1

Introduction

Lochner Marais and Karin van Marle

1   Background: Main research questions and methodology

This collection is the outcome of an interdisciplinary project conducted by academics and researchers linked to the university of the Free State that was funded by a grant from the office of the vice-principal concerned with research, Prof Corli Withuhn, in 2019. The project and the volume benefited from perspectives from scholars situated in the disciplines of Geography, Psychology, Anthropology, History, Human Rights and Jurisprudence.

The questions that prompted the initial inquiries and that are also reflected in this volume are the following:

- What are the long-term spatial inequalities created by apartheid and how do ordinary people deal with these historical injustices?
- How do historical dispossessions of land influence people's perceptions of property and property rights?
- How do current property rights create continued exclusion?
- What are the temporal aspects at play?
- Are there plural forms of law to be unearthed or alternative stories to be heard about the experience of law and property?

All of the contributions, albeit some more than others, relied on field work conducted in the Thaba 'Nchu, Botshabelo and Mangaung regions. Interviews were conducted with a number of inhabitants of these areas to obtain a sense of current relation to their homes. Questions were asked about how people came to live where they are living; if they have any formal or legal papers to confirm ownership. Older people were asked to reflect about the forced removals. Issues about safety and security were raised. The questions prompted people to reflect about possible alternative understandings of property and the relation to property or ownership. A wide range of responses were given and the chapters below engage with some of these. The interviews confirm what has been observed before, namely, that which South Africa's colonial and

apartheid histories have left the country's urban areas with a distinctive spatial legacy.[1]

Racial-based planning ideologies have resulted in racial segregation, low densities, sprawling suburbs and, in many cases, the urban poor have been located on the periphery of cities.[2] The need for spatial restructuring is usually closely associated with the legacy of apartheid planning. In that apartheid planning represented high levels of social engineering, it created hardship and it marginalised lower-income households. It was moreover a direct burden on city economies.[3]

Like all cities, Mangaung (Bloemfontein)[4] also experienced significant segregation. Colonial and apartheid planning had distinct spatial planning consequences for Mangaung. Krige[5] described Mangaung as a 'microcosm of apartheid planning'; Thaba 'Nchu being 'an "exclave of independent" Bophuthatswana'; Botshabelo as 'an ethnic city for the Sotho, a catchment area for canalised urbanisation and surplus blacks in the province'; and Bloemfontein as 'one of the ideal apartheid cities'. Other typical apartheid planning features, he notes, are the attempt to incorporate Botshabelo into the QwaQwa Bantustan, which failed in 1990, the three industrial development points which were part of industrial development under apartheid and the daily and weekly commuters and long-distance migrants. As an 'ideal' apartheid city, Bloemfontein's spatial development was fragmented. Its suburbs were sectored according to race; wide buffer strips were inserted between race groups; the railway line and industries were used to split white and black suburbs; and the black suburbs (the townships) were ethnically zoned and no freehold was allowed in them. A small amount of resettlement

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1   South Africa Cities Network 'The spatial transformation of South Africa's cities: From abstract concept to meaning and means' in State of the South African Cities Report (South African Cities Network 2016).

2   D Dewar and others *Housing: A comparative evaluation of urbanism in Cape Town* (1977).

3   I Turok 'Urban planning in the transition from aparteid: Part 1: The legacy of social control' (1994) 65 *Town Planning Review* 243.

4   Mangaung refers to the municipal area to which Krige referred as the Bloemfontein-Botshabelo-Thaba 'Nchu region. Bloemfontein refers to the historical city of Bloemfontein which consisted of the former white group areas of Bloemfontein, Mangaung township (for black people) and Heidedal (for the coloured population).

5   S Krige 'Bloemfontein' in A Lemon (ed) *Homes apart. South Africa's segregated cities* (1991) 104.

was done to implement the Group Areas Act within the city, but there was extensive resettlement from the Mangaung township to Botshabelo.

The collection relies on existing historical, anthropological and sociological work such as that of Krige;[6] Schoeman;[7] Murray;[8] and Marais[9] that details the history and, to some extent, the current patterns of spatial injustice in Bloemfontein and surrounds. This existing body of literature provides a sound and comprehensive description and analysis of the city's spatial history and some description and analysis of the city's current spatial development. Building on this existing work, the various chapters trace different ways in which these past legacies endure.

In the project we were interested in how property functioned and still functions as an exclusionary force but, more than that, also what different conceptions of property (as envisaged by the late André van der Walt) are held. Van der Walt[10] described the features of traditional conceptions of property to be defined in terms of a 'hierarchy based on binary opposition'. Property rights in this view are associated with ownership, that functions as a 'complete', 'comprehensive' and absolute 'right'. Within this understanding there is no room for property to be understood differently. It functions according to a logic in terms of which strong property rights can trump weaker property rights and any other rights. Van der Walt,[11] relying on work done in the realist tradition, argued for the notion of 'property as a bundle of rights', that could be understood in a relational way that allows for different property rights to overlap with one another.

The authors in various chapters ask whether and to what extent people are thinking about property in alternative ways, thereby challenging the Western conception of property as a boundary like concept set out to

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6   6   S Krige 'The challenge of dismantling spatial patterns constructed by apartheid in the Bloemfontein-Botshabelo-Thaba 'Nchu region' (1998) Suppl 1 *Acta Academica* 123; Krige (n 5); S Krige *Die transformasie van die Suid-Afrikaanse stad* Town and Regional Planning Research Publication 10 (University of the Free State 1988).

7   K Schoeman *Bloemfontein: Die onstaan van 'n stad 1846-1946* (1980).

8   C Murray *Black mountain: Land, class and power in the eastern Orange Free State, 1880s to 1980s* (1992).

9   L Marais 'The spatial development of Bloemfontein: Past and future conflicts' in L Marais, & G Visser (eds) *Spatialities of urban change: Selected themes from Bloemfontein at the beginning of the 21st century* (2008); L Marais 'Bloemfontein-Mangaung' in A Lemon, R Donaldson, & G Visser (eds) *Homes still apart* (2020).

10   AJ van der Walt *Property and constitution* (2012).

11   As above.

exclude. How did the experience of apartheid-forced evictions and forced removals affect people's perception of property? What are the stories told by people about past removals and resettlements? Below we provide a brief overview of the legacy of apartheid planning in Mangaung; the theoretical approaches guiding the volume and the arguments put forward in each of the chapters.

2   Apartheid planning in Mangaung: A historical overview

Apartheid planning had three main spatial implications for South Africa: grand apartheid, meso-apartheid and micro-apartheid. We only discuss grand and meso-apartheid, as these directly affected the spatial characteristics of Mangaung. No reference will be made to the concept of micro or petty apartheid that refers to the segregation of amenities (separate swimming bays, different buses, separate services points in businesses). Although petty apartheid was applied with rigour, it was easy to undo compared to meso and grand apartheid.

2.1   Grand apartheid

Grand apartheid referred to the creation of ethnic homelands in South Africa. Grand apartheid was built on the original development of black reserves under various colonial governments. For example, the Glen Grey Act of 1894 allocated land for exclusive use by black people. However, this also meant that black people's land rights outside of these areas were limited. The Act also laid the foundation for segregation and allowed the apartheid government to build on this. The Glen Grey Act also challenged the land rights of black people in the Cape Colony. The Natives Land Act of 1913 further reinforced the ideas of the Glen Grey Act but added more land to these African reserves. However, the unification of South Africa in 1910 resulted in Africans not having voting rights outside a few thousand in the Cape Province, who could vote for a white representative in parliament. However, like the Glen Grey Act, the Natives Land Act also contributed to the disenfranchisement of land and voting rights for black people. When the apartheid government came into power in 1948, there were several pieces of land to which Africans were restricted. Yet, there were areas outside these African reserves where black households had full title (for example, Alexandra in Johannesburg).

Various pieces of legislation prevented free mobility and, since 1910, influx control was a prominent policy response. The restriction on the mobility of black people, coupled with the laws described above, laid the foundation for the development of an ethnic homeland policy. In the process, the apartheid government created ten ethnic homelands. Four of these homelands received 'independent status', but South Africa was the only country recognising this status. The overall goal was to distinguish between white South Africans (87 per cent of the land) and black South Africans (13 per cent of the land). The macro plan of dividing South Africa into white and black land areas meant that the population had to be removed from white areas to the black areas. This resulted in large-scale forced removals.[12]

Grand apartheid was also applied in Mangaung. Thaba 'Nchu was an enclave of Tswana-speaking people (Barolong) with a long settlement history in the area. The Land Act of 1913 consolidated the area and the apartheid state then used this to create a homeland. The first resettlements of black people from 'white South Africa' (Bloemfontein) to Thaba 'Nchu started in 1968. The apartheid state stopped all land development in Bloemfontein and redirected new migrants to Thaba 'Nchu.[13] When Thaba 'Nchu was incorporated into Bophuthatswana in 1977 and Bophuthatswana became independent as an ethnic state for Tswana-speaking people, the Sesotho speaking population had to be removed. This led to the establishment of Botshabelo, 10 kilometres west of Thaba 'Nchu, and the resettlement of the Sesotho-speaking population from Kromdraai.[14] The aim was to link the Sesotho-speaking population from Botshabelo to an ethnic homeland. For this purpose, Botshabelo had to be linked to the QwaQwa homeland in the north-eastern part of the Orange Free State Province. However, in 1992 the apartheid government lost a court case against the people of Botshabelo about their inclusion into QwaQwa.[15]

Creating an ethnic homeland and an ethnic city 60 kilometres east of Bloemfontein fragmented the area. The apartheid state redirected

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12   L Platzky & C Walker *The surplus people: Forced removals in South Africa* (1985).
13   Krige (n 5).
14   Murray (n 8).
15   C Twala & L Barnard 'The incorporation of Botshabelo into the former Qwaqwa homeland: A logical consequence of the apartheid system' (2006) 31 *Journal of Contemporary History* 162.

urbanisation away from the core urban areas. Black people had to settle in the homeland (Bophuthatswana) and ethnic city (Botshabelo). This redirection of urbanisation was done to keep black people away from white South Africa. Two subsidy instruments had to ease the fragmentation. In the first place, a subsidised bus system was created for people to commute daily between Botshabelo and Thaba 'Nchu. Second, several industrial development growth points were created according to the industrial decentralisation policy.[16]. There were industrial development points in Thaba 'Nchu, Botshabelo and Bloemdustria, halfway between Bloemfontein and Botshabelo.[17] The development of these industrial development points also required high levels of government subsidy. As these were wage subsidies, many industrialists from the East (mainly Taiwan) made profits on the subsidy alone.

The industrial development points and the bus subsidy system have changed considerably since the 1980s. The high levels of subsidisation for the industrial development points meant that they were not viable points when the post-apartheid state phased out the subsidies. Consequently, the industrial development point in Thaba 'Nchu collapsed and Bloemdustria did not develop further. Botshabelo is still operating, although the levels of operations are substantially less than originally envisaged. Many stands have had a land-use change from manufacturing to retail or warehousing.[18] Another reason for continued action is that rentals are substantially below market value. This was for two reasons. The industrial park did not have to account for the capital cost of the initial development and, since then, various investments from the Department of Trade and Industry improved the infrastructure without adding to the cost of rental space in the area.

As people were able to settle in a place of choice from the early1990s, the number of people commuting between Botshabelo and Thaba 'Nchu decreased substantially. At the end of the 1980s, approximately 12 000 people were commuting daily. By 2015, this number is down to about

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16   D Dewar and others *Housing: A comparative evaluation of urbanism in Cape Town* (1977).
17   Krige (n 5).
18   L Marais and others 'Reinforcing housing assets in the wrong location? The case of Botshabelo, South Africa' (2016) 27 *Urban Forum* 347.

8 000.[19] Many commuters are scholars who choose to attend school in Bloemfontein. Two processes resulted in the reduction of commuting numbers. First, since 1990, new land expansions for low-income people have been possible in Bloemfontein. Research shows that up to 20 per cent of people in these new developments resettled from Botshabelo.[20] Second, by the early 1990s, it was already clear that people commute over weekends and have found rental accommodation in Bloemfontein during the week. A further decline in people commuting between Botshabelo and Bloemfontein is likely to occur.

By the early 1990s, it was clear that the grand apartheid ideals did not materialise. Botshabelo remained part of South Africa after the court case had dismissed a plan to integrate it into QwaQwa and Bophuthatswana which was eventually reincorporated into South Africa in 1994. Yet, the legacy of this spatially fragmented region continues to dominate planning responses.

2.2   Meso apartheid

Meso-apartheid refers to the separation at the suburb level. Krige[21] described Bloemfontein as an ideal apartheid city for the following reasons: racial sector development of suburbs; the location of the black township areas towards the east (away from the prevailing westerly winds); ethnic zoning; a central business district belonging to the white city; some resettlement from white areas to black suburbs; and the establishment of Botshabelo as an ethnic city (discussed above). Bloemfontein was highly segregated by the end of the 1980s. There were suburbs for black (Mangaung), coloured (Heidedal) and white populations (Indians were not allowed to live in the Free State at all). Suburbs in Mangaung were also zoned in terms of ethnic groups, so-called geolinguistic segregation (Xhosas, Tswanas and Sothos had different areas).

Since the repeal of the Group Areas Act, the desegregation of suburbs has been slow,[22] but has progressed more rapidly in the central business

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19   L Marais and others 'A tale of two markets: Uneven access to private property in a South African city' (2020) 111 *Tijdschrift voor Economische en Sociale Geografie* 80.

20   L Marais & J Ntema 'The upgrading of an informal settlement in South Africa: Twenty years onwards' (2013) 29 *Habitat International* 85.

21   Krige (n 5).

22   Marais and others (n 15).

district.[23] There is no evidence of resegregation, but desegregation in the southern suburbs is higher. The ethnic zoning in Mangaung has disappeared and there is evidence of residents from Botshabelo settling in Bloemfontein or the old Mangaung township area.

2.3   Post-apartheid policy responses

Several post-apartheid responses have shaped the region following the first democratic elections in 1994. First, Bophuthatswana was reincorporated into South Africa. The bureaucracy in Thaba 'Nchu became part of the Free State provincial government. Second, the broader Bloemfontein region, including Thaba 'Nchu, became integrated with the establishment of the Mangaung Local Council in 2001, which became the Mangaung Metropolitan Municipality in 2011.[24] Third, the establishment of the Mangaung council meant that large-scale infrastructure investments were made in Botshabelo.[25] The infrastructure level exceeded the proposals from an investment study in the mid-1990s.[26] Fourth, despite initial suggestions that the bus subsidy would be revoked, it remains intact. Finally, as mentioned earlier, two of the industrial development points have collapsed or shown no growth, while the third one has seen substantial change in land use.

   We turn below to some of the theories that guided the initial framing of the project and the writing of the chapters. These of course are not the only ones, but the ones that together with the interviews provided a shared point from which the authors coming from a wide range of disciplines and perspectives approached their chapters.

23   G Hoogendoorn & L Marais 'Inner-city residential change in Bloemfontein after apartheid: A perspective of those who did not flee desegregation' in L Marais & G Visser (eds) *Spatialities of urban change. Selected themes from Bloemfontein at the beginning of the 21st century* (2008).

24   N Subramanyam & L Marais 'Making Mangaung metro: The politics of metropolitan reform in a secondary city in South Africa' (2021) 59 *Urban Studies* 2893.

25   Marais and others (n 14).

26   R Tomlinson & S Krige 'Botshabelo: Coping with the consequences of urban apartheid' (1997) 21 *International Journal of Urban and Regional Research* 691.

3 Theoretical gestures

3.1 The right to the city and space in the city

The right to the city has become a major debating point globally. Consequently, the New Urban Agenda highlights the principle of the right to the city and sees it as being underpinned by basic human rights.[27] It considers the concepts of justice, freedom, inclusion and equality to be central to the right to the city. However, the inclusion of the right to the city in the New Urban Agenda has been contested.[28]

The work of Lefebvre (1901-1991) is commonly used to argue for a principled definition of the right the city. Lefebvre emphasised three concepts: habitation, appropriation and participation.[29] 'Habitation' refers to the use of space and the ability to inhabit the city and reap the benefits of urban living. 'Appropriation' refers to being present and experiencing and using the value of city life. 'Participation' refers to the ability to imagine the city and contribute to its form, meaning and operations. Participation also implies that conflicting perspectives from different groups will influence a city's form, meaning and aspirations. For Harvey,[30] the right to the city is a 'common rather than an individual right' and 'depends upon the exercise of a collective power to reshape the processes of urbanisation'. In this participatory process, the right to the city is embedded in 'difference' (strangers sharing space); the city being a place where different interest groups are valued.[31] Tolerating and living with this difference and not excluding people because they are different are essential aspects of the right to the city. The right to the city extends to all those who want to be part of the city and not only to those with legal rights. Several factors negatively affect this right to the city: legislation,

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27   UN-Habitat 'Habitat III: New Urban Agenda 10 September 2016. Draft outcome document for adoption in Quito' (October 2016), https://habitat3.org/wp-content/uploads/Habitat-III-New-Urban-Agenda-10-September-2016.pdf (accessed 23 April 2024).

28   M Huchzermeyer 'The legal meaning of Lefebvre's the right to the city: Addressing the gap between global campaign and scholarly debate' (2018) 83 *GeoJournal* 631.

29   H Lefebvre 'The right to the city *(Le droit à la ville)*' in *Writings on Cities: Henri Lefebvre*, selected, translated and introduced by Eleonore Kofman and Elizabeth Lebas (1996 [1968]).

30   D Harvey 'The right to the city' (2008) 53 *New Left Review* 23.

31   D Mitchell *The right to the city: Social justice and the fight for public space* (2003).

urban management practices and social structure (class). The World Charter on the Right to the City[32] defines the right to the city as 'the equitable usufruct of the cities considering the principles of sustainability and social justice. This right shall be understood as a collective right of all city inhabitants, especially those vulnerable and disfavoured, conferring legitimacy of action and organisation in accordance with their usages and customs in the search for full exercise of the right to an adequate standard of living.'

The bundle of rights associated with the right to the city are the right to have food, water, clothes, a home, family life, education, social security, public security and a good standard of living, and to be healthy, to work in a good working environment, to practise one's culture, to participate, to associate freely, to gather, to state opinions, to unionise and, finally, simply to exist.[33]

This broader concept of the right to the city does not always resonate with a legal understanding. Fernandes[34] argues that the legal meaning remains a neglected area of thinking about the right to the city. There is some debate as to whether Lefebvre argued for a legal and institutional meaning of the right to the city. Huchzermeyer[35] interprets the New Urban Agenda as saying the concept 'right to the city' has legal meaning. Brazil is the only country that has made the right to the city a legal right.[36] We argue that the notion of a set of interrelated rights, similar to the Bill of Rights in the South African Constitution, as opposed to an explicit legal right, fits better with the overall idea of a right to the city. Lefebvre himself never conceived of the right to the city in specific institutional terms, but also transformative readings of and approaches to the Constitution underscore the potential in notions of overlapping rights, or rights that create relationalities instead of asserting a single right that functions as a kind of trump over other rights.

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32   World Charter on the Right to the City (2004), https://www.hlrn.org.in/documents/World_Charter_on_the_Right_to_the_City.htm (accessed 23 April 2024).
33   As above.
34   E Fernandes 'Constructing the "right to the city" in Brazil' (2007) 16 *Social and Legal Studies* 201.
35   Huchzermeyer (n 24).
36   Fernandes (n 30).

To explain the production and reproduction of space in cities, Lefebvre[37] conceptualised urban space into three categories: conceived, perceived and lived. Conceived space refers to how society (including town planners and engineers) conceptualises space mainly through architectural design. It is possible to map conceived spaces. Examples are houses, factories and monuments. Epistemological, economic, political and religious ideologies underlie conceived spaces. Capital often is the most dominant underlying factor in creating conceived space. Perceived space (representation of space) refers to how people interpret space and its properties. People's differences create different perceived spaces. Lived space, the space of everyday life, refers to the use of physical space or how society functionally retrofits space. Lived space does not need to comply with rules and regulations. City planning and regulations should consider all three aspects of space in an integrated manner.

Separation, fragmentation and exclusion are common historical characteristics of urban planning and form in South Africa. Coggins and Pieterse[38] note that legislation under apartheid rule 'propped up an urban landscape which closely tied race and class 'difference' to acute social and economic disadvantage'. A substantial portion of the urban population had no 'right to the city'. These spatial problems have continued long since the post-apartheid government repealed repressive laws. The spatial patterns created under apartheid remain evident. Coggins and Pieterse[39] refer to this continued spatial fragmentation as a form of 'violence' against poor people. This situation continues despite the Bill of Rights in the South African Constitution.

The idea of the right to the city resonates with this Bill of Rights. The rights-based approach has increased the role of the courts in urban planning and management. However, Turok and Scheba[40] have concerns about a rights-based approach because it is not 'complemented by collective action and strengthened capabilities ... at the local levels'

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37   H Lefebvre *The production of space* (*La production de l'espace*) trans D Nicholson-Smith (1992 [1974]).
38   T Coggins & E Pieterse 'Rights and the city: An exploration of the interaction between socio-economic rights and the city' (2012) 23 *Urban Forum* 258.
39   As above.
40   I Turok & A Scheba '"Right to the city" and the New Urban Agenda: Learning from the right to housing' (2019) 7 *Territory, Politics, Governance* 494.

and conclude that it requires an 'approach to unlocking urban land and collective effort to spur socioeconomic development'.

This book is situated at the interface between concepts of the right to the city and attempts to address the concerns of people who did not have the right to the city under apartheid planning in South Africa. A planning system that focuses on individual rights instead of a broad right to the city creates unnecessary complications. Considering the historical overview provided in part 2 above, we ask the following specific questions:

- To what extent is the outcome 30 years later the result of participation, new meanings and imaginings rather than the result of an economic and political system that has reinforced apartheid spatial planning?
- What role has the rights-based approach, compared to the non-rights-based approach, played in the lack of restructuring in the case study area?
- Does a rights-based approach have unintended consequences and shortcomings that should receive attention in ideas about integration and inclusion?
- Considering the structural constraints, are there examples of people's agency rethinking the use of space?
- How do people respond to their historic spatial disenfranchisement through examples of conceived, perceived and lived space?

3.2   Relationality, narrative and pluralism

If the right to the city is the one main theoretical perspective that underlies and directs the more social scientific part of the investigation, then theories on relationality, narrative and pluralism make up the more, let us call it, law-and-humanities-orientated inquiry. South Africa's adoption of human rights by way of an entrenched Bill of Rights in the Constitution has been met with mixed feelings since the very beginning. Scholars who were weary to join the celebrations of a Bill of Human Rights as the ultimate end point of natural law and natural rights were cautious about how to make sense of rights given South Africa's fraught political history. Mamdani,[41] notably in the context of the Truth and Reconciliation Commission (TRC), argued for a broad-based interpretation to human rights that could respond to the neglect of the TRC to pay attention to the beneficiaries of apartheid. He noted that in the absence of such an approach, rights will do nothing but to entrench past and current privilege. The work of legal theorist and

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41   M Mamdani *When does reconciliation turn into a denial of justice?* (1998).

feminist Jennifer Nedelsky,[42] a former student of Hannah Arendt, has inspired many scholars contemplating how a rights-based approach may be understood and applied in the South African context in the aftermath of official apartheid. Nedelsky's approach centres around the idea that 'relationships are central to people's lives – to who we are, the capacities we are able to develop, to what we value, what we suffer, and what we are able to enjoy'.[43] She works with the notion of 'the self, autonomy and law [as] a constellation of ideas, practices and institutions'.[44] A relational approach to rights as suggested by Nedelsky has the potential to trouble traditional distinctions between rights and 'the good' or welfare or the public good.[45] Her argument that autonomy should be reconceived along the lines of relationality holds much potential for alternative understandings of property. Applying relationality to constitutionalism amounts to an understanding of it as a 'dialogue of democratic accountability in which rights do not serve as trumps'.[46] She regards her approach as transformative having the ability to 'restructure relations'.[47] The engagements with law in this volume all take inspiration, if not direct guidance, from this theoretical stance. In the context of constitutional property law in South Africa, the late Andre van der Walt,[48] taking his cue from, among others, Jennifer Nedelsky, put forward an idea of property that radically challenges the private scientific tradition that dominated the understanding, interpretation and application of property before 1994. Van der Walt[49] exposed the extent to which this scientific approach stood blind to real harm and was eternally caught up in an abstract play with syllogisms.

In terms of spatial theory, the work of Massey[50] and her embrace of the notion of relational space relates to the work of Nedelsky and Van der

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42   J Nedelsky *Law's relations. A relational theory of self, autonomy, and law* (2011).
43   Nedelsky (n 38) 3.
44   As above.
45   Nedelsky (n 38) 11.
46   Nedelsky (n 38) 16.
47   Nedelsky (n 38) 17.
48   AJ van der Walt *Property and constitution* (2012).
49   AJ van der Walt 'Un-doing things with words: The colonisation of the public sphere by private property discourse' 1998 *Acta Juridica* 235; AJ van der Walt 'Dancing with codes – Protecting, developing, limiting and deconstructing property rights in the constitutional state' (2001) 118 *South African Law Journal* 258.
50   D Massey *For space* (2005).

Walt and provides an important background to the engagements with the voices of the inhabitants of the specific spaces. Narrative theory provides a helpful way to scholars not that familiar with fieldwork to make sense of the various interviews. Another important theoretical gesture is work on legal pluralism as a way to disclose the possibility for more forms of law to be acknowledged. The work of Cover,[51] among many others, pushes the boundaries of what is traditionally regarded as law.

4   The chapters

The first substantive chapter in the volume by Marais and Gbadegesin sets the tone for discussion and arguments that follow in the volume by tracing the apartheid spatial history of Bloemfontein that centres on the social engineering of the apartheid government and its forced segregation policy that violently moved many inhabitants to areas such as Botshabelo, Thaba 'Nchu and Mangaung township. They reflect on the failed attempts post-1994 to reintegrate the region. Relying on social constructionism in engaging with the interviews, they raise the question of whether, instead of reintegration, the state should not do more to develop the settlements. Not ignoring the racialised history and the violence of the past, they note the sense in which some of the respondents regard their current places of living as rural homes and their inhabitance not of a temporary nature. They urge policy makers to pay attention to the importance of a 'rural home' and emotional attachment.

Serekoane and Twala respond to Marais and Gbadegesin by underscoring the extent to which, over and above economic value cultural, social, political values and aspects such as aesthetics, histories, identities and other symbolised meanings play a role in African concepts of home. They echo the trauma experienced by many because of dislocation and forced removals. They place emphasis on the distinction made between house and home as something to be taken into account when trying to make sense of present attachments to home. The authors are cautious about the question of whether settlements in places such as Botshabelo have created a home, and warn about new or continuous exclusion.

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51   R Cover 'The Supreme Court 1982 term. Foreword: Nomos and narrative' (1982) 97 *Harvard Law Review* 4; R Cover 'The folktales of justice: Tales of jurisdiction' (1985) 14 *Capital University Law Review* 179.

Brand in chapter 4 starts off by recalling how an apartheid system of land law and notion of ownership enabled both a dynamic social engineering and a static application to the detriment of black South Africans. Whereas Marais and Gbadegesin trace the story of Bloemfontein as such, Brand first sets out the overall structure of apartheid approaches to land law and property. Turning to the project, he is interested to see whether the interviews reveal the traditional notion of property law as something by which others can be excluded or if there is a promise of another understanding that could enhance also rights to equality, dignity, democracy and freedom. Brand finds in the interviews a sense of an overlapping of traditional and alternative understandings of property that could disclose possibilities for a transformed vision.

In response to Brand, Wara delves into the way in which communities can play a role in the transformation of land and property relations by integrating and harmonising tenure systems with formal law. He engages with sections 211(2) and 39(2) of the Constitution that support both courts and traditional authorities to observe, apply and develop customary law. He argues that the diverse forms of communal tenure that were at play before it was disrupted by colonialism and apartheid should be heeded. Wara's response links to Serokoane and Twala in his emphasis on the sacred role that land played in the lives of black people.

In chapter 6 Kamdem Kamga and De Villiers are interested in the role of time in the context of law, land and property. They focus on three ways in which time manifests in law, namely, acquisitive prescription, the acknowledgment of the duration of occupation in eviction legislation and the common law doctrine of *vetustas*. Drawing on the interviews, they trace the presence of trans-temporality and the invocation of time to capture a sense of belonging. They follow Massey's work on space and social relations and her insight into space as dynamic, three-dimensional and complex. Their emphasis on the complexity of spatial and temporal relations picks up on the argument of Serekoane and Twala in chapter 3.

In his response to Kamdem Kamga and De Villiers, Mhlanga invokes Wilson's view that traditional interpretations of property have placed too much emphasis on the formation of space and not enough on what occurs within it. Mhlanga notes the extent to which the law continues to heed to the powerful to keep the *status quo* intact. He argues that to the extent that temporality can be understood as the social patterning

of experiences and understandings of time and not simply about the passing of time, it seems as if nothing has changed.

In chapter 8 Van der Watt, working with the very same interviews, engages the stories of displacement, oppression and deprivation as reflective of enduring woundedness. She observes how the losses continue to come to the fore in all relationships in spite of or even as a result of political liberation and attempts to do redress. Van der Watt underscores how displacement was not only a material but also a psychological loss. Taking the right to the city as framework, the chapter investigates the enduring challenges of residents in a space such as Botshabelo. Linking with other chapters, she underscores the complexity of address and redress and the extent to which the full value of the right to the city remains elusive.

Odendaal, in response to Van der Watt, notes that the circumstances and narratives of the specific sites are not unique but are exemplary of South Africa. In particular, the search for home and the sense of security, dignity and belonging that could come with it, is yearned for by many. He notes that although public discourse focuses on the lack of economic and even political access, it is more complex to engage with the psycho-social woundedness. He expresses hope for a state that will respect the Constitution, civil servants that serve the public in a fair and respectful way, and an active citizenry.

Coming to the end of the volume, Van Marle in chapter 10 reflects on the overall project, the aims and questions raised as well as the methodological and theoretical inflections. She is interested in the question of lawful relations and asks whether, against the background of apartheid law, post-1994 notions of property as relation could open the possibility of lawful relations. Her interest in the interviews is to search for plural notions of law of which she finds hints in some of the 'sacred narratives' and 'folk tales' relied upon when notions of home is described. Drawing on the Arendtian notion of natality, she hopes for 'beginning' never to be settled, plural jurisdiction and an ethics of responsibility.

In his response to Van Marle, Motha raises a number of questions pertaining to newness, violence, constitution and storying the world. He is acutely aware of the limits and dangers of law, rights and sovereignty. He asserts that 'lawful relations' rest on rethinking the role of the Constitution in constituting the political. Motha forcefully reminds

us of the necessity to extend our work to questions also on nature and animals.

References

Coggins, T & Pieterse, E 'Rights and the city: An exploration of the interaction between socio-economic rights and the city' (2012) 23 *Urban Forum* 257

Cover, R 'The folktales of justice: Tales of jurisdiction' (1985) 14 *Capital University Law Review* 179

Cover, R 'The Supreme Court 1982 term. Foreword: Nomos and narrative' (1982) 97 *Harvard Law Review* 4

Dewar, D and others *Housing: A comparative evaluation of urbanism in Cape Town* (University of Cape Town 1977)

Dewar, D, Todes, A & Watson, V 'Industrial decentralisation policy in South Africa: Rhetoric and practice' (1986) 23 *Urban Studies* 363

Fernandes, E 'Constructing the "right to the city" in Brazil' (2007) 16 *Social and Legal Studies* 201

Harvey, D 'The right to the city' (2008) 53 *New Left Review* 23

Hoogendoorn, G & Marais, L 'Inner-city residential change in Bloemfontein after apartheid: A perspective of those who did not flee desegregation' in Marais, L & Visser, G (eds) *Spatialities of urban change. Selected themes from Bloemfontein at the beginning of the 21st century* (Sun Press 2008)

Huchzermeyer, M 'The legal meaning of Lefebvre's the right to the city: Addressing the gap between global campaign and scholarly debate' (2018) 83 *GeoJournal* 631

Krige, S 'Bloemfontein' in Lemon, A (ed) *Homes apart. South Africa's segregated cities* (David Philip 1991)

Krige, S 'The challenge of dismantling spatial patterns constructed by apartheid in the Bloemfontein-Botshabelo-Thaba'Nchu region' (1998) Suppl 1 *Acta Academica* 123

Krige, S *Die transformasie van die Suid-Afrikaanse stad* Town and Regional Planning Research Publication 10 (University of the Free State 1988)

Lefebvre, H 'The right to the city *(Le droit à la ville)*' in *Writings on Cities: Henri Lefebvre*, selected, translated and introduced by Eleonore Kofman and Elizabeth Lebas (Blackwell 1996 [1968])

Lefebvre, H *The production of space* (*La production de l'espace*), transl D Nicholson-Smith (Wiley-Blackwell 1992 [1974])

Mamdani, M *When does reconciliation turn into a denial of justice?* (HSRC Press 1998)

Marais, L & Ntema, J 'The upgrading of an informal settlement in South Africa: Twenty years onwards' (2013) 29 *Habitat International* 85

Marais, L 'Bloemfontein-Mangaung' in Lemon, A, Donaldson, R & Visser, G (eds) *Homes still apart* (UCT Press 2020)

Marais, L 'The spatial development of Bloemfontein: Past and future conflicts' in Marais, L & Visser, G (eds) *Spatialities of urban change: Selected themes from Bloemfontein at the beginning of the 21st century* (Sunmedia 2008)

Marais, L, Awuzie, B, Cloete, J, Napier, M & Greyling, E 'A tale of two markets: Uneven access to private property in a South African city' (2020) 111 *Tijdschrift voor Economische en Sociale Geografie* 80

Marais, L, Ntema, L, Rani, K, Lenka, M & Cloete, J 'Reinforcing housing assets in the wrong location? The case of Botshabelo, South Africa' (2016) 27 *Urban Forum* 347

Massey, D *For space* (SAGE 2005)

Mitchell, D *The right to the city: Social justice and the fight for public space* (Guilford 2003)

Murray, C *Black mountain: Land, class and power in the eastern Orange Free State, 1880s to 1980s* (Smithsonian Institue Press 1992)

Nedelsky, J *Law's relations. A relational theory of self, autonomy, and law* (Oxford University Press 2011)

Platzky, L & Walker, C *The surplus people: Forced removals in South Africa* (Ravan 1985)

Schoeman, K *Bloemfontein: Die onstaan van 'n stad 1846-1946* (Human & Rousseau 1980)

South Africa Cities Network 'The spatial transformation of South Africa's cities: From abstract concept to meaning and means' in *State of the South African cities report* (South African Cities Network 2016)

Subramanyam, N & Marais, L 'Making Mangaung metro: The politics of metropolitan reform in a secondary city in South Africa' (2021) 59 *Urban Studies* 2893

Tomlinson, R & Krige, S 'Botshabelo: Coping with the consequences of urban apartheid' (1997) 21 *International Journal of Urban and Regional Research* 691

Turok, I & Scheba, A '"Right to the city" and the New Urban Agenda: Learning from the right to housing' (2019) 7 *Territory, Politics, Governance* 494

Turok, I 'Urban planning in the transition from Aparteid: Part 1: The legacy of social control' (1994) 65 *Town Planning Review* 243

Twala, C & Barnard, L 'The incorporation of Botshabelo into the former Qwaqwa homeland: A logical consequence of the apartheid system' (2006) 31 *Journal of Contemporary History* 162

UN-Habitat 'Habitat III: New Urban Agenda 10 September 2016. Draft outcome document for adoption in Quito' (October 2016), https://habitat3.org/wp-content/uploads/Habitat-III-New-Urban-Agenda-10-September-2016.pdf (accessed 23 April 2024)

Van der Walt, AJ 'Dancing with codes – Protecting, developing, limiting and deconstructing property rights in the constitutional state' (2001) 118 *South African Law Journal* 258

Van der Walt, AJ 'Un-doing things with words: The colonisation of the public sphere by private property discourse' 1998 *Acta Juridica* 235

Van der Walt, AJ *Property and constitution* (Pretoria University Law Press 2012)

World Charter on the Right to the City (2004), https://www.hlrn.org.in/documents/World_Charter_on_the_Right_to_the_City.htm (accessed 23 April 2024)