

# NEOLIBERALISM AND INEQUALITY IN POST-APARTHEID SOUTH AFRICA

*by Thabiso Mfete\**



## 1 Introduction

The following article will uncover how the African National Congress's (hereafter 'the ANC') adoption of neoliberal policies and ideologies has resulted in the deepening and perpetuating of socio-economic inequality along racial lines in 'post-apartheid' South Africa.<sup>1</sup> Firstly I will elaborate what neoliberalism is and what it entails, then explain the historical context leading up to the ANC's adoption of neoliberal policies in the local and global context, and then I will show how these policies and its apparatuses perpetuate socio-economic inequalities which render the transformative promises of the Constitution hollow, using specific examples like the privatisation of water and the Marikana massacre.

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1 The author refers to 'post-1994' in inverted commas because it is debatable whether South Africa is truly in a post-apartheid term. The formal abolition of apartheid or racial segregation does not transcend to apartheid's demise in our realities or everyday living. This view will hold true to every mention of the phrase in the article.

The article will uncover how socio-economic inequality is prevalent in our democratic dispensation using mainly two theories: Critical Race Theory and Critical Legal Studies. The latter theories provide the lens through which we can evaluate, analyse, and criticise neoliberal policies in our contemporary society. I will argue that it is preposterous to theorise and understand neoliberalism and race as two separate entities that sometimes interconnect.<sup>2</sup> The article will outline how race and neoliberalism are co-constitutive.<sup>3</sup>

In explaining the concept of neoliberalism, the article will also answer pertinent questions arising in South Africa's contemporary context such as: why do the black-majority remain structurally poor in 'post-apartheid' South Africa when it is thought to be the best and most progressive constitution (with first 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> general rights) in the world? And who benefits from these policies since socio-economic inequalities have deepened? Lastly, I will come up with a well-thought alternative that best fits our democratic dispensation.

## 2 Neoliberalism

Neoliberalism can be understood as a new stage in the growth of capitalism evolving from the wake of the 'post-war-boom'.<sup>4</sup> It is mostly understood by the majority of people as encompassing the following three intertwined characteristics: (a) as an apparatus of institutions, policies and practices, (b) a structure of economic, social and political reproduction espoused by financialisation and, (c) as a system of capitalism for the minority and against the majority.<sup>5</sup> Neoliberalism is a complex system of multifaceted features in ideology, practice, and policy.<sup>6</sup>

The most rudimentary principles of neoliberalism are: commercialisation, privatisation of state-owned sectors, decentralisation, deregulation of the market, corporatisation of public entities and public resources, and the retraction of the state in the provision of social goods.<sup>7</sup> These principles set the foundation of many neoliberal states across the globe. It limits the state from 'interfering' with the market and having governance of public goods.<sup>8</sup>

2 DJ Roberts & M Mahtani 'Neoliberalizing race, racing neoliberalism: Placing "race" in neoliberal discourses' (2010) 42 *Antipode* 248.

3 Roberts & Mahtani (n 2 above) 248.

4 K Bayliss *et al* '13 Things you need to know about neoliberalism' (2016) *New Agenda: South African Journal of Social and Economic Policy* 25.

5 As above.

6 As above.

7 As above.

8 The author recognises the need to insert inverted commas to the word 'interfere' because the author is of the opinion that the state is not interfering but rather intervening. The author reinforces this view on any other time when mention is made to the word 'interfere' in the article.

The most comprehensive definition of neoliberalism, in my view, comes from the following quote by Harvey:

[N]eoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.<sup>9</sup>

This political-economic theory has reformulated the correlation between the state, the economy, and society.<sup>10</sup> This anatomy advocates for individual entrepreneurship and the ideology of self-sustainability; the political-economic theory which divests individual citizens of their collective social rights and merits the success of the collective groups on each individual while also isolating failures to individuals.<sup>11</sup> Within a neoliberal state, the balance of payment is structurally dependent on foreign investment.<sup>12</sup> The problem with the adoption of neoliberal political-economic policies is that they individualise successes and failures, and they abandon the constitutional mandate of a transformative society; they fail to address 350 years of black subjugation and they leave the quest for social justice to be dependent on an unpredictable free market.<sup>13</sup>

In a neoliberal state, people's sovereignty is substituted by market regulations.<sup>14</sup> The state and its citizens establish a transactional relationship of which citizens take the role of being customers, while that state becomes a service provider.<sup>15</sup> In a neoliberal democracy, the state is run like a business, and its performance is judged by the economic value of efficiency, derived from the privatisation and cuts of public goods.<sup>16</sup> What is key is the maximisation of profit with less costs.<sup>17</sup> The social enhancement of the state's people becomes secondary.<sup>18</sup> The market in a neoliberal state is the arbiter of the delivery of public services.<sup>19</sup>

This theory of economic practice has a cajoling effect on the ways of thought to a point where it has been normalised as a way of life and forms part of common knowledge in the way we understand the world.<sup>20</sup> The term 'neoliberalism' is a new term, which was relatively

9 D Harvey *A brief history of neoliberalism* (2005) 71.

10 Bayliss *et al* (n 4 above) 32.

11 As above.

12 Bayliss *et al* (n 4 above) 33.

13 As above.

14 MH Maserumule 'To fix SA's dysfunctional State, ditch its colonial heritage' *The Citizen* 04 July 2018 14.

15 Maserumule (n 14 above) 14.

16 As above.

17 As above.

18 As above.

19 S Narsiah 'Alternatives to neoliberal governmentality in South Africa' (2007) 89 *South African Geographical Journal* 41.

20 Narsiah (n 19 above) 34.

unknown to many before the 1990s.<sup>21</sup> It gained global circulation after Zapatistas' encounters with neoliberalism in Mexico when there was a commencement of the signing of the North American Free Trade Agreement in the year 1994.<sup>22</sup> It is thought that Victorian liberalism and the classical liberal thoughts are an inspiration to modern-day neoliberalism.<sup>23</sup>

Neoliberal policies tend to objectify institutions that are outside the parameters of the free market such as trade unions, universities and public administrations; the rationale behind this being to bring them inside the market through acts such as privatisation or attempting to reconstruct them in a market-like way to fit the model of neoliberal political-economic practice.<sup>24</sup> In this kind of apparatus, the idea of competitive competition in the economy and the production of structured inequality are embraced as being a positive outcome.<sup>25</sup> Structured inequality, the privatisation of gains, and the socialisation of losses are rudimentary indicators of neoliberal states.<sup>26</sup>

These neoliberal ideologies are justified through phenomena such as 'investor confidence', 'stability' and 'competitiveness'.<sup>27</sup> Concepts such as 'investor confidence' are problematic in the sense that they are materially ungrounded, elusive, volatile, self-referential and this systemically leads to the overestimation of investment that arises from financially-friendly policies.<sup>29</sup> The rationale behind free competition is that competition between firms and individuals manifest in increased efficiency, greater innovations and new products are sold at cheaper prices to attract international investors.<sup>30</sup>

21 W Davies 'Neoliberalism: A bibliographic review' (2014) 31 *Theory, Culture & Society* 309.

22 S Springer *et al* *An introduction to neoliberalism* (2016) 2.

23 Davies (n 21 above) 310.

24 J Mathekganye *et al* 'The nexus between water, neoliberalism and sustainable development in post-apartheid South Africa' (2019) 11 *African Journal of Public* 44.

25 Bayliss *et al* (n 4 above) 32.

26 Davies (n 21 above) 316.

27 The inverted commas in each word mentioned above are placed because the author is of the view that those terms are evasive and are an illusion. They do not signify the true state of affairs and are concepts that the government policies aspire to achieve but are not realistic.

28 Bayliss *et al* (n 4 above) 33.

29 As above.

30 B Ngulube 'The development of neoliberalism and its influence on undergraduate economics curricula at selected South African Higher Education Institutions' unpublished PhD thesis, *University of South Africa* (2016) 4.

According to what the system stands for, markets (which are self-regulating mechanisms) need to be freed from government 'inference' or interference to be at the most efficient, as collectivism is a barrier in economic prosperity.<sup>31</sup>

Hayek suggests that all forms of collectivism (whether socialism or social democracy) suppress efficient market flow and lead to undesirable results and in most cases, a totalitarian state.<sup>32</sup> Neoliberals rationalise government marginalisation and the transmission of responsibility for the provision of public services from the public sector to the private sector.<sup>33</sup>

Those who are in favour of neoliberalism argue that the market is self-efficient and that it is guided by the laws of supply and demand.<sup>34</sup> When supply and demand intersect at the market price, suppliers and consumers won't have any particular reason to increase or decrease prices.<sup>35</sup> As a result, consumers and suppliers will always be happy.<sup>36</sup> Neoliberal governance sees the market as being superior to non-market forms of services and goods.<sup>37</sup>

In South Africa, areas of health, education and welfare are now in the hands of the white minority and direct international investors.<sup>38</sup> The political-economic theory focuses on creating a new social and political regime and has no intention of recuperating the old system.<sup>39</sup> The main ancestries of neoliberalism can be traced back to liberal thought and philosophy, particularly classical liberalism and modern liberalism.<sup>40</sup> Classical liberalism can be traced back to earlier liberals such as John Locke, Alexis de Tocqueville, and Adam Smith.<sup>41</sup> The idea that the state should keep 'interference' in citizen's affairs to a bare minimum stems from this school of thought.<sup>42</sup>

Under this political-economic practice the state is obliged to guarantee the integrity and quality of money.<sup>43</sup> According to Harvey, this system of doing things should not be seen as the continuation of earlier classical liberal thought, but a modification of it.<sup>44</sup> It lives independently as a mainstream practice from its earlier predecessors, although it stems from and has similar characteristics to them. Blomgren is of the view that neoliberalism is deeply ingrained in a

31 D Cahill 'Is neoliberalism history?' (2009) 28 *Social Alternatives* 12.

32 Cahill (n 31 above) 12.

33 J Gilbert 'What kind of thing is 'neoliberalism'?' (2013) 80 *New Formations* 11.

34 Ngulube (n 30 above) 27.

35 Ngulube (n 30 above) 4.

36 As above.

37 As above.

38 Ngulube (n 30 above) 52.

39 Gilbert (n 33 above) 7.

40 Gilbert (n 33 above) 8.

41 As above.

42 Gilbert (n 33 above) 7.

43 Harvey (n 9 above) 71.

44 Ngulube (n 33 above) 5.

political theory which advocates for individual liberty, the protection of property and is subsequently hegemonic in nature.<sup>45</sup>

The rationale behind neoliberalism and its policies is that an unrestrained free market is a beneficial way of conducting commercial transactions at an international and national level.<sup>46</sup> It posits that this way of thought unshackles the innovative entrepreneurial acumen in every individual who wants to succeed.<sup>47</sup> According to this line of thought, wealth distribution in society will go to those who have sweat on their brows, and that one succeeds or lives a life of fiasco in accordance with one's individual choices.<sup>48</sup> Mitchell posits that in a neoliberal state, individuals are not induced by national unity in diversity, but by global competitiveness and individual enrichment.<sup>49</sup>

Neoliberalism is not concerned with the implementation of democratic values as entrenched in the Constitution of the Republic of South Africa.<sup>50</sup> Neoliberalism cannot be condensed to a mere coherent ideology, but should be understood as a spectrum of ideas that rationalises our contemporary context, that sway government policy and other contestations.<sup>51</sup> Neoliberalism can also be understood to be a discursive governmental program, an ideology, an abstract machine, and a hegemonic project.<sup>52</sup> In a neoliberal state, government deficit as well as social welfare spending need to be kept at a low.<sup>53</sup>

This caters to the interests of the South African white minority who are able to participate in the 'free market'.<sup>54</sup> This way of living does not address the racial socio-economic inequality that exists and it indirectly perpetuates socio-economic inequality. There can be no denial of the existence of neoliberalism as its rejection would go hand-in-hand with the rejection of capitalism, the manifestation of racialised socio-economic inequality, and structural subordination of black people.<sup>55</sup>

45 Mathekganye *et al* (n 24 above) 46.

46 Bayliss *et al* (n 4 above) 30.

47 Gilbert (n 33 above) 9.

48 DJ Roberts 'Race and neoliberalism' in S Springer *et al* (eds) *The handbook of neoliberalism* (2016) 209.

49 Ngulube (n 33 above) 50.

50 The Constitution of the Republic of South Africa, 1996 (subsequent reference in text: 'the Constitution').

51 Harvey (n 9 above) 72.

52 Gilbert (n 33 above) 7.

53 Narsiah (n 21 above) 39.

54 The phrase is inserted in inverted commas because the market is not 'free' to all but is free to a few who can participate in it.

55 Gilbert (n 33 above) 7.

Neoliberalism can also be understood as the exposure of national economies to global actors and multinational corporations such as the World Bank and the World Trade Organisation.<sup>56</sup> Its existence manifests in the socio-economic disparities and its 'transformative'<sup>57</sup> policies such as the Growth Employment and Redistribution program (hereafter referred to as 'GEAR').<sup>58</sup> 'From each according to their abilities'- best encapsulates what neoliberalism stands for.<sup>59</sup> It advocates for the restoration of capitalist power and the enhancement of individual egalitarianism.<sup>60</sup>

## 2.1 What was the historical context leading up to the ANC's adoption of neoliberal policies in the local context?

The 1980s, were characterised by massive internal resistance and violence from local political parties, trade unions and international sanctions which were imposed by international states and bodies against the apartheid regime.<sup>61</sup> During this period of unrest, the country was on the brink of a civil war with the government declaring states of emergency in response to the country's ungovernable state.<sup>62</sup> The value of the South African Rand also fell and inflation became chronic.<sup>63</sup>

Police and military brutality by the apartheid government was there to repress those who were opposed to the implementation of a capitalist government in the upcoming democratic dispensation.<sup>64</sup> The assassination of Chris Hani (a general-secretary of the South African Communist Party and head of Umkhonto we Sizwe [Spear of the Nation] - ANC's armed wing) on 10 April 1993, by a far-right anti-communist immigrant named Janusz Walus was evidence of the government's rejection of communism and the embracement of capitalist system/ neoliberal governance.<sup>65</sup> Talks of the nationalisation of industries and the redistribution of wealth to those who had fallen victim to the apartheid regime laid fears on white businessmen.<sup>66</sup> The apartheid government, led by De Klerk, spearheaded South Africa's period of transition and repealed legalisation that segregated between the black majority and the

56 W Larner 'Neoliberalism?' (2003) 21 *Environment and Planning D: Society and Space* 509-512.

57 The policies are not transformative.

58 Narsiah (n 21 above) 36.

59 Gilbert (n 33 above) 10.

60 As above.

61 C Saunders 'Perspectives on the transition from apartheid to democracy in South Africa' (2004) 51 *South African Historical Journal* 161.

62 RM Byrnes 'South Africa a country study' (1996) *Federal Research Division* lviii.

63 Byrnes (n 62 above) lix.

64 Byrnes (n 62 above) lviii.

65 Saunders (n 61 above) 160.

66 Byrnes (n 62 above) lx.

white minority.<sup>67</sup> The apartheid government surreptitiously aided the Inkatha Freedom Party with the provision of weapons to fight the ANC and create division during this period of unrest.<sup>68</sup>

As a result of the division created by the apartheid government, black-on-black violence had caused as many as 10 000 fatalities by 1994.<sup>69</sup> The Goldstone Commission of Inquiry found that these 'dirty tricks' campaign against the ANC were a ploy advocated for by the South African Defence Force (SADF).<sup>70</sup> Many exiles returned to South Africa during the 1990s and were against Nelson Mandela's conciliatory and multiracial government approach in the negotiation of the new democratic dispensation.<sup>71</sup>

It was, however, not all doom and gloom. The United States of America lifted its international sanctions in 1991 after the five conditions named in the Anti-Apartheid Act were accomplished.<sup>72</sup> These conditions included: the release of political prisoners, the entering of multiracial negotiations, the lifting of the state of emergency, the removal of bans of political parties and the repealing of segregatory legislation,<sup>73</sup> such as the Population Registration Act and the Groups Areas Act.<sup>74</sup>

The decline of communism in Eastern Europe and the catastrophes of socialist systems in Africa meant that the likelihood of the South African government adopting a communistic approach were slim.<sup>75</sup> The ANC government took control of South Africa after winning the 1994 election with over 62.5% of the national votes followed by the National Party with 20.4% and the IFP with 10.5% of the national votes.<sup>76</sup> Mandela was the President of the ANC and South Africa at large, with F.W. de Klerk as his deputy president.<sup>77</sup>

Nelson Mandela's status as the president meant that he was in effective control of all policy considerations. Neoliberalism was adopted after the fall of the apartheid regime in 1994 and it sought to 'make up'<sup>78</sup> for the historical injustice suffered by the black majority at the hands of the white minority.<sup>79</sup> At that time, social corporatism was present in the form of the tripartite alliance of the

67 Byrnes (n 62 above) lix.

68 Byrnes (n 62 above) lx.

69 Byrnes (n 62 above) 74.

70 Byrnes (n 62 above) 82.

71 Byrnes (n 62 above) 76.

72 Byrnes (n 62 above) 77-78.

73 As above.

74 Population Registration Act 30 of 1950; Group Areas Act 41 of 1950.

75 Byrnes (n 62 above) lx.

76 Byrnes (n 62 above) lxii.

77 As above.

78 The phrase is in inverted commas because the system of neoliberalism that advocates for individualism cannot realistically undo injustices suffered by the black majority.

79 Byrnes (n 62 above) lxii.



ANC, the South African Communist Party (SACP) and the Congress of South African Trade Union (COSATU).<sup>80</sup>

Between 1995 and 1996, there were demands for immediate economic developments. Labour unions stood firm for organised workers and the government was under massive pressure to alleviate poverty and attract investor confidence.<sup>81</sup> Trade unions were weak in the 'new South Africa'<sup>82</sup> because they had lost their key leaders when they took office as government officials.<sup>83</sup>

The South African government was under the influence of capitalism at the time. The rationale behind the adoption of neoliberal policies was that this adoption would help to attract international investors, gain confidence, and help boost economic growth since neoliberalism was a global phenomenon.<sup>84</sup> This particular approach gave birth to the reformation of a modernised apartheid that masquerades in 'transformative policies'<sup>85</sup> (such as the BEE, BBBE and affirmative action) and not its deconstruction.<sup>86</sup>

The formal adoption of neoliberal policies took place in 1996, when the then government adopted a policy named Growth, Employment and Redistribution Programme, hereafter referred to as the GEAR.<sup>87</sup>

## 2.2 The global context leading up to the ANC's adoption of neoliberalism

The adoption of neoliberal policies by the ANC's government was preceded by the ideological warfare which occurred from 1947 to 1991 between the Soviet Union and the United States of America and their allies.<sup>88</sup> The war of ideologies dominated international relations and domestic policies, and to a large extent affected the lives of ordinary civilians.<sup>89</sup> This ideology was between the Soviet Union's communist approach and the United States of America's capitalist approach.

80 Bayliss *et al* (n 4 above) 29.

81 Byrnes (n 62 above) lxii.

82 The 'new' South Africa is inserted in inverted commas because the South Africa we live in is not anyhow new. For further read of this view, the author suggests to the reader the following source: K Bayliss *et al* '13 Things You Need to Know About Neoliberalism' (2016) *New Agenda: South African Journal of Social and Economic Policy* 25.

83 Byrnes (n 62 above) lxii.

84 Ngulube (n 33 above) 50.

85 The phrase is in inverted commas because the policies are not transformative.

86 Byrnes (n 62 above) lix.

87 Byrnes (n 62 above) lxiv.

88 JA Engel *The Fall of the Berlin Wall: The Revolutionary Legacy of 1989* (2009) 2.

89 I Bredenkamp & A Wessels 'A historical perspective on South African military chaplaincy and cold war ideologies during the Border War, 1966-1989' (2013) 38 *Journal for Contemporary History* 46.

This ideological warfare known as the 'Cold War' was not only about ideology but was also about technological developments (the 'arms race' and astronomy). It divided the world into two, the Western capitalist and the Eastern communist. The failure of the soviet-style socialism was epitomised by the fall of the Berlin Wall in 1989; to the contrary the fall of the Berlin Wall signalled triumph for capitalism globally.<sup>90</sup> The fall of the Berlin Wall gave birth to the global phenomenon of the hegemonic neoliberal capitalist doctrine we know today.<sup>91</sup> Neoliberalism gained a fellowship in South Africa in the 1990s.

The 1990s saw communist countries such as the Soviet Union suffer economic meltdowns, resulting in communist ideologies losing credibility.<sup>92</sup> This indirectly endorsed capitalist economic practices globally and was no different in South Africa, as the ANC government was somewhat cajoled to implement these neoliberal policies (the GEAR program and the Reconstruction and Development Programme, hereafter referred to as RDP, which was a people-driven initiative).<sup>93</sup>

African influence also played a massive role in the spread of neoliberalism and this was illustrated by the implementation of neoliberal principles in 1974, by Tanzania's Julius Nyerere.<sup>94</sup> Nyerere named this economic-political theory 'Ujama',<sup>95</sup> which meant that individuals had to be self-reliant to ascertain success and had to divorce state intervention.<sup>96</sup> It resembles the qualities of neoliberalism, which is problematic considering black peoples' historical disadvantage. Expecting the historically disadvantaged black community to reverse the wills of injustice that were exerted on them for hundreds of years by themselves is preposterous.

In the 1980s the world was characterised by the over-commitment of states to politics in the public domain in their policymaking process.<sup>97</sup> This was however not the case in the 1990s, because of the democratisation of states as a result of the coming to the end of the Cold War.<sup>98</sup> As a result, there was a de-politicisation of the policy-making process and naturalisation of economic discourse.<sup>99</sup>

90 Narsiah (n 21 above) 34.

91 As above.

92 Ngulube (n 33 above) 49.

93 As above.

94 Ngulube (n 33 above) 67.

95 The inverted commas to the word indicate that the word is not an English word. It is a Ndebele word which says individuals must be self-reliant.

96 Ngulube (n 33 above) 67.

97 Narsiah (n 21 above) 34.

98 As above.

99 As above.

Most international bodies lifted their sanctions on South Africa after the Group Areas Act, Population Registration Act and Land Act were repealed by the ANC government in the 1990s.<sup>100</sup> They (international bodies) then re-established diplomatic relationships with South Africa, amid the upcoming democracy.<sup>101</sup> The World Bank played a pivotal role in popularising the spread of the neoliberal paradigm globally.<sup>102</sup> The adoption of neoliberalism by the South African government, having regard to South Africa's history of black subjugation by the white minority using the same system, meant that the South African government had not deconstructed colonial apparatuses, but merely administered it.<sup>103</sup>

Neoliberalism gained prominence in the 1970s -1980s under the 'new right' political leaders such as the former British Prime Minister Margaret Thatcher and former United States of American President Ronald Reagan.<sup>104</sup>

### 3 The methodologies used to evaluate ANC's neo-liberal policies

#### 3.1 Critical Legal Studies

Critical Legal Studies (herein referred to as CLS) is a movement in legal theory that emerged from the United States of America in the 1970s.<sup>105</sup> It presented a challenge to Western legalism (which embraced and legitimised existing power hierarchies).<sup>106</sup> It highlights how the law/ implementation of policies legitimises unequal power dynamics in societies.<sup>107</sup> CLS argues that politics and the law are intertwined; that the law (neoliberal policies) is informed by politics and that politics are informed by the law.<sup>108</sup> Empirical assumptions, epistemology, and moral standards that are in the law operate to advance the interest of an identifiable political assemblage.<sup>109</sup>

The political standpoint of CLS is occupied by feminists, and theorists that are concerned with the role played by the race in the

100 Byrnes (n 62 above) 80.

101 Byrnes (n 62 above) 81.

102 Ngulube (n 33 above) 5.

103 Maserumule (n 14 above).

104 Mathekganye (n 24 above) 43.

105 JWV Doren 'Illusive justice: Applicability of critical legal studies to South Africa' (1989) 4 *SA Public Law* 105.

106 Doren (n 105 above) 105.

107 J Modiri 'The grey line in between the rainbow: (Re)thinking and (re)talking critical race theory in post-apartheid legal and social discourse' (2011) 26 *Southern African Public Law* 180.

108 Doren (n 106 above) 105.

109 M Tushnet 'Critical Legal Studies: A Political History' (1991) 100 *The Yale Law Journal* 1517.

law (critical race theorists).<sup>110</sup> It is tough to understand how people could mainly be concerned or interested in what the law says and how it intends to improve their lives, without being interested in what policymakers' do and how they can participate in these policies.<sup>111</sup>

CLS stems from legal realism as a theory and seeks to expose how the law is indeterminate.<sup>112</sup> It aims to overcome race hierarchies and white domination. The theory also speaks about fundamental and internal contradictions (indeterminacies) within the law, in our context neo-liberal policies.<sup>113</sup> It is relevant in our contemporary context because the policies we have adopted speak of transformation and the achievement of an egalitarian society, while in actuality perpetuate racial inequalities and help maintain structural power – hence there exists a fundamental contradiction in the policies – reference?

These contradictions and tensions emanate between the dominant group (which reflects the current dominant status quo) and the subordinate group (which reflects the black majority who aim to challenge the status quo). The theory criticises and politicises earlier theories such as legal realism and liberalism.<sup>114</sup>

CLS can be of great utility since we are to confront those in power (the white minority and the black elite) and who claim that there is no other alternative to neoliberal policies.<sup>115</sup> CLS views the current status quo as unnatural, arranged by those in power, and that it needs to be reconstructed in favour of the black majority.<sup>116</sup> CLS can be used as a theory that explains hierarchical hegemony.<sup>117</sup>

This article intends to use this theory in our context to re-evaluate, analyse, and criticise the negative contributions that neoliberal policies have brought 'post'-1994. Through this theory, I will be able to show how the politics of law favour global capitalism and neo-liberal policies. I will furthermore use the theory to show the false consciousness of the law/neoliberal policies in normalising the current status quo – creating a misconception that things are the way they are because of factors beyond the control of the government.<sup>118</sup>

110 Tushnet (n 109 above) 1517.

111 Tushnet (n 109 above) 1539.

112 Modiri (n 107 above) 181.

113 As above.

114 As above.

115 Doren (n 105 above) 105.

116 Doren (n 105 above) 106.

117 As above.

118 Modiri (n 107 above) 182.

### 3.2 Critical Race Theory

I feel it is important that we understand what race is before I dwell deeper into what CRT means and how I intend to use it. Race can be understood as something that is not biological or embedded in our being from birth, but as a social, institutional and cultural construct aimed at categorising persons into the structure of hegemony for one group ('whites') over other ('blacks').<sup>119</sup> Social category of race has since been made biological into a hegemonic system.<sup>120</sup>

'Whiteness' has been created to represent purity, civilisation, wealth, art and everything good, while 'blackness' to the contrary represents bad luck, poverty, witchcraft, and dismay.<sup>121</sup> Decolonial scholars have been able to trace the origin of racial categorisation to the 15<sup>th</sup> century, during the Portuguese and Spanish exploration to the Americas.<sup>122</sup>

Critical Race Theory, herein referred to as CRT, falls under the broad umbrella of feminist jurisprudence, sometimes it is referred to as 'outsider jurisprudence'.<sup>123</sup> It came about as a result of the inadequacies of its predecessor, Critical Legal Studies, because CLS did not adequately recognise the black interest.<sup>124</sup> CRT calls for the obliteration of white structural supremacy, which goes hand-in-hand with the abolition of capitalism/neo-liberal policies.<sup>125</sup> These structural practices reproduce racialised power dynamics in our everyday living.<sup>126</sup>

One of the basic premises of CRT is that law (neo-liberal policies *in casu*) is not apolitical, and that it pushes a certain political, sociological, hidden presupposition and advocates for a certain ideology- namely that it serves the interest of the white minority in the South African context.<sup>127</sup> This theory problematises the traditional thought or view that the state is neutral and fair arbiters of injury.<sup>128</sup> Policies always legitimise inequality through their association to a particular social power and through their

119 S Chiumbu 'Media, race and capital: A decolonial analysis of representation of miners' strikes in South Africa' (2016) 75 *African Studies* 442.

120 J Modiri 'Towards a "(post-)apartheid" critical race jurisprudence: "divining our racial themes"' 27 (2012) *Southern African Public Law* 244.

121 Modiri (n 120 above) 244.

122 Chiumbu (n 119 above) 442.

123 Modiri (n 107 above) 180.

124 D Bell 'Who's afraid of critical race theory?' (1995) *University of Illinois Law Review* 899.

125 J Modiri 'The colour law, power and knowledge: introducing critical race theory in (post) apartheid South Africa' (2012) 28 *South African Journal of Human Rights* 409.

126 Chiumbu (n 119 above) 442.

127 Modiri (n 120 above) 245.

128 Modiri (n 120 above) 252.

appropriation by particular political interests, specific morals, culture and particular values.<sup>129</sup>

In light of South Africa's history of totalitarian white monopoly and legitimised structural racism over the black majority, it would be preposterous to disregard the importance of CRT in challenging white hegemony (through its implementation of neo-liberal policies in our contemporary context).<sup>130</sup> Modiri articulates that the non-existence of CRT in the context of 'post'-apartheid South Africa runs parallel with structural marginalisation of black needs and values in society.<sup>131</sup>

CRT is needed precisely in South Africa because there are ideological discrepancies and technocratic interpretations of our contemporary liberal approaches to the question of redress in South Africa.<sup>132</sup> CRT enables us to analyse, evaluate and criticise the law (policies) that we are governed by. It gives us a different lens through which we can view and problematise the issues of white privilege, racialised inequality, black marginalisation and question existing apparatuses.<sup>133</sup> CRT is also emancipatory through its criticism and analysis and uncovers possible solutions.<sup>134</sup>

Other theories try to provide solutions within those problematic systems, which makes us assume that major apparatuses of these systems do not need fundamental change but that a mere twitch there and there would suffice.<sup>135</sup> The end result of such solutions will be a synthetic analysis and false premise that favours the current status quo.<sup>136</sup> Theories (like the Marxist theory) that do not put race at the centre of their premise are unconscious to the role played by race in our everyday lives. I agree with Modiri in that race needs to be incorporated in the everyday policies and ideologies that govern us if they are to address the growing socio-economic inequality.<sup>137</sup>

I will use CRT to expose the inadequacies of the neo-liberal policies adopted by the ANC government 'post'-1994. I will use the theory to show how the government fails to address the broader issues of race, how they claim to be 'race-conscious' and radical in bringing about changes.<sup>138</sup> It is much easier to expose neo-liberal policies and how they deal with the question of racialised poverty and the

129 As above.

130 Modiri (n 120 above) 231-232.

131 Modiri (n 120 above) 233.

132 Modiri (n 120 above) 232.

133 As above.

134 Chiumbu (n 119 above) 430.

135 As above.

136 As above.

137 Modiri (n 125 above) 226.

138 The phrase 'race conscious' is inserted in inverted commas because the ANC government policies and its policies are not aware of the role of race in its policies.

perpetuation of white hegemony, since they are structurally ingrained in superstructures.<sup>139</sup> This theory will also be used to reveal the hegemonic role played by the ANC government in this regard.

Transformation is not something that can be readily achieved through each person's individual's work to ascertain socio-economic independence, but rather needs a structural re-evaluation from the top of the ladder going down, in order for it to be initiated.<sup>140</sup> This structural transformation ought to take into account black interests, black experience, black history and must place racial issues at the centre of the debate.<sup>141</sup> I will again use CRT as a tool to evaluate firstly, how our constitutional and legislative promises can be realised and secondly, how to provide a voice for the marginalised.

### 3.3 A critique of neoliberal ideologies and practices through the lens of CRT with a particular view of the Marikana massacre.

Due to the subjugation of blacks by whites, which has resulted in racialised poverty and socio-economic inequalities during apartheid, there is a need for redress 'post'-1994 and a neutral/global/neoliberal approach to transformation would be insufficient in light of our contemporary predicaments.<sup>142</sup> Race is a key instrument in understanding how violence and oppression take place in segments, such as the mining sector, because the oppressed belong to the particular racial group categorised as black.<sup>143</sup> There is no other way to understand institutionalised racial inequality than through capitalist exploitation and white supremacy.<sup>144</sup>

Derrick Bell states that in racially structured policies (neoliberal policies), there is an existence of a robust connection between economic resources and race.<sup>145</sup> The majority of black South Africans, twenty-six years after democracy, are employed in unskilled and low-paying jobs such as garbage collectors, cleaners, car guards, security guards, and domestic works.<sup>146</sup> The deepening of socio-economic inequality will continue to grow along racial lines because the means of production and the ownership of the markets that determine value belong to the dominant group and those that serve their interest.<sup>147</sup>

139 Modiri (n 125 above) 409.

140 Modiri (n 120 above) 229.

141 Modiri (n 125 above) 408.

142 Modiri (n 120 above) 231.

143 M Ndlovu 'Living in the Marikana world: The state, capital and society' (2013) 8 *International Journal of African Renaissance Studies* 49.

144 Modiri (n 120 above) 232.

145 As above.

146 As above.

147 Modiri (n 120 above) 231.

When one is in the position of the black miners (one of powerlessness), one is the subject of the ideas, plans, and decisions of the dominant group in that they determine one's life conditions.<sup>148</sup> The South African government's current neoliberal systems have not only led to a catastrophic deepening of socio-economic inequality, but have also led to a moral, physiological impoverishment of black-esteem and powerlessness.<sup>149</sup> Violence is a tool that is used to instil fear to those who dare to challenge the system, and is instrumental in maintaining white supremacy in capitalist states.<sup>150</sup>

What allows the phenomena of violence to succeed is not only the acts of violence themselves, but the circumstances that make it tolerable.<sup>151</sup> In most cases, like it was with the Marikana massacre, the violence is legally sanctioned through police services and targets a certain category of persons (black miners in this case).<sup>152</sup> Young enunciates that these group-targeted acts of violence are legitimised, institutionalised, encouraged and tolerated as social practices.<sup>153</sup>

South Africa has been described as the most unequal country in the world behind Lesotho.<sup>154</sup> Thabo Mbeki ('the former president of South Africa) holds the premise that South Africa is a country divided into two nations, the white nation (characterised by socio-economic superiority regardless of geographic dispersal) and the black nation (characterised by poverty, illiteracy and appalling living conditions).<sup>155</sup>

I now tend to engage with the events that happened at Marikana. The Marikana massacre refers to the killing of 34 black miners on the 16<sup>th</sup> of August 2012, by the South African police under the influence of the white-dominated Lonmin management (a platinum mine in Rustenburg owned by the British) for exercising their right to strike.<sup>156</sup> It must be borne in mind, when analysing the events which unfolded, that the exercise of the right to strike is entrenched and guaranteed by section 17 of the Constitution.<sup>157</sup>

The strike was a result of wage quarrels that existed between Lonmin management and the black miners.<sup>158</sup> From the findings of the Farlam Commission (a commission of inquiry recruited to

148 Modiri (n 120 above) 234.

149 As above.

150 Modiri (n 120 above) 237.

151 Modiri (n 120 above) 238.

152 As above.

153 As above.

154 G Blooma & D McIntyre 'Towards equity in health in an unequal society' (1998) 10 *Social Science & Medicine* 1529.

155 N Nattrass & J Seekings 'Two Nations'? Race and Economic Inequality in South Africa Today' (2001) 130 *Daedalus* 45.

156 M Ndlovu (n 143 above) 46.

157 The Constitution (n 50 above).

158 JF Boëttergerl & M Rathbone 'The Marikana massacre, labour and capitalism: towards a Ricoeurian alternative' (2016) 81 *Koers* 2.



investigate the massacre), it is clear that the protest was against racialised socio-economic inequality and injustice, black economic exploitation of labour and against appalling living conditions provided by the Lonmin management to black miners.<sup>159</sup>

Neoliberal ideologies have manifested themselves through media outputs (such as the Mail & Guardian). These media platforms criminalise the black miners for exercising their constitutional and industrial right to strike; media platforms in South Africa are highly commercialised and business-centred for the white capitalist and this is at the expense of the black population.<sup>160</sup> These platforms have been captured into neoliberal thought as continuously disseminate ideas that are centred on certain political presuppositions (business stability).<sup>161</sup>

The 'Business Day' (a big media-publishing company) is a typical example of a commercialised and business-centred apparatus. The headline from 'Business Day' read that, black miners ought to 'stay away' from strikes because it negatively impacts foreign investors' confidence.<sup>162</sup> Other institutions like Standard Bank also supported this view by stating that the black miner's strike was 'bad for growth' and for the distribution of payments.<sup>163</sup> Instead of uncovering how white capital and their agencies (SAPS) had exploited and dehumanised black miners, they concern themselves with business branding and how the exercise of the black miner's right to strike affects their profits.

The black miners are categorically excluded from representative participation and they do not have a view on how they are perceived.<sup>164</sup> In a neoliberal state like South Africa, this of course takes place along racial lines.<sup>165</sup> There is also the untruthful rhetoric which justifies black socio-economic marginalisation and holds that blacks are 'lazy' whiners,<sup>166</sup> undeserving of socio-economic readjustments and that they suffer from an 'entitlement complex'.<sup>167</sup>

In South Africa, exploitation and labour have a direct intertwined relationship. Racism is constitutive and woven with the international splitting up of labour and capitalist accumulation at a national level.<sup>168</sup> More often than not in neoliberal states, strikers are stripped of their right to agency and are not given the chance to explain their

159 Boëtterl & Rathbone (n 158 above) 2.

160 Chiumbu (n 119 above) 424.

161 As above.

162 Chiumbu (n 119 above) 425.

163 As above.

164 Modiri (n 120 above) 233.

165 As above.

166 The insertion of inverted commas is because there is no truth in the phrase the black people are 'lazy' and suffer from an 'entitlement complex'.

167 Modiri (n 12 above) 234.

168 Chiumbu (n 119 above) 428.

side of the story.<sup>169</sup> This is so because the ANC government advocates for a certain hidden political presupposition and ideological viewpoint that puts money first and prioritises attraction of foreign investor capital at the expense of the dehumanisation of black miners.

Neoliberalism has certainly 'denied' black people of their voice through the uneven distribution of narrative resources.<sup>170</sup> Agency (speaking on behalf of others) de-authorises those that are being spoken on behalf of and acts as a silencing instrument in neoliberal societies. Black miners then subsequently become objects, and not subjects of their struggles.<sup>171</sup> The media views the occurrence of the Marikana Massacre in a systematic view and it criminalises miners for being 'violent' and 'irrational';<sup>172</sup> this is done through narrow neoliberal discourse.<sup>173</sup> Neoliberal institutions (like the Lonmin mine) thrive on rendering of black miners invisible and on denying black identity, humanity and social realities.<sup>174</sup>

The argument I make above is exemplified in the way the media described the deaths of the 34 black miners: <sup>175</sup> '[s]everal bodies lay on the ground, some piled on top of the other... one man has half his head blown away.'

This descriptive article denies the black miners of their subjectivity, humanity and in a way normalises the extermination of black bodies.<sup>176</sup> Fanon has observed that the ontological denial of black humanity is one of the key instruments of white supremacy.<sup>177</sup> This approach to black lives and the prioritisation of capital are some of the reasons why institutions like Lonmin (which are supposed to alleviate poverty through job creation) end up exacerbating socio-economic inequality.

The Marikana Massacre must be viewed as a form of exploitation which has rejected the black mine-workers' neoliberal governance.<sup>178</sup> The event which took place at Marikana is reminiscent of the Sharpeville massacre that took place in 1960 at the hands of the white supremacist regime, and yet here we are 24 years into democracy.<sup>179</sup> This has happened under the watch of the ANC's neoliberal government with the so-called 'best constitution in the world' and best policies which aim to reduce socio-economic inequalities. During the apartheid regime, black mine workers used to

169 As above.

170 Chiumbu (n 119 above) 421.

171 As above.

172 Chiumbu (n119 above) 427.

173 Chiumbu (n 119 above) 424.

174 Chiumbu (n 119 above) 428.

175 As above.

176 As above.

177 Modiri (n 120 above) 244.

178 M Ndlovu (n 143 above) 46.

179 Boëttgerl (n 159 above) 2.

live in hostels as a solution for the capitalist apartheid government to minimise expenditure in relation to housing issues.<sup>180</sup> Fast-forward to 2012 and the ANC still maintains these structures.<sup>181</sup>

Neoliberal ideologies and policies have three interwoven characteristics of power as held by Chiumbu: <sup>182</sup>‘(1) subjectivity (these neoliberal ideologies practice systemic Eurocentric racism), (2) authority (the practice of systemic violence) and lastly (3) labour (a systemic practice of global capital)’.

The Marikana massacre should not be viewed as a phenomenon or something we are not used to seeing, but should rather be viewed as daily lived experiences of the marginalised black communities. The difference is that the Marikana massacre was well televised and documented as opposed to everyday harsh realities faced by the majority black population.<sup>183</sup>

Regarding the massacre, the question that becomes imperative is not ‘who began the shooting?’ because this question is descriptive of what happened on that day, but the question that should be asked is ‘why did it happen?’ This question gets to the root of the explanation from the top (the ANC government and the Lonmin management) down.<sup>184</sup> The ‘why it happened’ question aids in the understanding of superstructures that masquerade under neoliberal government policies and that repeatedly reproduce similar occurrences that silence the black voices to the corners of poverty.<sup>185</sup>

South Africa has a problem in the sense that the black-elite have been incorporated into a structural system which is designed to revive unofficial black subjugation and perpetuate socio-economic inequalities through the adoption of neo-liberal macroeconomic policies.<sup>186</sup> The modern-day segregation policies are not bluntly racial, discriminatory nor are they led by white supremacists, but are now led by the captured black elite.<sup>187</sup>

The incorporation of these ‘transformative policies’, the adoption of constitutional human rights, and the phenomenon of the infamous fallacy of ‘previously disadvantaged’,<sup>188</sup> makes it seem as though

180 C Chinguno ‘Unpacking the Marikana Massacre’ (2013) 124 *Global Labour Column* 124.

181 Chinguno (n 180 above) 124.

182 Chiumbu (n 119 above) 420.

183 Ndlovu (n 143 above) 47.

184 As above.

185 As above.

186 Modiri (n 107) 180.

187 Modiri (n 107 above) 188.

188 The phrase ‘previously disadvantaged’ does not take historic injustice into account and makes it appear as though the injustice is over. The more appropriate term would be the ‘historically disadvantaged’.

racism is a thing of the past and make the black majority oblivious to note that these policies do not address black poverty.<sup>189</sup> Whites still hold top managerial positions, and opportunities are still racialised in that whites are ten times more likely to get employed post-graduation than blacks.<sup>190</sup>

It is evident that neoliberal practices and ideologies through the Marikana Massacre have led to economic marginalisation, the death of the black population, black labour exploitation, the exacerbation of socio-economic inequalities and systemic forms of violence.<sup>191</sup> As a result of the close relationship between the government and the Lonmin Mine, neoliberal ideology and a business-minded approach become a new way of thought and as consequence to this. There is a manifestation of a false growth that mainly favours white business owners and the black elite at the expense of black majority.<sup>192</sup> The neoliberal individualistic approach is hostile to any form of public provision and collective organisation while remaining protective of minority individual needs.<sup>193</sup>

### **3.3 How neo-liberal policies and ideologies perpetuate socio-economic inequality, viewed through CRT and CLS with a particular interest in the privatisation of water (*Mazibuko* case).**

This part of the article will engage with the deepening of socio-economic inequality 'post-1994' through the lens of CLS. One of the basic premises of CLS is the exposure of internal contradictions and tensions within the law or neoliberal policies.<sup>194</sup> Some of these internal contradictions or tensions within neoliberal policies will be highlighted through the provision of water.<sup>195</sup> The argument I make will be furthered by the cost recovery pricing model. The model is aimed towards achieving equitable services that are financially and ecologically sustainable to the masses.<sup>196</sup> It is however submitted that this model is inequitable in that, poorer households pay larger amounts of their incomes towards the building of water infrastructure.<sup>197</sup> This is one of many contradictions found in neoliberal policies.

189 Modiri (n 120 above) 235.

190 Modiri (n 120 above) 238.

191 Chiumbu (n 119 above) 431.

192 DT McKinley 'The making of a myth: South Africa's neoliberal journey' (2007) 35 *Discourse* 16.

193 Gilbert (n 33 above) 16.

194 Modiri (n 107 above) 181.

195 Bayliss *et al* (n 4 above) 30.

196 As above.

197 As above.

In 1955 the ANC government adopted the Freedom Charter as a guiding blueprint of how they tend to govern the 'new' South Africa.<sup>198</sup> One of the most pivotal mandates of the Charter was to restore the national wealth of the country to the black majority.<sup>199</sup> One of the most rudimentary elements of the restoration of the national wealth of South Africa is its water.<sup>200</sup> This sentiment is further shared by section 27 (1)(b) of the Constitution and the Water Service Act 108 of 1997.<sup>201</sup> These initiatives were responsible for the distribution of water to all citizens of the country indiscriminate of race and class.<sup>202</sup>

It did not take the neoliberal ANC government long before it began to disregard its mandate by adopting neoliberal policies that produced the opposite results.<sup>203</sup> The ANC neoliberal government turned to the privatisation and commercialisation of public services, by forming partnerships with international water corporations as a means of generating revenue.<sup>204</sup> As a result of this move to a neoliberal cost-recovery method of governance, there was a massive increase in the price of water services, and people who suffered most belonged to the poor black community.<sup>205</sup>

Under apartheid there was no water metering technology in place and residents paid a flat rate for services,<sup>206</sup> but since 1994 the introduction of neoliberal water metering technologies and policies meant that there would be a growing socio-economic division along race because black communities would suffer most since they would pay for their individual water consumption.<sup>207</sup> The neoliberal way of governance is colour-blind and ignores power dynamics placed by race in a country with a history of white supremacy that spans over hundreds of years when it chooses policies.<sup>208</sup> CRT calls for the obliteration of such policies because they indirectly and blindly enhance structural white supremacy and black marginalisation through affordability.<sup>209</sup>

In South Africa the lack of affordability is directly related to race, thus the marginalisation of the poor-black households pertaining to the provision of water services endorses existing race

198 DT McKinley 'The struggle against water privatisation in South Africa' in B Brennan *et al Reclaiming public water* (2005) 181.

199 McKinley (n 198 above) 181.

200 As above.

201 Water Service Act of 108 of 1997 sec 47(1)(b) subsequent reference in text, Water Services Act.

202 As above.

203 As above.

204 McKinley (n 198 above) 182.

205 As above.

206 Services includes water and refuse removal.

207 Narsiah (n 21 above) 41.

208 Modiri (n 120) 409.

209 As above.

stratifications.<sup>210</sup> The black population makes up the overwhelming majority of the people who find themselves living under conditions of abject poverty.<sup>211</sup> Under the apartheid regime (in 1993) the local community of Fort Beaufort in the Eastern Cape paid a flat rate of R10.60 for services including their water consumption. Fast-forward to 1996 under the ANC neoliberal government and privatisation under the Suez (international body) there was an increase by 600% to a monthly rate of R60.<sup>212</sup>

In the black community of Nelspruit, where the unemployment rate is at a rate of 40% and with an average black household earning R1 200 per month, the price of water increased by 69% post 1994.<sup>213</sup> As a result of these policies there has been a bifurcation of the South African society into those who can afford water services and those who cannot. The division created by these policies legitimatises structural racial discrimination, black inferiority and maintains unequal power dynamics.<sup>214</sup> This systematic way of regulating water distribution caters to the interest of an identifiable white group based on affordability.<sup>215</sup>

According to Karl Marx, money is the ‘universal expression of commodity form’.<sup>216</sup> It is used as a concealing façade of material relationship between resources and a particular privileged group (whites) of people who possess it.<sup>217</sup> These power dynamics hide exploitation (through affordability), renders services as being transparent for all who can afford them and does so as an objective means of exchange.<sup>218</sup>

Neoliberal thought purports to turn the policymaking process into one involving a technocratic process.<sup>219</sup> Water is being reduced to the status of an ‘economic good’, rather than a ‘public good’. This policymaking process is an example of how the country is being run in a business-model-like way.<sup>220</sup> The fact that water needs to be billed according to individual water consumption (water metering) further entrenches white hegemony, considering the fact that those who can afford these water services are the privileged white minority.<sup>221</sup> The fact that municipalities have accepted the World Bank’s advice (in that they implemented policies that enabled them to cut off water services to those who can’t afford to pay) is problematic because it

210 Modiri (n 120 above) 225.

211 As above.

212 McKinley (n 198 above) 183.

213 As above.

214 Modiri (n 107 above) 180.

215 As above.

216 Narsiah (n 21 above) 39.

217 As above.

218 As above.

219 Bayliss *et al* (n 4 above) 25.

220 Bayliss *et al* (n 4 above) 26.

221 As above.

discriminates based on affordability (race) and violates the constitutional and legislative mandate of making water accessible to everyone, in particular the black communities.<sup>222</sup>

One of the most fundamental human rights (the right to have access to water) has been turned into a restricted privilege for those who can afford it.<sup>223</sup> It is argued that water is life, thus the denial of such a right results in the dehumanisation of the marginalised black community. The right to access water is crucial to the achievement of racial equality and to the revolution within the country.<sup>224</sup> The issue of prepaid water metering services is a key component in the context of privatisation (a neoliberal trademark) because it prioritises the maximisation of profit.<sup>225</sup>

As a consequence of the deepening socio-economic inequalities along racial lines because of these neoliberal policies, black communities find themselves in a state of generational poverty. Poverty affects the black community's moral recognition, dignity, and integrity.<sup>226</sup> Socio-economic inequality along racial lines is not a natural phenomenon but rather a result of a racially structured system that distributes benefits along axes of racial and social powers.<sup>227</sup> These are the basic features of a neoliberal democratic country.<sup>228</sup> Due to the level of importance and interconnectedness of race to socio-economic inequality in South Africa, the production of precarity runs parallel with continued white superiority.<sup>229</sup>

The principle of decentralisation under neoliberal water policy entrenches regional inequality.<sup>230</sup> The decentralisation principle has further led to the fragmentation of the apparatuses; provinces with one of the highest levels of poverty are the ones that have the lowest access to water supply.<sup>231</sup> Joel Modiri asserts that these structural practices reproduce racialised power dynamics in the form of laws (water services), knowledge, labour and ideology.<sup>232</sup> These ideological discrepancies under our contemporary neoliberal government need to put race at the forefront of its policies to address the growing structural socio-economic inequality.<sup>233</sup>

222 McKinley (n 198 above) 183.

223 McKinley (n 198 above) 185.

224 DM Chirwa 'Water privatisation and socio-economic rights in South Africa' (2004) 8 *Law, Democracy & Development* 186.

225 Chirwa (n 224 above) 199.

226 Modiri (n 120 above) 226.

227 Modiri (n 120 above) 239.

228 As above.

229 Modiri (n 120 above) 244.

230 Bayliss *et al* (n 4 above) 26.

231 As above.

232 Chiumbu (n 119 above) 422.

233 Modiri (n 120 above) 232.

The internal contradictions or tensions within neoliberal policies and the privatisation of water are underlined by the contradiction that arises when private water companies are faced with the predicament of meeting the demands of investors, while also having to meet the demands of local customers and stakeholders.<sup>234</sup> Investors want nothing but their returns (profit), while customers want low water prices.<sup>235</sup> This predicament between cost-recovery (recovering the total cost of providing water) and affordability in South Africa takes centre stage and needs addressing.<sup>236</sup>

Considering the fact that the ANC neoliberal government has accepted the World Bank's advice on the cutting off of water supply to those who cannot afford to pay, it has become counterintuitive when the same government fails to meet the requirements set out by the World Health Organisation that each individual should receive free 100 litres of water per day (roughly 30 000 litres per month).<sup>237</sup> It is unavoidable that black households, on average, have a higher number of people than white households and have a higher consumption of water, thus the allocations of a fixed 6000 litres for all households is unfounded and detrimental to black communities at large.<sup>238</sup> The average household size of the black population is 3.3 compared to that of the white household size of 2.7.<sup>239</sup>

The ANC neoliberal government is quick to act when collecting money (the cutting-off of the water supply to those who cannot afford to pay), but slow to meet its mandated water supply requirements. This is one of the rudimentary principles of a neoliberal government which is, 'profit before people'.<sup>240</sup> The people who are most affected by these tensions within the ANC neoliberal policies are the black community.<sup>241</sup> These ideological discrepancies and internal contradictions push a certain political, sociological, hidden presupposition which serves to protect the interest of foreign capital at the expense of the poor black communities.<sup>242</sup>

Those who do not qualify for free basic water supply, but are poor nevertheless through the forced installation of prepayment water

234 Bayliss *et al* (n 4 above) 30.

235 As above.

236 As above.

237 McKinley (n 198 above) 184.

238 Statistics South Africa 'Community Survey 2016 in Brief' (2016) [http://cs2016.statssa.gov.za/?portfolio\\_page=cs-2016-in-brief](http://cs2016.statssa.gov.za/?portfolio_page=cs-2016-in-brief) (accessed 03 May 2020). The 6000 'free' litres of water per household comes from the South African government policy introduced in late 2002. It only amounts to 25 litres per person per day. It does not even meet the basic sanitisation requirement even though the World Health Organisation recommended that each person be granted 100 litres of water per day. Should an average black household have eight people, the minimum amount of water needed 24 000 litres per month.

239 Statistics South Africa (n 238 above)

240 Chinguno (n 180 above) 124.

241 McKinley (n 198 above) 184.

242 Modiri (n 3 above) 245.



meters, are practically forced to self-disconnect their water supply because they can't afford to pay their individual water consumption.<sup>243</sup> Access to water will thus be accessed only by those who can afford it (in most cases, the privileged white minority and the black elite and middle class). These neoliberal water policies indirectly maintain racial hierarchies.

Neoliberal policies have rubbed salt in the wound, by worsening changes in the social-economic structure in 'post-apartheid' South Africa.<sup>244</sup> As a result, the society is stratified along socio-economic rights.<sup>245</sup> Individuals who feel the pain of privatisation (exclusion and cut offs of water because they cannot afford water services) and the commodification of water most are the poor black communities while business elites, bureaucrats and politicians live lavish lifestyles.<sup>246</sup>

#### **4 Possible alternatives and solutions to neoliberal policies that maintain socio-economic inequality along racial lines.**

There is a widespread dissatisfaction with neoliberalism and its socio-economic consequences within the country, but there has yet to be a methodology to crystallise a sufficiently potent strategy that critically amasses the masses to challenge the hegemonic apparatus.<sup>247</sup> It must be noted, however, that CRT and CLS are not the comprehensive answers to all the racial neo-liberal policies we face. My argument is not that they should replace other theories or ways of thought, but that they should be used as guidelines and in conjunction with other theories to evaluate, critique and to reject policies or ideologies that are colour-blind to the role played by race.<sup>248</sup>

Andrew Heywood is correct in his view that the political system can function without the Constitution, the judiciary, or without political parties, but that the political system cannot function without the executive branch that makes decisions and formulates policies that govern us.<sup>249</sup> It is therefore imperative that we know where the root of the problem is and attack it. It lies within the ideologies that form the policies that the executive government chooses to implement that cause the growing socio-economic inequalities. Politics are key in deciding a system of governance (this ties in with what the CRT and CLS hold about how the law and policies are

243 Bayliss *et al* (n 4 above) 30.

244 Bayliss *et al* (n 4 above) 29.

245 Maserumule (n 14 above) 14.

246 As above.

247 Gilbert (n 33 above) 18.

248 Modiri (n 107 above) 233.

249 Maserumule (n 14 above) 14.

inseparable), while administration institutionalises policy objectives.<sup>250</sup>

The reshuffling of government servants within the structure will not bear fruit but rethinking and decolonising the ideological edifice that forms the structure will be helpful. The idea that the government should be run as a business model needs to be eradicated and a more humanistic approach needs to be adopted.<sup>251</sup> We need to adopt the notion of public-good over neoliberal prescriptions entrapment.<sup>252</sup> Community mobilisation against every day hardships of neoliberal governmentality is one option in the fight against a neoliberal hegemony that exacerbates racial socio-economic inequality.<sup>253</sup>

One counter-hegemonic movement that has fought against growing socio-economic inequality is the Concerned Citizen's Group, hereafter known as CGG.<sup>254</sup> The movement took legal instruments and turned them against councils, took some policies to court and won those cases and called for the transformation of policy considerations.<sup>255</sup> These types of movements created the potential of a new space and new politics.<sup>256</sup> Forcing the state to act in unconventional ways is counter-hegemonic in the sense that it deprives the state from blindly acting through policy limitations.<sup>257</sup>

During the apartheid regime, black townships were ungovernable and the state was unable to exercise effective control over these areas.<sup>258</sup> The inability of the state to exercise power over a particular area suggests that the particular area becomes a thorn in hegemonic control.<sup>259</sup> These areas can thus become a spatial hotspot for active mobilisation against neoliberal policies.<sup>260</sup> Service boycotts have proven to be instrumental in bringing about effective change in the past, and it is logical that they should be thought of as a way of fighting the growing racialised socio-economic inequality brought by these neoliberal ideologies.<sup>261</sup>

The re-connecting of water and electricity through the use of technological advancements (e.g. professional electricians and plumbers that live in those areas), with regard to one's inability to pay for such services decommodifies public services.<sup>262</sup> The Soweto

250 As above.

251 As above.

252 As above.

253 Narsiah (n 21 above) 37-41.

254 Narsiah (n 21 above) 36.

255 Narsiah (n 21 above) 37.

256 As above.

257 As above.

258 As above.

259 As above.

260 As above.

261 As above.

262 As above.

Electricity Crisis Committee, with its operation Khanyisa, is a formal way of decommodifying public services.<sup>263</sup> These tactics have been shown to be useful during the apartheid era, and can no doubt help to eradicate the growing systematic poverty experienced by black communities.<sup>264</sup>

Campaigns such as the R10 campaign are a necessity in the fight against growing socio-economic inequality as a result of neoliberal ideologies.<sup>265</sup> The campaign was formed in response to the commodification of services and criticised the privatisation of services enforced in an effort to maximise profits.<sup>266</sup> The R10 campaign has had considerable effect in state-society relationships in that the flat-rate that is called for insinuates that water cannot be turned into a commodity for capital accumulation.<sup>267</sup> Water thus remains as a public service and is absolved from minority exploitation.<sup>268</sup>

It makes sense that those who can afford to pay for privatised water (the wealthy white minority) pay for their consumption, and that those cannot afford to pay (mostly black historically disadvantaged individuals) pay what they can afford to pay (if a poor black household can only afford to pay R30 for example, that's what they should pay).<sup>269</sup> This goes in hand with the constitutional mandate to heal the divisions of the past, to ascertain social justice, to improve the quality of life of all citizens (with a recognition of past injustices) and the achievement of substantive equality.<sup>270</sup> Those who are living in geographically poor areas should automatically qualify for tax rebates and this can act as a form of a redistributive mechanism.<sup>271</sup>

In essence, the alternatives that are suggested by these social movements and campaigns, particularly with the provision of water services and South African minerals (mining) are that the state should reclaim control of these resources and should aim to redistribute these riches with cognisance of affordability, equity, and the role played by race in the society.<sup>272</sup> Neoliberalism should be understood as a Eurocentric concept or ideology.<sup>273</sup> African problems cannot be resolved through westernised neoliberal principles.<sup>274</sup>

263 As above.

264 As above.

265 Narsiah (n 21 above) 39.

266 As above.

267 As above.

268 As above.

269 As above.

270 The Constitution (n 50 above), Preamble.

271 Narsiah (n 21 above) 39.

272 Narsiah (n 21 above) 41.

273 Ngulube (n 33 above) 66.

274 As above.

## 5 Conclusion

This article has set out its problem questions, aims, and explained how it seeks to problematise, evaluate, critique and expose neoliberal policies and how it plans to come up with recommendations or alternatives to these policies that perpetuate socio-economic inequality along racial lines in the 'post'-apartheid South Africa. A particular interest in the Marikana Massacre and the privatisation of water was also shown through the elucidation of these neoliberal policies. As shown in the research above, CRT and CLS are useful approaches to evaluate and critique neoliberal structures that perpetuate white supremacy.

Through the research we have come to understand what neoliberal is, its core principles, its relevance in our growing racialised socio-economic inequality and how it serves the interest of the white minority. It serves to restore structural power dynamics.<sup>275</sup> In the above research, CRT and CLS have exposed neoliberal inadequacies and how affordability and black labour exploitation has deepened socio-economic inequality. The research has also shown how business-like and profit orientated South Africa is and how this has been to the detriment of the black community and to the goal of achieving an egalitarian society.

Major apparatuses, such as the media, have also shown to contribute to these growing socio-economic inequalities. However, social movements, campaigns (to decommodify resources like the R10 campaign) and a review of how the whole neoliberal apparatus operates and who it serves is useful in understanding neoliberal limitations. Using CRT and CLS is instrumental in understanding how race is the key instrument at which everything is organised and it (race) should be placed forward as a lens at which we view future policies in the effort to eradicate systemic racism.

275 Gilbert (n 33 above) 16.