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How bodies challenge disciplinary binaries: re-examining law and the arts inside the Marikana Commission of Inquiry

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ABSTRACT

The field of transitional justice exemplifies the ‘law and ...’ approach to interdisciplinarity, in the way it has welcomed the arts as a critical counterpoint to legal form. This article challenges conventional notions of interdisciplinarity in this field, claiming that the maintenance of rigid disciplinary boundaries between the law and the arts results in pigeon-holing creativity as a critical foil for the law; and ignoring law’s internal capacity for practices and processes of critique. This reductive perspective denies the potential of both disciplines to offer complicity and critique. Using the Marikana Commission of Inquiry as a transitional justice case study, this article argues that an affective and corporeal perspective reflects the possibility of fluidity between complicity and critique inside both the law and the art of truth-seeking after atrocity. Turning away from binaristic analysis, this case study offers an alternative reading of corporeal agency inside both the law and the arts of truth recovery, discovering a dynamic and co-generative space that highlights the constraints and possibilities of each discipline.

KEYWORDS Corporeality; affect theory; critical legal studies; transitional justice

Introduction

The phrase ‘law and ...’ to describe how law and other disciplines engage, is ubiquitous in socio-legal studies, and law and the humanities. From literature and art, to bodies and senses, law can be seen as a field whose borders are receptive to external disciplinary influence. Examining a case of transitional justice, this article questions the idea of disciplinary boundaries between the form and process of law and the arts in this field, arguing that such characterization of law’s dialogue with creativity is reductive. With law continually the touchstone, the artistic realm is

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often locked in to perpetual critique, resulting in an explanation of knowledge production, but no *disruption* of knowledge production.¹ Setting up repetitive binaries between law and other disciplines means law is rarely questioned; but also, rarely empowered to consider critique emanating internally.

An example of this interdisciplinary approach to law and creativity can be found inside the field of transitional justice. In this field, the power of the arts to hold multiple views and conversations – as opposed to narrow state narratives; and how the arts can provide increased visibility for over-looked voices, is highlighted.² Scholars emphasize how the arts can be used to problematize transition – opening up opportunities to critique assumptions about the processes of transitional justice.³

But transitional justice also exemplifies some of the problematic aspects of the *law and* approach to interdisciplinarity. What the transitional justice literature often does, is consign arts – however valuable – to the transitional justice tool box, making the arts another potential tool for the law to activate and learn from.⁴ The law *itself* is not mined for potential creativity or critique – it remains as an unquestioned force, while other disciplines are drawn in to mitigate law's presumed short-comings. In this reading, not only does law remain under-interrogated, but complementary disciplines like art are also under-utilized. If art is merely a foil for law, this disallows creativity from being anything else, such as a force for conformity, as opposed to liberating ambiguity.

Such a perspective on how law and the arts interact is simplistic: it allows the arts to impact and respond, while denying the potential agency of law; as well as the possibility of the arts to conform and reinforce problematic interpretations, alongside its ambiguity and nuance. Boundaried definitions cause trouble as they become self-fulfilling prophecies: if one wants creativity to be seen as a humanizing force, then there is no alternative but for law to be '... cold and calculating'.⁵ Such definitional silos end up isolating both

¹Anne Bottomley and Nathan Moore, 'Law, Diagram, Film: Critique Exhausted' (2012) 23 *Law & Critique* 163, 166.

²For example, see Sanja Bahun, 'Transitional Justice and the Arts: Reflections on the Field' in Claudio Corradetti, Nir Eisikovits and Jack Rotondi (eds), *Theorising Transitional Justice* (Routledge 2015); Sherin Shefik, 'Reimagining Transitional Justice through Participatory Art' (2018) 12 *International Journal of Transitional Justice* 314; Sylvanna M Falcón, 'Intersectionality and the Arts: Counterpublic Memory-Making in Postconflict Peru' (2018) 12 *International Journal of Transitional Justice* 26; Robyn Gill-Leslie, 'Truth Will Set You Free: Implications of a Creative Narrative for the "Official Discourse" of the South African Truth and Reconciliation Commission' in Lizelle Bisschoff and Stefanie Van De Peer (eds), *Art and Trauma in Africa: Representations of Reconciliation in Music, Visual Arts, Literature and Film* (I.B Tauris 2013).

³Vicki Bell, 'Contemporary Art and Transitional Justice in Northern Ireland: The Consolation of Form' (2011) 10 *Journal of Visual Culture*, 324.

⁴For example, see Paul Greedy, 'Culture, Testimony, and the Toolbox of Transitional Justice' (2008) 20 *Peace Review* 41.

⁵Jane B Baron, 'Law, Literature, and the Problems of Interdisciplinarity' (1999) 108 *Yale Law Journal* 1059, 1082.

disciplines;⁶ and can be a futile enterprise: both can become repressive, hegemonic discourses, and constitute sites of struggle for meaning.⁷ It is this sameness that has often been overlooked.

Using the Marikana Commission of Inquiry as a case study, this article argues that a corporeal perspective reflects the possibility of fluidity between complicity and critique inside both the law and the art of truth-seeking after atrocity. Such fluidity – and the possibility of co-generative space inside the forms of both law and the arts – can challenge the binaristic and oppositional nature of *law and scholarship* inside transitional justice.

The first section of this article will introduce a case study from transitional justice – the Marikana massacre and its subsequent Commission of Inquiry. Specifically examining dead bodies, this section will show how the practices and processes of law and arts (namely, the process of developing legal evidence; and the practice of artistic detachment and heroification) worked together to undermine the powerful potential agency of corporeal presence after the massacre. By highlighting how legal practice and process treated the dead bodies offered up as evidence at this Commission, it offers a classic critical interpretation of how the law limits and constrains, demonstrating necropolitical intent: the treatment of the dead and their consequent visibility inside the law necessitates the invisibility and exploitation of those bodies still living. Turning to artistic production, this article shows how the artistic processes and practices highlighted are *complicit* with how law's form designates value to death and in doing so, vanishes critique, allowing complacency and detachment in the face of violence.

The following section then considers what a corporeal perspective, turned on both the law and the arts of the Marikana massacre, can offer. This article suggests looking to embodied and corporeal approaches that view law and the arts as co-generative, framed through the focus on the physical body. Scholars concerned with embodied approaches reject the unquestioned separation of law and '... what escapes law', stating that this kind of distinction forces a focus on the partition of disciplines, rather than seeing it as a threshold for further theorizing.⁸ They question the law and literature movement's historic call to bring law '... to its senses'; the law, they argue, has always been inside its senses.⁹ This perspective suggests that the senses – however they are expressed, through law, art, bodily experience or haptic moments – are no longer what law cannot contain, but rather useful tools with which to explore *inside* the law.¹⁰ Examining the work of Carrol Clarkson and Jacques Rancière,

⁶Julie Stone Peters, 'Law, Literature, and the Vanishing Real on the Future of an Interdisciplinary Illusion' (2005) 120 PMLA 442, 449.

⁷Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity* (Oxford University Press 2000) 6.

⁸Andrea Pavoni, 'Introduction' in Andrea Pavoni and others (eds), *See (Law and the Senses: Westminster Law & Theory Lab Series, University of Westminster Press 2018)* 2.

⁹ibid 3.

¹⁰ibid 3.

this article draws inspiration from their ideas of 'lived experience' and pairs this with strands of affect theory that focus on small, yet significant changes in how bodies relate to their worlds. This provides a theoretical starting point for bringing law and the arts into a more fluid form of dialogue.

Viewed from a perspective that foregrounds and valorizes bodily experience, the law inside the Marikana Commission is no longer an overwhelming, bureaucratic force, devoid of emotion and dynamism. Seeking out small changes in artistic representations of the dead bodies of Marikana, it is possible to discover art that is no longer either complicit with, or a critical foil for law, but rather, an instance of fluidity and engagement. By foregrounding – instead of utilizing – dead bodies, this alternative perspective demonstrates how both disciplines used death, release, to empower, critique and challenge ideas of forensic truth and evidentiary certainty.

With both the arts and the law presenting conformity and critique – identified through foregrounding the physical body – the binary set up between disciplinary boundaries through a 'law and ...' approach, is challenged. Turning away from reductive analysis, this case study offers an alternative reading of corporeal agency inside both the law and the arts of truth recovery, discovering a fluid and co-generative space that highlights the constraints and possibilities of each discipline.

Death at the Marikana mine

On the 16th of August 2012, the South African Police Service (SAPS) fired live ammunition into a crowd of striking mine-workers at the Lonmin-owned Marikana mine, resulting in thirty-four fatalities. Along with the ten men killed in the run-up to the massacre, this week of violence left forty-four people dead. SAPS firing assault rifles into crowds of workers striking for a living wage was a horrific reminder of the daily violence and brutality of the Apartheid regime's approaches to protest – and sent shockwaves through South Africa. In response, then-President Jacob Zuma instituted the Marikana Commission of Inquiry to uncover the 'truth' about what had happened.

The Commission's task, in the view of its Chair, was to 'evaluate all of the available evidence and come to a view of the probabilities of the facts'.¹¹ What this translated to in legal practice and process was the collection of photographs, video footage, written witness statements, computer documents and files from computer hard drives. These would be gathered, analysed and interrogated in an attempt to create an evidence-based

¹¹(Various) *Transcripts from the Marikana Commission of Inquiry* (Department of Justice and Constitutional Development, Marikana Commission of Inquiry 2012–2014), Day 135, 14347 <www.justice.gov.za/comm-mrk/transcripts.html>.

foundation, bounded by the certainty that such evidence – facts – would reveal the truth about how the chain of command had broken down; and whether the police's claim of self-defence had any validity.

Thus, the key to building a strong evidence base was the reliability and relevance of the documentary information gathered. A significant part of the Commission's mass of reliable evidence was undoubtedly the evidence provided by the dead bodies at the Marikana Commission. Thus, the dead bodies at the Marikana Commission were immediately tethered to the term 'evidence' – the gathering of which was sanctioned by the Commissions Act 1947, as per the Terms of Reference (ToR).¹² The legal practice of labelling the visuals of dead bodies and their accompanying texts (post-mortems) *evidence*, corpses became part of legal procedure – they became legally sanctioned material allowed for display during the Commission's proceedings. The only voice or agency allowed to these bodies by legal process, came from the documentation of their deaths – the post-mortem files – and the translators, as they translated the various languages on videos into English, videos that show the men who subsequently died negotiating with police, or singing protest songs in the lead-up to the massacre.¹³ Post-mortem reports, videos and pictures of those now dead were exhaustively reviewed and mined for information and content and were considered critical matters of evidence.¹⁴ Death became a matter of document, not a matter of corporeality.

The transformation of dead bodies from corporeal entities into documents or texts made them reliable witnesses indeed: they could be viewed, reviewed, rewound, re-examined and dissected by a variety of expert pathologists (through digital documents, if not in the flesh), in the quest for a solid evidence foundation from which to build the closest version possible of the truth.¹⁵ It is also important to realize that what legal procedure termed

¹²The ToR make this explicit in paragraph 6: 'Regulations will be made in terms of the Commissions Act, 1947 and shall apply to the Commission to enable the Commission to conduct its work and investigation in a meaningful and proper way and to facilitate the gathering of evidence by conferring on the Commission such powers as are necessary ...' – see South African Government, 'Commission of Inquiry into Tragic Incident at or Near Area Commonly Known as Marikana Mine in Rustenburg, North West Province: Terms of Reference', (*Government Gazette: No.35680*, South Africa 2012) <www.justice.gov.za/comm-mrk/docs/20120912-gg35680-nor50-marikana.pdf> accessed 25 August 2022.

¹³Many media houses inadvertently filmed scene 1 of the massacre; and the lead-up to the massacre received widespread media coverage. As such, there was a large amount of video evidence pertinent to the Commission.

¹⁴This is not to say that the dead bodies and the evidence they presented were without differing opinions and controversy (although forensic pathologists reached agreement on the majority of the dead bodies); it is rather to state that the dead body was *able* to be mined, reviewed and re-examined at will (through records, after they had been buried) – it was considered reliable as the information offered by the body could not change, even if interpretations *of* the body were different.

¹⁵This is not to say that forensic examination was without controversy. Greg Marinovich's book *Murder on Small Koppie* reveals how state pathologists attempted to block access to dead bodies at every turn. This argument is saying that the dead body could not change, alter or rescind consent; making it a 'reliable' witness.

evidence was also extremely traumatic and hypervisual: photos of murdered men with their faces disfigured by numerous bullet wounds; videos of men being shot by R5 assault rifles, the bullets kicking up a dust cloud that obscured how many immediately fell to the ground; further videos of men lying in a pile of both corpses and survivors, with some bleeding to death on the ground while policemen spectate; the awkward bending of limbs as dead men fall to the ground and are found and photographed later, blood pooling around their bodies. But by linking it to the term *evidence*, the shock of what was on display became managed, put to work as part of legal procedure, supported the uncovering of truth rather than undermining the search through intrinsic horror. The horror of death – this kind of death – is removed as the dead body becomes a tool of logic and reason, the hyper-visibility of which is managed by laws of evidence and legal procedure.

The focus on objective evidence, the emphasis on fact and accuracy in place of disgust and outrage, created an atmosphere of technical fact-finding. A good example of this is the dead body of Henry Mvuyisi Pato, who was killed at Scene 2. His death, like all death at Marikana, was gruesome and bloody. But his death was also of an extremely high utility. Mr Pato died with two bullet wounds in his body: one bullet had ripped through his hand; and the second, high velocity bullet entered his body through the back of his neck, tearing through the top of his spine and exiting via his throat. The horror of this visual image of his dead body – of this extremely distressing death – is secondary to *what it tells* the Commission of Inquiry: that Mr Pato was shot from behind, in what Greg Marinovich clinically terms ‘execution from the rear’.¹⁶ Mr Pato’s physical death recedes into the background, as the *evidentiary manner* of his death becomes a foundation-stone for lawyers who refuted the SAPS’ self-defence theory for the deaths on 16 August 2012. Thus, this gruesome death – managed by the creation of evidentiary documentation – moves from invoking horror, to invoking a procedural legal truth. Thus, law’s form and process separates the horror, from the utility, of death.

This separation, while problematic, is not to be altogether despised. Attempting to contain the horror of gruesome death and the mood of grief, rage and frustration that it can summon, can be seen as a public good in a country with a history of hurt such as South Africa. Already a violent country before Marikana, Leon de Kock suggests that the violence at Marikana resonates with South Africa’s ‘wound culture’,¹⁷ where ‘ruptured bodies stand in for dismayed and shocked public’.¹⁸ De Kock suggests that

¹⁶Greg Marinovich, *Murder at Small Koppie: The Real Story of the Marikana Massacre* (Penguin Random House 2016) 199.

¹⁷Leon de Kock, *Losing the Plot: Crime, Reality and Fiction in Postapartheid Writing* (Wits University Press 2016) 136.

¹⁸*ibid* 164–65.

Marikana is not only a crime scene, but also a violated public sphere, in a country where such violations take root in our individual consciousness and influence our daily lives. This argument becomes timely when considering how South Africa's designation between private and public spheres was (perhaps permanently) ruptured by Apartheid and its aftermath, the South African Truth and Reconciliation Commission (SATRC): Ken Barris argues that the public sphere '... is so invasive of the personal that the latter cannot be understood (or, more crucially, changed) without reference to the former'.¹⁹ Eighteen years on from the SATRC, at the Marikana Commission, attempting to perform a separation of the public and private spheres through limiting the pervasiveness of the horror of the death under investigation, must not be altogether decried.

However, such attempts at limiting the spread of horror of violent death should not come at such a high cost to those still living: as the hypervisuality of the dead at Marikana became harnessed to evidence and legal procedure, in return, the corpses were granted that which they strove for in life – recognition. It is a bitter irony that the labour of corpses at the Marikana Commission is paid for by the recognition that in death, they are granted the rights of citizens – the right to have legal recourse, to be recognized as people deserving of investigation and attention. The families of those slain at Marikana would be granted legal representation paid for by the state through Legal Aid South Africa.²⁰ Alongside legal funds, the names of the dead would be read out at the start of the Commission, and these names eventually linked to the forensic alphabet that originally labelled each body with a letter. In the words of the Chair, the linking of the name with the dead body was an important part of proceedings, giving respect to both the dead man and his family,²¹ and ensuring the correct pronunciation of names as part of the '... dignified treatment the dead are entitled to'.²²

For those who survived, however, the mood would be less friendly. A week after the massacre, the 270 miners who survived the shootings, were charged with the murder of their own comrades, and with attempted murder of the seventy-eight individuals who were injured but survived, under the Common Purpose doctrine – an approach more often associated with Apartheid-era policing than the democratic dispensation. The Common Purpose doctrine was used during Apartheid to allow the law to charge multiple

¹⁹Ken Barris, 'That Loose Canon: Rumours of South African Writing' (2015) 32 *English Academy Review* 41, 44.

²⁰Department of Justice and Constitutional Development, *Media Statement on the Funding of Commissions of Inquiry, South Africa* (23 August 2013) <www.justice.gov.za/m_statements/2013/20130822-comms-funding.html> accessed 1 March 2016.

²¹(Various) (2012–2014) *Transcripts from the Marikana Commission of Inquiry*, Department of Justice and Constitutional Development, Marikana Commission of Inquiry, Day 154, 17352 <www.justice.gov.za/comm-mrk/transcripts.html>.

²²*ibid* Day 199, 24379.

people for a single criminal act. The doctrine states that '... if two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, then the conduct of each of them in the execution of that purpose is imputed to the others'.²³ Given the environment at the time, during Apartheid the Common Purpose doctrine was often put to use for political ends;²⁴ and the fact that the doctrine was irrelevant to the Marikana massacre, as the SAPS admitted firing the shots that killed the mine-workers, its deployment after the massacre smacked of Apartheid-era containment and crisis management.

This is the necropolitical ideology that Achille Mbembe writes about – the subjugation of life to the power of death, demonstrated by massacre survivor Mr Magidiwana: after being shot by police, he was further subjected to a series of beatings and assaults while lying injured on the ground, culminating with the police officer abusing him asking, 'why are you still alive?'²⁵ Survivors would not be granted funding from the state for legal representation at the Marikana Commission, until a lengthy court battle had been won; survivors would be repeatedly arrested, harassed, tortured, intimidated and considered unreliable witnesses; some would be murdered; some would commit suicide.²⁶

Unfunded, uncounselled, criminalized – but their dead counterparts put to use – the living became that part of Jacques Rancière's 'distribution of the sensible' that is determinedly vanished from view, unless pulled into the gravitational force of legal documentation.²⁷ The power of death and the subsequent labour that corpses perform at Marikana, in the name of objective evidence gathering and fact finding, was an exercise in visibility; and an exercise in vanishing anything that could disrupt such procedural certainty. Turned into a key cog in the legal procedural wheel, the horror of death at Marikana became subsumed by its utility in the fact and truth-finding process. The dead bodies at Marikana became a function of the law, tethered to legal procedure, while their erstwhile compatriots were criminalized and vanished from view.

This critical reading of dead bodies inside the law of the Marikana Commission demonstrates how law's form and process established an asymmetrical power relationship between bodies and their legal categories.

²³This doctrinal definition is quoted by South Africa's Constitutional Court in *Jacobs and Others v S* (Constitutional Court of South Africa) decided 14 February 2019.

²⁴Marinovich (n 16) 195.

²⁵(Various) *Transcripts from the Marikana Commission of Inquiry* (Department of Justice and Constitutional Development, Marikana Commission of Inquiry 2012–2014), Day 54, 5875 <www.justice.gov.za/comm-mrk/transcripts.html>.

²⁶See the statements of lawyer for the injured and arrested mineworkers Dali Mpfu at numerous junctures throughout the Commission. For examples, see *ibid* Day 5 or Day 111.

²⁷Rancière in Claire Moon, 'Interpreters of the Dead: Forensic Knowledge, Human Remains and the Politics of the Past' (2013) 22 *Social & Legal Studies* 149, 156.

Conventionally, artistic output would now perform as a critical foil for law's hegemony. But this article's goal is to lay bare the limitations of this approach – and thus, the following section brings an alternative reading to art that explores death at Marikana. The following section shows how the art highlighted is *complicit* with how law's form designates value to death and in doing so, vanishes critique, allowing complacency and detachment in the face of violence.

Mgcineni 'Mambush' Noki: the man in the green blanket

The Marikana community and the public alike were particularly captivated by slain strike leader Mgcineni Noki, known by the nickname Mambush. Noki became known as the man in the green blanket, a strike leader always visible due to the lime-green blanket he wore tied around his shoulders. His devastating death on 16 August – he died from a volley of high-velocity gunfire, with fourteen bullets in his body, the kill shot of which was a bullet that exploded his face – gave him immediate martyr status. In their book on trade unionism and Marikana, *The Spirit of Marikana: the rise of insurgent trade unionism in South Africa*, Luke Sinwell and Sipiwe Mbatha write about how the striking miners, who were once 'ordinary workers ... became ... working class heroes'.²⁸ Writing specifically about Noki, they say 'Embodying the uncompromising characteristics of a warrior, he became a hero practically overnight'.²⁹ Athandiwe Saba writes a chapter in her edited collection titled 'The man in the green blanket', where she likens Noki's capacity for struggle to the legend of David and Goliath;³⁰ Greg Marinovich also has a chapter in his book on Marikana entitled *The Legend of Mambush*, and details the fantastical and mythical heights Noki's murder reached. After the massacre, rumour spread that Noki had *not* been killed by gunshots – that he had risen and walked away from the shooting, and had been later captured by police and murdered with poison injected into his body.³¹ Marinovich – a photo-journalist who made his name by embedding himself in the communities he was reporting on – also reported that after the massacre, strikers who continued the wage dispute photocopied Noki's likeness and carried it with them on marches; and that his face soon appeared on t-shirts and placards alike.³²

The artistic community was equally captivated by Mambush – the quiet-spoken man with a wife and young child, from a humble home, striking for

²⁸Luke Sinwell and Sipiwe Mbatha, *The Spirit of Marikana: The Rise of Insurgent Trade Unionism in South Africa* (Wildcat: Workers' Movements and Global Capitalism, Pluto Press 2016) 163.

²⁹ibid 1.

³⁰Felix Dlangamandla and others, *We Are Going to Kill Each Other Today: The Marikana story* (Tafelberg 2013) 31.

³¹Marinovich (n 16) 211–12.

³²ibid 211.

a better life. His symbolism soon spilled over from his community to the public sphere, where his image was used on the cover of the book *We are Going to Kill Each Other Today: the Marikana Story*, and inspiring a play called *The Man in the Green Jacket*. Mambush is also represented by a sculpture wrapped in a green piece of aluminium, in Pitika Ntuli's metal sculpture work on Marikana – and it is worth noting that amongst Ntuli's many sculptures in the exhibition, Noki was the only miner singled out with such a defining characteristic as the green blanket; and again he is represented on stage during the production of *Marikana: the musical*, a theatrical adaptation of *We are Going to Kill Each Other Today: the Marikana Story* (Figure 1).

These artistic depictions of Mgcineni Mambush Noki create around him the atmosphere of a hero: struggling against unsurmountable odds, brokering for peace when fate decrees war, and ultimately fulfilling a tragic destiny that was prophesied from the start. Nick Davies, writing for the Mail and Guardian newspaper, describes Noki's fate:

... he came from nowhere as the leader, making passionate speeches through a loud-hailer, negotiating with police and standing in the frontline as the shooting broke out. He died that afternoon, with 14 bullets in his face and neck and legs.³³

Commentary on Pitika Ntuli's metalwork sculpture of Noki follows suit:

The Man in the Green Blanket stands unbroken. He stands on a hilltop with eyes resolute and protruding. He wears three faces: to his front, left and right. One face expresses determination in the heat of exhaustion. The second speaks of an internal battle. It is his right-side face that sums up a repertoire of emotions – a face bowed down, reflecting sorrow.³⁴

A (tragic) hero – a collection of many sublime virtues (facing imminent destruction) – could not be better described.

Noki was also singled out by artists and authors as somehow separate from his fellow comrades. His backstory was heart-warming, his character established as calm, authoritative and loyal.³⁵ The processes of the kind of art depicted here call on us to look up to a hero, indeed – and in doing so, to separate the grief over his individual death from the affective individual heroism of his actions. The practice of individualizing Noki as a leader means his death becomes manageable and compartmentalized – by labelling individuals as heroes, they become elevated from the common world we inhabit, and into a realm of exceptionalism. By elevating a

³³Nick Davies, 'The Savage Truth Behind the Marikana Massacre' *Mail and Guardian* <<http://mg.co.za/article/2015-05-21-the-savage-truth-behind-the-marikana-massacre>> accessed 17 June 2015.

³⁴Ntombi Ndhlovu, 'Art Salvages Our History' *The Star* <www.iol.co.za/the-star/art-salvages-our-history-1414600> accessed 13 February 2016.

³⁵Dlangamandla and others (n 30) 29–42.



Figure 1. Depictions of Mgcineni Mambush Noki, from top l-r: book cover of *We are Going to Kill Each Other Today: the Marikana Story* (Leon Sadiki, *No Title, We Are Going to Kill Each Other Today: The Marikana Story* (Book cover) (2012) <www.nb.co.za/Books/15820> accessed 15 July 2017), advertorial for play *The Man in the Green Jacket* (Unknown, *The Man in the Green Jacket*, Grahamstown (Poster) (2014) <<https://eliotmoleba.com/press/the-man-in-the-green-jacket/>> accessed 14 May 2017), still from *Marikana: the musical* (Sanmari Marais, *No title*, Pretoria (Photograph) (2017) <<https://ewn.co.za/2017/08/03/marikana-will-never-leave-us>> accessed 15 September 2018).

dead body to heroic status, the body is taken out of its circumstances and becomes a signifier of metaphysical questions and mythical adventures.³⁶ The practice and process of tethering a dead body – not to evidence, this

³⁶Douglas V. Porpora, 'Personal Heroes, Religion, and Transcendental Metanarratives' (1996) *Sociological Forum* 11, 227.

time, but to the cult of the hero – has the dual result of vanishing actual death and the consequent dead body from view, as per the depictions above; as well as reinforcing ideas of fatalism, thereby blocking the horror of death through encouraging detachment and/or idolatry in its place.

This practice of hero-ification of the individual dead body, encouraging a mood of certainty in its own right (the fate of the tragic hero is sealed from the start) results in the management of horror and the consequent removal of such horror from our everyday lives (elevated to other-worldly realms that tragic heroes inhabit). It also has a second, more invidious result. Joseph Slaughter writes that suffering and its consequent representations must always contend with the fact that those who do not suffer find their own, personal worlds more absorbing.³⁷ He argues that such detachment is not inevitably part of the human condition, but part of a social and political construction that enables such detachment by allowing suffering and, indeed, requiring the suffering of some to secure the comfort of others.³⁸ Calling this the ‘suffering-security relation’, Slaughter contends that life itself (or as we know it) depends on a complete separation of the worlds of pain and play.

Slaughter continues his argument by stating that artistic output can confront and dispel these false separations, by providing ‘narrative conjunctions’ – paths between these two worlds of pain and satisfaction.³⁹ He uses the example of deep pain and composed tranquillity as found in the painting *Landscape with the Fall of Icarus* by Pieter Breughel, where the viewer leaps between gazing on a bucolic agricultural scene, and the death of Icarus, falling into the sea (Figure 2).

With both the placid and the fraught being depicted on the same canvas, Slaughter argues that art can provide a pathway between suffering and security. But without this conjunction – without the process of juxtapositioning pain and play, those who view representations of suffering are permissively accepting the depicted suffering as their viewer’s due, without having to locate that pain within their own worlds of ‘play’. The hero-ification of the dead at Marikana separates those dead bodies and marks them as different – something apart from the world the viewer lives in. Far from providing a narrative conjunction, these artistic artefacts are in fact giving the viewer permission for detachment, by identifying with heroism as opposed to bodily pain and death. Such detachment results in a similar mood of evidentiary certainty that the dead body at the Marikana Commission was used to create.

³⁷Joseph Slaughter, ‘Vanishing Points: When Narrative Is Not Simply There’ (2010) 9 *Journal of Human Rights* 207, 214.

³⁸*ibid* 216.

³⁹*ibid* 217.



Figure 2. Landscape with the fall of Icarus, Pieter Bruegel.

Thus far, this article has attempted to highlight how legal practice and process exerted necropolitical power over the dead body at the Commission, bureaucratizing death and subsequently vanishing those still living. The containment of the horror of death at Marikana, through the utility and evidentiary power of the documentation of such death, allowed for a form of detachment to arise. Similarly, in the artworks depicted above, it is possible to see the same kind of practices and processes at play – detachment and management of death, through the development of a heroic character that pulls Noki's death out of the everyday and into the exceptional. Through the separation of worlds of pain and play, and the fostering of a fatalistic discourse, the living are vanished and spectators are allowed to comfortably accept the miners' deaths without disruption or challenge to their everyday lives. These similar processes of disconnection and detachment found in both legal and artistic forms provide continuity between these two disciplines, showing how the arts and the law are complicit, working together to neutralize bodily horror.

But this article's claim is that the law and the arts inside truth-telling after atrocity are multi-faceted – thereby challenging the more rigid approaches that assign specific positions of fact and counter-narrative to law and the arts respectively. Having demonstrated how both disciplines conform in providing similar outcomes of disconnection, the following section suggests a methodological approach to discovering how both disciplines can demonstrate critique.

The body as a bridge to co-generative space between the law and the arts

In her book *The Aesthetics of Transitional Justice*, Clarkson references Rancière's discussion on art and aesthetics – his three regimes: the ethical regime (influenced by Plato – art designed to morally guide and improve its viewers); the representative regime (influenced by Aristotle – liberating art from its 'ethical utility' and recognizing it has its own domain, and can represent different things); and the aesthetic regime (removing the norms of representation, which allows for the boundaries of the visible and audible to change).⁴⁰ This aesthetic regime, Rancière claims, is where aesthetic acts can inspire change through new modes of sensory perception.⁴¹ Rancière is discussing art when he uses the term 'aesthetic' – but Clarkson develops this idea further, stating 'lived experience' is a more accurate translation of the Greek word *aesthesis*, from where the word aesthetic originates.⁴² In this reading, Rancière's aesthetic acts could be seen as any lived experience, processed through the senses, which makes it possible to '... reset social perceptions of what counts and what matters'.⁴³

As I have discussed in previous work, Rancière and Clarkson both highlight how lived experience and the senses have powerful potential to alter the way social and political worlds are evaluated – yet neither's work focuses on the physical body itself. Their focus remains on regimes, acts or structures that can offer opportunities for recalibration of what counts and what matters.⁴⁴ Clarkson hints at the importance of physical presence in her book on aesthetics and transitional justice, when she feels compelled to engage with a character in a novel written by her friend and author, Phaswane Mpe. She writes: 'It became important to me to retrace, **in person**, the path of the central character ... [own emphasis]'.⁴⁵ Mpe and Clarkson, with some friends, end up walking the streets of Hillbrow in Johannesburg, and Clarkson explains how walking made them feel as if they were '**animating** a dynamic ... urban landscape [own emphasis]' – the physical act of immersion into a landscape bringing life and vigour to the expedition.⁴⁶ The importance of sensory perception in both Clarkson's and Rancière's analyses implies a focus on physicality; this article takes this implication forward into practical application, by pairing the idea of lived experience with aspects

⁴⁰Jacques Rancière, *The Politics of Aesthetics* (Continuum 2004) 4.

⁴¹ibid 9.

⁴²Carrol Clarkson, *Drawing the Line: Toward an Aesthetic of Transitional Justice* (Fordham University Press 2014) 2.

⁴³ibid 2.

⁴⁴For more on this, see Robyn Gill-Leslie, 'The Body Inside the Art and the Law of Marikana: A Case for Corporeality' (2020) 14 *International Journal of Transitional Justice* 102.

⁴⁵Clarkson (n 42) 147.

⁴⁶ibid 147.

of affect theory that highlights the importance of how bodies interact with their worlds.

Affect theory is a dynamic and emerging field that investigates ‘bodies, emotions and the space between bodies and their worlds’.⁴⁷ Brian Massumi quotes Spinoza when he states that affect is ‘an impingement upon the body’,⁴⁸ highlighting the ubiquitous nature of affect: affect can be said to be everywhere, switch focus and apply to a variety of domains – private, economic, public. As a field of inquiry interested in connections, intersections and pathways, it is adept at negotiating traditional disciplinary boundaries, suggesting an examination of spaces in-between – events, moments or happenings – as locations rich in under-investigated insights.⁴⁹ Gregory Seigworth and Melissa Gregg term this the ‘bloom-space’ – a dynamic, unpredictable and yet ubiquitous zone of co-mingling that can be generative of alternative understandings of how bodies and moments interact.⁵⁰

This kind of investigating – without the pressure of identifying conventional outcomes – can allow researchers to look at aggregation, diminution or even just the ‘stretching’ of a process.⁵¹ Indeed, one of affect theory’s cornerstones is the focus on dynamism, changeability and the examination of such ebb and flow. While this, alongside the investigation of bloom spaces and the stretching of ideas and circumstances, might seem chaotic or senseless, this ceaseless recomposition is not formless Brownian motion of seeing and thinking. These ideas resonate with Janine Clark’s assertion that the physical body is also not a static site, but in the continual process of becoming.⁵²

Using affect theory’s ideas in this analysis can give rise to the identification of a form of relation amongst the interaction of bodies and worlds.⁵³ By seeking out smaller moments that change, alter or stretch how the body and world is understood, it is possible to hone in on that generative space where alternative understandings of circumstances can be identified. By foregrounding a corporeal frame of analysis, it is possible to return to the art and the law of Marikana, to discover inside *both* disciplines not only complicity with law’s hegemony – but powerful and subversive critique.

Thus, the next section of this article shows what can be found when corporeal presence is foregrounded without containment or management from art or legal forms; and such presence is examined from an affective position that highlights the subtle ebb and flow of how bodies and their worlds relate.

⁴⁷Gill-Leslie, ‘The Body Inside the Art’ (n 44) 109.

⁴⁸Brian Massumi, *Parables for the Virtual: Movement, Affect, Sensation* (Duke University Press 2002) 31.

⁴⁹Gregory J Seigworth and Melissa Gregg, ‘An Inventory of Shimmers’ in Gregory J Seigworth and Melissa Gregg (eds), *The Affect Theory Reader* (Duke University Press 2010) 5.

⁵⁰*ibid* 9.

⁵¹*ibid* 11.

⁵²Clark is quoting Shelly Budgeon’s 2003 work here – Janine Natalya Clark, ‘“Leaky” Bodies, Connectivity and Embodied Transitional Justice’ (2019) 13 *International Journal of Transitional Justice* 268, 17.

⁵³Seigworth and Gregg (n 49) 13.



Figure 3. TSC ‘Mambush’ graffiti, as displayed on their online gallery. Source: Anonymous, *Marikana Graffiti*, South Africa (2013–2015) (Graffiti) <<http://tokolosstencils.tumblr.com/>> accessed 10 January 2016.

This argument is developed through identifying a genre of art that expressly rejects any form of control or management of image; and pairs this analysis with uncovering a grim unpredictability concerning death and legal procedure at Marikana that challenges the very idea of containment of death, and the evidentiary certainty, it inspired. By centring agency and perspective on the corporeal form (as opposed to the legal or artistic), new interpretations of both disciplines appear.

‘We are all Marikana’

Approximately a year and a month after the Marikana massacre, a unique set of images began peppering South Africa’s cityscapes (Figure 3).

These graffitied images of Mgcineni ‘Mambush’ Noki began to appear all over innocuous parts of South Africa’s big cities. The image – sometimes accompanied by the phrase ‘remember Marikana’ – was found on university campuses, the signage of hotels, on churches, empty walls, road signs, roofs, cement construction materials, train stations and portable toilets.

These stencils became known as the work of the Tokolos Stencil Collective (TSC) – self-referred to as a group of ‘anonymous stencil and graffiti artists, activists and other concerned citizens’.⁵⁴ Working with an artistic media

⁵⁴ibid.

that is often criminalized, this group invokes a figure from African cultural mythology – the *'tokoloshe'*: traditionally, the tokoloshe is a small imp or dwarf, a mischief-maker and spreader of mayhem, summoned by those in the community with powers to communicate with the spirit world. TSC claim they are conjuring a tokoloshe out of anger at the continuing oppression of black communities in South Africa, putting the tokoloshe to work for the forces of good, resisting and countering oppression through radical and unsanctioned art. TSC explains that their tokoloshe has been hard at work, 'to battle with those trying to make us forget the atrocities of Marikana'.⁵⁵

What makes the work of the TSC so interesting, is how it utilizes Noki's body in what appears to be the same way as the artworks discussed previously: the spray-painted figure is easily recognizable as Noki, with a hand raised and a green blanket. But crucially, this work dismisses the context that other artistic output worked hard to include. Noki is not in full strike mode, surrounded by supporters outside a mining area, nor pointedly placed in a context redolent with meaning (Ntuli's sculptures were originally placed at Constitution Hill – referencing the hill where the miners were massacred – and a location specifically chosen, as it is also the site of the highest court in South Africa, the Constitutional Court). This graffiti stencil, sketched in broad stokes, reduces Noki's body to a series of lines and marks. This presents viewers with a symbol rather than a narrative. The viewer is not drawn into the story of Noki, but rather – through the lack of any guidance or contextual detail – is pushed to consider what this image might symbolize or represent. This is the work that is usually done for the viewer in conventional artistic output, either through captions, accompanying text or the performance of a narrative. Although immediately recognizable as the iconic man, the lack of contextual detail forces a confrontation of sorts: the figure of Noki is now removed from his original context and juxtapositioned against banal and everyday objects such as a MacDonalds or a local hotel sign.

Thus, the viewer must confront Mambush and his death in tandem with daily life. This confrontation occurs as the image is viewed while directly engaging with everyday objects that prevent the kind of detachment made permissible by entering an 'art space' like a theatre or sculpture exhibition – or indeed, a quasi-legal Commission. Instead of encouraging the viewer to detach and consider the detailed suffering of one man and his story – Noki – the TSC's work forces the viewer to consider Noki's death while thinking about the bus you are waiting for, or the coffee you are about to drink, or the off-ramp you're about to take on the highway. The dead at Marikana are not removed from the viewer's world through heroification, but placed

⁵⁵Tokolos-Stencils, 'We Send Our Tokoloshe to Battle with Those Trying to Make us Forget the Atrocities of Marikana' *Africa is a Country* <<http://africasacountry.com/2014/01/we-send-our-tokoloshe-to-battle-with-those-trying-to-make-us-forget-the-atrocities-of-marikana/>> accessed 16 May 2016.

squarely into the everyday: you could encounter this piece of art anywhere, including the places one traditionally associates with 'play', not 'pain'. Detachment, in this context, is unrealistic and actively countered by the collective, who determinedly state that their art will find its way 'through the cracks'.⁵⁶

Most importantly, this art is deliberately confrontational: this is not the mood of a calm, legal courtroom, where the discussion of corpses is interposed with questions of exhibit numbers; nor is this the atmosphere of a conventional art circuit exhibition space, or middle-class book store. The TSC position themselves as engaging in battle, using the body of a now-dead mine worker not to uncover evidence but as a rallying call to action, stating that through their images they want to '... terrorise the powers that be' and use their art to '... make people angry, to arouse their indignation ... and most of all to inspire them to act'.⁵⁷ The mood the TSC create is particular and unmistakable: entirely anonymous, operating at night, perpetrating supposedly criminal acts of graffiti, with the purpose of rousing anger and indignation.

Here the dead body of Noki is deployed very differently, because the TSC is not acquisitive regarding their art: anyone can download a graffiti stencil from their website and deploy as a tokoloshe, making this use of Noki's body the opposite of the tethering work performed by other artistic artefacts and legal procedure.⁵⁸ Ubiquity supersedes control. The TSC wants this image to freely circulate, to be seen unexpectedly and without explanation. This point is important: the ubiquity of this graffitied image, in contrast to other artistic appropriations of Noki's body, releases him from the constraints of heroification. But the image can still perform as a symbol of outrage, spray-painted onto surfaces without guidance or context, becoming its own agent of change (Figure 4).

With their rallying cry of 'we are all Marikana', the TSC refuses the separation of the living and the dead, the compartmentalization of giving one death significance and heroifying individuals at the expense of the collective. If we are all Marikana, then we are *all* survivors of this act of violence and horror. The living are no longer invisible – they have been galvanized and re-orientated to include everyone who sees this image. By introducing a mood of illegality, disquiet and unrepentant anger, the product of the TSC powerfully works against the tethering of dead bodies to evidence and fact, asking viewers to respond with outrage at the horror of Marikana, not detachment.

⁵⁶Dave Mann, 'Terrorising the Powers that be' *Archetype Online* <<https://archetypeonlinemagazine.wordpress.com/2014/08/13/terrorising-the-powers-that-be/>> accessed 17 May 2016.

⁵⁷*ibid.*

⁵⁸Download your Marikana graffiti stencils here: <https://tokolosstencils.tumblr.com/stencils>.



Figure 4. (a) Marikana graffiti posted to the TSC website. Source: Anonymous, *Marikana Graffiti*, South Africa (2013-2015) (Graffiti) <<https://tokolosstencils.tumblr.com/post/79256749833/weareallmarikana-at-ndabeni-train-station-at>> accessed 13 September 2022; (b) Mambush: Marikana graffiti posted to the TSC website. Source: Anonymous, *Marikana Graffiti*, South Africa (2013-2015) <https://tokolosstencils.tumblr.com/post/79182056668/some-photos-taken-at-bonteheuwel-train-station> accessed 13 September 2022

This analysis of the TSC's work shows how a dead body can impinge – can make itself felt, as per Spinoza's ideas of affect – and stimulate a mood of uncertainty, unpredictability and anger, pulling together worlds of pain and play to perform Slaughter's narrative conjunction. A foregrounding of corporeal form in this set of artworks reveals a kind of agency channelled through this depiction of Noki, an experience encountered in the spaces in-between official legal procedure and formalized art – a *bloom-space*.

An impingement: disruption

This article has identified the kind of continuity, as opposed to critique, that management of the dead bodies at Marikana resulted in through legal practice and through some artistic processes. But acknowledging the inherent dynamism of a corporeal and affective frame of analysis, it has also shown how some art, releasing a dead body from the confines of structure and category, produces confrontation and conjunction. This article posits that art and the law are not linked purely through critical foils; and that continuity between what these two disciplines produce can be demonstrated through the lens of the physical body. In this way, law and the arts can be seen as making co-generative space between complicity and critique, challenging conventional disciplinary boundaries of *law and* approaches.

To demonstrate these claims, this final section now re-examines the dead bodies at the Marikana Commission. Foregrounding the dead bodies of Marikana, as they appear inside the law of this truth-finding mechanism, is not only a matter of evidentiary certainty, as previously highlighted: there were other dead bodies that did not perform this function – and in fact, were actively blocked from gaining any traction inside the Commission at all.

Thus far, the only dead bodies that have been discussed are those that were ‘of interest’ to the Commission. In other words, this analysis has focused on those who died during the timeframes of the ToR. This point is important. As per the Commission’s ToR, deaths that occurred outside of the timeline of 9–16 August 2012 were supposedly of no import to the Commission’s proceedings. This was highlighted by Advocate Dali Mpofu, who attempted to get a specific death included in the timeline and ToR of the Commission – the death of ANC Councillor Paulina Masuhlo.⁵⁹ Ms Masuhlo was shot by rubber bullets in a police raid in Nkaneng, while police were ostensibly searching for weapons secreted by community members. She was shot on 15 September 2012, and died in hospital four days later.⁶⁰ Masuhlo, an ANC Councillor and community member, had been a leader of protests on 19 August 2012, when a large group of women marched from Wonderkop towards the site of the massacre, demanding justice for the men who had been killed and injured in the massacre. Mpofu was unsuccessful in his appeal to include Masuhlo’s death in the ToR, despite petitioning the President of South Africa and engaging the Chair and his Commissioners in an attempt to convince them of her death’s importance and relevance to understanding the massacre more completely.⁶¹

Paulina Masuhlo’s death is indicative of a problem that the Marikana Commission had to contend with: that the dead bodies did not stop arriving at the Commission’s door after the massacre ended. The body of Lungani Mabutyana, a survivor of the massacre, was found hanging from a tree near the site of Scene 2 of the massacre on 6th May 2013. On the same weekend of Mabutyana’s suicide, three other men were murdered – all four of these men had direct connections to the Marikana massacre or its key stakeholders.⁶² In total, alongside Paulina, a further eight people died over the

⁵⁹Alternative spellings of her name include Pauline Masuhlo; and Pauline Masuthe. The spelling in this text was chosen as it was the most commonly used across reliable reportage of her death.

⁶⁰Mandy De Waal, ‘Marikana’s Theatre of the Absurd Claims Another Life’ *Daily Maverick* (20 September 2012) <www.dailymaverick.co.za/article/2012-09-20-marikanas-theatre-of-the-absurd-claims-another-life/> accessed 12 March 2016.

⁶¹(Various) *Transcripts from the Marikana Commission of Inquiry* (Department of Justice and Constitutional Development, Marikana Commission of Inquiry 2012–2014), Day 102, 10879–10882 <www.justice.gov.za/comm-mrk/transcripts.html>.

⁶²Mr Mabutyana had survived the massacre itself; Mawethu Steven was murdered as he watched football in a bar – he was an Association of Mining and Construction Union regional organizer; twins Ayanda and Andile Menzi were similarly murdered that weekend, with one twin thought to be linked with the National Union of Mineworkers.

course of the Marikana Commission's inquiries: two documented suicides, five assassinations of potential witnesses and key trade union figures; and one death from illness. A miscarried baby was also attributed to the grief of losing a loved one.⁶³ These deaths were announced to the Commission without fanfare, with the Chair swiftly offering condolences and moving on with the day's business. But these dead bodies were jarring, nonetheless. They were out of place, disruptive – the 'tragic' killings had ended, the Commission had begun – the order of these deaths was not in line with the linearity of the Commission, set up to investigate *after* the fact.

These jarring and discordant deaths – outside of the ToR, yet reported inside the Commission and inextricably linked to the Commission's investigation – are troubling. They suggest a messiness – an ongoing cycle of violence – that did not start and has not ended with the Commission's clean-cut ToR dates. The implication of these deaths – these bodies that won't stop coming – is that whatever was wrong that caused the Marikana massacre, cannot be righted solely by this investigation into the truth. The operation of the law itself emphasizes this point, paradoxically highlighting these deaths in the Commission's transcripts – and then excluding them from investigation through the ToR timeframes, guaranteeing an impossibility of resolution within the framework of the Marikana Commission.

The sanctioned dead, linked to text and documentation, reassure that legal certainty and forensic truth are possible. But the unsanctioned dead have no such tether, yet are still present in the Marikana Commission transcripts. Their unpredictable arrivals in the transcripts weaken the idea that the dead bodies will provide a guide to forensic truth; their messy and incomplete stories of grief, murder and revenge – pointedly excluded from legal procedure through the limitations of the ToR – exert an unsettling influence over truth recovery attempts. These extraneous deaths hover at the edges of the Commission's proceedings, forcing spectators to acknowledge that violence and death continue outside of the neat parameters set by the Commission. And while legal procedure excludes these deaths from impacting the Commission's operation, they remain included in the legal form of the Commission, as each death is announced in the transcripts. As highlighted above, the law in fact acknowledges its own complicity with irresolution, by paradoxically both highlighting these deaths and then excluding the possibility of resolution within legal procedure. In fact, the law is calling attention to its own limitations through this parallel process of visibility and subsequent exclusion, that guarantees the impossibility of closure.

This is the character of the law that has been overlooked, and can be identified by foregrounding the affective, physical body inside the Marikana

⁶³Socio-Economic Rights Institute (SERI), *Marikana: Marikana Commission of Inquiry* (SERI) <www.seri-sa.org/index.php/advocacy/expanding-political-space/marikana> accessed 13 June 2017.

Commission. The law can hold unpredictability and dynamism as well as its character of linear, forensic truth recovery. Turning to the arts for critique overlooks the possibility of identifying critique inside the law itself, and prevents the discovery of continuity and dialogue between the arts and the law of Marikana, as has been identified throughout this article's analysis.

The ToR and subsequent legal procedure at the Marikana Commission labelled these extraneous deaths as irrelevant to the task at hand, which was to 'inquire into, make findings, report on and make recommendations'⁶⁴ regarding the massacre. Such dismissal at the hands of legal procedure implies that these dead bodies serve no purpose for the massacre investigation. But the death of Paulina Masuhlo provides an alternative reading of legal procedure's dismissal of her relevance for the purposes of truth recovery. In fact, her death had a very great impact indeed: it was the catalyst that led to the formation of a powerful women's group called Sikhala Sonke, meaning 'we cry together'.⁶⁵ Sikhala Sonke has been responsible for taking on Lonmin's corporate social responsibility record, reporting them to the International Finance Corporation, agitating for improved living conditions for the residents of Marikana;⁶⁶ and has been the subject of an award-winning film documentary, *Strike a Rock*.⁶⁷ Masuhlo's death was anything but irrelevant, despite legal procedure's refusal to countenance it. Paulina Masuhlo's death had a catalytic effect that continues to bring the plight of the Marikana survivors and widows into conversations, nine years after the fact – a conversation that remains ongoing and incomplete; an incompleteness first highlighted by the presence of Masuhlo's dead body – amongst the other grim deaths that stalked the Commission's proceedings – back in 2012.

Foregrounding these dead bodies that drift, not linked to evidence or legal procedure, results in challenging legal procedure's evidentiary certainty and its excision of that which is messy and incomplete. These dead bodies and their interplay with the Marikana Commission, placed in the centre of analysis, demonstrate that a singular, linear zone of engagement with a set outcome is a limiting approach to truth recovery. These untethered dead bodies thus force a confrontation of the relevance of the Marikana

⁶⁴South African Government, *Commission of Inquiry into Tragic Incident at or Near Area Commonly Known as Marikana Mine in Rustenburg, North West Province: Terms of Reference* (Government Gazette: No.35680, South Africa 2012) <www.justice.gov.za/comm-mrk/docs/20120912-gg35680-nor50-marikana.pdf>.

⁶⁵Marienna Pope-Weidemann, 'The Marikana Women's Fight for Justice, Five Years on' *Red Pepper* (2017) <www.redpepper.org.uk/the-marikana-womens-fight-for-justice-five-years-on/> accessed 9 February 2019.

⁶⁶Centre for Applied Legal Studies, *World Bank to Investigate Complaint on Lonmin's Social and Environmental Impacts* (University of the Witwatersrand, 7 December 2017) <www.wits.ac.za/news/sources/cals-news/2017/world-bank-to-investigate-complaint-on-lonmins-social-and-environmental-impacts.html> accessed 9 February 2019.

⁶⁷n/a, 'Sikhala Sonke Women's Organisation in Marikana' *Strike a Rock* (n/a) <<http://strikearock.co.za/sikhala-sonke/>> accessed 9 February 2019.

Commission's focus on the goal of certainty, and the utility of rigid legal procedure that doesn't acknowledge the inevitable incompleteness of bounded investigations.

Conclusion

By using dead bodies as an analytical touchstone, this article has applied the idea of the physical body acting as a bridge between the law and the arts of Marikana, bringing them into dialogue rather than a binaristic relationship suggested by conventional 'law and ...' approaches. The analysis began by examining how legal form exerted control over corporeal forms at the Marikana Commission by linking the dead bodies to evidence. This resulted in the bureaucratizing and neutralizing of the horror of death at Marikana, through the creation of evidentiary certainty from those dead bodies. The resultant separation of the horror from the utility of death at Marikana, was permissive of detachment: the dead performed a technocratic role in the establishment of both good legal procedure and high quality forensic truth.

A similar process was found inside artistic forms that used Marikana's dead as subjects. Rather than providing opposition or a counter-narrative, these artworks reinforced the tethering of the dead to structure and form, providing continuity with the law rather than critique. The linking of Noki to the cult of a hero mimics the detachment created through evidentiary certainty. Legal procedure, just one of law's characteristics, and heroifying artworks create the same kind of rigid, regulatory interpretation of death that results in similar outcomes of detachment and certainty – a process which has the critical resulting of vanishing those bodies still living.

But this work of foregrounding the physical body allows affective dynamism and fluidity in how corporeality inside the law and the art of Marikana is analysed. Bodies are not static, limited to being pegged to structure and category. Using corporeal and affectual concepts, it is possible to identify dead bodies that remain persistently (and through the arts, purposefully) de-linked from structure and category. Foregrounding physicality that breaks free from categorization, the dead bodies in the final analytical section of this article show how Marikana's dead can also perform a narrative conjunction between a viewer and the horror of Marikana. Dismissing detachment and fostering a sense of community with those now dead and critically, those still living, the foregrounding of these dead bodies inside the law and the art of Marikana shows a different kind of continuity between these two disciplines – one which demonstrates the futility of bounded investigations that have a limited impact on key stakeholders; and exposes the active vanishing of those who are unable to be appropriately corralled into the production line of evidentiary certainty.

It is thus possible to see artwork that reinforces both the containment and the liberation of the dead bodies of Marikana. This calls into question the arts' role as an add-on critic in conventional, interdisciplinary transitional justice approaches. The complexity of the arts as a field is as similar to the complexity of law's character – both of which remain under-acknowledged. Foregrounding the physical body recognizes the potential for both the arts and law to take on a variety of roles that current approaches to interdisciplinarity block from them. Identifying such continuity, rather than binaristic opposition, inside the law and the arts of transitional justice makes for a broader and more inclusive analysis that allows each discipline range and scope for both regulation and independence. Viewed from this perspective, interdisciplinarity inside *law and* approaches limit the capacity for dynamic and co-generative analysis. An affective, corporeal approach can release both disciplines from their straitjackets – giving space and opportunity to both disciplines to represent complicity and critique.

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