employment of native labourers and to the acquisition of land by natives.

Sec. 3 of this Act amended sec. 4 of the principal Act:

> 3. The following new section is hereby inserted in the principal Act after section four:
>
> *4bis.* (1) Subject to the provisions of this section, no native and no association, corporate or unincorporate, in which a native has any interest, shall, except with the approval of the Governor-General, given after consultation with the local authority concerned, enter into any agreement or transaction for the acquisition from any person other than a native of any land situated within an urban area, or of any right to any such land, or of any interest therein or servitude thereover: Provided that the provisions of this section shall not apply to any. land which, having been held at the commencement of the Natives Land Act, 1913…

Sec. 3 amended sec. 4 of the principal Act and expressly provided that without the approval of the Governor-General, after the necessary consultation process, black people could only acquire land within urban areas from other black people. Sec. 4 inserted a new section into the principal Act after sec. 4 provided that black people could only acquire land within a rural township from other black people. It wasn't until 1937 that the right of to acquire land outside of locations had been taken away.[713] This Act returned to the model of the 1913 Land Act which prohibited the acquisition of land by a black person from non-black people, white people in particular, without the permission of the Governor-General.

---

[712] South African History Online "List of Laws on Land Dispossession and Segregation", https://www.sahistory.org.za/article/list-laws-land-dispossession-and-segregation Accessed 5 August 2021.
[713] Davenport 1969: 99.

Sec. 4 of this Act amended sec. 4 of the principal Act:

> 4. The following new section is hereby inserted in the principal Act after section *four bis:*
>
> *4ter* (1) Notwithstanding anything in any law to contained, no native and no association, corporate or unincorporate, in which a native has any interest, acquire shall enter into any agreement or transaction for the acquisition from any person other than a native of any land situated within a rural township, or of any right to any such land, or of any interest therein or servitude thereover: Provided that the provisions of this section shall not apply to any land which, having been held at the commencement of the Natives Land Act, 1913…

Sec. 4 of the principal Act provided that only black people could enter into a transaction for the acquisition of land in a location or native village. Sec. 4 then restricted the acquisition of land further by providing that such land could only be acquired from black people. Effectively the land rights of black people were being curtailed.

Sub-sec. (8) of sec. 5 prohibited white people from residing in locations and native villages without the approval of the Minister, unless they were officers of the department of native administration or a member of the South African Police. This was another measure to achieve stricter segregation by ensuring that locations remained solely for black people. Hellmann maintains that white people were prevented from owning and occupying premises in locations.[714]

Sec. 6 of this Act amended sec. 5 of the principal Act:

> S6. The following new section is hereby inserted in the principal Act after section *five*:
>
> *5bis.* (1) The Governor-General shall, if requested to do so by a resolution adopted by a duly constituted meeting of any urban local authority, by proclamation in the *Gazette,* declare that from and after a date to be specified therein no native shall enter the urban area under the jurisdiction of that urban local authority for the purpose of seeking or taking up employment or residing therein, otherwise than in accordance with conditions to be prescribed by the Governor-General in that proclamation ; and the Governor-General may at any time after consultation with the urban local authority concerned, of his own motion issue any such proclamation in respect of any urban area.

This section allowed an urban local authority, following due process, to request that the Governor-General proclaim in the *Gazette* prohibit black people from entering

[714] Hellmann 1949: 233.

urban areas within their jurisdiction from a date and specified by such proclamation to reside or seek employment there. The Governor-General additionally had the power to make such proclamation, after due consultation process, at his own behest. Effectively sec. 6 gave urban local authorities the power to prohibit the presence of black people in urban areas with the support of government. The condition that black people enter urban areas to minister to the needs of white people received new impetus.

There were amendments to secs. 11, 12 and 17 of the principal Act. Paragraph (h) of sub-sec. (1) of sec. 12 is replaced by paragraph (h) of sub-sec. (3) of sec. 18 changes what the Urban Areas Amendment Act of 1930 provided for one month to depart down to fourteen days:

> S18. Section *twelve* of the principal Act is hereby amended
>
> (3) by the substitution for paragraphs (b), (c), *(d), (e),* {f), (g) and *(h)* of sub-section (1) of the following paragraphs :
>
> (h) to prohibit any male native who is not under a contract of service from remaining in the urban area for a longer period not exceeding fourteen days than is prescribed unless the prescribed officer has issued to him a certificate of registration authorizing him to do so for a period stated therein, and unless he has paid such registration fees as may be prescribed, and to require any native so registered, who is not under a contract of service, to carry such documents as may be prescribed, and to them on demand by an authorized officer : Provided that natives born and permanently residing in such area shall be exempt from such requirements."

Sec. 12 of the principal Act was further amended by sec. 18 of Native Laws Amendment Act 46 of 1937 which increased restrictions of the movement and residence of black women. Paragraph (d) of sub-sec. (3) reads:

> S18. (3) (d) to prohibit any female native from entering the proclaimed area for the purpose of residing or obtaining employment therein after a date to be specified in any such proclamation, without a certificate of approval from an officer designated by the urban local authority and one from the magistrate or native commissioner of the district where she resides, and to require any female native who is within a proclaimed area to produce said certificates on demand by an authorised officer: Provided that—
>
> (i) no such certificate shall be issued to any female native who is under the age of twenty-one years without the consent of her guardian; and

(ii) subject to the necessary accommodation being available, a certificate (which may be for a limited period and may at any time after one month's notice commencing from the first day of the month following that in which notice is given be cancelled by the officer so designated) shall upon application be issued to any female native who produces satisfactory proof that her husband, or in the case of an unmarried female her father, has been resident and continuously employed in the said area for not less than two years

Sec. 22 of this Act amended sec. 17 of the principal Act

S22. Section *seventeen* of the principal Act is hereby amended—

(b) by the substitution for paragraph *(f)* of sub-section (1) of the following paragraph:-

"(f) is a female who, being prohibited under paragraph (d) of sub-section (1) of section *twelve* from entering any area for any purpose mentioned in that paragraph without the certificates prescribed by that paragraph, has entered that area for such a purpose without the said certificates, or, having entered the area, has failed to produce the said certificates on demand by an authorized officer";

Sec. 12 of the principal Act prohibited black women from entering proclaimed areas without a certificate of approval from the urban local authority, which had to be produced. Sub-sec. (1) of sec. 17 of the principal Act as amended by sec. 8 of the Amendment Act of 1930 provided for the manner of dealing with idle or disorderly persons were ordered to be removed and sent to where they belong; but not only were they not permitted to return to the urban area or proclaimed area as may be the case, they were not permitted to enter any other urban area or proclaimed area specified in such order. Effectively paragraph (b) of sec. 22 provided for the order of removal of black women adjudged to being idle or disorderly persons by a magistrate or native commissioner from the urban area or proclaimed area as the case may be and not only could the order declare that they not return to said area within a specified time, they would not be permitted to enter any other urban area or proclaimed area as specified in the order. This extended the application of the order across jurisdictions allowing a magistrate or native commissioner to remove from a specified area and exclude black women from multiple urban areas and proclaimed areas as the case may be in a single order.

Paragraph (e) of sec. 22 substituted sub-sec. (2) of sec. 17 of the principal Act. Sec. 17 of the principal Act as amended by sec. 8 of the Amendment Act of 1930 addressed

the manner in which the presence of unnecessary black people in urban areas or in any proclaimed area should be dealt with, it reads:

> S17. (2) In the event of any native so required to give a good and satisfactory account of himself failing to do so, the magistrate or native commissioner… inquiring into the matter may adjudge him to be an idle or disorderly person and order—
>
> > (a) that he be removed from the urban area or proclaimed are as the case may be and sent to the place which he belongs, and that he do not return to the area from which he is removed within a period specified in such order; or
> >
> > (b) that he be... detained for a period not exceeding two years.

Paragraph (e) of sec. 22 reads:

> S22. Section *seventeen* of the principal Act is hereby amended—
>
> > (e) by the substitution for sub-section (2) of the following sub-section:
> >
> > > "(2) If any native who has been so required to give a good and satisfactory account of himself fails to do so, the magistrate or native commissioner inquiring into the matter may adjudge him to be an idle or disorderly person and may, by warrant addressed to any police officer, order-
> > >
> > > > (a) that he be removed from the urban area or proclaimed area, as the case may be, and sent to his home or to a place indicated by the Secretary for Affairs and that he be detained in custody pending his removal ; or
> > > >
> > > > (b) that he be sent to and detained for a period not exceeding two years in a farm colony, work colony, refuge, rescue home or similar institution… and perform thereat such labour as may be prescribed under… the regulations made thereunder for the persons detained therein,
> > >
> > > and that he do not at any time thereafter, or during a period specified in the warrant, enter any urban area or proclaimed area indicated in the warrant, except with the written permission of the Secretary for Native Affairs",
> >
> > (f) by the insertion after sub-section (2) of the following new sub-sections:
> >
> > > "(2)*ter*.·If any native who has been removed from an urban area or proclaimed area under any warrant issued under paragraph (a) of sub-section (2), or who has been sent to an institution under any warrant issued under paragraph (b) of that sub-section, enters any urban area or proclaimed area in contravention of the order contained in the warrant, he shall be guilty of an offence."

The new substitutions of sub-sec. (2) of sec. 17 of the principal Act by paragraphs (e) and (f) of sec. 22 this Act drastically amended sec. 17 of the principal Act. The penalties for failure to comply became disproportionally harsh. The intention of removing idle or disorderly persons from urban areas or proclaimed areas as the case may be to their homes where they belong and prohibited from entering any urban area or proclaimed area ordered became extremely detention centred. Where detention was a last resort consequence for failure to comply with removal, the new amendment ordered immediate detention pending removal even when there was acquiescence from such persons.

This Amendment Act of 1937 focused on the centralisation of influx control and it provided for the forced removal to rural areas of black people surplus to the requirements of labour in any particular urban area. The powers of the urban local authorities were increased by extending their power to expel black people. Increased restrictions of influx control required more intervention by the government and the Act provided that the Minister could compel urban local authorities to implement any section of the Act or have the section implemented by his own department.

This Act furthered restrictions on black women by making increasingly more challenging for them to enter any urban area seeking work in that urban area and to remain in that urban area.

4.2.3 Foundation for the Group Areas Act

In terms of the principal Act, implementing the legislation led to a struggle between local authorities and central government over the autonomy of the local authorities. According to Welsh a struggle which would later intensify because of the Group Areas Act due to the usurpation of the powers of urban local authorities in order to effect large scale racial rezoning of every city and village in the country to conform to the apartheid spatial blueprint.[715]

The Natives Urban Areas Consolidation Act was passed in 1945.[716] The 1940s saw a staggering increase in urbanisation which resulted in an increase in peri-urban informal settlements. The Consolidation Act of 1945 was enacted in response to this.

[715] Hellmann & Lever (eds.) 1979: 141-143.
[716] Natives (Urban Areas) Consolidation Act 25 of 1945 is hereafter referred to as the Consolidation Act of 1945.

It enabled the implementation of formal influx control policies applicable to black men only. It provided that black people who were deemed to be leading idle or dissolute lives or who had committed certain specified offences could be removed from an urban area. This Act provided for the establishment of legally recognised townships.

The long title of the Consolidation Act of 1945 reads as follows:

> To consolidate the laws in force in the Union which provide for improved conditions of residence for natives in or near urban areas and the better administration of native affairs in such areas; for the registration and better control of contracts of service with natives in certain areas and the regulation of the ingress of natives into, and their residence in, such areas; for the exemption of coloured persons from the operation of pass laws; for the restriction and regulation of the possession and use of kaffir beer and other intoxicating liquor by natives in certain areas and for other incidental matters.

A significant element of this Act is the increase in restrictions of black people to enter urban areas and more delineated conditions of entry.

The vast majority of these urban areas were established in terms of sec. 2 of Consolidation Act 25 of 1945. This section empowered local authorities to demarcate and plan spaces for black occupation. These areas included locations, vacant municipal land or buildings, and hostels. The settlement options provided for in the Act were subject to the approval of the Minister, who had to be satisfied with the planning and layout of the location, the suitability of the land, the condition of buildings, and the provision of essential services. However, this section did not require the Minister to consider the adequacy of the location or the quality of the housing spaces created in terms of it.

> S2. (1) Subject to the approval of the Minister after reference to the Administrator, any urban local authority may--
>
> (a) define, set apart and layout one or more areas of land for the occupation, residence and other reasonable requirements of natives, either as extensions of any area already set apart for that purpose or as separate areas;
>
> (b) define, set apart and layout any portion of a location or any other area of land as an area or areas wherein on such terms and conditions and within such limits as, with the approval of the Administrator and the Minister, the urban local authority may by regulation prescribe, natives shall be permitted to acquire the lease of lots for the erection thereon of houses or huts for their own occupation;

(c) provide one or more buildings or groups of buildings or huts, either within or without the limits of any location or native village, for the accommodation of natives not living under conditions of family life, on such terms and conditions as, with the approval of the Administrator and the Minister, the urban local authority may by regulation prescribe;

(d) provide buildings or huts within any location or native village for the accommodation of native families on such terms and conditions as, with the approval of the Administrator and the Minister, the urban local authority may by regulation prescribe;

(e) require any employer (including the Union Government, with which is included the Railway Administration, any provincial administration and divisional council) within the urban area to provide accommodation for any native in his employment;

(f) in accordance with such regulations as may from time to time be prescribed under paragraph (i) of sub-section (2) of section *thirty-eigh*t require every native not being a native belonging to any class specified in paragraphs (a), (b), (c) or (d) of sub-section (2) of section *nine* who resides in but is. not employed in the urban area, to remove therefrom.

Urban local authorities could request the Governor-General to refuse the entry of black people into areas under their jurisdiction:

S10. (1) The Governor-General shall, if requested to do so by a resolution adopted by a duly constituted meeting of any urban local authority, by proclamation in the *Gazette,* declare that from and after a date to be specified therein no native shall enter the urban area under the jurisdiction of that urban local authority for the purpose of seeking or taking up employment or residing therein, otherwise than in accordance. With conditions to be prescribed by the Governor-General in that proclamation; and the Governor-General may at any time, after consultation with the urban local authority concerned, of his own motion issue any such proclamation in respect of any urban area.

(2) The Governor-General may, if requested to do so by a resolution adopted by a duly constituted meeting of the urban local authority, by further proclamation in the *Gazette,* repeal or suspend the operation of any proclamation issued by him under sub-section (1) at the request of that urban local authority, and may at any time, after consultation with the urban local authority concerned, if he thinks fit to do so, by further proclamation in the *Gazette* repeal or suspend the operation of any proclamation issued by him under sub-section (1) of his own motion.

(3) Any native who contravenes the provisions of any such proclamation shall be guilty of an offence.

Sec. 10 created a material shift in the way apartheid segregation was approached.

Sec. 6 of the principal Act declared that no owner, lessee or occupier of land outside an urban area situate within three miles of the boundary thereof could not allow a black person to reside upon or occupy any dwelling on such land without the written approval of the Minister; however, the boundary thereof could be extended up to five miles. Under this Act sec. 15 provided that the limit of the boundary was five miles except with the approval of the Minister. The Governor-General could by proclamation in the Gazette increase the limit of five miles up to ten miles in the case of any particular urban area.

The Act permitted black people to have permanent residence in an urban area only if that person could prove that they had been resident in the area since birth, or had been lawfully resident in the area for 15 years, or had worked for the same employer for 10 years.[717]

In proclaimed areas, employers were required to register contracts of service entered into by black men. On demand by an authorised officer, the employers and or the employees had to produce evidence of the service contract. Black people who had been permitted to enter the area for a brief period to search for employment needed a work-seekers' permit. Casual male labourers needed a badge. Certain black men were exempted from these provisions, but they had to be able to produce their exemption certificates on demand.

While not directly referred to as an amendment of sec. 12 of the principal Act, further restrictions on proclaimed areas were dealt with by sub-sec. (1) of sec. 23 of the Consolidation Act of 1945. In the principal Act the refusal of entry into proclaimed areas as provided for paragraph (d) of sub-sec. (1) of sec. 12 applied to black persons appearing to be under the age of eighteen who could not adduce evidence to the contrary. The increased refusal of entry into a proclaimed area reads:

> S23. (1) (c) to refuse permission to be in the proclaimed area to any such native—
>
> (i) whenever there is a surplus of native labour available within the proclaimed area;

[717] South African History Online "List of Laws on Land Dispossession and Segregation", https://www.sahistory.org.za/article/list-laws-land-dispossession-and-segregation (accessed 1 November 2023).

(ii) if he fails to show that he has complied with the laws relating to the carrying of passes by natives and, in the Provinces of Transvaal and Natal, if he is without a document of identification;

(iii) if he appears to the prescribed officer to be under the age of eighteen and does not prove contrary to the satisfaction of the prescribed officer, unless he is accompanied by, coming to, or residing with his parents or guardian in the proclaimed area

This Act introduced stricter restrictions on the movement of black women as provided for by secs. 23 and 31.

Sec. 23 enabled black woman being refused entry into an urban area unless she had a written certificate of approval from the urban local authority or from the magistrate or the Native Commissioner of her district of residence which had to be produced on demand:

S23. (1) The Governor-General may by proclamation in the *Gazette* declare any urban area the local authority…may by the said proclamation or by any subsequent proclamation require any urban local authority to exercise in respect of the whole or any part of that area, such of the following powers as may be specified in the said proclamation or in any subsequent proclamation--

(d) to prohibit any female native from entering the proclaimed area for the purpose of residing or obtaining employment therein after a date to be specified in any such proclamation, without a certificate of approval from an officer designated by the urban local authority and one from the magistrate or native commissioner of the district where she resides, and to require any female native who is within the proclaimed area to produce the said certificates on· demand by an authorized officer: Provided that--

(i) no such certificate shall be issued to any female native who is under the age of twenty-one years without the consent of her guardian; and

(ii) subject to the necessary accommodation being available, a certificate (which may be for a limited period and may at any time after one month's notice commencing from the first day of the month following that in which notice is given be cancelled by the officer so designated) shall upon application be issued to any female native who produces satisfactory proof that her husband, or in the ease of an unmarried female her father, has been resident and continuously employed in the said area for not less than two years;

Sec. 31 provided that black men and women had to have written permits signed by someone duly authorised if they were out at night in urban areas after curfew hours:

S31. (1) The Governor-General may, by proclamation in the *Gazette* at the request of any urban local authority or the' Minister, declare that no native, male or female, shall be in any public place within the area controlled by such authority during such hours of the night as are specified in such proclamation unless such native be in possession of a written permit… every such permit shall bear the date of issue thereof and the date and hours for which it purports to be available and shall be produced for examination on demand made by any peace officer or authorized officer.

(2) Any 'person who signs any such permit relating to a native or who issues any such permit to a native shall be guilty of an offence and liable on conviction to the penalties prescribed by section *forty-four* unless he—

(a) is the employer of such native; or

(b) is authorized by such employer to issue such a permit to such native; or

(c) has been authorized by an urban local authority or the Minister to issue such permits and has issued such permit in respect of the area controlled by, such local authority in respect of which he has been authorized by the Minister to issue such permits; or

(d) was, when he signed or issued such permit, the officer in charge of a police station in the urban area in respect whereof such permit was issued

(3) Any native contravening the -provisions of any proclamation issued under sub-section (1) shall be guilty of an offence and liable on conviction to a fine…or in default of payment to imprisonment.

These increased restrictions on women would later lead to the application of pass laws to women in apartheid legislation.

The significance of the Consolidation Act of 1945 is the legislative framework it provided for many moving parts of apartheid spatial planning. From how to structure municipalities, townships, pass laws, reservation of amenities, racial zoning and many other measures.

The Native Laws Amendment Act was passed in 1952.[718] It limited the category of black people who had the right to permanent residence in urban areas. It amended sec. 10 of the 1945 Native Urban Areas Consolidation Act. While sec. 10 granted permanent residence to black people who had been born in an urban or had lived there continuously for more than 15 years, or who had been employed there

[718]Native Laws Amendment Act 54 of 1952. Hereafter referred to as the Native Laws Amendment Act of 1952.

continuously for at least 15 years, or who had worked continuously for the same employer for more than 10 years. Non-white people living in urban areas who did not meet these requirements faced forcible removal

The long title of the Native Laws Amendment Act of 1952 reads as follows:

> To amend the Native Labour Regulation Act, 1911, the Natives Land Act, 1913, the Native. Administration Act, 1927, the Native Administration Act, 1927, Amendment Act, 1929, and the Natives (Urban Areas) Consolidation Act, 1945; to repeal certain provisions of British Bechuanaland Proclamation No. 2 of 1885 and to repeal the Natives (Urban Areas) Amendment Act, 1945.

Paragraph (a) of sec. 35 amended sec. 23 of the Consolidation Act of 1945:

> S23. (1) The Governor-General may by proclamation in the *Gazette* declare any urban area or any area, defined in such proclamation, in which there is a large number of natives, to be… a proclaimed area… and may exercise in respect of that area… powers as may be specified in the said proclamation or in any subsequent proclamation.

By deleting a portion of sub-sec. (1) of sec. 23 of the Consolidation Act of 1945 which "the local authority of which has, either before or after the commencement of this Act, made or has been required to make any of the provisions mentioned in sec. 2", effectively all urban areas in the country became proclaimed areas in which influx control was applied, unless special exemption was granted. The Native Affairs Department no longer had to consult an urban local authority to make such proclamation.

Sec. 10 of the Consolidation Act was amended by sec. 27 of the Native Laws Amendment Act of 1952. The restriction of right of black people to enter an urban area for certain purposes imposed even stricter conditions:

> S27. The following section is hereby substituted for section *ten* of the Natives (Urban Areas) Consolidation Act 1945:
>
> 10. (1) No native shall remain for more than seventy-two hours in an urban area or in a proclaimed area in respect of which… an urban local authority exercises any of those powers, unless—
>
> (a) he was born and permanently resides in such area; or

(b) he has worked continuously in such area for one employer for a period of not less than ten years or has lawfully remained continuously in such area for a period of not less than fifteen years and, has not during either period been convicted of any offence in respect of which be has been sentenced to imprisonment without the option of a fine for a period of more than seven days or with the option of a fine for a period of more than one month; or

(c) such native is the wife, unmarried daughter or son… of any native mentioned in paragraph (a) or (b) of this sub-section and ordinarily resides with that native; or

(d) permission so to remain has been granted to him by a person designated for the purpose by that urban local authority.

(2) An officer so designated shall issue to any native who has been permitted to remain in any such area a permit indicating the purposes for which and the period during which such native may remain in that area: Provided that—

(a) where a native has been permitted to remain in any area for the purpose of taking up employment, the period of validity of the permit shall be limited to the period during which he remains in the service of the employer by whom he has been engaged;

(b) where a native has been permitted to remain in any area for the purpose of seeking work, the period of validity of the permit issued to such native shall be not less than seven or more than fourteen days, unless such native finds employment before the expiration of his permit, in which case the permit shall remain valid until the expiration of the period during which such native remains in the service of the employer by whom he is engaged.

(4) Any person who contravenes any provision of this section, or who remains in any area for a purpose other than that for which permission so to remain has been granted to him, shall be guilty of an offence.

(5) In any criminal proceedings against a native in respect of a contravention of the provisions of this section, it shall be presumed until the contrary is proved that such native remained in the area in question for a period longer than seventy-two hours.

(6) The Governor-General may, if requested thereto by a resolution adopted at a duly constituted meeting of any urban local authority, by proclamation in the *Gazette* declare that for such period as may be specified in the proclamation the provisions of this section shall not apply in respect of the urban area under the jurisdiction of that urban local authority or in respect of any proclaimed area or part thereof in which that urban local authority exercises any of the powers referred to in sub-section (1) of section *twenty-three.".*

The Act amended sec. 10 of the Consolidation Act of 1945 to provide that no black person would be permitted to remain in an urban area for longer than 72 hours without a permit unless he was born and permanently resided there. Exceptions were made

in the case of a man who had worked in one area continuously for one employer for not less than ten years and in certain other cases. Under the amendment of sec. 23 the Governor-General could by proclamation in the Gazette declare on his own that sec. 10 did not apply to any proclaimed or a portion thereof for a period specified in such proclamation and an urban local authority need not be consulted.

The presumption to have been present for over *seventy-two* hours in sub-secs. (4) and (5) then places that black person in the position of having remained unlawfully in a certain area which falls under the provision of sec. 32 of this Act which amended sec. 14 of the Consolidation Act of 1945 which reads:

> S32. The following section is hereby substituted for section *fourteen* of the Natives (Urban Areas) Consolidation Act, 1945:
>
> 14. (1) A native who has been convicted under sub-section (4) of section *ten*…may, under a warrant issued by a magistrate or native commissioner and addressed to a police officer, be removed to his home or his last place of residence.

Together these sections increase the likelihood of an innocent black person being convicted for an offence and forcibly removed or even imprisoned.

Sec. 29 of the Consolidation Act of 1945 had made provision for the removal from an urban area of black people deemed by the urban local authority to be surplus to the requirements, or who were habitually unemployed, or were leading idle or dissolute lives, or who had committed specified offences. The Native Laws Amendment Act of 1952 extended the powers of the urban local authority to order the removal of black people deemed to be “idle” or “undesirable”. Sec. 36 of this Act substituted sec. 29:

> 36. The following section is hereby substituted for section *twenty-nine* of the Natives (Urban Areas) Consolidation Act 1945:
>
> 29. (1) Whenever any authorized officer has reason to believe that any native within an urban area or an area proclaimed in terms of section twenty-three-
>
> (a) is an idle person;
>
> (b) he is an undesirable person
>
> he may, without warrant arrest that native or cause him to be arrested and any European police officer or officer appointed under sub-section (I) of section twenty-two may thereupon bring

> such a native before a native commissioner or magistrate who shall require the native to give a good and satisfactory account of himself.

The power to arrest without a warrant and prove good and satisfactory account of himself lead to immediate pending removal or sent to and detained for a period not exceeding two years in a farm colony, work colony, refuge, rescue home or similar institution. This was a disproportionate response and a cruel manner to remove undesirable black people.

The principal Act set a precedent that would be repeated in 1930 and 1937 when the Stallard doctrine was applied harshly in urban areas in South Africa. In 1947 the South African Bureau of Racial Affairs was formed and Colonel Stallard joined this body; which as emphasised by Rich was "directly instrumental in developing the concepts involved in apartheid into practical policies". The Act provided a foundation for the development of the apartheid ideology in the 1940s, which was progressively implemented after the 1948 victory of the Nationalists.[719]

Pass laws were instrumental for controlling and restricting the movement of black people in urban areas and inhibiting the growth of urbanised black communities. Passes were an instrument of influx control that has a long history in the country as a means of white control over black people by enforcing identification of black people in order to direct their labour to specific employers. Influx control was optional for local authorities between 1923 and 1952 and certain cities implemented no restrictions at all, for instance Port Elizabeth.[720] Pass laws were suspended in all major cities in the country from 1942 up until 1946 as a result of the booming economic conditions which required increased black labour. A series of severe amendments of the Urban Areas Act were passed starting from 1952 which created very harsh restrictions applied to both black men and women over the age of sixteen who sought residence or employment in an urban area for more than seventy-two hours.[721] David Welsh reported that, in line with policy laid down, black workers had to travel up to 90 minutes to work and 90 minutes home daily, a distance of up to 120km, if a white town was close to a homeland to avoid the permanent presence of black workers in the area.[722]

[719] Rich 1978: 190.
[720] Hellmann & Lever (eds.) 1979: 139
[721] Hellmann & Lever (eds.) 1979: 139-140.
[722] Hellmann & Lever (eds.) 1979: 141.

The policy stated that the travel times and travel distances were reasonable and would not negatively impact their productivity at work.[723]

4.3 Group Areas Act: apartheid and space

4.3.1 The conception of the Act: govenmentality and the cornerstone of apartheid

The National Party came to power in 1948 on the basis of a manifesto which made the party's commitment to compulsory urban segregation abundantly clear with a cohesive and comprehensive idea.[724] Urban planners found themselves at the heart of the process that the Land Tenure Advisory Board initiated by which 'group areas' would be created. The Group Areas Act imposed a two-part plan: "allocation of racially-zoned land for new areas; and deciding on, and achieving, uniracial areas where many 'groups' lived and worked".[725]

For Welsh a significant statement for a change of policy regarding the permanence of the urban black population came from the Native Laws Commission chairman Judge H. A. Fagan in 1948. The Fagan Commission concluded that "the idea of total segregation is utterly impracticable; and thirdly that in our urban areas there are not only Native migrant labourers, but there is also a settled, permanent Native population".[726] By this statement it was clear that his stance would not be reiterated in the coming elections. In true form the newly elected Nationalist Government of 1948 refuted the Fagan Commission's recommendations in favour of the Stallard Commission. The Stallard Commission's conclusions remained official policy which benefitted white farmers for the reason that restricting the entry of black people into urban areas effectively forced them to search for work on farms and mines, where strict influx control measures did not apply.[727]

The spatial restructuring of urban areas enacted by the Urban Areas Act provided a model and the Consolidation Act of 1945 provided the mechanisms for establishing

[723] Hellmann & Lever (eds.) 1979: 141.
[724] Mabin 1992: 419-420
[725] Mabin 1992: 423.
[726] Hellmann & Lever (eds.) 1979: 138.
[727] Hellmann & Lever (eds.) 1979: 138-139.

land use according to and for the different races which would shape apartheid urban areas and enabled segregated urban development through the Group Areas Act. The Group Areas Act was the merger of existing municipal planning measures for segregation through these Acts and the Housing Act 35 of 1920. Margot Strauss describes the prohibition of multiracial use and residence of urban land and the control of tenure the Group Areas Act implemented:

> The Act thus divided urban areas into segregated zones where only members of a particular race could reside and work. In doing so, it clearly designated urban spaces for the exclusive ownership and occupation of a particular group. Additionally, that Act made it possible to institute criminal proceedings against a person from one race who either owned or occupied land in an area designated for the exclusive use of another racial group.[728]

Paul Maylam warns against ascribing the reshaping of cities through a system of racial separation and domination solely to the National Party. Nineteenth-century colonial towns "restricted access to the urban area, racial residential segregation and other restrictive regulations". United Party policy makers had plans and practices for the destruction of black urban communities pre-1948. Evidence shows that the Group Areas Act was the essential continuity of urban policy geared towards the black underclasses.[729]

Michel Foucault posed the question of the meaning of the art of government tracing it from the sixteenth century to the start of the nineteenth century through the politics of Machiavelli's *The Prince* in which "it was alleged, the prince stood in a relation of singularity and externality, and thus of transcendence, to his principality" in which the art of governing, that is of being prince, is the exercise power to protect his principality "understood as the link that binds him to his territory and his subjects" and his wealth which he attained by "inheritance or conquest"[730] and can be linked to "the government of the family, termed *economy*".[731] In consideration of the different forms of government between and within the state and society, he states, "there is question of defining the particular form of governing which can be applied to the state as a whole".[732] What Foucault believes is central to the art of government is the inclusion

[728] Strauss 2019: 155
[729] Maylam 1995: 34.
[730] Burchell et al (eds.) 1991: 88-90
[731] Burchell *et al* (eds.) 1991: 90-92.
[732] Burchell *et al* (eds.) 1991: 91.

of the economy into political practice, that is "to set up an economy at the level of the entire state, which means exercising towards its inhabitants, and the wealth and behaviour of each and all, a form of surveillance and control as attentive as that of the head of a family over his household and his goods".[733] Foucault then attends to Guillaume de La Perriére's observation that "government is the right disposition of things, arranged so as to lead to a convenient end";[734] in deliberation of this account Foucault receives the word "things", which he then recounts the two-fold objects of the prince's power "on the one hand the territory, and on the other its inhabitants".[735] This leads him to his statement "one governs things", which contains within it the governing of an intricate composition of men and their relations with their things: their wealth, their territories, their ways of being and navigating the world, their triumphs and tribulations.[736] Foucault then receives the word "dispose" which when wielded under sovereignty was the imposition of obedience to the law;[737] and in the same vein as Agamben's position the sovereign answers only to himself and is the law as much he makes the law. Government, conversely, is concerned not with the imposition of law onto men, rather the disposal of things which as Foucault explained "that is to say, of employing tactics rather than laws, and even of using laws themselves as tactics – to arrange things in such a way that, through a certain number of means, such and such ends may be achieved"[738] which he calls "a range of multiform tactics".[739] In the early sixteenth century the art of government was theorised as the advancement of the territorial monarchies' "administrative apparatus" and the advent of "governmental apparatuses";[740] and in the late sixteenth century a science of the state emerged, which was "a set of analyses and forms of knowledge which… grew in importance during the seventeenth, and which were essentially to do with knowledge of the state, in all its different elements, dimensions and factors of power, questions which were termed precisely 'statistics'".[741]

[733] Burchell *et al* (eds.) 1991: 92.
[734] Burchell *et al* (eds.) 1991: 93.
[735] Burchell *et al* (eds.) 1991: 93.
[736] Burchell et al (eds.) 1991: 93.
[737] Burchell et all (eds.) 1991: 95.
[738] Burchell et all (eds.) 1991: 95.
[739] Burchell et all (eds.) 1991: 95.
[740] Burchell et all (eds.) 1991: 96.
[741] Burchell et all (eds.) 1991: 96.

The eighteenth century saw the advancement of the "problem of population" which was the ability "to identify problems specific to the population".[742] The emergence of the population ushered in a new conception of the art of government which no longer needed to be modelled on the government of the family that Foucault named "the derestriction of the art of government" which to him was essential.[743] There was a complete shift in the art of government from the model of the family to the population, the model of the family became an "instrument for the government of the population and not the chimerical model of good government"[744] from which could be drawn insight into the population such as their "sexual behaviour, demography, consumption".[745] Foucault refers to the population as the ultimate end of government:

> The population now represents more the end of government than the power of the sovereign; the population is the subject of needs, of aspirations, but it is also the object in the hands of the government, aware, *vis-á-vis* the government, of what it wants, but ignorant of what is being done to it. Interest at the level of the consciousness of each individual who goes to make up the population regardless of what the particular interests and aspirations may be of the individuals who compose it, this is the new target and the fundamental instrument of the government of population: the birth of a new art, or at any rate of a range of absolutely new tactics and techniques.[746]

These tactics and techniques of a government of population necessitated using new and different modes of discipline to manage the population, including "apparatuses of security".[747] With this understanding Foucault then explains how this has required him to embark on a new term "governmentality" by which he means:

> 1. The ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security.
>
> 2. The tendency which, over a long period and throughout the West, has steadily led towards the pre-eminence over all other forms (sovereignty, discipline, etc.) of this type of power which may be termed government, resulting, on the one hand, in the formation of a whole series of

[742] Burchell et all (eds.) 1991: 98-99.
[743] Burchell et all (eds.) 1991: 99-100.
[744] Burchell et all (eds.) 1991: 100.
[745] Burchell et all (eds.) 1991: 100.
[746] Burchell et all (eds.) 1991: 100.
[747] Burchell et all (eds.) 1991: 102.

specific governmental apparatuses, and, on the other, in the development of a whole complex of *savoirs*.

3. The process, or rather the result of the process, through which the state of justice of the Middle Ages, transformed into the administrative state during the fifteenth and sixteenth centuries, gradually becomes 'governmentalised'.[748]

Foucault maintains that since the eighteenth century we live in an era of the governmentalisation of the state, that is simultaneously internal and external, in which the state, through the tactics and techniques of government, "the continual definition and redefinition of what is within the competence of the state and what is not, the public versus the private , and so on; thus the state can only be understood in its survival and its limits on the basis of the general tactics of governmentality".[749] For Foucault a governmental state fundamentally relies on its population, on its size and depth and the territory over which its population is spread.[750]

After being introduced, the Group Areas Bill sat for three readings in the House of Assembly before the Committee before Senate Amendments were agreed to. The Group Areas Act was assented to on 24 June 1950 and commenced on 7 July 1950 making the urgency of commencing the legislation quite clear as the time from introduction of the Bill to it being assented to was within six months. Minister of the Interior Eben Dönges introduced the group areas legislation in the House of Assembly Debates in Parliament in 1950. In the second reading on 19 May 1950, he assured would "make provision for the establishment of...separate areas for the different racial groups, by compulsion if necessary…by separate development with a vertical colour bar"[751] Wilmot James writes that Dönges was Minister of the Interior between 1948 and 1958 and was instrumental in the establishment of legal and policy framework for apartheid. He oversaw the Immorality, Mixed Marriages and Population Registration Acts.[752] An ardent proponent of white parliamentary sovereignty, Dönges was clear that as an instrument of the law, parliament should be at the centre of power and all law making.[753] Schooled in law and an advocate, Dönges played an essential role in

[748] Burchell et all (eds.) 1991: 102-103.
[749] Burchell et all (eds.) 1991: 102-103.
[750] Burchell et all (eds.) 1991: 102-104.
[751] James 1992b: 1.
[752] James 1992b: 3-4.
[753] James 1992b: 5.

defining legislation to be introduced in parliament and simultaneously was an administrative bureaucrat who implemented policy. His policy making created a legal framework that endured until the 1990s. He believed that he could manipulate the law to organise society racially and use the law as an instrument to create strict definitions of racial categories in the service of white supremacy. He used parliament as his platform to share apartheid ideology, expressing his anti "mixed living" and "mixed marriages" standpoint during debates.[754] The Group Areas Act presented many difficulties in its application, but Dönges was not dissuaded and committed himself to achieving his goal even if it meant amending the Act and ancillary legislation yearly. He appointed Jan Raats as the Director of the Census and it was his duty to conduct a census in 1951 to racially classify the population for the purposes of his legislation.[755]

James explained that Dönges had aimed to achieve with Population Registration Act needed sharper teeth and the sharpening was tasked to Raats and the 1951 census to further restrict racial classifications, which also benefitted various other government departments. The census was in some respect experimental for Raats and leading up to the census he proposed the strict racial definitions:

> Asiatic means a person both of whose parents are or were members of a race or tribe whose national or ethnical home is Asia, and shall include a person of partly Asiatic origin living as an Asiatic family, but shall not include any Jew, Syrian or Cape Malay;
>
> Bantu means a person both of whose parents are or were members of an aboriginal tribe of Africa, and shall include a person of mixed race living as a member of the Bantu community, tribe, kraal or location, but shall not include any Bushman, Griqua, Hottentot or Koranna;
>
> Cape Malay means any person who states that he is a Malay, unless and until the contrary is proved;
>
> Coloured means any person who is not a white person, Asiatic, Bantu or Cape Malay as defined … and shall include any Bushman, Griqua, Hottentot or Koranna;
>
> A white person means a person both of whose parents are or were members of a race whose national or ethnical home is Europe, and shall include any Jew, Syrian or other person who is in appearance obviously a white person unless and until the contrary is proved.[756]

[754] James 1992b: 5.
[755] James 1992b: 3-5.
[756] James 1992b: 11-12.

The Governor-General was mandated by the Population Registration Act to sub-divide the coloured and 'native' group by ethnicity, however, that task in practice became the duty of the census. It was Raats who sub-divided the coloured group into Asiatic, Cape Malay and coloured. The sub-division of the racial classification of the coloured group proved to be as urgent as it was necessary as they presented the most threat to the white group. Raats, however, thought it to be unnecessary and financially burdensome to sub-divide the 'native' group for the purpose of the enumeration, despite the substantial budget for the census which was not exhausted. To ensure the unity and supremacy of the white group, as well as for the purpose of increasing the group, the group was not sub-divided by ethnicity and the specification of "a person who is in appearance obviously a white person" allowed for the growth of the white group. Nearly 100 000 people did not meet the strict definitions of white or coloured and the number of white passing coloured people was increasing. Many white passing coloured people took advantage of the definition and there was an influx of white passing coloured people moving into white residential areas, taking their children to white schools and socialising with white people and as a result they met Raat's legal definition of being a member of the white group. By absorbing appearance and social recognition into the law and other tactics, Raats had created difficulties for himself and his department, but he swiftly and decisively remedied it. He evaluated the situation and "wanted to know the political terms by which the classification device could be used to drive racial populations in given directions".[757] His recommendation was that although race-mixing was defiling the white race, which was already 'impure' and "a rigid racial line should be drawn around whites as the dominant group" so-called 'marginal cases', passing as white, were increasing he believed that the only way to prevent the development of a "competing white group"[758] it was best for those marginal cases where the coloured person looked white to classify them as white. Other members of the National Party did not agree, however, Dönges permitted his recommendation and it became the 'rule of thumb' in such cases from the 1950s onwards.[759] An estimated 30 000 light skinned coloured people were classified as members of the white group. Raats' powers of classification were expanded to include investigation into the descent of marginal cases, a criterion that previously was not

[757] James 1992b: 11-13.
[758] James 1992b: 13.
[759] James 1992b: 13.

required nor made use of by any other state departments and other racial legislation.[760]

The Cape Malay group came be to sub-divided because of an 'understanding' between Raats and Izak David du Plessis who was the Commissioner of Coloured Affairs and their benefactor. du Plessis made an appeal to Raats for the Cape Malay group to receive "special and favoured treatment" they were not to be affected by the group areas removals and the areas BoKaap and Schotsekloof in Cape Town remained theirs.[761] Raats had a great disdain for the Indian population because of their refusal to give up their cultures, practices and languages to assimilate, which Dönges believed they were unworthy of, and their endogamous marriages which kept their race pure. He was aware that many Indian men had affairs with coloured and black women and that it often resulted in mixed race babies that were denied by their fathers and the Indian communities and absorbed into the race of their mother and he made a specific recommendation to the state that it develop a process he called "*verkaffering"* which meant "to make kaffir":

> Many bastards are born of parents one of whom is Indian, and this bastard should go to the Indian community, be treated as one and live in the same neighbourhood, even though he might speak Zulu, Sotho or any other language. These bastards will be the medium of disintegration by which the solidarity of the Indian will be eroded, and will turn the Indian into a coloured group with a view of life more compatible with the conditions of our country.[762]

Both Dönges and Raats' tactics and techniques created a legal framework for the state and officials to divide and sub-divide the population along racial and ethnic lines just as Dönges had planned. James describes the mechanisms the group areas made for Dönges' master plan:

> (1) racial classification provided the definition of the races to which the officials wanted to move society towards;
>
> (2) sex and intermarriage laws invoked humiliating criminal penalties against those individuals who broke the emergent rules of colour and race;
>
> (3) group areas put an end to 'racial mixing', as the state officials saw it, by circumscribing the propinquity of sexually available populations and minimising points of social and interpersonal–

[760] James 1992b: 15.
[761] James 1992b: 13-14.
[762] James 1992b: 14.

> especially sexual–contact. In these terms, the guiding principle of social apartheid was endogamous reproduction, which if permitted to continue for some decades, result in the emergence of racial distinct populations.[763]

The National Party mastered the governmentalisation of the state. Contorting what was within the competence of the state, as Dönges said even annually if need be. The population was the target of the state and they were able to identify–and create–problems specific to apartheid South Africa which was the white population's desire for racial separation. The state managed to dispose of 'things' in the sovereign and governmental sense: to simultaneously impose obedience to the law and impose tactics including the law to arrange things to their liking. The National Party met Foucault's characteristics of governmentality:

1. They developed institutions, procedures and tactics to exercise their very specific form of power that was apartheid to target its population, which involved technical means and apparatuses of security, the economy as we understand it now was regulated by influx control to control the flow of cheap African labour;

2. Over a long period of time they used this power to form a whole new series of administrative and governmental apparatuses, of *savoirs*, were wielded, although not always, with precision to exercise their very specific form of power. The population was controlled, had surveillance and was disciplined as the state saw fit.

3. The National Party achieved Dönges' goal becoming an administrative state, and the goal of parliamentary sovereignty and administrative bureaucracy was achieved.

The white population believed that they were at all times aware of what the government was doing to achieve the goal of apartheid, but they were objects in the hands of the government. Their individual interests no longer mattered. What was proposed to them was racial purity and no mixing of any kind, but the state absorbed coloured people into their population for its benefit that it presented as the benefit of its subjects. The National Party did whatever it took for its own survival and this makes me wonder to what extent governmentality is its own inclusive-exclusion?

The National Party did not completely shift away from an art of government modelled on the family. As shown by *die volk*, the *volksmoeder*, the Population Registration Act,

[763] James 1992b: 15.

Dönges and Raats, to name a few, the problem of the population was still under the domain of the father— it was the art of fathering a population through multiform tactics to dispose of things to achieve their convenient end of apartheid, of complete racial and spatial separation for the common good of all its white subjects.

4.3.2 The Group Areas Act 41 of 1950: what is a township and what is its juridico-political structure?

To begin my analysis of the Group Areas Act,[764] I return to the closing question posed in the previous chapter: what is the juridico-political structure of the township that such atrocities could take place there? It is pertinent at this juncture to address what I mean when referring to township before I can consider its jurido-political structure. The National Treasury put together an initiative in 2007 called the Training for Township Renewal Initiative which was geared towards township development. I accept the definition proffered by the initiative for what a township is:

> The term "township" has no formal definition but is commonly understood to refer to the underdeveloped, usually (but not only) urban, residential areas that during Apartheid were reserved for non-whites (Africans, Coloureds and Indians) who lived near or worked in areas that were designated 'white only'.[765]

Tooled with this definition, I now consider the long title of the GAA which reads as follows:

> To provide for the establishment of group areas, for the control of the acquisition of immovable property and the occupation of land and premises for matters incidental thereto.

Without a doubt the most significant contribution this Act made to race and space is defining racial classification for spatial application. While other apartheid legislation referred to racial classification, the GAA gave a stricter and more detailed definition of race as well as the endowing the Governor-General with the power to proclaim racial groups, which previously was the undertaking of Raats as Director of Census. Sec. 2 defines the racial groups established for the purposes of the Act:

> 2. (1) For the purposes of this Act, there shall be the following groups:
>
> (a) a white group, in which shall be included any person who in appearance, obviously is, or who is generally accepted as a white person, other than a person who although in appearance

[764] Hereafter referred to as the GAA for the remainder of this sub-section.
[765] Godenhart and Pernegger 2007: 2.

obviously a white person, is generally accepted as a coloured person, or who is in terms of sub-paragraph (ii) of paragraphs *(b)* and *(c)* or of the said sub-paragraphs read with paragraph (d) of this sub-section and paragraph *(a)* of sub-section (2), a member of any other group;

(b) a native group, in which shall be included–

(i) any person who in fact is, or is generally accepted as a member of an aboriginal race or tribe of Africa, other than a person who is, in terms of sub-paragraph (ii) of paragraph *(c),* a member of the coloured group; and

(ii) any woman to whichever race, tribe or class she may belong, between whom and a person who is, in terms of sub-paragraph (i), a member of a native group, there exists a marriage or who cohabits with such a person;

(c) a coloured group, in which shall be included–

(i) any person who is not a member of the white group or of the native group; and

(ii) any woman, to whichever race, tribe or class she may belong, between whom and a person who is, in terms of sub-paragraph (i), a member of the coloured group, there exists a marriage, or who cohabits with such a person; and

(d) any group of persons which is under sub-section (2) declared to be a group.

(2) The Governor-General may by proclamation in the *Gazette*–

(a) define any ethnical, linguistic, cultural or other group of persons who are members either of the native group or of the coloured group; and

(b) declare the group so defined to be a group for the purposes of this Act or of such provisions thereof as may be specified in the proclamation, and either generally or in respect of one or more group areas, or in respect of the controlled area or of any portion thereof so specified, or both in respect of one or more group areas and of the controlled area or any such portion thereof.

Uma Shashikant Mesthrie examined the segregation patterns pre-1948 to later go on to the origin of the GAA. She explains that the first group area was declared in 1953 and more than 1 300 group areas had been proclaimed by 1987. The original Group Areas Act was amended several times, but the metamorphosis of the Act did not stop there.[766] By 1957 the principal Act had undergone so many amendments that it was necessary to consolidate all these changes in a single Act.[767] The GAA established controlled areas, specified areas, defined areas and group areas to accomplish its goals which were applied in stages. The first stage of application was the conversion of all the provinces into controlled areas, which provided for two forms of control:

[766] Mesthrie 1993: 178-179.
[767] Mesthrie 1993: 179.

ownership of property and occupation of property.[768] Control over ownership of property stipulated that members of different groups could not enter into sales agreements with one another without a permit.[769] Effectively making the transfer of property by white people to non-white people subject to a sanction.

Sec. 10 refers to the restrictions on occupation of land in controlled area:

> 10. (1) No disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in the controlled area, except under the authority of a permit.

Sec. 10 provided for the control over occupation and stipulated that the occupier had to be of the same group as the owner of the property. Thus if a non-white person occupied property owned by a white person, or any other configuration of groups, they would have to vacate the property unless they had a permit. Sec. 10 was intended to ensure that the owner and occupier in a group area were of the same group which resulted in many instances of dislocation. However, the Act provided that a controlled area could be excluded from the application of sec. 10 by proclamation.[770] Elizabeth Landis explains:

> A disqualified person in relation to real property in a group area is a person not of the group specified in the proclamation establishing the area; in relation to a controlled area it means a person not of the same racial group as the owner of the property, or, if the owner is a company, then a member of a group different from the group of a person who holds a controlling interest in the company. Group Areas Act, Act No. 77 of 1957, s 1(x).[771]

Mabin refers to the Natural Resources Development Council, whose jurisdiction included the urban population of the three controlled areas of the goldfields regions (the north-western Free state, the western Transvaal and the eastern Transvaal highveld), which determined that no development for townships in its controlled areas could take place there without its approval.[772]

Secs. 11-13 provided for specified areas, which were declared as falling under controlled areas, were declared and allowed for the 'freezing' of large urban

[768] Mesthrie 1993: 180. See Elizabeth Landis *South African Apartheid Legislation 1: Fundamental Structure* for further exposition of controlled areas, she writes "group areas for ownership only are controlled areas as to occupation, and group areas for occupation only are controlled areas for purposes of acquisition of property".
[769] Mesthrie 1993: 180.
[770] Mesthrie 1993: 180.
[771] Landis 1961: 21.
[772] Mabin 1992: 418.

settlements where the norm of ownership and occupation were mixed neighbourhoods. The owner of a vacant plot of land in a specified area was considered the occupant of that property and they could occupy what they built on that land or let it to members of their own group. Effectively as Mesthrie writes, “unlike the controlled area where the group of the owner determined the group of the occupant, in this case the group of the occupant on the date of the proclamation of the specified area determined the group of future occupants”.[773] Sec. 14 provided for permits and determinations and created a strict permit system that ensured that permits were only issued in pursuance of completely segregated groups and if it were to increase to increase the mixing of group within the area it would not be granted.[774] Within controlled and specified areas, there were defined areas which varied from a stand of property down to the intimacy of a room in a home. This was intended to prevent members of different groups from entering areas occupied predominantly by a different group. The owner of a vacant plot of land in a defined area had to apply to the minister to determine which group could occupy the buildings if they put up a building or several buildings, demolished a building or added to existing buildings.[775] This was intended to allow members of another group, mostly white people, to buy property in an area declared only for occupation by another group or where the group in that area could not afford to buy property in that area. Once proclaimed as a group area for one group, all individuals belonging to any other group became ‘disqualified persons’ and they were given one year or more to vacate the area unless a permit was issued which would allow them to remain in that area a specified period of time. An inspectorate was set up by the GAA that could issue fines, jail sentences, both or expropriation of property if the provisions of the Act were violated.[776]

The last type of areas that were established was the group areas which consisted of areas either only for occupation or ownership and areas for both ownership and occupation. The following secs. provided for this:

Sec. 3 refers to the establishment of group areas for the purposes of the Act:

[773] Mesthrie 1993: 180.
[774] Mesthrie 1993: 180-181.
[775] Mesthrie 1993: 181.
[776] Mesthrie 1993: 180-182.

3. (1) The Governor-General may, whenever it is deemed expedient, by proclamation in the *Gazette*–

(a) declare that as from a date specified in the proclamation, which shall be a date not less than one year after the date of the publication thereof, the area defined in the proclamation shall be an area for occupation by members of the group specified therein; or

(b) declare that, as from a date specified in the proclamation, the area defined in the proclamation shall be an area for ownership by members of the group specified therein.

(2) Proclamations under paragraphs (a) and (b) of sub-section (1) may be issued also in respect of the same area.

Sec. 4 refers to occupation in group areas for the purposes of this Act:

4. (1) As from the date specified in the relevant proclamation under paragraph (a) of sub-section (1) of section *three,* and notwithstanding anything contained in any special or other statutory provision relating to the occupation of land or premises, no disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in any group area to which the proclamation relates, except under the authority of a permit.

Sec. 5 refers to the acquisition of immovable property in group areas for the purposes of this Act:

5. (1) If any group area is in terms of a proclamation under paragraph *(b)* of sub-section (1) of section *three* a group area for ownership–

(a) no disqualified person and no disqualified company shall, on or after the relevant date specified in the proclamation, acquire any immovable property situate within that area, whether or not in pursuance of any agreement or testamentary disposition entered into or made before that date, except under the authority of a permit: Provided that the provisions of this paragraph shall not render unlawful any acquisition of immovable property by a statutory body;

John Western avers that Durban had the first almost perfectly conceived "race-space plan"[777] for the application of the GAA and that the Durban City Council's Technical Subcommittee released a report in November 1951 in which they proffered seven principles for segregation patterns:

1. A residential race zone should:
   (a) have boundaries which should as far as possible constitute barriers of a kind of preventing or discouraging contact between races in neighbouring residential zones;

[777] Western 1981: 88.

(b) have direct access to working areas and to amenities as are used by all races, so that its residents do not have to traverse the residential areas of another race, or do so only by rail or by way of a common highway segregated from the residential areas abutting it;

(c) be large enough to develop into an area of full or partial self-government or be substantially contiguous to such an area;

(d) provide appropriate land for all economic and social classes which are present in the race group concerned, or may be expected to emerge in the course of time; and for group institutions, suburban shopping, minor industry and recreation;

(e) be so sited that the means of transport most suitable for the group concerned is or can be made available.

2. The number of race zones not contiguous to zones occupied by the same race must be kept as low as possible; accordingly large areas offering scope for urban expansion not too remote from the group's places of employment are to be preferred to areas that cannot be expanded.
3. In order to give the maximum length of common boundary between working areas and residential zone, and thus reduce transport costs and difficulties, dispersal of industry in ribbon formation where practicable is preferable to the massing of industry in great blocks.
4. In planning areas for each race group, the present and future requirement of the group, in relation to other groups, must be determining factors; the extent of situation of land presently owned, occupied or otherwise allocated to that group is not a material consideration.
5. Settled racially homogenous communities should not be disturbed except in so far as it is necessary to give effect to the postulates set out above…
6. Different race groups may have differing needs in respect of building and site development. In allocating zones to each race, due account must be taken of topographical suitability of the land and of the extent to which the race group concerned can effectively utilise existing sites and building development.
7. The central business area and the existing or potential industrial areas should not, in the initial stages, be earmarked for the exclusive use of any [one] race.[778]

Daniel Smit lists the spatial model and specific criteria intended for the design of group areas as detailed in the Durban Housing Survey of 1952 having tweaked the seven principles:

1. Each race group should have its own consolidated residential areas.

2. Each consolidated area should be located in such a way as to allow continuous and incremental expansion.

3. Each residential group area should be separated by a strong physical "buffer" such as a river

[778] Western 1981: 88-89.

> or ridge or by a use buffer such as an industrial or commercial area. Should buffers of this kind. not be available, then an open space or "buffer zone" was to be left between group areas.
>
> 4. Each group area was to have good access to and from work. Attention should be given to trying to locate Black areas as close to work opportunities as possible.
>
> 5. Racial mixing within work areas was regarded as permissible (and, in fact, obligatory).
>
> 6. In moving to and from work, however, no ethnic group should have to traverse the residential areas of other group.
>
> 7. Each area should become self-governing as soon as possible and move toward equality in as many aspects as possible.[779]

Speaking in Parliament in Cape Town in January 1951 as then Governor-General, Dr Ernest Jansen, stated the intention of the Act:

> The biggest problem in connection with Native Administration today is the situation in the urban areas… it is admitted that Natives should remain in urban areas, but it is explicitly stated that they should have no political or equal social or other rights as Europeans. They may live in European areas, where they cannot have such rights and cannot be regarded as permanent inhabitants.[780]

Smit refers to the relocation of black people in the 1950s as "an almost militaristic short term concern to restore social control and the accumulation concerns of local capital"[781] in which entire black townships were relocated along Bantustan boundaries with the intention of keeping black labour within a reasonable travelling distance to and from work in white towns and what was understood to be a reasonable travelling distance was distances up to 70kms.[782]

The Group Areas Board was appointed by the government in September 1950.[783] The Board was established by sec. 24 and consisted of not more than seven members appointed by the Minister, who also designated the chairman and vice-chairman from the members. Sec. 25 provided that the chairman could call a special meeting of the board at any time and place as he directed and that a quorum for the meeting was

[779] Smit 1989: 103.
[780] Horrell *et al*. 1950: 3.
[781] Smit 1989: 115.
[782] Smit 1989: 116.
[783] The Group Areas Board was previously the land Tenure Board under the GAA and later changed with amendments to the principal act. Hereafter referred to as the Board.

three of the members thereof. The decision of the majority of the members present at the meeting was considered the final decision of the board, additionally that if there was an equality of votes the member presiding over the meeting was given an additional casting vote. Sec. 28 vested the board with the powers to summon any person it believed had material information concerning the subject of its enquiry and interrogate him or allow him to be interrogated by a person whose application relates to the enquiry; and the power to enter and inspect any land or premises at all reasonable times for the purpose of any investigation conducted by it. The Board was given the power to declare controlled, specified, defined and group areas as well as overseeing the permit system and issue certificates. An important function of the Board was its power to determine the subgroups of coloured and black people as provided for in the GAA. The Board declared Indians and Chinese separate groups in Cape Town, Transvaal and Natal on 30 March 1951.[784] It later declared Malays as a separate group in a list naming certain parts of the Western Cape and Eastern Cape. The Board added cities and towns to the list and amended the list in 1952. This declaration of the group of the Malays applying in certain places created a precarious situation in which a member of the Malay group would no longer be considered Malay but instead coloured if they moved to a town or city not named on the list. After many years the Board reversed its declaration regarding Malays and declared that Malays were to be considered part of the coloured group in the rest of the country except in the Schotsche Kloof area of Cape Town where they had been established for centuries.[785]

The social engineering of apartheid, as novel as it was thought to be, was built on the strong foundation of white supremacy that already existed in South Africa. There were continuities in the theories of race and racial classification prior to apartheid. As a system brought into power based on (promises?) and without a full grasp of the intricate machinations such an endeavour would require, apartheid was wrought with uncertainty and conflicting views concerning its essence and implementation. The scope of racial classification under apartheid presented a completely different system of designating race. Having been compelled to register as a member of one of the official races, every South African became subject to the hierarchical order of that

[784] Mesthrie 1993: 183.
[785] Mesthrie 1993: 183-185.

classification in every sense in perpetuity. Deborah Posel argues that this system ushered in a "new vision about the scope, powers, and responsibilities of the state",[786] additionally that the transformation of the apartheid state from its advent in 1948 was responsible for the "bureaucratisation and normalisation of race"[787] which created a legacy that would endure for decades to come and create a formidable racial order known across the world.[788]

Proposals were made for the provision of buffer zones to separate group areas from each other. These buffer zones could have been natural barriers such as rivers or other barriers such as railway lines and such barriers were to be created were they not available and would serve the same purpose of separation. These created barriers were called border strips and were provided for in 1955 legislation.[789] The Board could proclaim them and individuals in this strip were only allowed to sell their property to local and provincial authorities and the state unless they had a permit, which stipulated who the owner could allow to occupy the property. The land could also not be sub-divided or used for any other purpose than for which it was used at the date of proclamation. The Minister of Lands thought these barriers common-sense as it was unimaginable for whites to live side by side with non-whites where they were constantly in possible threat of physical danger. When he introduced the measures for the creation of border strips he said they were "an attempt to stop people of different racial groups from living cheek by jowl".[790] The GAA's provision of these strips was following a precedent already set by the Native Affairs Department which had strict regulations regarding the separation of black locations from any other group or from a national road by a minimum of 0.6km, a provincial road by 0.3km and any other border by 0.2km.[791]

Attempts to eliminate shack settlements and continued building in massive townships intensified during the 1960s through combining race zoning and regional and town planning. Reservation of land based on race created space for white middle-class

[786] Posel 2001a: 89.
[787] Posel 2001a: 88.
[788] Posel 2001a: 88.
[789] Mesthrie 1993: 193.
[790] Mesthrie 1993: 193.
[791] Mesthrie 1993: 193-194.

suburbanisation assisted by township boards monitoring land subdivision.[792] At the height of apartheid, the reconstructionist vision of the South African city was the temporary presence of black people in the city who then returned to houses rented from the state in townships. The late apartheid era government envisioned housing the growing population of black people in large controlled informal settlements on the urban periphery. It is argued that the closing of the 1980s shifted "the map of the urban areas"[793] by absorbing non-whites into the city. Some black people choosing to leave existing townships for their new informal settlements and extensions. The GAA act was slowly reformed allowing some middle and upper income black people into established white areas.[794]

The Board demarcated a group area and when the Minister proclaimed such an area the Minister would then specify the date from which disqualified persons would have to move out. The date decided on by the Minister gave disqualified people less than a year to move out and they were given a minimum of three full months' notice.[795] Sub-sec. (viii) of sec. 1 of the GAA defined a "disqualified person" as:

> 1. (viii) "disqualified person", in relation to immovable property, land or premises in any group area, means a person who is not a member of the group specified in the relevant proclamation under section *three*…[796]

Landis avers that the most significant difference between controlled areas and group areas is that "group areas point to the ultimate objective of *apartheid:* areas free from any members of the 'disqualified' groups".[797] For Landis the operation of the provision for the disqualification people is particularly iniquitous in that apart from group areas, the whole country constituted a controlled area and as such it was forbidden to contractually acquire immovable property in any portion of a controlled area with a disqualified person, to dispose of immovable property in a controlled area, as she write, "a disqualified person in relation to real property in a *group area* is a person not of the group specified in the proclamation establishing the area; in relation to a

[792] Mabin & Smit 1997: 206-207.
[793] Mabin & Smit 1997: 212-213.
[794] Mabin & Smit 1997: 212-213.
[795] Harris 1979: 2.
[796] A detailed discussion of disqualified companies is not pertinent for the purposes of my argument and as such it should be considered as being included in the term disqualified persons.
[797] Landis 1961: 21.

controlled area it means a person not of the same racial group as the owner of the property".[798]

I would now like to consider the presumption of race when defining, regulating and demarcating space. Sec. 35 defines the presumptions of race created by establishment of racial groups by the Act for the purposes of the Act:

> 35. (1) A person who in appearance obviously is a white person shall for the purposes of this Act be presumed to be a member of the white group until the contrary is proved.
>
> (2) A person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a member of the native group until the contrary is proved.
>
> (3) A person who is not in appearance obviously a white person and who is not in fact or is not generally accepted as a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a member of the coloured group until the contrary is proved.

There are several problems or perhaps queries raised for me: the concurrent and consecutive operation of disqualified persons, the presumption of race; the fact that the Governor-General could by proclamation define and declare native and coloured groups for the purposes of this Act, that the Governor-General could by proclamation proclaim and define a group area for occupation and for ownership. Effectively the Nationalists centralised through administrative procedures and laws the ability to proclaim controlled areas, i.e., the entire country, define and declare disqualified persons and those people could be disqualified on a presumption of race and the onus would be placed on them to prove their group. With the Nationalist agenda, it would have been completely antithetical to the cause not to declare as many non-white people as possible and disqualify them effectively from the entire country. This was the inclusion of the space-race nexus into the juridical order through its exclusion; in an inclusive-exclusion. When considering the long title of the GAA along with the question raised in the beginning, it becomes clear: under apartheid place was not merely space that had been imbued with meaning, place was in fact space that had been disciplined. And that is the juridico-political structure of a township: disciplined space–space disciplined through race.

[798] Landis 1961: 21.

Foucault writes in *Discipline and Punish: The Birth of the Prison* that the system of torture and public execution was left behind at the beginning of the nineteenth century state and punishment took on the form of legal and administrative practices. He writes that punishment became "the most hidden part of the penal process… as a result, justice no longer takes public responsibility for the violence that is bound up with its practice".[799] Brutality was no longer exerted on the body in the form of torture but could take the form of a type of 'physical' penalty. The body was an instrument intervened upon "to imprison it, or to make it work, it is in order to deprive the individual of a liberty that is regarded both as a right and as property… from being an art of unbearable sensations punishment has become an economy of suspended rights".[800] Foucault writes that from the mid-nineteenth century punishment "assumed as its principal object loss of wealth or rights".[801] Foucault argues that criminal justice systems has maintains whispers of torture as imprisonment is targeted at the body.[802] He asks us to consider the "new tactics of power" created by seemingly more lenient penal mechanisms, two of the four which I consider:

> 1. Do not concentrate the study of the punitive mechanisms on their 'repressive' effects alone, on their 'punishment' aspects alone, but situate them in a whole series of their possible positive effects, even if these seem marginal at first sight. As a consequence, regard punishment as a complex social function.
>
> 2. Analyse punitive methods not simply as consequences of legislation or as indicators of social structures, but as techniques possessing their own specificity in the more general field of other ways of exercising power. Regard punishment as a political tactic.[803]

I have explored the body through many lenses throughout this thesis, what I now want to consider is the matrix of power the body is captured in when brought into political systems of punishment and discipline. Foucault describes the body as "invested with relations of power and domination".[804]

> …there may be a 'knowledge' of the body that is not exactly the science of its functioning, and a mastery of its forces that is more than the ability to conquer them: this knowledge and this mastery constitute what might be called the political technology of the body. Of course, this

[799] Foucault 1977: 8-9.
[800] Foucault 1977: 11.
[801] Foucault 1977: 15.
[802] Foucault 1977: 15.
[803] Foucault 1977: 23.
[804] Foucault 1977: 26.

> technology is diffuse… it implements a disparate set of tools or methods. In spite of the coherence of its results, it is generally no more than a multiform instrumentation. Moreover, it cannot be localised in a particular type of institution or state apparatus… What the apparatuses and institutions operate is, in a sense, a micro-physics of power, whose field of validity is situated in a sense between these great functionings and the bodies themselves with their materiality and their forces.[805]

Once in the micro-physics of power, there is a "mode of detailed political investment of the body"[806] in which the body becomes the object and target of power and the object of control and subjection, under constant supervision and intimidation "exercised according to a codification that partitions as closely as possible time, space, movement"[807] that can be called 'discipline'. Foucault details the great powers of discipline which are: the art of distribution, the control of activity, the organisation of geneses and the composition of forces. In "the art of distributions" Foucault describes that discipline requires "the distribution of individuals in space"[808] a technique of which can necessitate "*enclosure*, the specification of a place heterogeneous to all others and closed in upon itself. It is the protected place of disciplinary monotony".[809] Foucault then explains that essential to the machinery of disciplinary space is "location or partitioning" which is more rigid:

> Each individual has his own place; and each place its individual… disciplinary space tends to be divided into as many sections as there are bodies or elements to be distributed… its aim was to establish presences and absences, to know where and how to locate individuals, to set up useful communications, to interrupt others, to be able at each moment to supervise the conduct of each individual, to assess it, to judge it, to calculate its qualities or merits. It was a procedure, therefore, aimed at knowing, mastering and using. Discipline organises an analytical space.[810]

Space organised through discipline strategically apportions precariousness and grievability that Foucault calls an art of rank which "mark places and indicate values; they guarantee the obedience of individuals… They are mixed spaces: real because they govern the disposition of buildings, rooms, furniture, but also ideal, because they are projected over this arrangement of characterisations, assessments,

[805] Foucault 1977: 26.
[806] Foucault 1977: 139.
[807] Foucault 1977: 137.
[808] Foucault 1977: 141.
[809] Foucault 1977: 141.
[810] Foucault 1977: 143.

hierarchies".[811] What is apparent from the art of ranking is the minutia in which spatial discipline operates: the disposition of furniture; and on the other hand, the systemic hierarchisation of living beings. Western refers to Heribert Adam who considers the strategic considerations that formed the foundation of township was not only segregation, but that townships were designed and located in such a way that "within a short time such a location could be cordoned off, and in its open streets any resistance could easily be smashed"[812] which is why townships generally had narrow roads and one point for entry and exist and enclosed.[813]

Disciplinary power has three instruments: hierarchical observation, normalising judgment and examination. Hierarchical observation refers to coercion by observation in which the technique of observing made those who were being observed more "clearly visible" through invasive monitoring.[814] Foucault uses the example of the military camp as the ideal model for the functioning of power through "a network of gazes", a network of cross surveillance, in which "the geometry of the paths, the number and distribution of the tents, the orientation of their entrances, the disposition of files and ranks were exactly defined".[815] This model was later applied in urban development to achieve spatial hierarchised surveillance for the construction of "working-class housing estates, hospitals, asylums, prisons and schools".[816] What developed was an architecture built in order to control and continuously monitor the individuals in them:

> To render visible those who are inside it; in more general terms, an architecture that would operate to transform individuals: to act on those it shelters, to provide a hold on their conduct, to carry the effects of power right to them, to make it possible to know them, to alter them. Stones can make people docile and knowable. The old simple schema of confinement and enclosure – thick walls, a heavy gate that prevents entering or leaving – began to be replaced by the calculation of openings, of filled and empty spaces, passages and transparencies.[817]

As a mechanism of disciplinary power "continuous and functional surveillance" was an organised network of "multiple, automatic and anonymous power" reliant of

[811] Foucault 1977: 148.
[812] Western 1981: 74-75.
[813] Western 1981: 47-75.
[814] Foucault 1977: 171.
[815] Foucault 1977: 171.
[816] Foucault 1977: 171.
[817] Foucault 1977: 172.

individuals.[818] Foucault writes that hierarchised surveillance "functions like a piece of machinery"[819] that produces a disciplinary power that is "both absolutely indiscreet, since it is everywhere and always alert, since by its very principle it leaves no zone of shade and constantly supervises the very individuals who are entrusted with the task of supervising and absolutely 'discreet', for it functions permanently and largely in silence".[820] Foucault refers to it as the 'physics' of power which has a "hold over the body".[821]

Foucault begins to explain normalising judgement writing that

> At the heart of all disciplinary systems functions a small penal mechanism. It enjoys a kind of judicial privilege with its own laws, its specific offences, its particular forms of judgement. The disciplines established an 'infra-penality'; they partitioned an area that the laws had left empty; they defined and repressed a mass of behaviour that the relative indifference of the great systems of punishment had allowed to escape.[822]

The micro-penalities were "of time (latenesses, absences, interruptions of tasks), of activity (inattention, negligence, lack of zeal), of behaviour (impoliteness, disobedience), of speech (idle chatter, insolence), of the body ('incorrect' attitudes, irregular gestures, lack of cleanliness), of sexuality (impurity, indecency)"[823] which were imposed in workshops, schools and the army. Micro-penality operated through punishment in which there was subjection to subtle punitive measures such as physical punishment, deprivation and humiliation whenever there was even a minor deviation from what was held to be correct behaviour.[824] Disciplinary penality is a form of punishment reliant on "non-observance, that which does not measure up to the rule, that departs from it".[825] It extends beyond a "small-scale model of a court" in which order is enforced by the law to include "natural and observable processes", thus punishment in a disciplinary regime takes on a "double juridico-natural reference".[826] Disciplinary punishment's function of reducing gaps is "*corrective*"[827] in that it mirrors

[818] Foucault 1977: 176.
[819] Foucault 1977: 177.
[820] Foucault 1977: 177.
[821] Foucault 1977: 177.
[822] Foucault 1977: 177-178.
[823] Foucault 1977: 178.
[824] Foucault 1977: 178.
[825] Foucault 1977: 178.
[826] Foucault 1977: 178-179.
[827] Foucault 1977: 179.

the juridical model and additionally punishment that is exercise. Punishment is an element of "a double system: gratification-punishment. And it is this system that operates in the process of training and correction"[828] through the basis of good and evil as opposing values to define behaviour and hierarchise subjects in relation to each other.[829] The hierarchisation in consonance with ranks and grades marks gaps and has a double role of punishing and rewarding, "it is the penal functioning of setting in order and the ordinal character of judging. Discipline rewards simply by the play of awards, thus making it possible to attain higher ranks and places; it punishes by reversing this process".[830] The operation of this art of punishing refers individual actions to a whole; differentiates individuals from each other by virtue of a rule that is the minimum of behaviour; it measures individuals and places them in a hierarchical system; it introduces the constraint of conformity that must be achieved through 'value-giving'; and it traces the limit of relational difference and by so doing traces the abnormal.[831] All these distinct operations together form the perpetual penalty which fundamentally, as Foucault writes, *normalises*.[832] The judicial penality in contrast refers:

> To a corpus of laws and texts that must be remembered; that operates not by differentiating individuals, but by specifying acts according to a number of general categories not by hierarchising, but quite simply by bringing into play the binary opposition of the permitted and the forbidden; not by homogenising, but by operating the division, acquired once and for all, of condemnation. The disciplinary mechanisms secreted a 'penality of the norm', which is irreducible in its principles and functioning to the traditional penality of the law.[833]

At the end of the classical age the power of the norm formed part of the great instruments of power in which normalisation replaced indications of status and privilege with indications of belonging to a normal social body [read as white group].[834] Normalisation has a double system of imposing homogeneity on a population while

[828] Foucault 1977: 180.
[829] Foucault 1977: 180-181.
[830] Foucault 1977: 181.
[831] Foucault 1977: 182-183.
[832] Foucault 1977: 183.
[833] Foucault 1977: 183.
[834] Foucault 1977: 184.

simultaneously individualising the population by facilitating the measurement of all differences between individuals.[835]

Examination, Foucault explains, is an amalgamation of both the techniques of hierarchal observation and normalising judgement in which:

> a normalising gaze, a surveillance that makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges them. That is why, in all the mechanisms of discipline, the examination is highly ritualised… At the heart of the procedures of discipline, it manifests the subjection of those who are perceived as objects and the objectification of those who are subjected.[836]

Examination introduced from the formation of knowledge an exercise of power. First, introduction of the "*economy of visibility*"[837] is a discipline in which the visibility of the subject, and not the sovereign, ensures that power is had over them because the process of being constantly seen "maintains the disciplined individual in his subjection… [and] holds them in a mechanism of [compulsory] objectification".[838] Second, the introduction of "*individuality into the field of documentation*"[839] where individuals are placed in a field of surveillance through what Foucault names "a power of writing" in which the essential mechanism of discipline is registration and administrative documentation containing "identification, signalling or description"[840] the purpose of which was "a first stage in the 'formalisation' of the individual within power relations"[841] including "their distribution in a given 'population'"[842] Third, as a new modality of power, the accumulation of "documentary techniques, makes each individual a 'case'… who has to be trained or corrected, classified, normalised, excluded etc. … it functions as a procedure of objectification and subjection… for which individual difference is relevant".[843] The technology of power, Foucault closes with, is that "it [power] produces reality; it produces domains of objects and rituals of

[835] Foucault 1977: 184.
[836] Foucault 1977: 184-185.
[837] Foucault 1977: 187.
[838] Foucault 1977: 187.
[839] Foucault 1977: 189.
[840] Foucault 1977: 189.
[841] Foucault 1977: 189-190.
[842] Foucault 1977: 190.
[843] Foucault 1977: 191-192.

truth. The individual and the knowledge that may be gained of him belong to this production" [844]

The third party appeals of another person's racial classification that they disagreed with as a matter of "public interest" were used for the self-preservation of white communities by the community members.[845] This surveillance within communities by their own community members, their neighbours and friends, was the social operation of the disciplinary power of hierarchal observation through cross-monitoring. The town plan of townships with only one point for entry and exit was not similar to but was actual enclosure. The Nationalist fixation of identification documents and passes was their "power of writing". The ability of the Minister and later the State President to declare a group for the purposes of the Act was a judicial penalty in double system of gratification-punishment. To marry outside of your race or "down" as a white person resulted in the punishment of being stripped of all the social, economic and political rights and benefits of being white. In this way, holding the white supremacist views of the National Party could reward coloured people who passed as white, and in some instances did not pass as white, with (re)classification as white and all the rights and benefits associated with being white. Black people were suspended in a state of discipline from which there was little to no escape.

4.3.3 Shaping space through narrow definitions of race (inclusive exclusion): the impact on race resulting from the amendments of Act 1950[846]

Continuing with my interest in etymology explored in Chapter Three, I return to the world-making of words, to the power to shift and shape material and spiritual realms concealed within linguistics. It is significant for me to return to *lexis* and *logos* for a sustained analysis of the Group Areas Acts, the living beasts whose language lies in what is said and simultaneously is not said, in what was said and simultaneously what will be said. In this endeavour I must consider the language of not only the long titles, but also the insertions and deletions in the amendments. For purposes of this endeavour, I read the most significant amendments to the Principal Act in tandem.

[844] Foucault 1977: 194.
[845] Posel 2001a: 108.
[846] The Group Areas Act of 1950 shall hereafter be referred to as the principal Act.

The Group Areas Amendment Act 77 of 1957 repealed the whole of the principal Group Areas Act; along with the Group Areas Amendment Act 65 of 1952, the Group Areas Amendment Act 6 of 1955, the Group Areas Further Amendment Act 68 of 1955, and the Group Areas Amendment Act 29 of 1956. It gave effect to the Principal Act. The Group Areas Act 77 of 1957[847] was assented to 24 June 1957 and commenced 5 July 1957, its long title reads as follows:

> To consolidate the law relating to the establishment of group areas, the control of the acquisition of immovable property and the occupation of land and premises and matters incidental thereto.

The Group Areas Act 36 of 1966 repealed the whole of Act 77 of 1957; along with the Group Areas Amendment Act 23 of 1961, Group Areas Amendment Act 49 of 1962, the Group Areas Amendment Act 56 of 1965. The Group Areas Act 36 of 1966[848] was assented to on 5 October 1966 and commenced on 26 October 1966, its long title reads as follows:

> To consolidate the law relating to the establishment of group areas, the control of the acquisition of immovable property and the occupation of land and premises, and matters incidental thereto.

Both Act 77 of 1957 and Act 36 of 1966 make provision for the classification of race. In Act 77 of 1957 sec. 10 refers to the racial group created for the purposes of the Act:

> 10. (1) For the purposes of this Act there shall be the following groups, namely–
>
> (a) a white group, in which shall be included any person who in appearance obviously is or who is generally accepted as a white person, other than a person who, although in appearance obviously a white person, is generally accepted as a coloured person, or who is in terms of sub-paragraph (ii) or (iii) of paragraph (b) or (c) or of either of the said sub-paragraphs read with paragraph (d) of this sub-section and paragraph (a) of sub-section (2), a member of any other group;
>
> (b) a native group, in which shall be included
>
> > (i) any person who in fact is or who is generally accepted as a member of an aboriginal race or tribe of Africa, other than a person who in terms of sub-paragraph (ii) of paragraph (c) is a member of the coloured group; and

[847] Group Areas Amendment Act 77 of 1957. Hereafter referred to as Act 77 of 1957.
[848] Group Areas Act 36 of 1966. Hereafter referred to as Act 36 of 1966.

(ii) any woman to whichever race, tribe or class she may belong, between whom and a person who in terms of sub-paragraph (i) is a member of the native group, there exists a marriage, or who cohabits with such a person; and

(iii) any white man between whom and a woman who in terms of sub-paragraph (i) is a member of the native group, there exists a marriage, or who cohabits with such a woman;

(c) a coloured group, in which shall be included–

(i) any person who is not a member of the white group or of the native group; and

(ii) any woman, to whichever race, tribe or class she may belong, between whom and a person who in terms of sub-paragraph (i) is a member of the coloured group, there exists a marriage, or who cohabits with such a person; and

(iii) any white man between whom and a woman who in terms of sub-paragraph (i) is a member of the coloured group, there exists a marriage, or who cohabits with such a woman; and

(d) any group of persons which is under sub-section (2) declared to be a group.

(2) The Governor-General may, by proclamation in the *Gazette*—

(a) define any ethnical, linguistic, cultural or other group of persons who are members either of the native group or of the coloured group; and

(b) declare the group so defined to be a group for the purposes of this Act or of such provisions thereof as may be specified in the proclamation, and either generally or in respect of one or more group area~, or in respect of the controlled area or of any portion thereof so specified, or both in respect of one or more group areas and in respect of the controlled area or any such portion thereof.

Sec. 12 of Act 36 of 1966 refers to racial group for the purposes of this Act:

12. (1) For the purposes of this Act there shall be the following groups, namely–

(a) a white group, in which shall be included any person who in appearance obviously is or who is generally accepted as a white person, other than a person who, although in appearance obviously a white person, is generally accepted as a coloured person, or who is in terms of subparagraph (ii) or (iii) of paragraph (b) or (c) or of either of the said subparagraphs read with paragraph *(d)* of this sub-section and sub-section (2) *(a)*, a member of any other group;

(b) a Black group, in which shall be included–

(i) any person who in fact is or who is generally accepted as a member of an aboriginal race or tribe of Africa, other than a person who in terms of paragraph *(c)* (ii) is a member of the coloured group; and

(ii) any woman to whichever race, tribe or class she may belong, between whom and a person who in terms of subparagraph (i) is a member of the Black Group, there exists a marriage, or who cohabits with such a person; and

(iii) any white man between whom and a woman who in terms of subparagraph (i) is a member of the Black group, there exists a marriage, or who cohabits with such a woman:

(c) a coloured group, in which shall be included–

(i) any person who is not a member of the white group or of the Black group; and

(ii) any woman, to whichever race, tribe or class she may belong, between whom and a person who in terms of subparagraph (i) is a member of the coloured group, there exists a marriage, or who cohabits with such a person; and

(iii) any white man between whom and a woman who in terms of subparagraph (i) is a member of the coloured group, there exists a marriage, or who cohabits with such a woman.

Both Acts moved towards narrower definitions of race by the including white men explicitly in the operation of the space-race nexus. The Principal Act only accounted for the racial changing of white women marrying down. My interpretation of this is that since white women who betrayed their race were cast out, it was white men who were responsible for muddying the white bloodline and increasing the coloured population. Because they maintained their racial classification, they could sow their bountiful seeds of miscegenation unabatedly. John Coetzee explores the workings of the mind of one of the most ardent proponents of apartheid considered by some as part of the founding apartheid, Geoffrey Cronjé.[849] As Coetzee writes, Cronjé believed that "mixed areas become the dying-places (sterfplekke) of the white race in South Africa and the most fruitful soil [for] bastardisation"[850] and that the volk would be "swallowed down (verswelg) in die bastardisation-process".[851] Coetzee contends that one of the concerns his research notes under apartheid was that living in close proximity to white

[849] Cotzee 1991: 1.
[850] Coetzee 1991: 11.
[851] Coetzee 1991: 11.

people would not only create a vicious lust in black and coloured people for white culture and lifestyle, but also a vicious lust in white people, men especially. Coetzee writes that Cronjé's aversion to race mixing became his libidinal obsession and he believed and preached that black men and women had to be removed from the gaze of the white man lest they become the object of his ravenous desires and exacerbate "rasse-mengelmoes" which means "race-mishmash" and would undoubtedly result in the creation of a "mengelmoesras" which means "mishmash-race".[852] What Coetzee names "the algebra of mixing" explains Cronjé's obsessive "blood fantasy" writing "C is the sign of the undifferentiated but also of indifference: indifference to the law, indifference to everything but the urgings of a devouring appetite. Whatever C devours comes out at the other end undifferentiated, that is, as more C. In the algebra of mixing, C+W=C, C+B=C, C+C=C, even B+W=C".[853] White men had to be interpolated into the coloured, black and Asiatic racial groups because their desires had racial ramifications necessitating spatial separation.

Both Act 77 of 1957 and Act 36 of 1966 make provisions for the presumptions of race. Sec. 41 of Act 77 of 1957 refers to the presumptions of race for the purposes of the Act:

> 41. (1) A person who in appearance obviously is a white person shall for the purposes of this Act be presumed to be a member of the white group until the contrary is proved.
>
> (2) A person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a member of the native group until the contrary is proved.
>
> (3) A person who is not in appearance obviously a white person and who is not in fact or is not generally accepted as a member of an aboriginal race or tribe of Africa shall for the purposes of this Act be presumed to be a member of the coloured group until the contrary is proved.
>
> (4) Whenever in any proceedings under this Act or any law repealed by this Act, whether civil or criminal, it is alleged by or on behalf of the Minister or any officer in charge of a deeds registry or in any indictment or charge–
>
> (a) that any person was at any time an Asiatic in terms of any law repealed by the Group Areas Act, 1950 (Act No. 41 of 1950); or

[852] Coetzee 1991: 15.
[853] Coetzee 1991: 16.

(b) that a company was at any time a company wherein a controlling interest was held by or on behalf or in the interest of an Asiatic in terms of any law repealed by the Group Areas Act, 1950.

the allegation shall be presumed to be correct unless the contrary is proved.

Sec. 45 of Act 36 of 1966 refers to the presumption of race for the purposes of the Act:

(1) A person who in appearance obviously is a white person, shall for the purposes of this Act be presumed to be a member of the white group until the contrary is proved.

(2) A person who in fact is or is generally accepted as a member of an aboriginal race or tribe of Africa, shall for the purposes of this Act be presumed to be a member of the Black group until the contrary is proved.

(3) A person who is not in appearance obviously a white person and who is not in fact or is not generally accepted as a member of an aboriginal race or tribe of Africa, shall for the purposes of this Act be presumed to be a member of the coloured group until the contrary is proved.

(4) Whenever in any proceedings arising out of the operation of any provision of this Act or any law repealed by this Act, or the Group Areas Act, 1950 (Act 41 of 1950), or any law repealed by that Act, whether civil or criminal, it is alleged by or on behalf of the Minister or any officer in charge of a deeds register or in any indictment or charge-

(a) that any person was at any time an Asiatic in terms of any law repealed by the Group Areas Act, 1950; or

(b) that a company was at any time a company wherein a controlling interest was held by or on behalf or in the interests of an Asiatic in terms of any law repealed by the Group Areas Act, 1950; or

(e) that any person or company has at any time held immovable property on behalf or in the interests of an Asiatic or an Asiatic company or any other person in contravention of this Act, the Group Areas Act, 1957 (Act 77 of 1957), the Group Areas Act, 1950, or any law repealed by the last-mentioned Act,

the allegation shall be presumed to be correct unless the contrary is proved.

Both Act 77 of 1957 and Act 36 of 1966 inserted paragraphs to sub-sec. (4) of sec. 35 of the Principal Act in which it is mentioned for the first time the racial group Asiatics. No definition of Asiatic is proffered nor is there mention of obvious appearance or general acceptance of the group. Act 36 of 1966 has inserted an additional paragraph (e) to sub-sec. (4) of sec. 45 referring to the immovable property of an Asiatic. The Principal Act makes no mention of the immovable property of Asiatics. Alexander

Weheliye considers the classifications "*Negro* and *Muslim*" within the United States writing that "their conscription to a set of political relations that necessitates inventing new caesuras in order for Man to remain interchangeable with the human"[854] further that:

> Negro came into being when the slave no longer accomplished the required labour of distinguishing black from white subjects so as to ensure the continued superiority of Man with its attendant class privilege, at the same time as *Muslim* became necessary as a racialised category in Europe when it threatened to dislodge the until then unchallenged advantages of whiteness, Europeanness, and Protestant secularism of the autochthonous population.[855]

He refers to Ruth Wilson Gilmore who writes that "racism is the ordinary means through which dehumanisation achieves ideological normality, while, at the same time, the practice of dehumanising people produces racial categories…. This culture, in turn, is based on the modern secular state's dependence on classification, combined with militarism as a means through which classification maintains coherence".[856] The apartheid government invented caesuras within South Africa by permitting the central state to define any ethnical, linguistic, cultural or other group of persons who are members either of the native group or of the coloured group. Western considers the apartheid government's reference to race was to the three racial groups white, black and coloured and that ethnic differentiation referred to white, black, coloured and Asiatic.[857] He addresses sec. 12 of Act 36 of 1966 which played a role in the recognition of Cape Malays as a separate group from the general coloured group that required the establishment of a separate group area.[858] He writes "it is in fact perfectly logical and generally appropriate that, when a particular minority group is relatively very small, the mainstream society, with its power to define the group's members externally, tends to subsume them into a more general minority group, which includes persons with allegedly related characteristics; but when the group is larger and more visible, its members may be allowed a more specific identity".[859] The caesuras of the Cape Malays from the coloured group was necessary to splinter the growing coloured group and the establishment of Asiatics to ensure that Indians and the Chinese could

[854] Weheliye 2014: 71.
[855] Weheliye 2014: 71.
[856] Weheliye 2014: 72.
[857] Western 1981: 77-78.
[858] Western 1981: 78.
[859] Western 1981: 79.

not operate successful businesses in or around white areas. To protect the domination of the white minority, white appearing coloured people were subsumed into their group to prevent a competing white race and giving Cape Malays a more specific identity was to foster some form of commitment to the apartheid state because they were generally treated better than coloured people. The presumption of race operated as a caesura to ensure the superiority of 'Man' by placing the onerous task of proving their race on the individual in the face of state. The process of (re)classification was time consuming for the individual and by the time their classification was appealed or proved to the contrary the state had already established a new group area. In this sense space was setting the pace and race was struggling to keep up.

Both Act 77 of 1957 and Act 36 of 1966 make provisions for future group areas which did not appear in the Principal Act

Sec. 21 of Act 77 of 1957 refers to Future group areas:

> 21. (1) The Governor-General may, whenever it is deemed expedient, by proclamation in the *Gazette* define an area and declare—
>
> (a) that such area shall be an area for future occupation by members of the group specified in the proclamation; or
>
> (b) that such area shall be an area for future ownership by members of the group so specified.
>
> (2) Proclamations under paragraphs *(a)* and *(b)* of sub-section (1) may be issued also in respect of the same area. Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998

Sec. 24 of Act 36 of 1966 makes provision for Future group areas:

> 24 (1) The State President may, whenever it is deemed expedient, by proclamation in the Gazette define an area and declare—
>
> (a) that such area shall be an area for future occupation by members of the group specified in the proclamation; or
>
> (b) that such area shall be an area for future ownership by members of the group so specified.
>
> (2) Proclamations under paragraphs (a) and (b) of sub-section (1) may be issued also in respect of the same area.

The power to declare future group areas transferred from Governor-General in Act 77 of 1957 to State President in Act 36 of 1966 which was a move to centralisation of power. Future group areas froze space. Future group areas marked controlled areas and controlled areas belonged to white people. Effectively that froze a white future for eventual realisation. Temporal operation of the space-race nexus. The future planned for was never for black people. Future areas were planned to allow expansion and with spatial expansion in mind it was held for the expansion of the white population.

As the legislation has shown through it development, the power to control the lives of urban black people was vested in the central state which increased surveillance, control and discipline as apartheid developed. Without having to reach far back into our history, it is clear that apartheid policies and practices rose like a phoenix from the ashes of previous less explicit or failed attempts to racially segregate cities. Carving into the ground shades of inclusion and exclusion. Defining and redefining who belonged to which race and under what circumstances. Upheaving proximity to whiteness in abstraction and concreteness. Each new act, committee, commission and report grounding race in law; law cementing race and building fences around it.

4.4 Conclusion: the race of space and the space of race

What I have explored is the creation of distinct racial groups for the application of complete racial segregation to illustrate that within the South African context race is a spatial practice and space is a racial practice and ultimately that these practices operate within the greater machinations of assigning which lives have social, economic and political value, which populations are more or less precarious and which lives are actually recognised as fully human and accorded fundamental human rights.

Relying on the theoretical framework set forward in Chapter Three there is a link between the Group Areas Act and the state of exception. Group areas represent the suspension of fundamental human rights in specific places through the inclusion of racialised space into the juridical order, but are not inserted into the ontology of the camp.

Frames of recognition increased precariousness and were weaponised by the Urban Areas Act and the Group Areas Act. These Acts set out which lives can be recognised

as lives and that, as intended, was/is the lives of those racialised as white. The Group Areas Act represents proper positioning in the *polis* and full humanity. As townships are located on the periphery, they are not situated in the *polis* proper. Restriction on ownership and occupation aligns with Butler's precarity because in specific areas increased the precariousness of specific people in specific places and that was predominantly increasing the precariousness of the black population in townships.

High police presence in townships, surveillance, influx control and the pass law system can be conceived of as relating to the camp in the sense that Agamben considered the camp as the "most absolute biopolitical space"[860] Reading these sets of tactics in line with discipline, punishment and governmentality brings me back to Butler's reading of Foucault in which they explain that the maintenance and control of persons and the production and regulation of persons and populations restricts the life of the population.

The provisions in the Group Areas Act refer to *bona fide* occupants and that can be linked to Agamben's bare life because he who is not *bona fide* can be considered *homo sacer* in that he is exposed to violence in the form of inhumane legislative and judicial power. They can literally be expelled from the city and their expulsion has been included in the juridical order.

Whiteness is the ability to move through space; but not only to move through space, to define space and shift and expand those spaces as needed or as wanted. Most importantly whiteness is the ability to leave space if and when you please. Race was 'created' in the legislative sense to materially create space. The incongruities of racial classification pre-1948 indicates that order was difficult to achieve as the task of defining race fell on different branches of the state, but mostly on administrative officials that were tasked with implementing them. Race was created for the creation of spatial and urban planning applicable across the nation/territory of South Africa.

The Urban Areas Act from its conception to its passing to the amendments that eventually became the foundation of the Group Areas Act, the sheer magnitude of the spatial ramifications of this Act and how it shaped so much of what we understand to be the geographic arrangements of South Africa today is quite remarkable.

[860] Agamben 1998: 171

The Stallard doctrine and its reiterations made black people sojourners in the sense that we had no definite space which ties to belonging and feelings of citizenship can't survive in displaces sense of, the Governor-General or the Minister could expand the boundaries of white urban areas with a month's notice. So what does it mean to be a stuck sojourner? Blackness in this legislation is an anchor but also shifting. In the same breath manhood/masculinity is the ability to move through space, to define and shift space. To move through the country and life untethered. The disruption of family life and the stuckness of blackness and the limited movement of womanhood reproduces race spatially. Your purpose under Stallard is to enter to serve. The Stallard doctrine says a lot about the value of black life. Legislation is the western understanding of space. Stuck sojourners don't belong to themselves.

Women do not have the luxury men do of leaving. Women as the bearers or birthers of the next generation and the generation after that *ad infinitum* tie generations to the spaces they inhabit Women's bodies were used as markers of space and for the production of specific populations in specific places.

With the retroactivity of all of the Group Areas Acts and the later provisions for the proclamation of future group areas read together with the powers of the State President, the Governor-General, the Minister and the Boards we can understand the temporal operation and creation of the space-race nexus: race can move backwards and forwards in time to create space and simultaneously space can move backwards and forwards in time to create race.

Taking into account the retroactive application of segregation, there is something important to be asked about the provision for the proclamation of future group areas: what future was imagined and for whom? And now, if we reflect, are we standing in that apartheid imagined future and was it meant for us? Knowing that apartheid geography has undoubtedly endured, so has that future. Standing squarely in this apartheid-imagined spatial arrangement, how do we construct a present and a future of our own? By understanding that our future relies some part on imagination, existing in the planes of consciousness, psyche and spirit, any and all forms spatial redress and justice must extend beyond the material realm. A realm that can only be accessed through intentional and sustained engagement with blackness, gender, queerness,

ableness and class. In the following chapter I undertake this engagement through black geography.

CHAPTER FIVE

THE OTHER/UNDER/OVER SIDE OF MATERIALITY: SOUL, LIFE AND SPACE

> To be injured by speech is to suffer a loss of context, that is, not to know where you are… To be addressed injuriously is not only to be open to an unknown future, but not to know the time and place of injury, and to suffer the disorientation of one's situation as the effect of such speech. Exposed at the moment of such a shattering is precisely the volatility of one's "place" within the community of speakers; one can be "put in one's place" by such speech, but such a place may be no place.
>
> —Judith Butler[861]

> Tar Baby is also a name [...] that white people call black children, black girls, as I recall. At one time, a tar pit was a holy place, at least an important place, because tar was used to build things. It held together things like Moses' little boat and the pyramids. For me, the tar baby came to mean the black woman who can hold things together.
>
> —interview with Toni Morrison by Thomas LeClair[862]

5.1 Introduction

As a black woman living in (post)apartheid South Africa my analysis of space and how we navigate it and belonging is informed by my simultaneously inside-outside relationality.

A theme of particular importance in my thesis is the concept of spatial justice and the way in which spatial power and domination produce social injustices that have both structural and temporal effects. Systems of spatial or territorial control associated with the former racist apartheid regime of are a symbolic reference to all forms of cultural domination and oppression arising from spatial strategies of segregation and boundary making. As such this research project is intended to contribute to the expanding field of spatial justice within the context of (post)apartheid South Africa. This chapter is

[861] Butler 1997: 3-4.
[862] LeClair "The Language Must Not Sweat: A Conversation with Toni Morrison", https://newrepublic.com/article/95923/the-language-must-not-sweat (accessed 1 October 2023).

informed by the previous chapter. In Chapter I addressed the endurance of apartheid spatial planning, in Chapter Three I set out the theoretical framework and in Chapter Four I examined apartheid spatial legislation.

In section two I pose the question whether spatial justice extends beyond geographic arrangements into restoring dignity and humanity, can the 'right to the city' critically engage the fact that racially devalued groups are removed from normative space and thus adequately respond to the (post)apartheid South African landscape?

In section three I address separate development in exploration of the apartheid governments' understanding of black spaces within white South Africa.

In section four I situate space within black geographic thought. In doing so I put forward a different way of conceptualising spatial justice in South Africa to explore the role of race, racism, gender, sexuality, disability and memory in the production and maintenance of geographic arrangements to show that spatial justice is inextricably linked to dignity and humanity and extends beyond the material realm.

In section five I reflect on the previous chapter and make my closing remarks.

5.2 Cracks in the concrete: the cartographic constraints of the Global North

French Marxist philosopher Henri Lefebvre is important in my thesis for his role as an innovator of the spatial turn in social theory and his political radicalism. As he writes in his book *The Production of Space* his view that space is a product and a precondition of processes of social production, which allows me to appreciate space as a tool of state control and planning and the ground of political struggle. He explains that "a *product* can be reproduced exactly, and is in fact the result of repetitive acts and gestures"[863] he then asks the question "what does it mean to speak of 'producing space'?"[864] He expands:

[863] Lefebvre 1991: 70.
[864] Lefebvre 1991: 15.

> If it is true that (social) space is a (social) product, how is this fact concealed? The answer is: by a double illusion, each side of which refers back to the-other, reinforces-the other, and hides behind the other.[865]

Further writing that:

> It is reasonable to assume that spatial practice, representations of space and representational spaces contribute in different ways to the production of space according to their qualities and attributes, according to the society or mode of production in question, and according to the historical period.[866]

His concept of the right to the city is the non-negotiable reappropriation of space and the collective right over the processes of urbanisation, this is reflected in the production of space:

> The production of space brings other things in its train, among them the withering-away of the private ownership of space, and, simultaneously, of the political state that dominates spaces. This implies a shift from domination to appropriation, and the primacy of use over exchange (the withering-away of exchange value).[867]

In *The Right to the City* Lefebvre writes that "the *right to the city* is like a cry and a demand… The *right to the city* cannot be conceived of as a simple visiting right or as a return to traditional cities. It can only be formulated as a transformed and renewed *right to urban life".*[868] According to Edward Soja, Henri Lefebvre re-establishes the urban foundations of seeking justice, democracy, and citizen's rights through his concept of the right to the city.[869] The city can be understood as being a space and place of social and economic advantage that results in uneven development of that which falls outside the city. Through planning and public policy, the inequitable and unjust distributions of social resources affect not only those living in the city proper as its influences reverberate everywhere through the operations of the state and the market.[870] Lefebvre views space as a dominant shaping force in society and politics

[865] Lefebvre 1991: 27.
[866] Lefebvre 1991: 46.
[867] Lefebvre 1991: 410.
[868] Lefebvre 1996: 64.
[869] Soja 2010: 83.
[870] Soja 2010: 96.

that can be changed through human action by the very nature of their being produced by humans.[871]

Urban sociologist Robert Park once noted that the city is:

> Man's most consistent and on the whole, his most successful attempt to remake the world he lives in more after his heart's desire. But, if the city is the world which man created, it is the world in which he is henceforth condemned to live. Thus, indirectly, and without any clear sense of the nature of his task, in making the city man has remade himself.[872]

According to this, the right to the city is a collective right over the processes of urbanisation. In this sense, the right to the city is a claim over the way our cities are (re)made in a radical way.[873] Mark Purcell provides that Lefebvre never imagined legal rights as God-given or written down by constitutional framers; rather he envisioned them as the manifestation of political action, as the collective claims of mobilised citizens to reclaim political power from the state.[874] For Lefebvre, he says, the right to the city involves a politics that places urban space at the very heart of its vision. In *The Production of Space* he writes:

> Any revolutionary project today… whether utopian or realistic, must, if it is to avoid hopeless banality, make the reappropriation of the body, in association with the reappropriation of space, into a non-negotiable part of its agenda.[875]

Key spatial theorists like David Harvey, Edward Soja, Andreas Philippopoulos-Mihalopoulos and Doreen Massey, who are influenced by Lefebvre, have written about the manner in which geographies affect social processes like the formation of class, social stratification and racist or masculinist practices in order to illustrate that the spatial is inherently and inextricably social and that the social is inherently and inextricably spatial. But they do not explicitly address the black experience of space, justice and the city.[876] Lefebvre himself writes that:

---

[871] Soja 2010: 104.
[872] Harvey 2012:3-4
[873] Harvey 2012: 5.
[874] Purcell 2014: 6
[875] Purcell 2014: 148.
[876] In *Social Justice and the City* Marxist economic geographer David Harvey puts forth "an adequate and appropriate way to bring together a viewpoint established in social and moral philosophy on the one hand and material questions that the condition of the urban centres in the western world point to on the other". In *Seeking Spatial Justice* political geographer and urban theorist Edward Soja explores "the geography, or "spatiality," of justice is an integral and formative component of justice itself, a vital part of how justice and

> The individual, at the centre of social forces due to the pressure of the masses, asserts himself and does not die. *Rights* appear and become customs or prescriptions, usually followed by enactments. And we know how, through gigantic destructions, World Wars, and the terror of nuclear threats, that these concrete rights come to complete the abstract rights of man and the citizen inscribed on the front of buildings by democracy during its revolutionary beginnings: the rights of ages and sexes (the woman, the child and the elderly), rights of conditions (the proletarian, the peasant), rights to training and education, to work, to culture, to rest, to health, to housing. The pressure of the working class has been and remains necessary (but not sufficient) for the recognition of these rights, for their entry into customs, for their inscription into codes which are still incomplete.[877]

David Harvey expanded the concept of territorial justice in his work *Social Justice and the City* writing "spatial or territorial allocation based on principles of social justice".[878] The original concept sought for the allocation of public services in ways that actually met social needs, as he writes "the principle of social justice therefore applies to the division of benefits and the allocation of burdens arising out of the process of undertaking joint labour"[879] and "a measure of territorial justice can be devised by correlating the actual allocation of resources with the hypothetical allocations. Such a procedure allows the identification of those territories which depart most from the norms suggested by standards of social justice"[880] Harvey described territorial justice as the search for a just distribution of social resources justly arrived at. He was interested in linking the resulting unjust geographies with the discriminatory practices and unjust processes that produced them.[881] Harvey also provides that distinctive human practices create and make use of distinctive spaces and space thus has social effects.[882] Soja says that in his later work, Harvey's Marxist reformulation of geography moved away from territorial justice to an "urban process under capitalism".[883] His focus

injustice are socially constructed and evolve over time". In *Spatial justice: Body, Lawscape, Atmosphere* critical legal geographer Andreas Philippopoulos-Mihalopoulos addresses the "recent tendency to despatialise law, matter, bodies and even space itself… arguing that there can be neither law nor justice that are not articulated through and in space". As a feminist geographer, Doreen Massey addresses "the intricacy and profundity of the connection of space and place with gender and the construction of gender relations" in *Space, Place, and Gender*.

[877] Lefebvre 1996: 63.
[878] Harvey 2009: 97.
[879] Harvey 2009: 97.
[880] Harvey 2009: 101.
[881] Soja 2010: 81.
[882] Hubbard & Kitchin (eds.) 2011: 237.
[883] Soja 2010: 88.

shifted to how capitalist social forces shape space thus making these geographies inherently unjust and unequal in service of those promoting these social processes.[884]

Soja then describes Harvey loosening his rigid Marxism to tentatively turn to Lefebvre once more when he said:

> A different right to the city must be asserted. Those that now have the rights will not surrender them willingly: "Between equal rights, force decides"… Derivative rights (like the right to be treated with dignity) should become fundamental and fundamental rights (of private property and the profit rate) should become derivative. But new rights can also be defined: like the right to the city which… is not merely a right of access to what the property speculators and state planners define, but an active right to make the city different, to shape it more in accord with our heart's desire, and to re-make ourselves thereby in a different image. The creation of a new urban commons, a public sphere of active democratic participation, requires that we roll back that huge wave of privatisation that has been the mantra of a destructive neoliberalism. We must imagine a more inclusive, even if continuously fractious, city based not only upon a different ordering of rights but upon different political-economic practices. If our urban world has been imagined and made then it can be re-imagined and re-made. The inalienable right to the city is worth fighting for.[885]

Doreen Massey conceptualises space in terms of a "four-dimensional 'space-time' and… as taking the form not of some abstract dimension but of the simultaneous coexistence of social interrelations at all geographical scales"[886] and place as "formed out of the particular set of social relations which interact at a particular location" and in turn produce new social effects.[887] She then goes on to state that ethnicity and gender are deeply implicated in the ways in which we inhabit and experience space and place.[888]

Soja provides that spatial justice is a way of looking at justice from a critical spatial perspective.[889] He explains that a critical perspective on justice extends our knowledge into effective actions to achieve justice and democracy.[890] Critical spatial thinking must acknowledge that we are simultaneously spatial, social and temporal beings; and that

[884] Soja 2010: 87-88.
[885] Soja 2010: 94.
[886] Massey 1994: 168.
[887] Massey 1994: 168.
[888] Massey 1994: 163-164.
[889] Soja 2010: 2.
[890] Soja 2010: 2.

by being socially produced, space can be socially changed.[891] Spatial justice appeals to our basic ideas of democracy and human rights, such as the fair and equitable distribution in space of socially valued resources and the opportunities to use them, through understanding space as an active force that shapes human life.[892] Only when we ignore the spatiality of human life can we imagine a situation in which individuals and collectives are perfectly equal no matter how equality is defined.[893] Location in space is itself a source of discrimination, not on considerations of characteristics of identity, but based on the ability to access location-related privileges and the ability to meet fundamental human needs.[894] Spatial justice involves uncovering the biases imposed on certain populations because of their geographical location and the processes that produce these outcomes.[895] These biases could be race, gender, heterosexual bias and class. The political organisation of space such as colonial geographies of social control, segregation and territorial apartheid are powerful sources of spatial injustice.[896] Soja sees justice as a more politically grounded force fostering solidarity across the differences of race, class, gender and heterosexual bias.[897]

In *Spatial Justice: Body, Lawscape, Atmosphere* Andreas Philippopoulos-Mihalopoulos approaches spatial justice from a critical legal perspective due to their co-constitutivity. He defines spatial justice as "the conflict between bodies that are moved by a desire to occupy the same space at the same time".[898] He contends that it is simply not possible to conceive of the law without spatial considerations and vice versa. He terms this confluence of law and space the *lawscape*, that it reflects "the inherent yet tortuous way in which law and space come together"[899] additionally that it "is the way the ontological tautology between law and space unfolds as difference"[900] which "takes place as a play of visibilisation and invisibilisation… In/visibilisation is the

[891] Soja 2010: 2.
[892] Soja 2010: 1-2.
[893] Soja 2010: 72.
[894] Soja 2010: 50.
[895] Soja 2010: 47.
[896] Soja 2010: 40-41.
[897] Soja 2009: 2-4.
[898] Philippopoulos-Mihalopoulos 2015: 3.
[899] Philippopoulos-Mihalopoulos 2015: 2.
[900] Philippopoulos-Mihalopoulos 2015: 4.

ontological condition of the lawscape, which goes beyond an epistemological/disciplinary connection between law and geography".[901]

While paying all due respect to them, the prominent thinkers influenced by Lefebvre mentioned above have not sufficiently addressed the co-constitutive and dialectical nature of racial and spatial processes for black people in particular although having engaged "race", "ethnicity" and "people of colour". This gap can be remedied by the growing scholarship of spatial analysis of racial processes, or what I would like to call the spatial turn in critical race theory. The scholarship of black geographies directly engages a way of seeing and understanding place by detailing the socio-spatial landscapes that critique the on-going processes of racialisation and allows me to ask questions that challenge the reification of race through space.[902] Spatial power and domination produce the outside world and spatialise difference resulting in the ways non-white racial bodies can or cannot occupy space.[903] From this it is clear that social injustices are expressed spatially in uneven geographies and the production of space.[904]

5.3 Overcoming material boundaries: situating the soul in space

Under Nationalist rule the country was split between the racial groups, between whites and non-whites, but I write with and for black people so the schism I address is between white people and black people.

In November 1950 the government commissioned an inquiry into the socio-economic development of the Homelands in order to create a plan for separate development of black and white people that would be contained in a report along with the recommendations of the commission. Dr FR Tomlinson was the Chair of the commission which was named the Commission for the Socio-Economic Development of the Bantu Areas and was later referred to as the Tomlinson Report. The report was released in October 1954 with an abridged version released in March 1956. According to John Henri Roosegaarde Bisschop the report "consisted of 51 chapters of more

[901] Philippopoulos-Mihalopoulos 2015: 4.
[902] This is explored below.
[903] Hubbard & R Kitchin (eds.) 2011: 245.
[904] Hubbard & R Kitchin (eds.) 2011: 247.

than a million words; 598 tables and an atlas with 66 maps [and] the printed report has 18 volumes".[905] As state by the Governor-General the aim was:

> To conduct an exhaustive inquiry into and to report on a comprehensive scheme for the rehabilitation of the Native Areas with a view to developing them in a social structure in keeping with the social structure of the Native and based on effective socio-economic planning.[906]

The most important recommendations in the report was that the white man should develop completely separately from the 'Native'. As Tomlinson recommended, development and social structure should be "in keeping with the culture of the Native"[907] so that they might "develop on his own lines"[908]. While major recommendations of the report were later rejected, its delineation of a long-term policy for separate development was lauded. Legislation in line with separate development along colour lines was enacted.

The political and social segregation of black people in the name of separate development necessitated white Nationalist ethnographers separating the black population into ten "groups of nations"[909] assigned their own territories called homelands in the 1970s.[910] Together these black national states, as Bertil Egerö has referenced them, covered an area of 13.8 per cent of the land in the country.[911] Jeffrey Butler, Robert Rotberg and John Adams explain that rights of citizenship were accorded to black people in homelands whether they were born in the homelands or regular residents. Each of the ten homelands was intended to move towards independence and were assigned increased self-governance.[912] In line with this the Bantu Homeland Citizenship Act 26 of 1970 was enacted, the long title of which reads as follows:

> To provide for citizenship of certain Bantu homelands and for the issue of certificates of citizenship to Bantu persons; in connection therewith to amend certain laws; and to provide for incidental matters.

[905] Bisschop 1987: 2-3.
[906] Houghton 1957: 14.
[907] Houghton 1957: 19-20.
[908] Houghton 1957: 20.
[909] Butler *et al* 1978: 1.
[910] Butler *et al* 1978: 1.
[911] Egerö 1991: 8.
[912] Butler *et al* 1978: 1.

The Nationalists regurgitated rhetoric of parallel but separate development to preserve the identity and culture of the racial groups. As Anthony Lemon writes on the Nationalist conception:

> The homelands are viewed as the homes of the African peoples, the place where they belong and hold citizenship. Those who live and work outside them in white South Africa are regarded as temporary sojourners regardless of the length of the time they may have spent there either permanently engaged in its economic activities or as migrant workers returning periodically to the homelands.[913]

Further legislation was enacted to return black people 'home' including the Black Communities Development Act 4 of 1984 which consolidated and repealed many laws pertaining to urban black communities. The long title of the Act reads as follows:

> To provide for the purposeful development of Black communities outside the national states; to amend and consolidate certain laws which apply with reference to such communities; and to provide for matters connected therewith.
>
> Whereas it is the policy of the Government that the' Black . communities outside the national states, should be developed in a positive and purposeful manner and that such communities should be equipped with institutions having all such powers as may be required for the achievement of this goal;
>
> And Whereas provision has already been made for the development of urban Black communities towards full autonomy at local government level;
>
> And Whereas it is considered expedient to revise and to amend and consolidate existing legislation affecting urbanised Black communities and the said boards.

A black identity had to be fragmented through institutionalised ethnicity, as quoted by Butler *et al,* "the Bantu peoples…do not constitute a homogeneous people, but form separate national units on the basis of language and culture".[914] This fragmentation was used simultaneously to reason that the white population was in fact not a minority as their nation was larger than all of the individual black nations and they were thus the ruling majority.[915] In House of Assembly Debates M. C. Botha put forward that placed upon the government, above constitutional, were "legal, ethical, and moral

[913] Lemon 1976: 89.
[914] Butler *et al* 1978: 25.
[915] Butler *et al* 1978: 29.

obligations"[916] to ensure that the black people had ties to their respective black territories "however remote in time or place his ties to that particular territory might be".[917]

John Western explores the ideal apartheid city of the white nation as envisioned by the Nationalist where he refers to a speech made by Eben Dönges in Parliament on 31 May 1950 in which Dönges said:

> Hon. members will realise what it must mean to those groups, always to have to adopt an inferior attitude, an attitude of inferiority towards the Europeans, to stand back for the Europeans, where they live alongside the Europeans, but if we place them in separate residential areas, they will be able to give expression to their full cultural and soul life, and that is why we say that separate residential areas must be established.[918]

What Dönges said should be read with Butler's reading of Agamben in mind that the deprivation of citizenship rights relegates a subject to a suspended zone, of suspended life and suspended death, "neither living in the sense that a political animal lives, in community and bound by law, nor dead and, therefore, outside the constituting condition of the rule of law".[919] Butler links the suspended zone to bare life. Agamben warned that we all reducible to bare life, positioned outside of conception of a normative human and stripped of legal rights just as intended by the Tomlinson Commission.

Whether in Parliamentary debates, public speeches and the media, the Nationalists presented apartheid as "separate development",[920] the salve to heal all of the country's ails. On some psychic level, as time passed, members of the government accepted their delusion as truth that separate development was a humanitarian effort. As they expelled black people out of 'their'[921] space they took on the view that they were no longer maniacally stripping us of citizenship and rights and most importantly the long established relationships we had with and in space, but that they were sending us 'home', home to a place that we often had not been to before. What stays with me from all of Dönges' egregious utterances is this one, the one in which the father of the

[916] Butler *et al* 1978: 35.
[917] Butler *et al* 1978: 36.
[918] Western 1981: 86.
[919] Butler 2004: 67.
[920] Western 1981: 86.
[921] Western 1981: 87.

Group Areas Act attached life to space—a soul life. This powerful statement was an admission that space extends beyond geography, beyond the material, that inherent in space is that which cannot be pointed to on a map, that which exists in the other/under/over side of materiality.

5.4 Black Spaces: the comfort of returning to a space unknown

As a black queer woman, it would be remiss of me to speak of space in any context, especially within South Africa, without situating my inside-outside relationality within the power matrix of knowledge production. The maps were not drawn by people like me. The conversations were not led by people like me. The books were not written by people like me. That is not our reality anymore, there has been a shift, a turn—the spatial turn in critical race theory and racial turn in spatial theory and the queer feminist mortar that holds them together in a beautiful mosaic that is explored in this section.

5.4.1 Black Skin, white maps: our skin is black like the ink used to draw the lines on a map

Verónica Vélez defines critical race spatial analysis as the study of the role of race, racism and memory in geographic as well as social spaces and working towards challenging racism and all forms of oppression within these spaces due to its roots in Critical Race Theory.[922] It is the spatial exploration of how structural factors shape racial dynamics and the power associated with those dynamics over time. It is concerned with how space is divided, constricted and constructed along racial lines.[923] And as such, it is the transdisciplinary theory of racial formations as a product of historically specific geographies and how race-based ideologies produce nuanced, power-laden aspects of space over time and normalize "white" landscapes.[924] One of the main questions critical race spatial analysis seeks to answer is: "how do race and racism shape space, give it meaning, and condition the experiences of Communities of Colour?"[925] Racialised boundaries are decisive of belonging to the modern nation state and as such have an impact on, among other things, property ownership, relationship to the State and civic participation. To be racialised is to have one's

[922] Vélez 2017: 1.
[923] Vélez 2017: 1.
[924] Vélez 2017: 1-3.
[925] Vélez 2017: 1.

physical, economic, social, and political mobility curtailed and policed.[926] Patricia Price explains that Critical Race Theory and critical geographies of race engage similar issues that are intellectually and politically overlapping from divergent and important positions.[927] These insights can mutually inform and enrich one another concerning scale and place and concerning the specific function of the law in the making of race.[928] Verónica Vélez and Daniel Solórzano refer to W.E.B. Du Bois' poignant concept of the 'color-line' to formulate their understanding of "the way *space* comes to be defined and experienced as the conceived and constructed reality of a racist society"[929] leading their exploration of the role white supremacy plays in shaping urban and rural space as well as a sense of inclusion or exclusion.[930] It would be good to turn to Lefebvre writing that:

> The reproduction of the social relations of production within this space inevitably obeys two tendencies: the dissolution of old relations on the one hand and the generation of new relations on the other. Thus, despite—or rather because of—its negativity, abstract space carries within itself the seeds of a new kind of space. I shall call that new space 'differential space', because, inasmuch as abstract space tends towards homogeneity, towards the elimination of existing differences or peculiarities, a new space cannot be born (produced) unless it accentuates differences. It will also restore unity to what abstract space breaks up—to the functions, elements and moments of social practice. It will put an end to those localisations which shatter the integrity of the individual body, the social body, the corpus of human needs, and the corpus of knowledge. By contrast, it will distinguish what abstract space tends to identify—for example, social reproduction and genitality, gratification and biological fertility, social relationships and family relationships.[931]

Camilla Hawthorne considers the intellectual interventions the "white discipline" of geography requires and she puts forward black geographic scholarship as the necessary intervention.[932] She avers that no sustained analysis of space can take place without consideration of race and racism as central to the research:

> Although racism—and "scientific racism" in particular—is popularly understood to be rooted in (erroneous) understandings of biological difference, geography in the eighteenth and

[926] Vélez 2017: 2-3.
[927] Price 2010: 149.
[928] Price 2010: 166.
[929] Morrison *et al* 2017: 14.
[930] Morrison *et al* 2017: 14-15.
[931] Lefebvre 1991: 52.
[932] Hawthorne 2019: 2.

> nineteenth centuries also contributed to the production of racial essentialisms based on *place.* Since the Enlightenment, race has been understood in spatial terms, through "sedentarist metaphysics" that bound individuals and groups in place, classify them according to their geographical locations, and arrange them in a spatio-temporal hierarchy. The discipline of geography is thus implicated in the elaboration of the racial theories that animate colonialism, fascism, and violent nationalisms. In other words, the production of *space* is tied to the production of *difference.*[933]

Agamben writes that the law cannot operate without a *corpus* in that it requires a body to be the bearer of rights. Agamben, however, makes no consideration of the role of race on that *corpus*. This failure to acknowledge racialised assemblages is critiqued by Weheliye because the flesh of the body is always racialised, specifically as black. Vélez, Price, Solórzano and Hawthorne spatially express Weheliye's contention that social markers cannot be transcended. The "white discipline" of geography demands a return to the body to understand that racialised brutality is included in the operation and production of space.

In *Black Geographies and the Politics of Place* Katherine McKittrick and Clyde Woods have brilliantly illustrated the ways in which black geographies address the hitherto unchartered territories of human geographies through the racialisation of space. What they identify as three "trajectories" illustrate the manners in which blackness is inherently connected to the production of space:

1. The ways in which essentialism situates black subjects and their geopolitical concerns as being elsewhere (on the margin, the underside, outside the normal), a spatial practice that conveniently props up the mythical norm and erases or obscures the daily struggles of particular communities.
2. How the lives of these subjects demonstrate that "common-sense" workings of modernity and citizenship are worked out, and normalised, through geographies of exclusion the "literal mappings of power relations and rejections".
3. The situated knowledge of these communities and their contributions to both real and imagined human geographies are significant political acts and expressions.[934]

In *Demonic Grounds* McKittrick notes that human geography requires philosophical interventions "because existing cartographic rules unjustly organise human hierarchies *in place* and reify uneven geographies in familiar, seemingly natural

[933] Hawthorne 2019: 3.
[934] McKittrick & Woods (eds.) 2007: 4.

ways"[935] and these interventions are brought about by black women's geographies.[936] Explaining that by geographies she is "referring to geography as space, place, and location in their physical materiality and imaginative configurations".[937] What is central for her is that black women's geographies address how racial-sexual differentiation organise and produce space, how socio-geographical domination occurs and subjectivity in place. Her insights into conceptualising a/the world is concerned with the interpretive not just the see-able and knowable world, in the connection between the concrete and subjectivity:

> I want to suggest that space and place give black lives meaning in a world that has, for the most part, incorrectly deemed black populations and their attendant geographies as "ungeographic" and/or philosophically undeveloped. That black lives are necessarily geographic, but also struggle with discourses that erase and despatialise their sense of place, is where I begin to conceptualise geography… I want to suggest that we take the language *and* the physicality of geography seriously, that is, as an "*imbrication* of material and metaphorical space," so that black lives and black histories can be conceptualised and talked about in new ways.[938]

McKittrick makes use of the term "traditional geography" which refers to "formulations that assume we can view, assess, and ethically organise the world from a stable (white, patriarchal, Eurocentric, heterosexual, classed) vantage point".[939] I receive her interventions as most crucial to my thesis because taking black women's subjectivities as the point of departure for geographic inquiries brings to the fore how geography as a serious discipline is deepened and enriched by the autobiographical, poetics, struggles, context specific histories, the subaltern and the disruptive.

When I read these all together the mosaic takes clearer form, what geography needs is black humanism: the interventions necessary are a critical race framework, black intellectual thought, a black approach to the production of space, black histories, black philosophical inquiries and black women's interdisciplinary analyses of geography. As it has been said, black matters are spatial matters and spatial matters are black matters. And black women's geography *is* geography.[940]

[935] McKittrick 2006: x.
[936] McKittrick 2006: ix-x.
[937] McKittrick 2006: x.
[938] McKittrick 2006: xiii.
[939] McKittrick 2006: xiii.
[940] McKittrick 2006: xii.

5.4.2 Jointing disjointed concrete: towards fixing the cracks in the concrete

McKittrick suggests that an ethical analytics of race based on the interrelatedness of our collective history requires a focus on human life beyond suffering.[941] In considering a black sense of space, McKittrick refers to Massey who writes that a sense of place is:

> About what one might call the *power geometry* of it all; the power geometry of time-space compression...This point concerns not merely the issue of who moves and who doesn't…it is also about power in relation *to* the flows and movement. Different social groups have distinct relationships to this anyway differentiated movement: some people are more in charge of it than others; some initiate flows and movement, others don't; some are more on the receiving-end of it than others; some are effectively imprisoned by it.[942]

Relying on McKittrick, I want argue that settler colonialism and apartheid situated black people and black places outside modernity while labouring for modernity and forming part of modernity's narrative. Bearing in mind a black sense of place, group areas were at the centre of modernity in creating black and non-black geographies in apartheid South Africa that "provided the blueprint for future sites of racial entanglement"[943] in (post)apartheid South Africa.[944]

In conceptualising the spatial injustice of apartheid geography as not simply administrative and legislative measures that shifted and shaped the material realm, I return to Uma Mesthrie's exploration of the Group Areas Act in which she said:

> The law was cast in non-discriminatory terms but it was mainly blacks who were to bear the consequences. The legal language referred to 'disqualified persons' and 'affected property'. These referred to human beings about to be humiliatingly evicted from homes and neighbourhoods to which they had emotional and psychological ties. It is this human angle which needs to be explored.[945]

According to Soja, Lefebvre defined three types of space: *perceived* space, *conceived* space and *lived* space in *The Production of Space*.[946] Lefebvre referred to this as the "perceived-conceived-lived triad (in spatial terms: spatial practice, representations of

[941] McKittrick 2011: 948.
[942] McKittrick 2011: 949.
[943] McKittrick 2011: 949.
[944] McKittrick 2011: 949.
[945] Mesthrie 1993: 202.
[946] Soja 2010: 102.

space, representational spaces)"[947] further that "the lived, conceived and perceived realms should be interconnected, so that the 'subject', the individual member of a given social group, may move from one to another without confusion".[948] For Lefebvre perceived space is shaped by material spatial practices it is the relationship "between daily reality and urban reality… a spatial practice must have a certain cohesiveness, but this does not imply that it is coherent".[949] Conceived space is shaped by "representations of space, one which is bound to graphic elements… this *conceived* space is thought by those who make use of it to be *true*".[950] Lived space addresses the spatiality of human life "like all social practice, spatial practice is lived directly before it is conceptualized; but the speculative primacy of the conceived over the lived causes practice to disappear along with life, and so does very little justice to the 'unconscious' level of lived experience *per se*".[951] For Lefebvre, lived space acknowledged that, individually and collectively, we are social, spatial and temporal beings.[952]

Michel Foucault agreed that a richer way of conceptualising space would be limited by a purely material and imagined approach. Foucault continued looking at the spatiality of human life in *Of Other Spaces* in what he described as "heterotopology"[953] in which geographies ranging from "little tactics of the habitat to the global realm of geopolitical confrontation and conflict"[954] all contained within them simultaneous oppression and opportunities for emancipation. While looking at "heterotopias"[955] and not focusing on the city as such, Foucault, as Soja understands, reconceptualised spatial thinking by looking at the connection of space, knowledge and power to think about space as containing "politics and privileges, ideologies and cultural collisions, utopian ideals and dystopian oppression, justice and injustice, oppressive power and the possibility for emancipation".[956] Lefebvre and Foucault asserted that being is fundamentally spatial and that human spatiality is socially produced, thus that we make our own

[947] Lefebvre 1991: 40.
[948] Lefebvre 1991: 40.
[949] Lefebvre 1991: 38.
[950] Lefebvre 1991: 361.
[951] Lefebvre 1991: 34.
[952] Soja 2010: 102.
[953] Foucault 1984: 4.
[954] Soja 2010: 103.
[955] Soja 2010: 103.
[956] Soja 2010: 103.

geographies.[957] Their view that space is consequential and a shaping force in society and politics is very important. For Lefebvre, the city is a result of human creativity, both "*produit* and *oeuvre"*[958]—the materiality of human action and a work of art. For Foucault, every space, as a heterotopia, has consequential effects and is an imagined and realised space of "resolvable oppositions".[959] "*heterotopias,* or mutually repellent spaces" 1991: 366.

In *Plantation Futures,* McKittrick thinks about "the city as a location where new forms of human life become possible"[960] as blackness, the urban and the built environment are all inextricably linked.[961] Group areas and the plantations of the Americas differ vastly and I apply her theories to our context delicately and with much care. She refers to Sylvia Wynter's "Man's human others"[962], who are African people amongst others, as occupying "damned" spaces—those uninhabitable spaces in which those who were spatially and corporeally unimaginable were situated. In thinking about the aims of apartheid geography, her words "spaces of otherness—for purposes here, black geographies—were designated as incongruous with humanness"[963] ring chillingly true to me. She ties human worth, race and space as organising geographic arrangements. The racial hierarchies and the determination to keep whites away from others resulted in "different degrees of humanness and attaching different versions of the human to different places".[964] In following McKittrick's line of thought, those far removed white spaces became normative spaces and those devalued groups who were removed:

> Live in the unlivable, and to live in the unlivable condemns the geographies of marginalised to death over and over again. Life, then, is extracted from particular regions, transforming some places into inhuman rather than human geographies. Or, those who have lived outside what is considered normal and those who continue to inhabit the uninhabitable are so perversely outside the Western bourgeois conception of what it means to be human that their geographies are rendered - or come to be - inhuman, dead, and dying… the spaces of otherness have hardened through time, often with black, "wretched" bodies occupying or residing outside the lowest rung of humanness and thus inhabiting what most consider inhuman or uninhabitable

[957] Soja 2010 103.
[958] Soja 2010: 104.
[959] Soja 2010: 104.
[960] McKittrick 2013: 2.
[961] McKittrick 2013: 2.
[962] McKittrick 2013: 5.
[963] McKittrick 2013: 6.
[964] McKittrick 2013: 7.

> geographies. This is the mutual construction of identity and place writ large. If some places are rendered lifeless in the broader geographic imagination, what of those inhabiting the lifeless?[965]

While black group areas are their own beast, the shack settlements cropping up around them are those inhuman uninhabitable geographies, the bottom of the barrel of humanness.[966] McKittrick argues that human struggles are captured in ways that are not considered as critically geographic and existing inside the empirical work of city plans such as narratives, poetry and texts. This exercise to "identify unseen and uncharted aspects of city life and, in doing so, depict city death not as a biological end and biological fact but as a pathway to honouring human life"[967] allows us to acknowledge that within our history as temporal beings, city life was founded on relations of violence and domination. Black geographies write relations to space as assertions of humanness and destabilise normative identities and normative spaces. McKittrick calls for "honouring and living city life differently"[968] through decolonial poetics of spatial politics that view social and political location as humanly, as malleable and as geographic practices.[969]

McKittrick refers to Achille Mbembe's *Necropolitics* to view how geo-political power and colonial practices extinguish geographic life from bodies to buildings and leave displaced survivors "perpetually lifeless and disposable".[970] Mbembe writes that colonial occupation is the "subversion of existing property arrangements; the classification of people according to different categories; resource extraction; and, finally, the manufacturing of a large reservoir of cultural imaginaries. These imaginaries gave meaning to the enactment of differential rights to differing categories of people for different purposes within the same space"[971]

She also argues that geographic thought must always see anti-black violence as the human and dehumanising of black geographic life. As such linking life, violence, coloniality and the destruction of place complicates racial categories and makes strategies of resistance possible.[972] McKittrick speaks of the practices that politicise

[965] McKittrick 2013: 7.
[966] McKittrick 2013: 5-7.
[967] McKittrick 2013: 14.
[968] McKittrick 2013: 15.
[969] McKittrick 2013: 14-15.
[970] McKittrick 2011: 952.
[971] Mbembe 2003: 26.
[972] McKittrick 2011: 953.

place-life and place-death that are ignored in analyses of racial violence and human life. By this she means that analyses of "spaces of absolute otherness"[973] often frame:

> The racial Other to the white Western liberated human norm, precisely because black death proceeds and is necessary to the conceptual frame. Put differently, it seems eerily natural that those rendered less than human are also deemed too destroyed or too subjugated or too poor to write, imagine, want, or have a new lease on life. [974]

The right to the city is the right to claim your humanity and the right to be treated with dignity and thus includes the right to mourn in public as it is the right to (un)make our collective imagination of normative identities and normative space; to affirm the losses we have experienced as a result of dispossession and displacement. Black geographies explicitly address the social effects of spatial processes; it explores the realm of life and death, of life's rootedness in the earth and soil. Black geographies return to a radical right to the city through a heterotopological conceptualisation in ways that otherwise would not have been seen as serious critical spatial thinking but rather what Soja warns could be "applications of a spatial perspective are superficial, involving little more than a few pertinent spatial metaphors such as mapping this or that or using such words as cartography, region, or landscape to appear to be moving with the times".[975] Spatial justice in (post)apartheid South Africa is the fundamental objective of a search to decrease injustice through "maximising human dignity and fairness" in society.[976] It is through these alternative paths to the right to the city that we can unearth the spirit of humanity and dignity and (un)make ourselves beyond geographic arrangements.

5.4.3 Jointing disjointed concrete: holding space together, together

In situating apartheid geography within black geographic thought I turn to McKittrick and Woods who make use of the middle passage and the transatlantic slave trade across the Atlantic Ocean to introduce a geographic narrative of the unknown where what is at the bottom of the ocean is unknown and the Atlantic Ocean itself is a "geographic region that can also represent the political histories of the disappeared".[977] What they highlight is that what is evoked by the Atlantic Ocean is something that

[973] McKittrick 2013: 15.
[974] McKittrick 2011: 954-955.
[975] Soja 2010: 14.
[976] Soja 2010: 20-21.
[977] McKittrick & Woods (eds.) 2007: 4.

cannot be mapped or charted and in this way the "tension, between the mapped and the unknown, reconfigures knowledge, suggesting that places, experiences, histories, and people that 'no one knows' do exist, *within our present geographic order*".[978] What they call for us to do is to consider how socio-spatial events like these enhance our understanding of human geography from the vantage point of "the lives of subaltern subjects".[979] What we are called to do it is to understand that geographic narratives and lived experiences (re)configure spatial practices. In terms of my chosen instantiations they represent the lives of the subaltern subject and also the known. The socio-spatial events of the death, violence and neglect assist my understanding of South African geographic narratives and the endurance of apartheid geography. Zoliswa and the mental health care users of Life Esidimeni represent the geographic narratives of people that no one knows, they highlight the spatial practices of violence and domination are still present in townships—damned spaces, spaces of otherness–– owing to apartheid. Franziska and Uyinene represent the people that we know, the socially produced human spatiality of privilege and that space is a shaping force in society and politics that benefits some more than others; that apartheid geography created spaces of privilege that persist.

McKittrick and Woods warn against falling into the easy trap of associating black geographies with brutality, abandonment and catastrophe, but rather to use socio-spatial events for spatial liberation.[980] And that is what I endeavour to do, not to pathologise townships and homelands but to use them as socio-spatial events to challenge spatial practices of domination and conquest and offer pathways to spatial liberation, knowledge production and emancipation. They push us to imagine that "these sites, and those who inhabit them, can also trouble those modes of thought and allow us to consider alternative ways of imagining the world. That which, and those who, "no one knows" might also be a map towards a new or different perspective on the production of space".[981] To understand that we can classify and delimit *our* place and *our* home the same way that those in power delimited "our place" through displacement and spatial domination. They moreover raise questions of whether

[978] McKittrick & Woods (eds.) 2007: 4.
[979] McKittrick & Woods (eds.) 2007: 5.
[980] McKittrick & Woods (eds.) 2007: 5.
[981] McKittrick & Woods (eds.) 2007: 5.

remembrance, reclamation and preservation can be spatial practices and the search for a home through a (re)constructed 'politics of place'.[982]

Grada Kilomba is likewise in search of *us* and *our* reality in space as she poignantly writes "everyday racism embodies a chronology that is timeless".[983] She recounts the story of an Afro-German woman named Alicia who, while having been born in Germany, is constantly bombarded with racist questions by white Germans as to her national origins as it is inconceivable to them that she can be German because she is black. Kilomba draws our attention to "the colonial fantasy that 'German' means *white* and Black means stranger (*Fremdler*) or foreigner (*Ausländer*)…one is either Black *or* German, but not Black *and* German; the '*and'* is replaced by '*or'*, making Blackness incompatible with German-ness".[984] Kilomba characterises the incongruence between race and nationality as "*new forms of racism*"[985] which differ from the old forms of racism in that the *old* forms make biological distinctions between races where one race is 'superior' and the other is 'inferior' and thus excluded, while *new* forms veer away from explicit racial essentialism rather referring to "'cultural difference' or 'religions' and their incompatibility with the national culture".[986] Kilomba expounds that the 'vocabulary' of racism has transformed and that:

> We have moved from the concept of 'biology' to the concept of 'culture', and from the idea of 'hierarchy' to the idea of 'difference'. Within contemporary racisms there is no place for 'difference.' Those who are 'different' remain perpetually incompatible with the nation; they can never actually belong, they are irreconcilably Ausländer…Racism is thus explained in terms of 'territoriality,' assuming an almost natural feature. The repetitive enquiry illustrates the *white* desire to make Alicia irreconcilable with the nation; whenever she is asked, she is being denied authentic national membership on the basis of 'race'. The question unveil the *white* subject's reluctance to accept that it is not that *we do have our own countries to live in* but rather that *we are living in our country*.[987]

What I receive from Kilomba and Alicia is the vocabulary to spatialise *new* forms of racism within the South African context. As I discussed in the previous chapter, the Nationalists realised that to rely on biological essentialism as the foundation of

[982] McKittrick & Woods (eds.)2007: 5-6.
[983] Kilomba 2010: 12.
[984] Kilomba 2010: 64.
[985] Kilomba 2010: 64.
[986] Kilomba 2010: 64-65.
[987] Kilomba 2010: 65.

apartheid would jeopardise the entire project as none of them could claim to come from pure white blood.[988] This led to the creation and insistence of *die volk.* The colonial fantasy of *die volk* was at the same time a new form of racism and an old, relying on racial superiority without staking full claim to biology, positioning themselves as the authentic nation and us, black people, as irreconcilably Ausländer.

In the same way that the questions were an attempt to situate Alicia as incompatible with German-ness and relegate her to some illusory separate country so too must we understand *die volk* as relegation to some illusory separate country. In this timeless chronology of apartheid geography, to lay claim to our space and our land and our country is to lay claim to ourselves. To lay claim to ourselves, to our cultures, in fact to our difference is to lay claim to our space and our land and our country. To lay claim to ourselves is to reconcile blackness with national membership and 'territoriality' as we might understand it. To lay claim to ourselves is to lay claim to our grievability: we count as human, our lives count as lives and we make for a grievable life. To declare that we are not the nonhuman at the border of the human. Butler's arguement that unfamiliarity and difference sever national self-recognition and in turn relational ties can be understood as the Ausländer effect, that is to say that nationalist intention was to render us ungrievable and not apprehendable as a human life.

Within *our* present geographic order as McKittrick and Woods write, we lay claim to ourselves, and our geographic narrative is of the *known*. That is to say, that black spaces are all spaces and all spaces are black spaces.

5.5 Conclusion: The futur antérieur of space is black

In considering ways to address the unjust spatial configurations of (post)apartheid South Africa, I want to call for an alternative way of seeing space. This way, I believe, centers the importance of what it means to be human and that the humanity of space is ethical. As Butler stated in Chapter Three "[grief is] an implicit understanding that the life is grievable, that it would be grieved if it were lost, and that this future anterior is installed as the condition of its life. In ordinary language, grief attends the life that

[988] See Chapter 4 for exposition of Nationalist biological essentialism and *die volk*.

has already been lived, and presupposes that life as having ended".[989] Grievability makes possible the apprehension of the living being as living and establishes one within a political and legal framework as I mentioned in Chapter Three. Grievability is the cultural frame for our conception of the human and how we recognise loss, to this Butler asks "what and where is the loss and, how does mourning take place?"[990] I believe that this directly aligns with black geographic thought and a black sense of space.

A black sense of space understands the symbolism of spatial form and is a way to analyse the persistence, patterns, and consequences of violence against black people. This reflects Butler's understanding mourning: that we acknowledge and accept that we have suffered a loss and this this loss reveals the relational ties between us and constitutes us, and that as we mourn we gain a sense of life that we need to oppose violence. Practices of black life, resistance, and survival are inseparable from the production of space. Lefebvre refers to aesthetics, imageries and art and this relates to black geographies. As a field of inquiry engaged especially by women, black geographies are a way of looking at space and the subject of space, who is black. Returning to Lefebvre's radical approach to space is the aim of black geographies. Informed by feminist theory, critical race theory and queer theory, black geographies critically engage and transform the power-laden category of "human" and are a rebuttal to the presumed ontological or naturalised condition of black abjection. The historical and geographical particularities of (post)apartheid South Africa require a spatial justice concerned with the being of blackness based on the understanding that our landscape is simultaneously shaped by black spatialities and anti-black racism.

To understand the juridico-political structure of townships and homelands and take them as socio-spatial events within the timeless chronology of apartheid geography, what we do is remember, reclaim and preserve the resistance and persistence of our black spirit. Black spaces can map the unmappable and tear apart the illusion of the map and that is the pathway to spatial liberation.

[989] Butler 2009: 15.
[990] Butler 2004: 32.

CHAPTER SIX: CONCLUSION

WHEREVER WE ARRIVE: SPACE WAS, IS AND WILL ALWAYS BE BLACK

> I elaborated on various visions of public space and endorsed a specific one. I said that South African visions of public space must be reconstructed and transformed. I used the two concepts of reconstruct and transform because on the one hand public spaces must be positively constructed and created but on the other hand past and present conceptions of public spaces must be challenged, undermined and changed. I support a heterogeneous vision of public space, where difference is accepted. I am drawn to the possibility of a public space where action can take place, human plurality is displayed and humans appear to each other.
>
> —Karin van Marle[991]

> In other words, what is the norm according to which the subject is produced who then becomes the presumptive "ground" of normative debate? The problem is not merely or only "ontological" since the forms the subject takes as well as the life-worlds that do not conform to available categories of the subject emerge in light of historical and geopolitical movements. I write that they "emerge" but that is, of course, not to be taken for granted, since such new formations can "emerge" only when there are frames that establish the possibility for that emergence.
>
> —Judith Butler[992]

Summary and reflections

To what extent may *a* space be read or decoded? A satisfactory answer to this question is certainly not just around the corner. As I noted earlier, without as yet adducing supporting arguments or proof, the notions of message, code, information and so on cannot help us trace the genesis of a space; the fact remains, however, that an already produced space can be decoded, can be *read.* Such a space implies a process of signification. And even if there is no general code of space, inherent to language or to all languages, there may have existed specific codes, established at specific historical periods and varying in their effects. If so, interested

[991] van Marle 1999: 389
[992] Butler 2009: 138-139.

> 'subjects', as members of a particular society, would have acceded by this means at once to *their* space and to their status as 'subjects' acting within that space and (in the broadest sense of the word) comprehending it. If indeed spatial codes have existed, each characterizing a particular spatial/social practice, and if these codifications have been *produced* along with the space corresponding to them, then the job of theory is to elucidate their rise, their role, and their demise.[993]

This chapter concludes my thesis, the final conversation within the confines of these pages. I do not endeavour to put forward a step-by-step guide to achieving spatial justice in (post)apartheid South Africa. Nor do I have a perfect and final solution for apartheid geography—it simply is not possible for me to do so. This thesis is intended to contribute to the expanding field of spatial theory within the context of (post)apartheid South Africa by making materiality, bodies, gendered and raced bodies central, integrating instantiations with theory and law. As indicated by the title, this thesis centres around four main points: blackness, the Group Areas Act, material boundaries as expressions of life and grievability.

In Chapter Two I respond to my first research question as to whether racialised, gendered, heterosexist and ableist geographical boundaries arising from apartheid have endured and whether this endurance assigns death, poverty, neglect and violence to specific areas and specific people.

In the second section I begin by exploring the geopolitical perspective of the "body", the body as constituted by space and place and as constituting space and place. I find that social relations are played out on the body and within the context of anti-black racist South Africa we can understand this to mean that the social relations of domination are inscribed on the body by corporeal processes and intersecting axes of privilege and oppression. Then I explore the notion of place to define geographical differentiation and its social and political implications. I examine "place" as the geographic location where social relations interact. Likewise, the meanings of places exist in a cultural, political and social web of power which differentiates one place from another and positions places as "in place" or "out of place", this differentiation has social and political implications as shown by apartheid geography.

[993] Lefebvre 1991: 17.

In the third section I examine the brutal murder of nineteen-year-old Zoliswa Nkonyana who was killed by a mob because she was a masculine presenting lesbian in 2006. She was murdered in a tavern in the township Khayelitsha not far from her home. Her trial took six years and it was stated to have the most postponements in a single trial recorded in the country. It was the first case in South Africa where sexual orientation and identity were named and recognised as an aggravating factor in a murder trial. In the end, only three of the nine men accused of her murder were sentenced and the sentences were not long in consideration of the nature of her murder. From there I consider the spatial inscription of homophobia and the problematics this has raised in Khayelitsha. The spatial inscription of homophobia can largely be extended to other townships as majority of all homophobic murders take place in townships, with mob killings almost exclusively taking place there.

In the fourth section I examine the rape and murder of sixteen-year-old Franziska Blöchliger whose naked bloody body was found in the upper middle-class Tokai Forest in cape Town where she disappeared during her jog, with her belongings missing in 2016. Her trial took one year and her rape and murder were national news. Four men were arrested in connection with her rape, robbery and murder, however, only one was sentenced for her murder and the and the murder and robbery charges against the other three were withdrawn. Her rapist and murderer received a very long sentence. From there I consider the spatial inscription of whiteness and white privilege and the problematics this raises in historically white areas and by extension historically black areas owing to apartheid geography.

In the fifth section I examine the rape and murder of nineteen-year-old Uyinene Mrwetyana, a wealthy UCT student, who went missing in upper middle-class Cape Town suburb Claremont in 2019 whose burned body was found in Khayelitsha. She went to the Post Office and did not return. Her family had the means to enlist the services of their private investigator assist the high-level task teams looking for her. From the day of her disappearance to the day of the trial was under three months and her murderer received a very long sentence. Her disappearance was national news with the Minister of Police Bheki Cele attending her funeral and official statements on behalf of UCT by its vice-chancellor Professor Mamokgethi Phakeng condemning her murder. From there I consider the spatial inscription of class and the un-even

distribution of precariousness and the problematics this raises for poor communities who, within the South African context, are majority black people.

In the sixth section I examine the deaths and abuse of an estimated 1711 mental healthcare users in Life Esidimeni, located in the middle-class suburb Waverly, where the thirty-year-old contract the facility had with the Gauteng Department of Health was terminated in 2015. The mental health care users were unlawfully and negligently moved to ill-equipped organisations and facilities in low-income areas and townships where 144 patients were killed and 1418 patients suffered torture. The Health Ombudsperson compiled a Report into the termination of the contract that established arbitration proceedings which sat for forty-five days and ended in 2018. The Arbitrator found that the termination of the contract and the transfers of the patients was unconstitutional and deprived them of their human dignity, further that it was reminiscent of colonialism and apartheid. From there I consider the spatial inscription of ableism and the problematics this raises for disabled people who experience environmental injustice because of their disabilities, who ,within the South African context, are majority black people.

In the seventh section I examine the direct correlation between space and physical, structural and institutionalised violence. I explore violent spatial practices targeted at marginalised communities on the basis of race, gender, disability, sexuality and class. I examine these considerations within the context of apartheid geography in order to illustrate that apartheid spatial arrangements imposed violence and that violence shaped space.

In Chapter Three I engage with my second research question as to whether Judith Butler's concept of "grievability" as put forward in *Precarious Life: The Powers of Mourning and Violence* and *Frames of War: When is Life Grievable?* as well as Giorgio Agamben's "bare life" as put forward in *Homo Sacer: Sovereign Power and Bare Life* can be expressed spatially making space and place the sites of grief and life. In the second section I explore Butler's grievability. I begin by looking at precariousness, the ontological and existential state that describes the common, but uneven distribution of human physical fragility, and precarity, the political conditions inducing the differential exposure of certain populations to injury, violence, systemic neglect and death, as

presented in their books. I then turn to grievability as the condition of a life's emergence and sustenance and the foundation of a life with value. In the third section I address Agamben's bare life. I begin by reflecting on the Greek terms *zoē,* the simple fact of living common to all living things, *and bios*, a qualified life that is not the simple fact of living. I then turn to *homo sacer,* governed bare life, and bare life, life exposed to death. In the fourth section I examine the connection and disconnection between Agamben and Butler. I then comment on the limits and potential of bare life through a critical race lens. In the fifth section I consider the application of Agamben and Butler within the geographical context of South Africa through notions of suspended rights, careful relation of the camp and townships and the usefulness and limitations of such concepts.

In Chapter Four I raise my third research question as to whether the continuities of both the Urban Areas Act and the Group Areas Act created legal and political mechanisms that concretised race. In the second section I begin by analysing the Urban Areas Act, its predecessors as well as its conception. Then I turn to the Urban Areas Bill. Following that I analyse the Act and its long-term implications, significant amendments and the further restrictions placed on influx control. Lastly, I reflect on how further restrictions on the movement of black laid the foundation for the Group areas Act. In section three I analyse the Group Areas Act by firstly examining the governmentality of the National Party and the conception of the Act and secondly the implication the Act had on the creation of racial groups for its application. Then I look at the Act and the juridico-political structure of townships and the discipline of space. Lastly, I note significant amendments and the manner in which each amendment directly shaped narrower definitions of race.

In Chapter Five I respond to my fourth research question as to whether spatial justice extends beyond the material realm of geographic arrangements into the restoration of dignity and humanity. Additionally, how within the context of (post)apartheid South Africa concept of spatial justice and the way in which spatial power and domination produce social injustices that have both structural and temporal effects should be conceived. In section two I pose the question whether the 'right to the city' can critically engage the fact that racially devalued groups are removed from normative space and

thus adequately respond to the (post)apartheid South African landscape. I begin by assessing French philosopher Henri Lefebvre's theories on the production of space and the right to the city and key spatial theorists influenced by him. In the third section explore separate development, homelands and citizenship rights and the Nationalist's creation of black spaces within their white South Africa. In the fourth section I argue the importance of critical race theory as an intervention to geography. I explore critical race spatial analysis and the importance of recognising race and racism as being shaped by space and as the forces that shape space. I argue that black geographic scholarship is central to human geography because blackness is inherently connected to the production of space. Moreover, that black women's geographies explain socio-geographical domination and enrich an interdisciplinary analysis of the production of space and a black approach to the right to the city.

Butler and Agamben have been read together before, what I have investigated is their reading within the spatial context of ((post))apartheid South Africa. I read them together to expound to the production of a normative human whose life has social and political value and must be protected. The lives falling outside of these norms conversely have no social or political value and are exposed to violence, poverty, neglect and death, which is naturalised and normalised. Illegitimate state power can produce these norms and render the lives of entire populations valueless and use this to justify their destruction. Within a spatial context these valueless populations can be placed in the most inhumane uninhabitable spaces, living in completely precarious conditions often without any state support. In apartheid South Africa the white supremacist Nationalist government's normative human was unquestionably white and legal and administrative mechanism had to be put in place to ensure not only their proper positioning in the *polis*, but to ensure the precariousness of every non-white person. This was done through space. By understanding that space shapes every facet of human existence we can understand how spaces themselves were shifted and shaped by Nationalist ideologies and then shifted and shaped South African life. Space takes on the meanings assigned to it in the form of material conditions in such a way that location in space is an indication of the value assigned to the lives of the people living there and their bodies bear the brunt of these material conditions. What I have shown with my instantiations is that the endurance of apartheid geography, the

spaces created by the Group Areas act, is not only the endurance of material conditions, but the endurance of the failure and refusal to assign social and political value to the lives of black people, women, queer people, people with disabilities and low-income people.

The Group Areas Act created a juridico-political system to suspend rights through the discipline of space. Additionally, the Group Areas Act was a means for the inclusion of blackness into the juridical order through its exclusion. The racial classifications in the Group Areas Act legally classified exposure to violence and was the spatial practice of suspending human rights in specific areas through legal and other mechanisms. The impact of the Act was that space was used to indicate race and, over time, used to assign race. It made it so that certain spaces were where black subjects could be found and where spaces could produce black subjects.

Butler's grievability is both epistemological and ontological, it explains how and why it is that there can be humans, not-quite-humans and non-humans, how certain lives are indeed considered lives and how certain deaths indeed count as deaths. When used as the lens through which the Group areas Act can be analysed, grievability illuminates the ultimate function of the Act: the use of space to assign humanity and dignity.

Grievability used as an analysis of spatial practices is bolstered by black geography to explain the precariousness of black people in certain spaces owing to apartheid geography. No salient analysis of space, especially in South Africa, is possible that does not take as its starting point the role of race and racism in the (re)production and maintenance of space. Blackness cannot be removed from the production of space: it explains how biological essentialism is a spatial practice that situates black subjects outside normative space, it explains the struggles of black communities, it explains that geographies are the workings of power relations, it explains human hierarchies and uneven development, it explains geopolitics and citizenship, it connects what can be seen and what cannot be seen, it connects the material and the imaginative, it connects histories and stories. Taking from Lefebvre, grievability is a cry and a demand, it places an obligation upon all of us to strive for spatial liberation—and black geography gives us the vernacular to make that cry and demand.

Bibliography

AGAMBEN G

1998. *Homo Sacer: Sovereign Power and Bare Life.* California: Stanford University Press.

2005. *State of Exception*. Chicago: The University of Chicago Press.

ALLWOOD E

2015. *Khayelitsha, South Africa*.

https://prezi.com/rloyckdbacuk/khayelitsha-south-africa/ (accessed 20 October 2023)

ARENDT H

1958. *The Origins of Totalitarianism*. London: Harcourt Brace Jovanovich Publishers.

1998. *The Human Condition* 2nd edition. Chicago: University of Chicago Press.

ARVIN M, TUCK E & MORRILL A

2013. Decolonizing feminism: challenging connections between settler colonialism and heteropatriarchy. *Feminist Formations* 25(1): 8-34.

ATTERIDGE D (ed.)

2004. *The Cambridge Companion to James Joyce*. Cambridge: Cambridge University Press.

HOWES M

2004. Joyce, colonialism, and nationalism. In D Atteridge (ed.) 2004: 254-271.

BEINART W

2001. *Twentieth Century South Africa*. Oxford: Oxford University Press.

BELL D, BINNIE J, CREAM J & VALENTINE G

1994. All hyped up and no place to go. *Gender, Place and Culture: A Journal of Feminist Geography* 1(1): 31-47.

BELL D & VALENTINE G (eds.)

1995. *Mapping desire: geographies of sexualities*. Routledge: London

KNOPP L

1995. Sexuality and Urban Space: A Framework for Analysis. In D Bell and G Valentine (eds.) 1995: 136-149.

BEZUIDENHOUDT J

2016. *Why South Africa is failing mental health patients and what can be done about it.*

https://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445 (accessed 20 October 2023).

BISSCHOP JHR

1987. *Bisschop Collection On the Tomlinson Commission (1954)*. Johannesburg: UJ Library Special Collections Inventory: 1-29.

BLUE LETTER BIBLE

βίος.

https://www.blueletterbible.org/lexicon/g979/kjv/tr/0-1/ (accessed 30 October 2023).

ζωή.

https://www.blueletterbible.org/lexicon/g2222/kjv/tr/0-1/ (accessed 30 October 2023).

BRECKENRIDGE K

2014. The Book of Life: The South African population register and the invention of racial descent, 1950-1980. *Kronos* 40(1): 225-240.

BURCHELL G, GORDON C & MILLER P (eds.)

1991. The Foucault effect: studies in governmentality: with two lectures by and an interview with Michel Foucault. Chicago: Chicago Press.

FOUCAULT M

1991. Governmentality. In Burchell G, C Gordon and P Miller (eds.) 1991: 87-104.

BUTLER J

1997. *Excitable Speech: A Politics of the Performative.* New York: Routledge Classics.

2000. *Antigone's Claim: Kinship Between Life & Death*. New York: Columbia University Press.

2004.*Precarious Life: the Powers of Mourning and Violence.* London: Verso.

2009. *Frames of War: When is Life Grievable?.* London: Verso.

BUTLER J, ROTBERG R & ADAMS J

1978. *The Black Homelands of South Africa: The Political and Economic Development of Bophuthtswana and Kwa-Zulu.* Berkeley: University of California Press.

CAMBRIDGE DICTIONARY

Precariousness.

https://dictionary.cambridge.org/dictionary/english/precariousness (accessed 30 October 2023).

CARAVACA MORERA JA

2019. About Homo Sacer, Bare Lives and Abandonment: the Case of Transsexuality in Thanatopolitics. *Enfermería: Cuidados Humanizados* 8(2): 18-32.

CITIZEN

2017. *Charge withdrawn against accused caught with Blochliger cellphone.*

https://citizen.co.za/news/south-africa/1461089/charge-withdrawn-accused-caught-blochliger-cellphone/ (accessed 20 October 2023).

CLEVELAND CLINIC

Grief.

https://my.clevelandclinic.org/health/diseases/24787-grief (accessed 30 October 2023).

COLOMINA B (ed.)

1992. *Sexuality and Space.* New York: Princeton Architectural Press.

GROSZ E

1992. Bodies-Cities. In B Colomina (ed.) 1992: 241-254.

COETZEE JM

1991. The mind of apartheid: Geoffrey Cronjé (1907-). *Social Dynamics*. 17(1): 1-35.

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY AND A BREAKDOWN IN RELATIONS BETWEEN SAPS AND THE COMMUNITY OF KHAYELITSHA

2014. Towards a Safer Khayelitsha.

CRENSHAW K

1989. Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum* 140:139-167.

CRESSWELL T

2009. Place. *Elsevier* 1-9.

DAILY MAVERICK

2019. *Murder Confession arrives with a thud – but Uyinene Mrwetyana is still officially missing.*

https://www.dailymaverick.co.za/article/2019-09-03-murder-confession-arrives-with-a-thud-but-uyinene-mrwetyana-is-still-officially-missing/ (accessed 20 October 2023).

DAILY VOICE

2017. *Judge delays Franziska 'killer's' trial*.

https://www.dailyvoice.co.za/news/judge-delays-franziska-killers-trial-9203090 (accessed 20 October 2023).

2017. *'Skelm' pleads not guilty to Franziska's rape, murder*. https://www.dailyvoice.co.za/news/skelm-pleads-not-guilty-to-franziskas-rape-murder-9044781 (accessed 20 October 2023).

DAVENPORT TRH

1969. African Townsmen? South African Natives (Urban Areas) Legislation through the Years. *African Affairs* 68(271): 95-109

1971. *The Beginnings of Urban Segregation in South Africa: The Natives (Urban Areas) Act of 1923 and Its Background*. Grahamstown: Institute of Social and Economic Research Rhodes University.

DE WAAL M

2001. *We'll make you a 'real' woman– even if it kills you*. https://www.dailymaverick.co.za/article/2011-12-09-well-make-you-a-real-woman-even-if-it-kills-you/ (accessed 20 October 2023).

DICTIONARY.COM

Precarity.

https://www.dictionary.com/browse/precarityaccessed (30 October 2023).

DOLLEY C

2017. '*How could an adult do this to a child?' Franziska's parents*. https://www.news24.com/SouthAfrica/News/how-could-an-adult-do-this-to-a-child-franziskas-parents-20170531 (accessed 20 October 2023).

DOMMISSE J

1985. Apartheid as a Public Mental Health Issue. *International Journal of Health Services* 15(3):

DORDLEY L

2020. *Uyinene Mrwetyana receives posthumous award*. https://www.capetownetc.com/news/uyinene-mrwetyana-receives-posthumous-award/ (accessed 20 October 2023).

DUBOW S

1991. Afrikaner Nationalism, Apartheid and the Conceptualization of "Race". *African Studies Institute Seminar Papers.* 301:1-36

DUNCAN J, JOHNSON N & SCHEIN R (eds.)

2004. *A Companion to Cultural Geography* (2004) Oxford: Blackwell Publishing.

LANDZELIUS M

2004. The Body. In J Duncan, N Johnson and R Schein (eds.) 2004: 279-297.

PHILLIPS R

2004. Sexuality. In J Duncan, N Johnson and R Schein (eds.) 2004: 265-278.

DURAN-COGAN MF & GOMEZ-MORIANA A (eds.)

2001. *National Identities and Sociopolitical Changes in Latin America*. New York: Routledge.

WYNTER S

2001. Towards the Sociogenic Principle: Fanon, The Puzzle of Conscious Experience, of Identity and What it's Like to be "Black". In Duran-Cogan and Gomez-Moriana (eds.) 2001: 30-66.

DWYER O & JONES III J

2000. White socio-spatial epistemology. *Social & Cultural Geography* 1(2): 209-222.

EGERÖ B

1991. *South Africa's Bantustans: From Dumping Grounds to Battlefronts*. Uppsala: Nordiska Afrikainstititet

ETHERIDGE J

2017. *Trial of Tokai forest murder accused sent to High Court*. http://www.news24.com/SouthAfrica/News/trial-of-tokai-forest-murder-accused-sent-to-high-court-20170118 (accessed 20 October 2023).

FERBER A

2020. *Judith Butler on the culture wars, JK Rowling and living in "anti-intellectual times.*

https://www.newstatesman.com/uncategorized/2020/09/judith-butler-culture-wars-jk-rowling-and-living-anti-intellectual-times (accessed 30 October 2023).

FISHER S

2017. *Franziska Blochliger's killer handed double life sentence*. http://ewn.co.za/2017/06/07/alert-franziska-blochliger-s-killer-handed-double-life-sentence (accessed 20 October 2023).

FLURI J

2012. Capitalizing on Bare Life: Sovereignty, Exception, and Gender Politics. *Antipode* 44(1): 31-50.

FLURI JL & PIEDALUE A

2017. Embodying violence: critical geographies of gender, race, and culture. *Gender, Place & culture* 24(4): 534-544.

FOUCAULT M

1977. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.

1984. Of Other Spaces: Utopias and Heterotopias. *Architecture /Mouvement/ Continuité:* 1-9.

FRANKENBERG R

1991. *White Women, Race Matters: the Social Construction of Whiteness*. Minneapolis: University of Minnesota Press.

GIESKING J, MANGOLD JW, KATZ C, LOW S & SAEGERT S (eds.)

2014. *The People, Place, and Space Reader*. New York: Routledge.

RUDDICK S

2014. Constructing Differences in Public Spaces: Race, Class, and Gender as Interlocking Systems. In J Giesking, JW Mangold, C Katz, S Low & S Saegert (eds.) 2014:

GOBA N

2018. The architecture of non-grievability: a critical race spatial analysis of the continuance of apartheid spatial planning into (post)apartheid South Africa' unpublished LLM dissertation, University of Pretoria.

GODENHART S & PERNEGGER L

2007. Townships in the South African Geographic Landscape - Physical and Social Legacies and Challenges. Pretoria. 1-25.

GREEKLEXICON.ORG

βίος.

https://greeklexicon.org/lexicon/strongs/979/ (accessed 30 October 2023).

ζωή.

https://greeklexicon.org/lexicon/strongs/2222/ (accessed 30 October 2023).

GREGORY D, JOHNSTON R, PRATT G, WATTS M, & WHATMORE S

2009. *The Dictionary of Human Geography.* Oxford: Wiley-Blackwell.

GROSBY S

2005. *Nationalism: A Very Short Introduction*. New York: Oxford University Press Inc.

HARRIS C

1993. Whiteness as Property. *Harvard Law Review* 106(8): 1707-1791.

HARRIS J

1979. The Group Areas Act. Talk given at the University of the Witwatersrand. 1-6.

HARVEY D

2009. *Social justice and the city*. Athens: The University of Georgia Press.

2012. *Rebel Cities from the Right to the City to the Urban Revolution* 3 London: Verso.

HAWTHORNE C

2019. Black matters are spatial matters: Black geographies for the twenty-first century. *Geography Compass*:1-13.

HELLMANN E

1949. *Handbook on race relations in South Africa*. Cape Town: Oxford University Press.

HELLMANN E & LEVER H (eds.)

1979. *Race Relations in South Africa 1929-1979.* Johannesburg: MacMillan South Africa (Publishers) (Pty) Ltd.

WELSH D

1979. Urbanisation in South Africa: 1929-1979. In E Hellmann & H Lever (eds.) 1979: 131-154

HORRELL M, WHYTE Q & VAN WYK F (eds.)

1950. *A Survey of race relations: 1949-1950*. Johannesburg: South African Institute of Race Relations.

HOERNLE AW

1950. Presidential Address Delivered in Cape Town, January, 1951. In M Horrell, Q Whyte and F van Wyk (eds) 1950: 1-12.

HOUGHTON DH

1957. The Significance of the Tomlinson Report. *Africa South* 1(2):13-21.

HUBBARD P & KITCHIN R (eds.)

2011. *Key thinkers on space and place*. London: Sage.

CASTREE N

2011. David Harvey. In P Hubbard & R Kitchin (eds.) 2011:

MCKITTRICK K

2011. bell hooks. In Hubbard P & Kitchin R (eds.) 2011: 242-248.

IOL

2019. *42-year-old man arrested over missing UCT student Uyinene Mrwetyana*. https://www.iol.co.za/news/south-africa/western-cape/42-year-old-man-arrested-over-missing-uct-student-uyinene-mrwetyana-31575183 (accessed 20 October 2023).

JAMES W

1992a. Group Areas and the Nature of Apartheid. *South African Sociological Review* 5(1):41-57.

1992b. T.E. Donges and the Group Areas Act. *Johannesburg: African Studies Institute*. 1-15.

JOHNSTON L & LONGHURST R

2010. *Space, place, and sex: geographies of sexualities.* Lanham: Rowman & Littlefield Publishers.

JUNG C

1996. After apartheid: shaping a New Afrikaner “Volk”. *Indicator SA* 13(4): 12

KILOMBA G

2010. *Plantation Memories. Episodes of Everyday Racism*. Münster: Unrast Verlag

KINDRA J

2006. *Zuma slammed for views on homosexuality, same-sex marriage*.

https://www.thenewhumanitarian.org/news/2006/09/27/zuma-slammed-views-homosexuality-same-sex-marriage (accessed 24 January 2024).

LANDIS E

1961. South African Apartheid Legislation 1: Fundamental Structure. *The Yale Law Journal* 71(1): 1-52.

LECLAIR T

1981. *The Language Must Not Sweat: A Conversation With Toni Morrison*.

https://newrepublic.com/article/95923/the-language-must-not-sweat (accessed 1 October 2023).

LEFEBVRE H

1991. *The Production of Space*. Oxford, England: Blackwell.

1996. The Right to the City (1968 *Le Droit à la ville*).

LEMON A

1976. *Apartheid: A geography of separation*. Farnborough, Hants: Saxon House.

LEPULE T

2016. *Accused's guilty plea*.

https://www.dailyvoice.co.za/news/western-cape/accuseds-guilty-plea-6992883. (accessed 20 October 2023).

LONGHURST R

1995. VIEWPOINT the Body and Geography. *Gender, Place & Culture* 2(1): 97-106.

LYNCH I & VAN ZYL M

2013. Justice delayed: Activist engagement in the Zoliswa Nkoyana murder trial' Cape Town: Triangle Project.

MABIN A

1992. Comprehensive Segregation: The Origins of the Group Areas Act and Its Planning Apparatuses. *Journal of Southern African Studies* 18(2): 405-429.

MABIN A & SMIT D

1997. Reconstructing South Africa's cities? The making of urban planning 1900–2000. *Planning Perspectives* 12(2): 193-223.

MACMASTER L

2009. Resilience of Faith Communities On The Cape Flats (Sa): A Pastoral Theological Perspective. *Scriptura* 101: 288

MANDONYANA M

2020. *Is the South African lockdown effective for townships like Khayelitsha?.* https://www.71point4.com/is-the-south-african-lockdown-effective-for-townships-like-khayelitsha/ (accessed 20 October 2023).

MARE G

2001. Race counts in contemporary South Africa: 'an illusion of ordinariness'. *Transformation* 47:75-93.

MASSEY D

1994. *Space, Place and Gender* 168 Minneapolis: University of Minnesota Press.

MATSOLO M

2011. *TAC and Sonke Gender Justice angered at further unexcusable delays in the Zoliswa Nkonyana murder trial*.

http://www.ngopulse.org/press-release/tac-and-sonke-gender-justice-angered-further-unexcusable-delays-zoliswa-nkonyana-murde (accessed 20 October 2023).

MAYLAM P

1990. The Rise and Decline of Urban Apartheid in South Africa. *African Affairs* 89(354): 57-84

1995. Explaining the apartheid city: 20 years of South African urban historiography. *Journal of Southern African Studies* 21(1): 19-38.

MAWANI R

2016. Law, Settler Colonialism, and 'the Forgotten Space' of Maritime Worlds. 12 *Annual Review of Law and Social Science* 12: 107-

MBEMBE A

2003. Necropolitics. *Public Culture* 15(1): 11-40.

MCALLISTER W, KUANG L & LENNON MC

2010. Typologizing Temporality: Time-Aggregated and Time-Patterned Approaches to Conceptualising Homelessness. *Social Service Review 84*(2):225-255.

MCCLINTOCK A

1992. The Angel of Progress: Pitfalls of the Term “Post-Colonialism”. *Social Text* 31(32): 84-98

MCKITTRICK K

2006. Demonic Grounds: Black Women and the Cartographies of Struggle. Minneapolis: University of Minnesota Press.

2011. On plantations, prisons, and a black sense of place. *Social & Cultural Geography* 12(8):947-963.

2013. Plantation Futures. *Small Axe 42* 17(3):1-15.

MCKITTRICK K & WOODS C (eds.)

2007. Black Geographies and the Politics of Place. Toronto: Between the Lines

MCKITTRICK K & WOODS C

2007. No One Knows the Mysteries at the Bottom of the Ocean. In McKittrick and Woods (eds.) 2007: 1-13.

MERLEAU-PONTY M

2002. *Phenomenology of Perception* Routledge. London: Classics.

MERRIAM-WEBSTER DICTIONARY

Etymology.

https://www.merriam-webster.com/dictionary/etymology (accessed 30 October 2023).

Precarious.

https://ww.com/dictionary/precarious#:~:text=Latin%20prec%C4%81rius%20%22given%20as%20a,meaning%20defined%20at%20sense%203 (accessed 30 October 2023)

MESTHRIE US

1993. Tinkering and Tampering: A Decade of the Group Areas Act (1950–1960). *South African Historical Journal* 128(1): 177-202.

MEYER D

2019. *Missing UCT student Uyinene Mrwetyana was 'bludgeoned with a scale' in post office*.

https://www.timeslive.co.za/news/south-africa/2019-09-02-breaking-missing-uct-student-was-bludgeoned-with-a-scale-in-post-office/ (accessed 20 October 2023).

MEYER W

2016. *More CCTV cameras needed in Khayelitsha*. http://www.pressreader.com/south-africa/cape-argus/20160901/281565175193856 (accessed 20 October 2023).

MJEKULA L

2010. *It was not another township murder*.

https://www.iol.co.za/news/south-africa/it-was-not-another-township-murder-476482 (accessed 20 October 2023).

2011. *Fury over lesbian murder trial delay*.

https://www.iol.co.za/news/fury-over-lesbian-murder-trial-delay-1038024 (accessed 20 October 2023).

MORETON-ROBINSON A

2004. The possessive logic of patriarchal white sovereignty: The High Court and the Yorta Yorta decision. *Borderlands e-Journal* 3(2):1-9.

MORGAN B

1984. Social Geography, Spatial Structure and Social Structure. *GeoJournal* 9(3): 301-310.

MORRISON D, ANNAMMA SA & JACKSON DD (eds.)

2017. Critical Race Spatial Analysis Mapping to Understand and Address Educational Inequity. New York: Routledge

VERÓNICA N VÉLEZ & DANIEL G SOLÓRZANO

2017. Critical Race Spatial Analysis Conceptualizing GIS as a Tool for Critical Race Research in Education. In D Morrison, SA Annamma & DD Jackson DD (eds.) 2017: 8-31.

NAST HJ & PILE S (eds.)

1998. *Places Through the Body*. London: Routledge.

NAST HJ & PILE S

1998. MakingPlacesBodies. In Nast HJ and Pile S (eds.) 1998: 1-14.

NAST H

1998. The body as “place”: reflexivity and fieldwork in Kano, Nigeria. In HJ Nast and S Pile (eds.) 1998: 69-86.

NEILSON B & ROSSITER N

2006. From ‘Precarity to Precariousness and Back Again: Labour, Life and Unstable Networks. *Variant* 25: 10-13.

NELSON L & SEAGER J (eds.)

2005. *A Companion to Feminist Geography*. Oxford: Blackwell Publishing.

LONGHURST R

2005. Situating Bodies. In L Nelson and J Seager (eds.) 2005: 337-349.

NEWS24

2012. *Cape lesbian killers get 18 years*. http://www.news24.com/SouthAfrica/News/Cape-lesbian-killers-get-18-years-20120201 (accessed 20 October 2023).

2019. *Luyanda Botha pleads guilty, sentenced to life for Uyinene Mrwetyana rape, murder.*

https://www.youtube.com/watch?v=jYpOBkMZtco (accessed 20 October 2023).

NJILO N & SAVIDES M

2019. *Uyinene Mrwetyana's alleged killer had criminal conviction and faced a previous rape charge: NPA*.

https://www.timeslive.co.za/news/south-africa/2019-09-02-uyinene-mrweytanas-alleged-killer-had-criminal-conviction-and-faced-a-previous-rape-charge-npa/ (accessed 20 October 2023).

OLIVIER N

1984. The Legal Status of Urban Blacks in South Africa. *Koers* 49(3). 356-384.

OMAR I

1989. The Group Areas Act: A Historical And Legal Review. *De Rebus* 515-522.

ONLINE ETYMOLOGY DICTIONARY

Grief.

https://www.etymonline.com/word/grief (accessed 30 October 2023).

OWENS P

2009. Reclaiming 'Bare Life'?: Against Agamben on Refugees. *International Relations* 23(4): 567-582.

PARKER S, UPRICHARD E & BURROWS R

2007. Class Places and Place Classes: Geodemographics and the Spatialization of Class. *Information, Communication & Society* 10(6): 902-921.

PARNELL S

1998. Negotiating segregation: pre-parliamentary debate over the natives (urban areas) act of 1923. *African Studies* 57(2): 147

PARRY JT

2006. *Evil, Law and the State*. Leiden, The Netherlands: Brill.

BURKE A

2006. Mental Health Care During Apartheid in South Africa: An Illustration of How “Science” Can be Abused. In JT Parry 2006: 87-100.

PEAKE L

2009. Whiteness. *Elsevier* 247-253.

PETERSEN T

2017. *Two plead guilty to possession of Franziska’s phone*. https://www.news24.com/news24/SouthAfrica/News/p2-two-plead-guilty-to-possession-of-franziskas-phone-20170223 (accessed 20 October 2023).

PHALISO S & DOMINIC A

2016. *Thousands at vigil for teen.*

https://www.iol.co.za/capetimes/news/thousands-at-vigil-for-teen-1995184 (accessed 20 October 2023).

PHILIPPOPOULOS-MIHALOPOULOS A

2015. *Spatial Justice: Body, Lawscape, Atmosphere*. New York: Routledge.

PHILLIPS S

1991. The Hegemony of Heterosexuality: A Study of Introductory Texts. *Teaching Sociology* 19(4): 454-463.

POSEL D

2001a. Race as Common Sense: Racial Classification in Twentieth-Century South Africa. 44(2) *African Studies Review* 44(2)*:* 87-113.

2001b. What's in a name? Racial categorisations under apartheid and their afterlife. 47 *Transformation* 47: 59-82.

PRICE PL

2010. At the crossroads: critical race theory and critical geographies of race. *Progress in Human Geography* 34(2):147-174.

PURCELL M

2014. Possible Worlds: Henri Lefebvre and the Right to the City. *Journal Of Urban Affairs* 36(1): 141-154.

RABORIFE M

2019. *Uyinene – God is truth'* (part of "#AmINext" a News24 special feature).

https://aminext.news24.com/ (accessed 20 October 2023).

RICH A

1984. Notes Toward a Politics of Location. 210-231.

RICH P

1978. Ministering to the white man's needs: the development of urban segregation in South Africa 1913–1923. 37(2) *African Studies* 37(2): 177

ROBINSON J

1991. The Geopolitics of South African Cities: States, Citizens, Territory. *University of the Witwatersrand African Studies Institute.*

ROSS R, MAGER A & NASSON B (eds.)

2011. *The Cambridge History of South Africa (Volume 2) 1885-1994.* Cambridge: Cambridge University Press.

DUBOW S

2011. South Africa and South Africans: nationality, belonging, citizenship. In Ross R, Mager A and Nasson B (eds.) 2011:

SA PEOPLE

2019. *Emotional Scenes at Uyinene (Nene) Mrwetyana's Funeral in South Africa*. https://www.sapeople.com/2019/09/07/emotional-scenes-at-uyinene-nene-mrwetyanas-funeral-in-south-africa/ (accessed 20 October 2023).

SASHIDHARA S

1980. Mental health and apartheid a case to answer?. *Bulletin of the Royal College of Psychiatrists* 4(11): 171-172.

SMITH A

2010. *Nationalism: Theory, Ideology, History* (2010) Cambridge: Polity Press.

SMITH L

#Ableism.

http://cdrnys.org/blog/uncategorized/ableism/ (accessed 20 October 2023).

SMIT DP

1989. The Political Economy of Urban and Regional Planning in South Africa: 1900-1988 Towards Theory to Guide Progressive Practice. Unpublished DPhil thesis. University of Natal.

SOJA E

2010. *Seeking Spatial Justice.* Minneapolis: University of Minnesota Press.

2009. The city and spatial justice' (2009) *Spatial Justice*:1-5.

SOUTH AFRICAN HISTORY ONLINE

35. Colour Legislation in the Orange River Colony. https://www.sahistory.org.za/archive/35-colour-legislation-orange-river-colony (accessed 1 November 2023).

List of Laws on Land Dispossession and Segregation.

https://www.sahistory.org.za/article/list-laws-land-dispossession-and-segregation (accessed 1 November 2023).

National Party (NP).

https://www.sahistory.org.za/article/national-party-np (accessed 1 November 2023).

SOUTHERLAND W

2016. Agamben's Homo Sacer: Interpretation and Application. 1-18.

SPRINGER S

2011. Violence sits in places? Cultural practice, neoliberal rationalism, and virulent imaginative geographies. *Political Geography* 30(2): 90-98.

STAFFORD L

2019. *Ableism and the struggle for spatial justice*. https://www.opendemocracy.net/en/transformation/ableism-and-struggle-spatial-justice/ (accessed 20 October 2023).

STRAUSS M

2019. Historical Exposition of Spatial Injustice and Segregated Urban Settlement in South Africa. *Fundamina* 25(2): 135–168

TEMBO T

2019. *State says they're ready to start with Uyinene Mrwetyana's murder trial*. https://www.iol.co.za/capeargus/news/watch-state-says-theyre-ready-to-start-with-uyinene-mrwetyanas-murder-trial-36811206 (accessed 20 October 2023).

THAMM M

2006. *Not just another murder*.

https://mg.co.za/article/2006-02-26-not-just-another-murder/ (accessed 20 October 2023).

TUAN Y

1997. *Space and Place: The Perspective of Experience.* Minneapolis: University of Minnesota Press.

TYNER JA

2012. *Space, Place, and Violence: Violence and the Embodied Geographies of Race, Sex, and Gender*. New York: Routledge

UNITED NATIONS

1973. International Convention on the Suppression and Punishment of the Crime of Apartheid.

1998. Rome Statute of the International Criminal Court.

VAN DER WALT J

2014. *Law and Sacrifice: Towards a Post Apartheid Theory of Law*. New York: Routledge.

VAN HEES B

2017. *Two to plead guilty over Franziska's stolen property*. https://www.iol.co.za/amp/news/two-to-plead-guilty-over-franziskas-stolen-property-7810846 accessed 12 July 2020 (accessed 20 October 2023).

VAN MARLE K

1999. Towards an "Ethical" Interpretation of Equality. Unpublished LLD thesis. University of South Africa.

2018. 'Life is Not Simply Fact': Aesthetics, Atmosphere and the Neoliberal University: 1-18.

VELAPHI S

2019. *I am sorry for not warning you about post office, says Uyinene's mom at funeral*. https://www.iol.co.za/sundayindependent/news/i-am-sorry-for-not-warning-you-about-post-office-says-uyinenes-mom-at-funeral-32555242 accessed 10 July 2020.

VÉLEZ V

2017. Spatializing Race and Racializing Space: Exploring the Geographic Footprint of White Supremacy Using Critical Race Spatial Analysis. *Center for Critical Race Studies* 11:1-4.

VOCABULARY.COM

Mourning.

https://www.vocabulary.com/dictionary/mourning (accessed on 30 October 2023).

WEHELIYE A

2014. *Habeas Viscus: racializing assemblages, biopolitics, and black feminist theories of the human*. Durham and London: Duke University Press.

WESTERN J

1981. *Outcast Cape Town*. Minneapolis: University of Minnesota Press.

WIKIPEDIA

Atteridgeville.

https://en.wikipedia.org/wiki/Atteridgeville (accessed 20 October 2023).

Danville, Pretoria

https://en.wikipedia.org/wiki/Danville,_Pretoria#cite_note-Dict01-2 (accessed 20 October 2023).

Grief.

https://en.wikipedia.org/wiki/Grief (accessed 30 October 2023).

Mourning.

https://en.wikipedia.org/wiki/Mourning (accessed 30 October 2023).

Population Registration Act, 1950 .

https://en.wikipedia.org/wiki/Population_Registration_Act,_1950#:~:text=The%20Population%20Registration%20Act%20of,of%20the%20system%20of%20apartheid (accessed 1 November 2023)

Tokai, Cape Town

https://en.wikipedia.org/wiki/Tokai,_Cape_Town (accessed 20 October 2023).

Waverley, Pretoria

https://en.wikipedia.org/wiki/Waverley,_Pretoria (accessed 20 October 2023).

WITTEN L

2012. 18 years 'won't bring our daughter back.

https://www.iol.co.za/capeargus/18-years-wont-bring-our-daughter-back-1226070 (accessed 20 October 2023).

WYNTER S

2001. Towards the Sociogenic Principle: Fanon, The Puzzle of Conscious Experience, of Identity and What it's Like to be "Black". In Duran-Cogan and Gomez-Moriana (eds.) 2001: 30-66.

ZAGAGANA M

2023. *Khayelitsha Community Makes Safety Gains With Neighbourhood Watch Initiative*.

https://ewn.co.za/2023/03/23/khayelitsha-community-makes-safety-gains-with-neighbourhood-watch-initiative (accessed 20 October 2023).

ZIAREK EP

2008. Bare Life on Strike: Notes on the Biopolitics of Race and Gender. *South Atlantic Quarterly* 107(1): 89-105.

Legislation

Arbitration Act 42 of 1965

Bantu Homeland Citizenship Act 26 of 1970

Black Communities Development Act 4 of 1984

Constitution of the Republic of South Africa 1996

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

Criminal Procedure Act 51 of 1977

Group Areas Act 36 of 1966

Group Areas Act 41 of 1950

Group Areas Amendment Act 6 of 1955

Group Areas Amendment Act 23 of 1961

Group Areas Amendment Act 29 of 1956

Group Areas Amendment Act 49 of 1962

Group Areas Amendment Act 56 of 1965

Group Areas Amendment Act 65 of 1952

Group Areas Amendment Act 77 of 1957

Group Areas Development Act 69 of 1955

Group Areas Further Amendment Act 68 of 1955

Natives Land Act 27 of 1913

Natives Laws Amendment Act 46 of 1937

Native Laws Amendment Act 54 of 1952

Natives (Urban Areas) Act 21 of 1923

Native (Urban Areas) Amendment Act 25 of 1930

Natives (Urban Areas) Consolidation Act 25 of 1945

Population Registration Act 30 of 1950

Cases

The Arbitration Between Families of Mental Health Care Users Affected By The Gauteng Mental Marathon Project and the National Minister of Health of the Republic of South Africa, Government of the province of Gauteng, Premier of the province of Gauteng and Member of the executive council of health: province of Gauteng rehearsed before Justice Dikgang Moseneke

S v Malgas 2001 (1) SACR 469 (SCA)

S v Matyityi 2011 (1) SACR 40 (SCA)

S v Oliver (CC47/2016) [2017] ZAWCHC 65

S v Schwartz 2004 (2) SACR 370 (SCA)