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Masters Dissertation

Title

Constitution Hill, a site of inclusive exclusion. A study into the relationship between nation building and the production of space at Constitutional Court.

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Submitted in fulfilment of the degree of Master of Art at the University of the Witwatersrand 2013.

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ABSTRACT

The Constitutional Court in Johannesburg, inaugurated on 21 March 2004 (Human Rights Day), is at once a complex of working buildings, a heritage site, and a community centre. The court is a concrete symbol of the notion of redemptive justice over repressive justice that is at the heart of South Africa's democratic constitution. Built on the site of and incorporating into its precinct Johannesburg's infamous Old Fort and Number Four Prison, the project also recognises that architectural history can be manipulated to suit shifting ideologies. This thesis is concerned with the relationship between nation building and the production of space of the Constitutional Court at Constitution Hill. Utilising the theoretical framework offered by Henri Lefebvre and Dennis Cosgrove it attempts to argue that space is produced at the court in a way that reinforces the nation building narrative that is embedded in the constitution itself. Ultimately it is argued that the court is a manifestation of the end goal of the ambition of transformative constitutionalism, in this sense the court is an ode to a fantasy.

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INTRODUCTION

> *'In reality there are no identities, only identifications: either with the institution itself, or with other subjects by the intermediary of the institution. Or, if one prefers, identities are only the ideal goal of processes of identification, their point of honour, of certainty or uncertainty of their consciousness, thus their imaginary referent'.*
>
> (Balibar. 1995:187).

In the extract above, Etienne Balibar, alludes to the notion that it is more useful to think in terms of a process of identification as opposed to identity per say. A successor of structuralism, Balibar argues that identifications are performed in relation to others. Included in this, is forming the sentiment of solidarity. It is only through solidarity that, Balibar argues, people are able to construct the *'we'* intrinsic to the national project. These subjects are constructed and realised through media that includes architecture, symbolism and heritage (Noble. 2011: 3).

The enactment and implementation of the multi-racial parliamentary system in 1994 marked the formal demise of apartheid, unfortunately, the moment was not one triumphant consolidation of a truly post apartheid, post colonial, identity and over a decade into democracy South Africa remains a country in search of its identity.

The ambiguity surrounding South Africa identity has premised both idealised notions of compatible diversity, such as Desmond Tutu's *Rainbow Nation* and acceptance of state republicanism, as explained by Jean and John Commaroff (2001: 635).

> *'...whether or not they are primarily citizens of nation states, seem widely able to re-imagine nationhood in such a way as to embrace the ineluctability of internal difference: 'multiculturalism', the 'rainbow nation', and terms of similar resonance provide a ready argot of accommodation, even amidst bitter contestation.'*

The problem, in effect, centres on the construction of 'nation building' in an increasingly 'post-national' world. As Delanty and Jones (2002: 454) put it,

> *'National identity must now live in a world where other collective identities – gender, ethnic, ecological, regional, cosmopolitan ones – have attained the dominance that*

class identities once enjoyed and these are less easily absorbed by nationalism which has lost its former exclusive priority in the order of collective loyalties.'

Autochthony, the limits of sovereignty, and access to free-market capitalism have all been suggested as ports from which a new South African identity can be imagined. However, the final solution is yet to be determined and included in this contestation are questions regarding the routes available for coaxing this cultural nationalism into a rooted 'imagined community', which we have been led to believe lies at the centre of all modern nation states.

Interestingly, the ANC government of post-apartheid South Africa has generally not opted for the route of producing large-scale public buildings in its ambition to re-brand nationalism. Instead, it has, for the most part, simply appropriated the grandiose fineries of the ancien régime, papered over or removed the more odious reminders of the past, and invented traditions to fit the hybrid spaces. Such examples include the Union Buildings in Pretoria designed by Herbert Baker to celebrate the unification under the imperial crown of the "two races (i.e., in the political parlance of the day, the English and Afrikaner constituencies) of South Africa" (Baker, 1944: 61) in 1910.

Although there appears to be an apparent loss of faith in the ability of state-led architectural projects to embody the national code, it would be untrue to claim that that there have been no significant new public building projects since 1994. Buildings like the Northern Cape Legislature and the Constitutional Court in Johannesburg illustrate this point. Both these buildings engage with the rhetoric of nation building, in practical as well as symbolic terms, and both boast extensive and much-publicised decorative programmes. These decorative programmes in turn bring many of the issues regarding the articulation of a single 'national identity' in a multi-ethnic, post-colonial African society into sharp focus.

Aims

The Constitutional Court in Johannesburg, inaugurated on March 21 2004 (Human Rights Day), is similarly concerned with reconstructing the conceptual bases informing conventional expectations of public building. At once a complex of working buildings, a heritage site, and a community centre, the Court is a concrete symbol of the notion of redemptive over repressive justice that is at the heart of South

Africa's democratic constitution. Built on the site of, and incorporating into its precinct, Johannesburg's infamous fort and native prison – number four, the project also recognises that architectural history can be manipulated to suit shifting ideologies.

This thesis is concerned with the relationship between nation building and the production of space of the Constitutional Court at Constitution Hill, utilising the theoretical framework offered by Henri Lefebvre and Dennis Cosgrove it attempts to argue that space is produced at the court in a way that reinforces the nation building narrative that is embedded in the constitution itself. In doing so the space is socialised as one of inclusive exclusion in that the nation building process serves to unify people under the banner of citizenship while excluding others.

The nation building process has been characterized by a re-crafting of old apartheid sites, and Constitutional Hill is no exception. Now the site of the new Constitutional Court, the site is historically a site of oppression and fear having played host to the Old Fort, Number Four Men's Prison and the Women's Prison.

This paper considers the re-organisation of urban space in Johannesburg and transformative constitutionalism in the law arguing that both are conjoined and represented in the building of the Constitutional Court. Historically, the legal system played a functional and undisputed role in perpetuating and enforcing apartheid, which was after all a system crafted, created, enforced and sanctioned through the law. The post-apartheid era was characterised by a commitment to human rights that was embodied in its post-liberal constitution. Similar to the apartheid era, the new nation was thus grounded in the rule of law, which would need to be rebranded and reimaged in order for the law to be included and accepted as a tool to accomplish the vision of the new democratic era and no longer be associated as a tool of oppression. It is this new image that has come to be manifested in building of the Constitutional Court. The paper argues that the Court creates a representation of the law as being already transformed, rendering the previous character of the law as no longer relevant and fit to be framed as a relic in a museum. The Court thus, is a premature monument to an idea of law as being already transformed or of transformative constitutionalism being achieved and not still in process.

In order reach this aim, the paper combines comparative historical, ethnographic, and visual methodologies and is located at the intersection of the literatures of sovereignty, the modern nation state, nation building, citizenship, critical legal studies and memorialisation. The paper is read and argued in line with the spatial turn in the social sciences.

Theoretical Framework

Since the 1970‘s there has been a decisive turn within the Humanities manifesting in the recognition of the importance of language as an agent of structure. This reorientation was informed by a tradition of linguistic structuralism suggested by Saussure that was further developed, becoming a consequence of postmodernity and ensuing poststructuralist theory. Titled the *linguistic turn*, it became the pre-occupation and framework of numerous influential theorists including, Louis Althusser, Ernesto Laclau, Chantal Mouffe, Judith Butler, Luce Irigaray, Julia Kristeva, Michel Foucault, Jacques Derrida, Roland Barthes, and Jacques Lacan.

According to Flax (1987) postmodern discourses are all deconstructive, seeking to create distance from and raise objections to beliefs concerning truth, knowledge, power, the self, and language that are all to often taken as necessary variables. Furthermore, Flax maintains that postmodernity was born as part of a response of growing uncertainty within Western intellectual circles concerning the appropriate grounding and methods for explaining and/or interpreting human experience. This radical uncertainty was addressed through a push in the postmodern project framed within the linguistic turn towards viewing cultural sources as legitimate, meaningful markers in researching and making sense of the world (as opposed to the exclusive utilisation of traditional, tangible data). This included, among other things, representation as a valid source, with notable contributors to this field including Stuart Hall, Philip Auslander, Griselda Pollock, Ien Ang, and Theodor Adorno, who wrote extensively on the debates around aesthetics and the *Cultural Industry.*

It is within this tradition of thought that this thesis is framed and aspires to contribute to. This research is particularly interested in the representations of national identity in public building and visualities. As such the research is grounded in the disciplines of Cultural Studies, the linguistic turn, the spatial turn and transformative

constitutionalism. This research aims to read concrete textual and visual representations, as well as social and cultural practices, against the intersecting theoretical palimpsest of the aforementioned knowledge systems in examining the formation of national identity and the transformation of the law through public manifestations of architecture and buildings.

Cultural Studies

Long associated with Stuart Hall and the Birmingham School in the Britain, cultural studies manifested in an intellectual movement in the 1970s that aimed to incorporate intellectual tenets like Marxism, post-structuralism, feminism, and critical race theory with more traditional methodologies such as sociology, geography and ethnography in order to create an interdisciplinary approach to the study of culture.

Cultural Studies includes a reflexive objective of understanding culture in a complex structure that seeks to analyse the social and political context in which culture manifests itself. As a multi-disciplinary academic field, Cultural Studies forms a useful framework from which to conduct research into physical manifestations of nationality, unity and transformation in the landscape and public architecture. Underlying the Cultural Studies Model is the understanding that people read, receive, and interpret cultural texts in different ways; and also that as people produce and re-produce cultural practices, they appropriate and (re)shape practices, and are simultaneously (re)constituting or (re)shaping themselves through performing certain practices.

In the framework of Cultural Studies, culture is seen as a key channel through which political and social management is inscribed within a society because the cultural norms or socially accepted ways of being must ipso facto be assimilated and enacted by and through society. According to the Cultural Studies paradigm, social control is maintained also through ideological forces or structures of power that function discreetly but effectively to influence the behaviour and attitude of people and is not maintained exclusively by coercive forces such as the police, prisons, repression, or the military. This is due to the very fact that ideologies inform and constitute the everyday culture of people. According to Lash *"Hegemony means domination*

through consent as much as coercion. It has meant domination through ideology or discourse…" (Lash, 2007).

Clearly, Cultural Studies is informed heavily by notions of cultural hegemony, a term for understanding economic class analysis that was coined by Gramsci (Barker, 2008), which posits that a culturally diverse society can be dominated by one social class, the bourgeoisie, who, by manipulating the societal culture (beliefs, practices, institutions, values) impose their beliefs as the societal norm, which then is perceived as a universally valid ideology and status quo beneficial to all of society, whilst in effect benefiting the dominant class.

Gramsci's concept of cultural hegemony, which promotes a reading against interpreting prevailing cultural norms of society as natural and inevitable and instead as social constructs that should be deconstructed in order to expose their roots as tools for social oppression, is still central to the discipline of Cultural Studies. However recently emerging approaches recognise that society, power and thus the praxis of cultural hegemony, is not a monolithic imposition by one dominant group upon others but rather that power operates across complex layers and social structures. According to Butler (2000), hegemony emphasises the ways in which power operates to inform our everyday understandings of social relations, power she maintains *'is not stable or static, but is reconstituted at several junctures in everyday life'* (Butler, 2000). The prevailing knowledge systems of culture are composed according to power; but our notion of common sense also stems from power.

Methodology

The methodology of this thesis in grounded in cultural studies and incorporates discourse analyses to read landscape as text. In order for a study of language to reveal and detail a socio-cultural atmosphere Janks (2005) asserts that critical socio-cultural theory of language which posits a systematic relationship between the social context, the functional organisation of language and the discursive production of relationships of power is needed. Critical Discourse Analysis endeavours to explain the relationship between language, ideology and power by analysing discourse in its material forms. Rather than just being an analysis of form within a discourse, the word critical signals a focus on the role played by discourse in establishing and

maintaining relations of domination. In this thesis critical discourse analysis is utilised to uncover and read hegemonic ideology and culture in landscape. This is discussed at length in chapter two.

Chapter Outline

Chapter one, titled *Nationalism as Ideology*, offers a theoretical overview of the theories on the emergence of the modern nation state and the idea of ideology. It argues that nationalism is an ideology that is integral for crafting and promoting national identity and subject formation. This chapter ultimately makes the case for the studying of nationalism through discourse analyses.

A Case For Space, the second chapter in this thesis, presents a theoretical overview of the developments resulting in a convergence between human geography and the social sciences. Key themes explored are the spatial turn, the production of space, and the landscape as text approach. The chapter concludes with an argument for the using discourse analyses to read landscape and geography

Chapter three, *Reinventing the City,* introduces the idea of transformation in the post 1994 era. It details the ways in which urban spaces were crucial variables in the structure of Apartheid, which accounts for the attention applied to transforming city spaces in the post-apartheid era. The chapter focuses on Johannesburg in particular and details the transformation project established by the city. It shows how the development of Constitutional Hill is part of this project of transformation.

Chapter four, *Transforming the Law,* investigates the idea of transformative constitutionalism, it discusses the fact that the apartheid system was entrenched and maintained through a legal order that is theoretically and philosophically not dissimilar to the current system. Both the old apartheid and post-apartheid legal order have been characterised by a commitment to the rule of law. The chapter argues, through discourse analyses, that there has been a systematic attempt to reconstruct the image of the law since 1994 and that the new Constitution and its Court are both at the centre of this endeavour.

Chapter five of this paper deals with the concept of transformative constitutional. It aims to discuss the project as integral to the post apartheid project of legal transformation, while highlighting the ways in which the legal system in many ways mimics the logic its predecessor, resulting in a repackaging of a system that for the most part has not been transformed.

Chapter six, *Constitutional Court, a Premature Monument,* begins with a discussion of heritage and memorialisation in South Africa during the post-apartheid era. It then details the history of the court and the site that now embodies Constitutional Hill. Thereafter, the discussion turns to an analysis of the building utilising the theoretical tools that emerging from chapters one and two. Ultimately the chapter attempts to argue that the building offers a false presentation of the law, which is of one that is transformed and distinct from its previous identity. In doing so the building falls prey to the critiques of transformative constitutionalism presented in chapter four. Ultimately the chapter concludes that the image of the law that the building offers is premature and wishful, the court is a manifestation of the end goal of an ambition to transform the law as though it were a reality, in this sense the court is an ode to a fantasy.

The conclusion of this paper is reached mainly in chapter six. This chapter summarises the argument and path that was taken to reach that conclusion. It also offers a critique of sorts, in that it shows contempt for a fetisisation of memory and law.

NATIONALISM AS IDEOLOGY

> *'The purpose of the State is always the same: to limit the individual, to tame him, to subordinate him, to subjugate him'*
>
> -Max Stirner, The Ego and His Others (1845)

Introduction

Whilst certainly a harbinger of anarchism, Steiner's misgivings and suspicions regarding the state, although undeniably sweeping, clearly illustrates the early dominance of the Westphalian Order of statehood and sovereignty - a model that has since persisted. Tied to the state and often conflated with it, is the concept of the nation. Elusive, and donning numerous guises, much has been written in efforts to theorise, understand and explore the amalgamated notion of the nation-state and its corollary nationalism. This chapter is concerned primarily with the latter and will outline some of the theories and debates regarding nationalism theory. The literature concerned with this theme is vast and tumefying, subsequently, the review offered here is a selection of those theories that appear relevant and useful to the task at hand, and is emphatically not a complete consolation of this broad field. Ultimately, the assemblage presented is wielded in an argument in favour of employing discourse analysis or theory as a tool for considering nationalism and in particular for studying nationalism through the phenomena as ideology for the goal of nation building.

Commencing with an elucidation of the traditional debate within nationalist theory, the chapter then proceeds to reject the framework of that debate in favour of one that discusses nationalism through discourse. In order to make such an argument the notion of the modern state as presented by Lefort is elucidated. The Chapter then progresses to discuss the concept of ideology in the work of Althusser the ways in which ideology can be wielded to promote national identity as shown through the work of Laclau.

Nationalism: The Traditional Debate

Traditionally, nationalism theory has unfolded largely as a debate between those considered modernists, primordialists and ethno-symbolists. The modernists, most notably represented by Geller in *Nations and Nationalism* (1983), argue that

nationalism is inextricably linked to modernisation and the process of industrialisation. This process, Geller maintains, differentiates modern societies from agroliterate ones, which were organised according to a network of feudal bonds and loyalties (Heywood 2007:111). In comparison modern industrial societies were underpinned by an ethos of social-mobility, individualism and competition that removed the individual from its previous restrictive and definite position grounded within in the body politic. As a result nationalism was utilised to rejuvenate social cohesion and rearticulate the subjects role within the structure.

Responding to the position crafted by modernists that rendered identification of the subject with the pre-modern or ancien régime untenable, ethno-symbolists point to what they perceive as on-going links that persist between modern nations and pre-modern ethnic communities (Smith, 1986). The existence of the *'ethnies'*, Smith argues, bares testament to the notion that nations are historically rooted and embedded with a common cultural and heritage that may exist prior to establishment of the particular nation in question. This position, although similar to those of Herder and Fichte, does not promote an 'organic' concept of nationalism. Instead, Smith specifies that ultimately the modern nation state is dependent on the aligning of such enthnies to the political ambition of sovereignty. Differentiating between *cultural* nations and *political* nations, the German historian Friedrich Meinecke (1907) opined that the former was distinctive as situations marked by a convergence of ethnic and national identity. Ethnic homogenisation features highly in cultural nations and as such the nation is fashioned through historical forces as opposed to political ones. In political nations nationality is premised on political allegiance and civic loyalties, citizenship, then, is a cohesive element and not the outcome of historical unity (as is the case with ethnic nations).

The elected variables promoted by Gellner and others attached to the modernist school, are restricted by their largely nineteenth century context, this (according to Narin (1981)) results in an inability to examine contemporary nationalism exclusively through the modernist interoperation. Primordialist theorists also fall short in this regard, their insight being somewhat ill-suited to incorporate twenty-first century conditions into their analyses (Guibernau 1999).

Nationalism and Ideology

While respectful and cognisant of the framework established (and documented above) through the classic debate of nationalist theory between modernist, primordialists and ethno-symbolists, the approach adopted in this paper leans more towards the work of scholars who prioritise ideology in their analysis, viewing nationalism in fact as ideology. In abandoning the pragmatism of the classic scholarship that accounts for nationalism causally and universally, the approach favoured here resists the (undeniably) seductive pull of deterministic theories intended to intellection nationalism as a single phenomena in which indistinguishable variables can be found at the radical of all of all nationalist movements. Instead, nationalism and nation-building is examined and interpreted as an ideological construct (Brown 2000).

Methodologically it is suggested, in this chapter, that discourse and ideology together offer a lens from which a useful vista of nationalism emerges, one that reveals the almost perfunctory processes by which the ideological construction of the nation endeavours to a hegemonic reticulation of the national 'nodal point'. Thus enabling a reading of nationalism within the epistemological context of discourse theory and approached methodologically through the rhetorical analysis of texts and and images. However, before such an argument can be made it is necessary first to discuss and define some of the key notions in this discussion. These include the modern nation state, ideology and nationalism and hegemony.

The Modern Nation State

Generally termed the *modern nation*, its theoretical foundation is thought to originate in the work of Rousseau, whose emphasis on popular sovereignty or general will prefaced the those nationalist doctrines underscoring the values of the French revolution as well as the numerous texts of analysis regarding the modern nation state including those of Claude Lefort, Eric Hobsbawm and Benedict Anderson. Reading these works as complimentary offers a useful fabric in better conceptualise the concept of the modern nation state, in depicting the idea of the modern nation state this paper focuses on the work of Lefort.

Lefort and the Modern Nation State

A champion of political philosophy, Lefort argued in favour of a form of inquiry premised on the *political* and not on *politics*. The latter, *politics*, makes reference to an inquiry premised on a concern with institutions and practices of *politics*, while the former, the *political*, refers to the constituting power used to represent a society (by and to itself) as a unit. Lefort argues that political power and representation are necessarily linked. Reminiscent of the Classical Greek trend, Lefort insists that the form of society and the nature of the differences between different forms should be addressed and expounded. (Hansen, P. 1993:2)

Lefort's political philosophy subsequently emerges from a consideration of political experience and forms of political life. Subscribing to a phenomenological tradition, his reflection on politics incorporates an ontological aspect without drawing excessively on categories observed elsewhere. In his elucidation of the totalitarian and democratic phenomena, Lefort deals largely with themes of nationalism, arguing that both democracy and totalitarianism are both incarnations of the modern state, born out of the collapse if the ancient regime.

Lefort, argues that both democracy and totalitarianism are responses to the dissolution to the *markers of certainty*, that had previously characterised the pre-modern or *ancien regime.* The elimination of conflict is impossible, and while this is embraced by democracy, the totalitarian project denies such conflict and is largely driven by the phantasm notion of unity. The elimination of such disharmony and fragmentation thus becomes central to the totalitarian project. (Lefort, C. 1986: 280)

Lefort identifies the political image of the body as being historically specific, he argues that society begins to perceive itself in terms of a *body* during the era of monarchical rule. The unity of pre-modern society is achieved through the image of the Kings body. The period maintained a perception of a unified social by joining the image of the body with the king, as its head, this is the secularisation of the mystical body of Christ. This image is produced by society and symbolically represents the unity of the realm. This unity was accomplished through the rigidity and certainty offered by the pre-modern social order, this certainty extended to power, law and knowledge, which was incarnated in the body of the monarch. The rigid structure

provided certainty, and although social mobility was impossible, it offered a definite marker of certitude. (Lefort, C. 1988: 18).

Expounding the network of social connections binding the pre-modern society, Lefort notes the importance of the role of religion and the King as the secularisation of the body of Christ. The king, subsequently possess two bodies, his body of nature and his body of grace. The king must, as a result, constantly perform two roles. The hierarchy and social structure of society is revealed by God, who reveals this message through the king and the clergy. The king is the embodiment of God, while the clergy provides content to the message of God. This God-centred kinship is one that cannot be questioned, to do so would amount to an act heresy. The king too is bound by this determinacy.

Revolutions in quest of modernity succeeded by eliminating the body of the king, both his body of nature and his body of grace. The king's body was the incarnation of the identity of pre-modern society. His body played the role of mediator between the sensible and super sensible, the king was the point of intersection between society and the will of God. Modernity results in the *disincarnation* of society, since there is no longer a point reference or figure incarnating societies link to God, or *another place*. (Flynn, B. 2005: xxiv)

Importantly, despite the elimination of the bodies of the King, the place that was occupied, the place of power, still remains even though societies political legitimacy is no longer drawn from God. It is what Lefort refers to as the *empty place of power.* The empty place of power serves to prevent modern society from closing in on itself. It testifies not only to the non-closure of society but also to its non-identity with itself. The empty place of power and legitimacy in a modern democracy is symbolically empty, this is because there is no body capable of incarnating societies identity. It is important to note though, that Lefort sees the place of power as being *symbolically* empty but not *completely* empty.

The source of legitimacy in a democracy is *the people.* But who represents them? The legitimate representative of the people cannot be established with certainty, there can be no a priori claim of legitimacy, the people through regular electoral processes must

validate all claims and these claims must always be subject to change. Political anxiety, uncertainty and disharmony subsequently characterise the democratic experience.

Totalitarianism, Lefort argues, is a response to the modern experience of the void created by the dissolution of the markers of certainty. Unlike democracy, which embraces the dissolution of the social, totalitarianism seeks to restore the pre-modern unity of the social. In doing so the totalitarian project attempts to fill the empty place of power. This is not accomplished by a reinstating or reestablishment of the monarchy, the totalitarian project is rather a revolution against a specific personification of modernity, that its democracy.

Totalitarianism reengages the pre-modern notion of the image of the body as the guarantor of the unity of a society which is apparently delivered from division to be one with itself. In attempting to do so, the totalitarian project must establish a unity of the social by eradicating the fragmentation and the symbolic mutation characteristic of democracy. This culminates in the binding of social divisions, and ultimately of power, law and knowledge because it is impossible for the totalitarian regime to consider a separate realm that's questions the unity of society. (Lefort, C. 1986: 307, 318-9)

Totalitarianism aims to occupy the place of power, by filling it with a materialisation of the people. This conception of the people, is one that see's society as homogenous and not in conflict, it gives rise to the myth of the people as one. The myth of the people as one is one that will forever haunt the democratic experience, because while democracy embraces the dissolution of the social and the markers of certainty, it is forever craved by the social. This is especially the case during times of crises. Through the homogenisation of the social, the totalitarian regime denies any plurality or individualism. All people must subscribe to the regime's notion of the social, acting not as individuals but as a collective. (Lefort, C. 1986: 247, 251-2)

Despite the depiction of social harmony, social conflicts still exist, unable to admit to any social rupture, the totalitarian logic projects social conflicts onto the other, remaining elements of the *ancien régime*, the outside or the evil other. For example

Jews, homosexuals and gypsies in the case of Fascist Germany and class enemies under Stalinism. These unsanitary elements are eliminated, the purpose of this is to guarantee the unity and homogeneity of society. Lefort refers to this as a social prophylaxis, an elimination or expulsion of the parasitical elements in the body politic. This same act guarantees society of its identity as the body becomes purified, making its identity more clear to itself (by eliminating that which it is not). (Lefort, C. 1986:287). Societies identity is also asserted by the embodiment of society through the leader or what Lefort terms the *egocrat*, who acts as the supreme representative of society. The egocrat, masquerades as the incarnation of the unity of the peoples as one. This results in the combining of the image of the body that of the machine. The image of the body is seen as a homogenous social unit, while the machine is the organising driver of society, one should question though, why a homogenous, unified society would require organising. (Lefort, C. 1986: 300).

This elimination of parasites in the body politic lies at the heart of the conception of terror. The account of terror cannot then be solely premised on the eradication of opposition, it must be seen also as an attempt to conceal the void that emerges in the phantasmic project of the people as one. (Flynn, B. 2005: xxviii)

Lefort thus discusses repression on two levels, these are at the heart of the totalitarian project. The first is an inability to recognise the inevitability of conflict, to do so would challenge the notion of the unified social. The second, is that the identity of the body politic is one that is sought but never given. (Flynn, B. 2005: xxviii)

Lefort is careful to note that totalitarianism is not simply tyranny, rather it is a revolution against the democratic form of modernity. Because the totalitarian project attempts to fill the empty place exposed by the disincarnation of the social and the dissolution of the markers of certainty, it must necessarily imply a reversal of modernity within modernity itself. Terror is not just instrumental in eliminating opposition, it moves beyond such repression, in fact it is often intensified after the opposition has already been eliminated and power is secured.

Totalitarianism then is a response to modernity. Unlike democracy, which embraces the dissolution of the markers of certainty, the totalitarian project seeks to reinstate

the certainty and unity associated with the pre-modern era. Totalitarianism attempts to fill the empty place of power, and deny the radical indeterminacy of the social.

Lefort's separation between democracy and totalitarianism is a useful guide, in establishing the constructed nature of the modern nation state and illustrating the nation to be the central facet in the 'imagining' of the post-modern subject, especially in the democratic context.

Benedict Anderson adopts this in his massively influential text, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (1993). In it, Anderson considers the creation of a national identity. Incremental to his study is the relation between culture and the creation of a communal national identity. The nation, he argues, is mediated through cultural representations that people internalise and use to imagine a communal identification. It should be noted that in this context Anderson is not making the argument that these identities are falsely fabricated. Instead he is contemplates the connection between people who form the nation, these individuals are strangers and yet reach a belief in a collective identity through a shared sense of culture, history and kinship. (Freschi. 2006: 19).

Anderson highlights the role of print-capitalism in the political and ideological construction of the nation, calling for devoted study of print-texts when examining specific forms of nationalism. In his case studies he pays close attention to linguistics and the diction used in national print during the late eighteenth to early nineteenth centuries, arguing that the print media was an avenue for the bourgeoisie to visualise and imagine a commons. Integral to Anderson's conception is the study of the production, distribution and reception of texts.

Nationalism and Ideology and the National Subject

As was mentioned above, in the context of the modern nation state new mechanisms and tools have to be employed in order to imagine, promote and entrench the national subject in the context of the modern state. Nationalism and ideology are tools used by the modern democratic state in service of this agenda. This argument has been usefully detailed and presented by the key Marxist scholar in this field, Louis

Althusser. Althusser's argument that ideology served to tie the subject to a certain identity was grounded in the structuralist movement but offered no potential for the revolutionary subject. Attempting to remedy this situation, Ernesto Laclau set forth to develop Althusser's thesis on the subject and ideology in a more forgiving way. Both their arguments are detailed below, preceded by a necessary detailing of the structuralism and the subject – which accounts for the theoretical grounding of both their work.

Structuralism, an Overview

The structuralist revolution in the human sciences concerned itself with the notion of human agency. Indeed the movement has long been associated with the 'death of the subject' and the defeat of Cogito. In his seminal piece Ideology and Ideological State Apparatuses Althusser's offers the initial framework for considering the subject within the context of structure. Laclau thereafter develops the Althusserian conception of the subject, situating his conception within the framework of post-structuralism. Whilst it is the Laclauian subject that it utilised in this work it important to trace the development of the Althusserian subject in order to fully grasp Laclau's development.

In his Course in General Linguistics Ferdinand de Saussure outlined a science that could be employed for studying language as a system. Saussure argued that elements in a language do not individually signify anything and should not be considered as vehicles for the transformation of meaning. Language is not a nomenclature or a window onto the world. Each element signifies only its difference in respect to the others, this is true of every element and so it can be concluded that there is only differences of signification in a language. (Saussure, F. 1974.)

Saussure noted four central binary opposites; the signifier and the signified, language and parole, synchronic ad diachronic and infrastructure and superstructure. The linguistic sign is the result of the union between the signifier and the signified. The signifier makes reference to the aspect the sound-image, it is the component of the sign that can become perceptible. It is the psychological stamp or the indentation it makes on the senses. The signified in comparison is the concept, the mental image or material picture or description associated with a signifier. (Saussure, F. 1974.)

Synchronic is the structural property of a system at a particular moment in history, the diachronic is the historical dimension of language, the historical evolution of its element through various stages.

Infrastructure is the set of underlying relations that explain the superstructure or surface structure that is open to observation and description. Language is the infrastructure to parole as superstructure. (Saussure, F. 1974.)

Langue refers to the set of interpersonal rules and news, which speakers of that language must obey to communicate. Langue is the theoretical system or structure of language for example French or English. Whilst parole is the actual manifestation of the system in speech and writing; the speech act, the language used. The distinction is between structure and event, between a collective product passively assimilated by the individual and the individual act. (Saussure, F. 1974.)

Language is ultimately the infrastructure to parole as superstructure. Structural linguistics shifts from the study of conscious linguistic phenomena to the study of their unconscious infrastructure. It promotes a conception of linguistics that denies any individualism of terms, only relations between terms. It operates through a system of modern phonemes, which don't simply depict or assert that phonemes are part of the system. (Saussure, F. 1974.)

It was this concept that Levi-Strauss reengaged with, the novelty however, was that he argued to extend the Saussurean analysis of sign systems beyond linguistic sign systems. This realisation marked the advent of structuralism as a general method of analysis.

Strauss was not the only proponent of extending Saussure's framework, Lacan noted that structuralist methods of linguistic analysis could be extended to psychoanalysis and to sign systems of the unconscious.

Strauss did however, adopt the Saussurean analysis in the Savage Mind, an attack on existentialism and phenomenology. The Savage Mind Strauss positions Sartre as the leading effigy of humanism, against whom he offers the conceptualisation of the

death of the subject or the dissolution of man. Strauss argued that like Descartes, Sartre is a prisoner of the cogito. Strauss maintained that for Descartes cogito is psychological and individual, whilst for Sartre cogito is socialised. Strauss concluded that Sartre simply exchanged one prison for another, reducing history simply to the part of a myth.

The Subject as Read Through Althusser's Ideology and State Apparatuses

Althusser maintained a similar impression of Sartre, arguing that he championed the humanistic approach to Marx. Althusser instead argued for a Marxist interpretation that diminished the role of the individual subject or agent while highlighting the underlying relations governing social and psychic practices.

Crucial to the Althusserian conception of the subject are his concepts of overdetermination and ideology. Althusser's conception of overdetermination is drawn largely from his reading Lenin's work on the Russian Revolution. Emphasising the importance of circumstances, conditions and contingency, Lenin argued that the Russian Revolution of 1917 was the result of a unique historical situation and moment, one that could not be simply attributed to the result of 'general contradiction…between capital and labour'. (Lenin in Althusser, L. 1969:99). Lenin maintained that the general contradiction between capital and labour was not sufficient to produce the conditions of revolution and certainly not a situation of revolutionary triumph. The situation of revolution and the situation of revolutionary triumph in Russia required extremely aggravated circumstances, importantly Lenin recognised that these circumstances were only contingently combined with general contradiction. From this Athusser extracted a conclusion in which he concurred with Lenin's view that general contradiction alone is insufficient for producing revolutionary transformation, in addition he argued that it was unable to produce its own reproduction. General contradiction, according to Althusser, is insufficient in itself and is thus always specified by the historical circumstances in which it is exercised. General contradiction is only effective when combined with historical conditions that support revolutionary transformation, ultimately general contradiction does not exist independently it is combined with contingent historical conditions. As mentioned these historical conditions are contingent, as a result they vary and are

always unique. As Lenin noted, the future of the general contradiction is dependent on these conditions.

Althusser argued that these conditions and circumstances that Lenin stressed were dramatically important. He argued that the conditions which produce the balance of class forces in a determinate capitalist society are, in a similar way to the general contradiction itself, part of the identity of the society. Lenin, according to Althusser, exposes the contingency of history, a conception of history that is non-teleological. This means that history is not predetermined and that the unique conditions in each society are in fact relevant, importantly there is no essence or underlying identity that applies to each and every society.

In relation to the various epochs identified in Marxist theory, the concepts of each epoch must be constructed, as opposed to merely being drawn from a general theory of history, which is teleological. These societies are in fact unique because of their variable conditions, and cannot be lumped under one general law of motion of capitalism. The Marxist dialectic is thus premised on difference and contingency, Althusser subsequently concluded that it could therefore not be an inversion of the Hegelian dialectic which is grounded on identity and necessity. Althusser identified a theology in the Hegelian dialectic that is incompatible with Marxism. Hegel identified an essence that is present in every manifestation of the real, whilst Marxism (unknowingly) stresses the primacy of the difference and the contingency which is inherent to social transformation.

Althusser continues his discussion of causality and determination in Marxism by employing the concept of overdetermination. Traditionally utilised in the fields of linguistics and psychoanalysis Althusser argued that it has a place in structuralism as well. As discussed earlier, Saussure outlined the ways in which the system of language functions through differences, that is the meaning of an element is in fact negative and is dependent on its difference or what differentiates it from other elements. Althusser argued that the concept of social totality, derived from his readings of Lenin, illustrate the same concept of structure. Althusser's referral to social totality means that any identity cannot be determined independently of the identities of the other elements which make up its totality. The identity of any element

depends on what differentiates it from them, it does not exist outside of this system of differences. The identity of a worker therefore is not self contained or self sufficient, it is the effect of the relations of interdependence that exist among it and other identities such as the capitalist, it is the effect of the structure that it is a part of. Each identity is composed of multiple identities which exist in relation to one another and in contrast to what they are not, it is in this context that identities can be seen as overdetermined. Because no elements are self-sufficient in the model of structural or overdetermined causality, instead they rely on conditions which are external to them, in the same vein their reproduction and transformation are also contingent. Causality is according to Althusser's reading overdetermined and differential, as opposed to being essentialist and expressive.

Ideology, according to Althusser, is crucial in creating a conception of the subject that defies the structuralist notion of overdetermination. Althusser's conception of ideology surpasses the established Marxist understanding, which claims that ideology is present only in class-divided societies and will as a result cease to exist under communism. Once communism is achieved there will be relations of transparency between human individuals and the real nature of society. Against this conception Althusser offers the concept of structural causality, moreover he argued that human beings are in fact ideological animals, as a result ideology would exist in any society, even communist ones.

Ideology, according to Althusser, is a system of representation and beliefs that provide individuals with an understanding of themselves, of their relations with other people and the world that they exist in. This system is embodied in the terms of everyday discourse and language, importantly it produces the *misrecognition* effect. The misrecognition effect offers individuals an imaginary understanding of their relationship to their real conditions of existence. Ideology, Althusser argued, consists of a structure that is invisible in the same way that the structure of the relations of production and social totality is. Like language, ideology is structured through a system of differentiation, as a result ideology manifests itself through something other than itself, it has therefore a metonymic causality.

The ways in which ideology functions and organises the way in which individuals perceive themselves and their world is hidden by the structural nature of ideology itself. As a consequence of its differential composition it is unnoticed or invisible from the lived experience of people. Because it is hidden ideology creates a misrecognition of the real relationship that exists between individuals and their real conditions of existence. Ideology, Althusser argues, is responsible for the impetuous or spontaneous belief that the real nature of society and history, of their truth, is immediately accessible in everyday experience.

Althusser argued that ideology ultimately created an understanding in the subject considering and believing itself to be an autonomous self-sufficient centre of thought and action. This is a social identity that cannot be reduced to an effect of the natural or biological properties of the concrete individual.

The concrete individual is transformed into the ideological subject by learning to consider itself autonomous, as a free subject or agent. This happens during childhood, and is termed by Althusser as the interpellation of the *'former subject to be'* into the ideological order. (Alhusser,L. 1971:176). The identity of the subject exist essentially or permanently in the concrete individual, instead it is the result of the fact that the individual exists in the ideological system. The subject subsequently always believes itself to be an autonomous subject.

Althusser argued that the ideological effect of naturalisation is necessary to create stable identities for individuals, without which there can be no social cohesion. The subject-form adapts the concrete individual to the inherent constraints embodied in all forms of historic individuality. Social practice, according to Althusser, is determinate on interpellation of concrete individuals into the subject-form. Moreover in class divided societies ideology functions to hide class domination that is inherent in class forms of historic individuality, which they must assume and as a result reproduce. Ultimately for Althusser ideology should be conceptualised by its contribution to the reproduction of the relations of production.

Laclau and the Subject

Despite developing critiques of Althusser's loyalty to determination in the last instance by the economy and his conception of the subject Laclau accepted Althusser's conception of overdetermination as his point of departure. However although developing a Marxist reading of overdetermination Althusser regarded the relations of production as a self-constitutive essence, because he considered the status of class identity as determined by political antagonism in a concrete social formation to be an intrinsic property of this identity, and not one that is relationally constituted. Laclau challenges this conception by positing a conception of class identity whose role in the constitution of political identity relies on the way it is articulated with other social identities. Class identities, for Laclau, should therefore subscribe to the same differential logic of language. Class identities are thus signifiers who do not possess intrinsic identities only relational identities. The status of class identity is not necessary for Laclau, it is dependent on a contingent relation of articulation.

Social and political identities are also constructed by the same articulatory practice. This system is premised on a logic of differentiation as a result the identities vary in accordance with the relations established between them through the articulator practice. Class identity is therefore not fixed, instead there is the characterisation of relational semi-identities. There is fixation, but through articulation and this fixation must be understood as temporary as it is always vulnerable to dislocation and re-articulation. Identity for Laclau is therefore constituted by the politics of the signifier. From this Laclau develops his position that society does not exist, this is because social identity does not enjoy the stability or ontological security of essence it is contingent and vulnerable. Because it functions in an open system of differences the security that it does enjoy is precarious and partial.

Laclau argues that considering social identity as a relational construct avoids the structuralist impasse, that is, being trapped in a new essentialism –one of structures (as opposed to that of the transcendental subject). (Hudson, P. 2006:299). Social identity, according to Laclau, is variable (through re-articulation) and contextual. Consequently, the meanings of social identities and demands are sometimes indeterminate and ambiguous fro the holder of the identity. This occurs when the

relational system that defines the agents identity has been challenged by another system, as a result the agent inhabits a dislocated semantic universe.

This moment is sometimes termed as the moment of organic crises, in this moment the agent is forced to confront the dissolution of the structures and it is in this moment that the subject emerges to re-articulate itself. The structure (in this moment) can no longer be said to determine the subject as the structure itself is now dislocated. In failing to constitute itself (the structure) fully, it also fails to constitute the subject, to endow it with determinate identity.

Laclau's conception of the subject is, therefore, that the subject is partially internal to the structure, it does not posses an intrinsic identity but it is not completely consumed by the structure. Laclau also identifies what he terms subject position, this makes reference to the individual as the vessel or bearer of a social identity, it is experienced as natural or objective and is subsequently reproduced. Subject on the other hand refers to a lack of an intrinsic identity, the void that is covered by subject positions or social identities. The subject is revealed in the moment of organic crisis when the subject is destitute as a result of the collapse of the structure.

Laclau responds to the Althussarian conception of ideology by arguing that ideological misrecognition is also open to subversion by the experience of antagonism. If this occurs the effect of misrecognition (naturalisation and objectivity) is replaced by an awareness of the radical contingency of all identity. Laclau concludes that Althusser's theoretical anti-humanism completely reduces the subject to an effect of the structure. Althusser has, he argues, substituted the essentialism of the subject with radical objectivism of an essentialism of the substance.

The subject, for Althsser, cannot access anything beyond interpellation, it has no experience with contingency of all identity and meaning. The only avenue available to the Althusserian subject when attempting to escape itself, is that of the Marxist science. Beyond that there is no escape for subject from ideological misrecognition. Moreover once this path is taken Althusser creates no room for the contingency and indeterminacy of history. There is no space for the subject in Althusser because history is reduced to expressing the logic of the relations of production.

The concept of human agency in relation to the structural revolution in the human sciences, the 'Althusserian Revolution' and the response offered by Laclau have been the focus of this section. It can be concluded that whilst Althusser and Lalau both share a conception of structure and overdermination there conceptions of the subject vary greatly. For Althusser the *'subject is condemned in perpetuity to the prison of ideological misrecognition'*, unless the subject accesses Marxist science, in which case there is still no space for the subject. Laclau on the other hand embraces the contingency of history and offers a space for the subject that emerges in the context of the dissolution of structures.

This chapter has elucidated the concept of the modern nation state, and discussed the ways in which nationalism as ideology is used to create the national subject. In the next chapter the discussion will turn to spatial turn, and discuss the relevance of landscape in determining and analysing culture.

THE CASE FOR SPACE

What follows is an anthology of sorts, testifying both to the prolific character of scholarship on space and place, as well as the diverse positions on its relevance in studying the world. Instead of a paradigmatic map, plotting the intellectual development of space and place in a genealogical fashion, the discussion below focuses on the theorists and theories that have shaped and guide ideas of space and place, it is less concerned with a genealogy of the field than with establishing which thinkers (and theories) are currently relevant to the concerns of this paper. That said, the influence of certain donnish figures are often undeniable and where this is the case, their positions have been detailed. More than a précis of theories, the chapter intends to make an argument for the importance of space and place in shaping cultural, social, economic and political life in recent years. Lastly the chapter concludes that the work of Lefebvre read with Dennis Cosgrove's arguments in favour of using discourse analyses to read landscape offer a useful framework reading and studying the ways that place is made. This will be applied later in the thesis to the case of Constitutional Court.

Space and Place: An Overview

A somewhat nomadic concept, space and place can be located in the interests of scholars from diverse intellectual traditions, including positivism, phenomenology, Marxism, feminism, post-structuralism, queer studies, post-colonialism, post-modernism and subaltern theory. The concept has thus been conceptualised in varying ways and the plethora of scholarships listed above is testament to that as well as the importance of the 'spatial turn' in the social sciences and literature. The augmentation of the importance of space and place in scholarship was also promoted by a symbiotic relationship between spatial turn in the social sciences as well as the cultural turn within geography, that promoted an engagement with social theory by geographers. (Hubbard et al. 2002)

Space and place, are now established 'totemic' concepts in social sciences for instance, the anthropological works of Michel de Certeu, Marc Augé and Tim Ingold premise their investigations every day practices and routine on place. Similarly, studies regarding representation in the works of cultural studies theorists such as

Edward Said, Stuart Hall, Benedict Anderson and Raymond Williams note the relevance if not the importance of space as a positive tool establishing and entrenching cultural imaginaries. The effect of space and place spans so far as to also be realised even in fields of economic thought where thinkers like Anthony Giddens, Manuel Castells, Saskia Sassen and Amartya Sen offer varying arguments detailing the relevance of real and virtual space in the construction of crises-prone capitalism. Writing in the context of the War on Terror, the stated response of the government of the United States of America to the 9/11 attacks on the World Trade Centre in New York City, writers like Judith Butler, Jean Baudrillard, Gerard Ó Tuathail and Paul Virilio have predicated their arguments in favour of mediated images of war and terror on spatial thought (Hubbard et al. 2011:2).

The usefulness and appropriation of space and place for disciplines exterior to geography is undeniable, as the above tribute should evidence, however the relationship is hardly parasitical and proliferation of space and place in these other disciplines has offered new insights that have readily been incorporated into the field of geography. Admittedly, the camaraderie between geography and social sciences entered into over space and place has included only human geography and not physical geography, which still maintains a conception of space that is absolute and an idea that phenomena pre-exists its location in space (Massey 1999). In comparison, human geographers generally ascribe to the position that social, economic and political phenomena are dependent on spatial-temporal locality and furthermore that space is the product of articulation of interrelations. Space, Nigel Thrift argues, is not a necessary, vacuous entity against which human and social action occurs. Instead, space is the product of various temporary settlements that arrange things into different groupings, these groupings are then provided (or not provided) with the means to maintain themselves (Thrift 2003:95).

Spatial thinking, as intimated above, has its roots in geography and it was only in the 1970s that human geographers began to break from the convention that rendered space as neutral or vacuous. Instead of being thought of having a positive relationship in social development, space was considered outside of human existence, as mere scenery (Gleeson 1996:390). The introduction of the predictive spatial models of the 1950s and 60s promoted quantification in the conceptualisation of space, which

asserted the idea that space is a surface on which interactions between quantifiable elements manifest. Central to the explanation were the concepts of direction, distance and connection, which were considered to lie at the centre of all relationships between things, furthermore it was argued that utilisation of these concepts made possible discernment of patterns that could thereafter be mapped and modelled (Wilson 1999). This new spatial discourse accounted for human activities and phenomena through networks, nodes or hierarchies that were performed on the Earth.

This position did not go uncontested and scholars like Kevin Lynch and Reg Colledge (for instance) advocated for an approach that, drawing on psychology, focused on a behavioural perspective that considered the conscious mind as a key figure in shaping human spatial behaviour. However, the effect of this was merely to transpose the concept of absolute distance with subjective distance, and it was only with the geographic and historical materialism of the 1970s that space was really reconfigured. This tradition saw the merging of urban sociology and geography, resulting in a conception of space that located it as necessarily intertwined in social relations that were both socially produced and consumed. A dominant focus of this class (which includes Manuel Castells, David Harvey and Neil Smith) was to chronicle the relationship between urbanisation and capitalism and how the former entrenched particular class inequalities. Other interests manifested in the works of economic orientated geographers, like Peter Dicken, Michael Storper and Linda McDowell, and scholars in the localities tradition, such as Doreen Massey and Andrew Sayer, who argued that spatial segregation of labour sustained capitalist structures. In a similar vein, political theorists (particularly Immanuel Wallerstein, Stuart Corbridge and Peter Taylor) focused that the global division of labour through territorial assignment (Hubbard et al. 2011:5).

Whilst all these disciplines and theoretical projects are notable, it is indisputable that the academic authority and conviction that finally cemented space as a concept that was socially produced, came only and finally with the work of Marxist theorists Henri Lefebvre. Writing in 1991, Lefebvre, arguing that space once appropriated through social activity becomes relativized and historicised, intimated that absolute space was thus impossible. Space, Lefebvre argued, is a societal product that is unique to each society and can broadly be categorised as abstract spaces of capitalism, sacred spaces

of societies premised on religious affiliations that existed before the abstract spaces of capitalism and the contradictory and differential spaces yet to come. Lefebvre maintained that the insistence of space as absolute was abstract capitalist space was actually incremental in the promotion and the production of relativised abstract (capitalist) space. Lefebvre suggests, instead, that space be conceptualised through a spatial triad that is invested in the interlacing of cultural practices, representations and imaginations. A departure from the convention of considering space as a container of things, Lefebvre's theory sees space as produced or created through a spatial triad between perceived, conceived and lived space. Place, according to Lefebvre, is a form of space that is realised through naming and the relevant activities and imaginings that are associated with specific social spaces.

Lefebvre's notion of place has persisted and most cultural geographers think of it as a specific and largely contained type of space that has been defined by and constructed by the lived experiences of people (Hubbard et al. 2011:6). Places, therefore offer a locus for identity in that they present a tangibility to which people can attach their desires of belonging, inclusion and community. Lefebvre's articulation of place offered a nuanced perspective that presented against the dominant position of place as absolute, as a self-contained assembly secured through territory, it was quickly adopted by the humanist geographers of the 1970s.

Concerned with the empirical relationships of people and space, human-geographers like Anne Buttimer, David Ley and Yi-Fu Tuan used this conception of place to draw attention to the ways in which people relate to the world, which is through meaning and not through geometrics. Tuan (1977), for instance, used the notions of topophilia and toprophobia to discuss the ways in which people maintain place due the attachment of the emotions of desire and fear to specific places. In doing so he introduced an emotional and aesthetic element that complimented the subjective understanding of place that the humanist geographers encouraged. Place, therefore, was seen to be individually constructed, yet attachments and meanings were often shared. The subjectivity extends to a multisensory experience of place that involve cognitive and physical performances that are perpetually evolving as people encounter space, this is broadly considered the geographies of embodiment (Thrift 2003). This concept, some argue is involved in the creation of class, as has been

argued by Pierre Bourdieu, gender, according to Judith Butler and other and racial divides, as has been argued by Allan Pred. Ultimately these writers all contend that place is produced through rhythms of being that entrench and normalise the existence of certain spaces.

It would be easy to conclude that given their subjective nature places are organic, authentic, close and lived spaces, if not for those within the disciplines of structuralism and critical studies who argue that spaces exist within a larger network that extends beyond their self conceptualised boundaries, and continue to influence them. Places, therefore, are not immune to the effects of political power and as such, can be vulnerable to oppressive institutional forces and social relationships. Doreen Massey, for instance, points to the idea that places are the product of numerous social, economic and political arrangements that intersecting constitute endless spatialities. Places, therefore, and the social relations that exist within them and between them are the products of specific power relations, these can be individual or institutional, imaginative or material and points to the great interdependency amongst places. Developed along the stucturalist line, places are seen as existing in relation to one another and are understood differently and exist in flux. Also known as relational geographies, writers like John Urry and Tim Cresswell maintain that the social fabric from which place is produced is not fixed and fluid and that mobility is at the centre of political arrangements (Jones 2009).

The discussion above evidences the numerous and vast ways that space and place has been conceptualised, and yet in spite of its ambiguous dimensions space and place have remained central tenants in social and cultural geography. The abstruseness attached to space and place has been little aided by the adoption of different theoretical and methodological traditions, in particular the Marxists orientation and the landscape tradition of Carl Sauer and the Berkley School. The tradition of the former tenement was to account for the role of culture in making spaces of domination and resistance while the latter is concerned primarily with the concept of *place-making* which is discerned in the ways of life that are etched on the landscape.

This discord was settled by the *new* cultural geographers, who, in extracting and discerning the ways in which the world is inscribed with cultural meaning have

incorporated aspects from both disciplines, creating dulcet conversation. Notable examples include the work of Denis Cosgove (elaborated on later in this chapter), whose work is concerned with outlining the function of landscape in the production of social and cultural orders, or Gillian Rose who dissects the ways in which landscape is gendered. The result is that cultural geographers have come to consider both space and place as produced and there see relevance in both concepts when regarding culture (Baldwin et al. 1999). Culture, the new geographers maintained, makes place and their work subsequently focused around two main observations namely, the ways that power and resistance are realised in the everyday and secondly, the politics of representation. This can be seen in the works of Peter Jackson, who in his *Maps of Meaning* (1989) highlighted the discursive construction of people and place through language. Drawing on Gramsci's notion of hegemony, Jackson argued that these representations were vital in establishing and entrenching social and cultural structures and orders. Similarly, Raymond Williams focused on specialised language to arrive at a similar conclusion. This was furthered by those grouped as the LA school, whose leading scholars (such as Michael Dear, Ed Soja, Michael Stopper and Mike Davis) focused on material and discursive manifestations of power revealed the struggle for the city. Here it was argued that identity and difference were influenced by the outcomes of contestation of the meaning of place. Using Los Angeles as their case study of a post-modern city, they argued that capital and class were merging to create a new city and new identities of categories of belonging.

While entrenching the link between the production of cultural identities through cultural practices of maintaining territorial boundaries, these thinkers also countered the postmodern and post-structural critique of language and instable. Opposed (also) to universalising notions of place and space they suggest, instead, that places are real and imagined assemblages constituted through language. Subsequently, the markers of place are flexible and only appear to be stable and authentic because of the success of the operating cultural system of signification, these are therefore susceptible to varied interpretations and readings. This has resulted in studies that have highlighted how certain representations have been normalised and taken for granted, for instance maps, which are also constructs geared at producing a certain conception of place (Barns). These undisputed terms are also found in the binaries that inform cultural conceptions of the world, scholars like Homi Bhabha and Edward Said have been

instrumental in unearthing these preconceptions. In tackling constructions of the global North and the global South, they have demonstrated how spatial metaphors framed against Oriental and Occidental values are at the centre of geopolitical processes of power and resistance.

Obviously, the field is not one of saints and geographers have also been complicit in the production of otherness through spatial structuring and (hopefully) as a result, there has been some engagement with the postmodern ideas of reflexivity, polyvocality and the importance of acknowledging the fluid identities of place (Spivak).

A scion to this has been an interest in the production of individual subjectivity, with geographers drawing either on Foucault's formulation regarding the overlap between power and knowledge and the subsequent impact of spatialised language in the creation of self, or those leaning on psychoanalytical traditions to decipher and comprehend the projection of self into places that possess both elements of reality and fantasy. Those in the latter category have explored the ways in which the unconscious mind maps itself onto space.

The contested nature of space and place is not the only product of this academic focus and some thinkers have instead considered the relationship between space and place as more relevant. Within this scholarship there has been an overwhelming interest in the impact of globalisation in transforming places (Smith 2000). Global space of flows, it is argued, is highly effective in disseminating a standardised repertoire of consumer goods, images and lifestyles. Local constructions of place are subsequently overwhelmed by the interest of global capital accumulation (Castells).

The most nuanced discussion regarding the production of space into place under conditions of globalisation is offered by David Harvey (1989). Harvey, drawing on the work of Lefebvre, disseminates how places are created and them made to be experienced as material artefacts. These places are represented in discourse and further used as representations in themselves of changing cultural identities, which are related to processes of time-space compression that encourages homogenisation and differentiation. Place, then becomes more important in the context of globalisation

because of its central role in perpetuating processes of capital accumulation. While this conforms the post-structuralist position that place is still relevant and that the world is perpetually territorialised, de-territorialised and re-territorialised (Deleuze). Certain geographers have concluded from this a concept of space and place as fragile, fluid entities that are constantly remade through the actor networks of people, things, languages and representations (Latour).

To suggest that the above overview constitutes an achievement of comprehensive totality would amount not only to solipsism but an unpardonable conscious naivety. Instead what can conclusively be confirmed is that the above discussion should provide some overview of the intricate scholarship on the topic of space and place and that furthermore it offers some context against which the theorists that have been selected and emphasised below can be read.

Henri Lefebvre.

Lefebvre, as has been claimed above, is arguably the seminal theorists regarding space and place, not only for geographers, but importantly also for those is the social sciences. As such, what follows is a detailed discussion of his canon.

Theory and Method.

Lefebvre offers a nuanced and advanced theory of space in which he highlights its physical, symbolic and lived dimensions. Fundamental to his conception is the linking of social phenomena to both the socially produced character of space and its role in social reproduction. Theoretically, his work avoids an excessive methodological reliance on metaphorical associations between ‘mental spaces’ and interpretive indeterminacy. It allows us to chart a course between the pitfalls of spatial fetishism and instrumentalist understandings of law’s role in the production of space. As opposed to adopting the instrumentalism of orthodox Marxist urban studies, Lefebvre provides a way of conceptualising the tools of municipal governance simultaneously as codifications of dominant representations of space, and as technical mechanisms for inscribing dominant uses in space.

Lefebvre’s concept of the right to the city emerges directly from his philosophical and

sociological writings on space. The requirement for abstract space to be perpetually reproduced opens up the possibility for contrary tendencies to challenge dominant forms of spatial ordering. It is in this inevitably political context that Lefebvre articulates the right to the city, constantly reasserting itself against the control of space by the state and capital, as one means of pursuing an emancipatory spatial practice.

In the Production of Space, Lefebvre's attempts to reduce the artificial fragmentation of social thought and to link the mental, physical and lived dimensions of space in ways which emphasise how space is produced through human agency (Lefebvre 1991: 11). Extending the concept of relative or relational conception of space developed by Leibniz (Leibniz 1956/1969: 675-721), he argues that the mental, physical and lived dimensions of space are internally related within an open totality.

Lefebvre makes the argument that Marx, Hegel and Nietzsche can be read together combining the tools for a critique of capitalist social relations developed by Marx, the conception of the state as wielding immense power by Hegel and Nietzsche's attention to the celebration of art, festival and bodily pleasure that are all distinctive features of civilised life (Lefebvre 2003a: 43-4).

Space is produce, Lefebvre argues, in a way that mediates and structures the experience of everyday life. Space is produced in a multitudinous way that assists in the shaping of social, economic, legal and political relations. Consequently, Lefebvre's account of the produced nature of space can provide theoretical resources for critical studies which avoid fetishising space or reducing it to a discursive or epistemic structure.

Lefebvre's infatuation with space, spatial relations and urbanism can be traced to pieces produced as early as in 1939, where Lefebvre initiated an enquiry into the spatial dialectics, he concluded that production is a temporal as well as spatial process (Shields 1999:119-20). However, by the 1970s texts such as *The Right to the City* (Lefebvre 1996) and *The Urban Revolution* (Lefebvre 2003b) indicate that his focus had shifted to questions of space and the politics of urban life. Still his most significant contribution to space and its implications would be marked in *The Production of Space* (1991)

The Production of Space elucidates one of Lefebvre's main arguments, that is, that space contains a number of dimensions. It is not simply a geographic location or a commodity, it is instead a political tool, it forms part of the relations of production and property ownership and is also a mode of creative and aesthetic expression. (Lefebvre 1991: 349)

Lefebvre positions himself against the hegemonic conceptions of space that have been dominant since the Enlightenment, that promote an absolute conception of space. This conception, he argues, is inspired by the Cartesian separation between *res cogitans* (thinking beings) and *res extensa* (the physical world), which conceptualized space as geometric and as an extension of and not an element of thought. It could therefore be considered merely as coordinates, lines and planes, that are capable of quantitative measurement. The Cartesian conception of space and was then developed by Kant who argued that they constituted a priori categories, as result space was conceptualised within the realm of consciousness (Lefebvre 1991: 1-2).

With the Cartesian and Kantian philosophies informing the dominant conception of space, it came to be treated ontologically as an empty vessel that exists prior to the matter that 'fills' it. At the same time, space is reduced to an abstract, mental construction. (Lefebvre 1991: 3). This conception of space has been highly influential especially in the natural sciences, mathematical modeling and in positivist geography which have historically valued the abstraction and quantification of space. Lefebvre maintains that this conceptualization of space, with its inherent identification of mental space(s) with social and physical space has also embedded itself in a number of critical approached to social inquiry, that fetishise space as an epistemological category and collapse social relations into the realm of mental space (Lefebvre 1991: 3). Lefebvre in fact notes theorists Michel Foucault, Julia Kristeva, Jacques Derrida and Jacques Lacan for vacillating between positions that attempt to apply a systematic logic on social analysis and accepting 'a chasm between the logical, mathematical and epistemological realms and practice'. (Lefebvre 1991: 300).

Critical of both the positivist models of science and the idealist tendencies in French poststructuralism The Production of Space argues that space must not be conceptualised within the dichotomy between the physical dimensions of space and

abstract conceptions of it. By supporting the division between mental, physical and social fields, the majority of the social sciences have relied upon an impoverished conceptualisation and understanding of space.

The Production of Space

In the Production of Space, Lefebvre's attempts to reduce the artificial fragmentation of social thought and to link the mental, physical and lived dimensions of space in ways which emphasise how space is produced through human agency (Lefebvre 1991: 11). Extending the concept of relative or relational conception of space developed by Leibniz (Leibniz 1956/1969: 675-721), he argues that the mental, physical and lived dimensions of space are internally related within an open totality.

Lefebvre explains these three aspects of space as internally related within an open totality. He establishes a conceptual triad which expresses the complex interaction and dialectical unity of spatial relations, consisting of the following elements; spatial practices, Representations of space and Representational spaces (Lefebvre 1991: 33, 38-9).

a) Spatial practices can be described as the physical practices, everyday routines, networks and pathways through which the totality of social life is reproduced. These practices include both individually embodied social rhythms and collective patterns of movement within cities and regions. Lefebvre utilized the following description to elucidate the point, the daily life of a tenant in a government-subsidised high-rise housing project. Which should not be taken to mean that motorways or the politics of air transport can be left out of the picture. (Lefebvre 1991: 38)

b) Representations of space are forms of abstract knowledge generated by formal and institutional apparatuses of power engaged in the organisation of space. Obvious examples include the work of planners, bureaucrats, social engineers, cartographers and the variety of scientific disciplines holding socially recognised ‘expertise’ in the management and control of spatial form (Lefebvre 1991: 38-9).

c) Representational spaces are closely associated with the social and bodily functions of lived experience, these form part of the social imaginary of ‘inhabitants and users’

of space through which complex symbols are linked to non-hegemonic forms of creative practice and social resistance (Lefebvre 1991: 33, 38)

Expounding these three dialectically related dimensions of space is paramount to Lefebvre's explanation of the production and social use of space. Lefebvre argues that the components of his conceptual triad operate simultaneously, and provide the groundwork for description of the multi-dimensionality of social space. Following from his rejection of the absolute conception of space, Lefebvre is not content to see space as a mere object or a receptacle. Rather he represents it as a social matrix that operates as a 'presupposition, medium and product of the social relations of capitalism' (Brenner 1997: 140). Social space is simultaneously (Lefebvre 1991: 349):

a) Part of the forces of production that progressively displaces and supersedes the role of (first) nature.

b) A product that is consumed as a commodity and as a productive resource in the social reproduction of labour power.

c) A political instrument or apparatus that facilitates forms of social control.

d) The basis for the reproduction of property relations through legal and planning regimes that order space hierarchically.

e) A set of ideological and symbolic superstructures.

f) A means of human reappropriation through the development of counter-spaces forged through artistic expression and social resistance.

Lefebvre's definition facilitates an understanding of space as a composite of relations and networks that enable social action. A and B recognise how space forms part of processes of production and social reproduction, whilst C and B identify it as a mechanism of state regulation and the site of political struggle and human creativity. Lastly E and F highlight the point that social conflicts have spatial dimensions in

addition to traditionally acknowledged political and economic ones. As such, space can be argued to perform multiple roles in production and social reproduction a point that Lefebvre derives from Leibniz's assertion of the necessity for 'space to be occupied' by the body (Lefebvre 1991: 169-71).

While the absolute conception of space encourages a separation of formal space and material content, Lefebvre's relational depiction of space presupposes an immediate relationship between the whole body and its space. As a result, production is seen as the means through which the living body as a deployment of energies, produces space and reproduces itself within the limits and laws of that space.

Re-working and developing Marx's model of commodity production, Lefebvre explains that space is *produced* and contributes to the reproduction of the social relations of capitalism. Production is not limited to the manufacture of commodities and the confines of the labour process, but also encompasses artistic creations and the built environment alongside the social relations of production. As a result Lefebvre understands space in a way that is unique in social theory. Not only does he identify space as an outcome of the productive process, it is also part of the *means* of production as a 'network of exchanges and flow(s) of raw materials and energy', (Lefebvre 1979: 287) and as one of the *forces* of production alongside labour and technology.

However whilst this is a great achievement, Lefebvre's definition of space extends beyond the various ways in which it is inscribed within processes of production and reproduction. Included in Lefebvre's definition is its political status as a means of social regulation and as the site of political struggle. The provision of relatively stable forms of territorial organisation for the circulation and accumulation of capital necessarily requires state planning, regulation and the administration of urban space. This facilitates the fulfilment of capital's drive for the 'annihilation of space by time'. (Marx 1973: 539) Extended capital accumulation can only be secured through the 'spatial fix' (Harvey 1982: 414- 44) offered by state construction of 'fixed and immobile transport, communications and regulatory-institutional infra-structures' (Brenner 1999: 433).

Brenner argues that the interception of economic and social life by the state should be 'conceived spatially as attempts to organize, instrumentalise and regulate social space' (Brenner 1997:146). Ultimately political production is used to ensure that spatial limitations to accumulation are eliminated.

Lefebvre's conception of social space is not, however, limited to the recognition that the political dimensions of space include its management and use as a political tool by the state. As has been briefly noted above, social space is also a site of political conflict, as a result class struggle must also be conceptualised as spatial (in addition to being political and economic).

Class relations and social conflicts are not simply projected onto space, instead they are precipitated by the spatial dialectic that cuts across classic class distinctions. The creation of counter-spaces, the alternative use of the space, is therefore a strategy of counter-hegemonic struggles that confront existing forms of organising.

Space, therefore is both socially produced and is a fundamental precondition for the reproduction of social relations. It forms part of the state's productive machinery of social regulation, while also performing as a site of political struggle and creative appropriation.

When considering the dialectical relationship between the instrumental use of space and the political possibilities inherent in its material and symbolic production it becomes pertinent to consider Law as a set of techniques of spatial organisation and governance, a framework for the collection of everyday spatial practices.

Developing Lefebvre's spatial triad, David Delaney introduces the concept of 'nomosphere' which is ultimately cultural material environments that are constituted by the simultaneous materiality of legal relations and law's discursive representation of socio-spatial relations. (Delaney 2004: 852)

Delaney argues that the spatial triad offers a platform that enables critical legal studies to balance the mental and physical dimensions of the social world with the realm of the lived. Delaney notes that the law often imposes spatial practices and

representations, the law is both a collection of ideological representations of space and material practices that maintain social order and govern social space.

Law, State Power and the Emergence of Abstract Space

Lefebvre develops Marx's chronology of the historical stages of social development as a history of the modes of production of space. Lefebvre extends Marx's argument that extends backward to consider the productive activity itself by arguing that 'any activity developed over (historical) time engenders (produces) a space, and can only attain practical 'reality' or concrete existence within that space'. (Lefebvre 1991: 115)

This spatial history offers an explanation of the spatial prerequisites for the genesis of modern capitalism, contemporary capitalism, ultimately, produced a new spatial form. This is what Lefebvre labels *abstract space* - the fragmentary space created by the imperatives of capital and the state's management and domination of space (Lefebvre 1991: 285-9). It not only nurtures and facilitates the reproduction of capitalist social relations, it actively excludes alternative spatial uses.

Lefebvre notes that three tendencies which simultaneously characterise abstract space exist: fragmentation, homogeneity, and hierarchy (Lefebvre 2003a: 210; Martins 1982: 177-8; Gottdiener 1985/1994b: 126).

Fragmentation is manifested in the partitioning of space into small units which can be privatised and traded as commodities, this is enhanced by the fragmentation of the sciences into separate domains that divide space into disciplinary interests. Each area of knowledge adopts its own segmented portion of the objects in space which are ripe for analysis. Just as the fetishism of commodities arises from treating 'things in isolation', so too the intellectual fragmentation of space introduces a fetishism of space (Lefebvre 1991: 89-90).

In addition to the fragmentation there is what would appear to be a contradictory tendency towards homogenisation. A cursory examination of modern life would reveal an extraordinary diversity of consumable products and styles: a diversity of things in space. However Lefebvre argues that 'abstract space is *not* homogeneous; it simply has homogeneity as its goal, its orientation, its 'lens'' (Lefebvre 1991: 287).

Abstraction divides space into fragments, but it also imposes a logic of exchangeability on places and times (Martins 1982: 177). The application of the criteria of pure exchange to space operates as an homogenising force which has the power to flatten-out spatial diversity on a global scale.

The merging of homogenised and fragmented spaces reveals the third tendency of abstract space - the hierarchical ordering of economic, technological, administrative and political power. The position of a space is determined by its position in the conflictive relationship between centres and peripheries, this becomes evident in the distribution of power, wealth, resources and information (Martins 1982: 178). This hierarchy between centre and periphery is not random it is the result of a logic that sees the centre organises that which is 'around it, arranging and hierarchising the peripheries' (Lefebvre 1976: 17). The importance of state power in the construction of abstract space is thus incredibly important, the state actively intervenes in the production of space, treating it as a political instrument through which social order can be maintained. The state provides the formation which on which abstract space is built through its role as the provider of infrastructure and the manager of resources, alongside its subsidisation policies and spatial planning regimes (Lefebvre 1978a: 307-8). The production of space and the ordering of its dominant uses require the prohibitions and sanctions imposed by the state through the legal order. The juridical form of private property relations is inherently based on spatial prohibitions which prescribe the limits of everyday life and serve as 'the reverse side of the negative appropriation of space under the reign of private property' (Lefebvre 1991: 319). Abstract space is characterised by both a normative and discursive non-aggression pact and the coercive exercise of institutional power to preserve an apparently 'non-violent' social order (Lefebvre 1991, 56-7). It therefore achieves a repressive efficiency, which hides deceptively behind the pretence of civic peace and consensus.

The state's participation in the production of abstract space is highly relevant to critical inquiries into the structure and form of contemporary spatial projects such as urban governance and planning law. Regimes of urban governance can subsequently be viewed as elements of the contemporary state's ensemble of socio-spatial rules, techniques and ideological representations. Neil Brenner utilizes Lefebvre's analysis when showing how urban governance has operated as a paramount element in the

restructuring and spatial rescaling of the state in the era since the 1970s (Brenner 2004a; 2004b; 1999; 1997). Some theorists however question whether Lefebvre's 'abstractions about space in general' can contribute very much to understanding the concrete ways in which regulatory powers are deployed 'in everyday legal governance' (Valverde 2005: 55). Valverde argues against the utilization of functionalist, class-based explanations of urban legal mechanisms used in Marxist, 'structural' accounts of the politics of space, and instead favors empirical investigations of the operation of commonplace techniques of municipal governance (Valverde 2005: 35, 46-7, 55).

Others argue that Lefebvre's work is useful because of its anti-essentialist and non-reductionist orientation, which reveals the inherent complexity of space (Merrifield, 1995: 299), which is contrary to an orthodox Marxist reading. Dividing space into zones, imposing homogeneity within them and hierarchically organising these fragments of space has proved a crucial vehicle for the reproduction of abstract space.

The Politics of Space: Citizenship and the Right to the City

The dominance of abstract space in Lefebvre's account is never total or absolute and its social relations must be continually reproduced and reimposed. All elements in constituting the abstract space are subjected to an aggressive cross-examination which places a perpetual, contrary pressure on established forms of spatial power. As a result future transformations through the generation of new socio-spatial orders are always possible. All political and social movements that attempt to redefine the dominant spatial order must also undergo the judgment of a trial by space. Brenner describes it as, 'the viability of all transformative political strategies depends crucially upon their ability to produce, appropriate and organise social space' (Brenner 1997: 152). For Lefebvre, 'groups, classes or fractions of classes cannot constitute themselves, or recognise one another as 'subjects' unless they generate (or produce) a space.' (Lefebvre 1991: 416-7)

Given that space is a vehicle for the reassertion of use values and creativity over exchange and domination, counter-hegemonic and emancipatory political tendencies must aim towards the self-management of space. As a result the engagement between the state and its citizens are framed by struggles for what is defined by Lefebvre as

the ‘right to the city’ - or the right to urban life. For Lefebvre, the urban is not simply a product of processes of industrial production and capital accumulation. It is ‘more or less the *oeuvre* of its citizens’ (Lefebvre 1996: 117) – an entity that is constantly being renegotiated. The prevention of certain groups and individuals from fully participating in this collective, creative act constitutes a denial of the right to the city.

When considering the right to the city Lefebvre emphasises the importance of the full use or appropriation of space by those who inhabit the city. It is a right not to be expelled from social life and a rejection of enforced segregation to the urban peripheries, with the daily schedule this imposes. This right highlights the importance of the urban as a space of encounter, allowing differences to flourish in order to facilitate the possibility of collective political action. Lastly, it is a demand for a participatory role in ‘all circuits of decision-making leading to the control and development of the organisation of social space’ as a means of resisting the control of space by the state, its planning bureaucracies, and capital (Martins 1982: 183).

The concept of the right to the city has also been adopted by writers arguing that it could provide a basis for the replacement of formal notions of political citizenship with the broader concept of ‘urban citizenship’ (Fernandes 2007; 2006; Purcell 2003; 2002; Butler 2007; McCann 1999; McCann 2002; Isin 2000). This right can transform the ‘power relations that underlie the production of space, fundamentally shifting control away from capital and the state and toward urban inhabitants’ (Purcell 2002: 101-2). A right to inhabit space would concretise the rights of the citizen as a user of multiple urban services (Kofman and Lebas 1996: 34), and directly challenge the dominance of more limited ‘liberal-democratic/Westphalian’ forms of political citizenship. By emphasizing ‘urban liberties’ and protecting inhabitants against forms of spatial exclusion (Lefebvre 1996: 141; Lefebvre 2003a: 238-54), spatial citizenship may prove more democratic than traditional conceptions of citizenship - linked as they are to the historically sovereign nation-state, which is globally under challenge from processes of scalar restructuring and reterritorialisation (Purcell 2003: 565; Brenner 2004a; 1999). This could also provide protection for the interests of asylum seekers (Butler 2007).

In his recent discussion of this issue, expanding on Lefebvre's original formulation, Fernandes argues that any meaningful 'right to habitation' must be pursued alongside the 'right to participation' in social life. The extent to which the recognition of such rights has been the subject of intense political and legal contestation in Brazilian cities provides a salutary lesson for critical scholars on the inevitable obstacles to be overcome in the extension of the right to the city to other legal contexts (Fernandes 2007: 218).

Denis Cosgrove

Cosgrove, a vital figure in the developing the landscape-as-text approach, advocated a re-imagining of the conventional methods of this approach, which ambitioned to examine landscapes for hidden truths that reveal cultural realities. As such, his work has been influential in this thesis.

Departing from the orthodoxies of the disciplines method, Cosgrove (and others – especially amongst British cultural geographers) deduced that extending the theoretical developments made in interpreting literary texts to the reading of cultural landscapes amounted to a logical conclusion. Drawing on the post-structural approaches found in literary criticism, led some cultural geographers to the realisation that landscapes can be read in varied ways. Translated, this meant that landscapes were capable of holding multiple meanings and that cultural geographers need not served as interpreters of the landscape. A key concept to this approach is symbolic representation, the idea that social power and hierarches reproduced and represented in landscape. Dominant culture, the presiding culture in a society, is influential in determining the content of landscape, that is, who and what is included and excluded (Oakes et al. 2008: 176). This notion was well elucidated in Kenneth Foote's *Shadowed Ground: America's Landscapes of Violence and Tragedy* (1997), which argues that significant events are cultivated from a nation's history and recorded and marked in order to produce and image of itself for the outside world and its own citizens. Drawing also on the structralist paradigm this school of thought identifies these symbols as signifiers, the signified, they maintain, is not organic or static. Instead, the signified (or what the signifiers represent) are social constructs and not nomenclatures – they can be reconfigured and disputed.

Cosgrove's work is concerned largely with the progression of landscape representation, focusing particularly of Venice and Northern Italy, he documents the evolving socio-economic relations of capitalism. His study reveals a focus on privately held and wage labour, which he argues is encode and contested through the European landscape and its representations, particularly in landscape architecture and painting (Cosgrove 1984). An interest in the use of symbolism has persisted in Cosgroves later work, investigating the 'blue marble' image of the earth as captured from space, he has demonstrated how the advent of the image has altered conceptions of the earth and people's own locality within it (Cosgrove 2001). Cosgrove argues, that while blue marble is now symbolic of human unity, stemming from a history of attempts to represent the earth. Primarily these have taken the form of maps and have been altered based of the varying notions of Western identity (Cosgrove 1999). Cosgrove identifies three concepts as integral to realising human geography as a humanity, namely, landscape, culture and symbolism.

Landscape as term, Cosgrave reminds the reader, emerged in the Renaissance to denote a new relationship between humans and their environment. As a concept in human geography is has generally been associated with culture, visible manifestation formed on the earth and their composition. It is, he opines, a 'way of seeing', a way of arranging elements into a visual unified scene. (Cosgrove in Oakes et al. 2008: 179).

Landscape is therefore attached to a perception of the world, which observes it to be a rationally ordered, designed and harmonious creation, the structure and mechanism of which is fathomable and appreciable to both the human mind and eye. Subsequently it's a useful concept and guide in endeavours to alter and enhance the environment. Clearly then landscape is a multifaceted, complex entity with many implications, three of which Cosgrave identifies as most relevant. Firstly, a focus on the visible forms of our world, their composition and spatial structure; secondly, unity, coherence and rational order or design in the environment and thirdly, the idea of human intervention and control of the forces that shape and reshape our world.

Cosgrove claims that his second chosen term, culture, has enjoyed a long association with landscape. Citing the tradition in American human geography, developed largely on the basis on Carl Sauer's work, Cosgrove argues that a space was indeed created

for a focus on the role of humans in transforming the face of the world. While the emphasis was certainly on technologies, there was still some, albeit limited, appreciation of the role of non-material culture, such as religious belief, legal and political systems and so on. Cultural geography as this point was dominated, largely by a focus on material elements or visible forms of landscape, culture itself was seen as unproblematic and largely uncontested, as merely *'a set of shared practices common to a particular human group, practices that were learned and passed down the generations.'* (Cosgrove in Oakes et al. 2008: 180). Cosgrove is critical of this cultural determinism and advocates for a more nuanced cultural theory in which reading landscape as cultural text recognises that texts are multi-layered and capable of delivering simultaneous and equally valid different readings (Cosgrove in Oakes et al. 2008: 180).

Cosgrove argues that his third notion – symbol, is necessary to understand the expressions etched by a culture onto landscape, symbols in this sense are keys to reading and understanding the language that a culture writes onto landscape in. Symbolism of landscape might can be overt or subtle, but they always serve the function of reproducing cultural norms and establishing the values of the dominant groups in a society. Cosgrove offers the example of a municipal park of an English provincial town:

> *Surrounded by green or black painted railings, it still maintains its nineteenth-century design of mown lawns, carefully edged, serpentine paths winding past herbaceous borders, chromatic summer beds and shrub plantations with perhaps a small lake and scattered deciduous trees. In one corner is a children's playground, carefully fenced off.*
> *Anyone entering the park knows instinctively the boundaries of behaviour, the appropriate codes of conduct. In general one should walk or rather stroll along the paths. Running is only for children and the grass for sitting on or picnics. Ducks may be fed, but the pool neither paddled nor fished in. Trees should not be climbed, nor should music be played except by the uniformed brass band on the wrought iron bandstand. In sum, behaviour should be decorous and restrained. When these codes are transgressed, as they are, by music centres, BMX bikers, over-amorous couples or bottle-toting tramps, then the fact is observed, and disapproval clearly registered by those who, although perhaps numerically a minority, nevertheless have the moral symbolism of the whole designed landscape on their side. There is little need for signs, although the unread printed park regulations peeling at the entrance would confirm the interpretation of the righteous guarantors of propriety.*

Despite moral standards and virtues having developed since the Victorian era, its protocols still enjoy legitimacy in the park because the landscape is still organised in the same way as before, in this was the space communicates those same values. Developing the example, Cosgrove shows how these parks were created with the intention of bettering the physical and spiritual welfare of the labouring classes in order to promote greater work productivity. The introduction of these parks was coupled with condemnation of traditional pastimes such as tavern drinking, cockfighting and common-land festivals and fairs. Parks were offered instead and rules governing behaviour and standards of decorum while in them were established and entrenched (Cosgrove in Oakes et al. 2008: 180).

In order to read symbolic-landscapes, Cosgrove advocates for the use of tools that are generally associated with the humanities. Of particular importance is close and detailed readings of the site, another important tool for Cosgrove is evidence. By this he means, sources that reveal the intentions and consciousness of the people who created, edited, maintained, utilised or experienced the site, ultimately what the meanings were contained in the landscape for these people. These forms of evidence include the more traditional forms that have long been utilised by geographers, such as material evidence in the field and cartographic, oral, archival and other documentary sources. Increasingly, though, evidence of cultural products such as paintings, poems, novels, folk tales, music, film and song, have become useful in determining the meanings that places and landscapes possess, express and evoke.

As an organisational device, Cosgrove identifies the following forms of culture, namely: dominant, residual, emergent and excluded cultures. Dominant culture belongs to a group that has power over others, their dominance is grounded in control over the means of life, which includes land, capital, raw materials and labour power. Their dominance and power is maintained (also) by their ability to utilise media to project and articulate an image of the world that ascribes to their own experiences and most importantly to convincingly present this image as an accurate reflection of everyone's reality. Cosgrove views this as ideology.

When considering existing landscapes, Cosgrove maintains that the clearest expression of dominant culture can be viewed at the geographical centre of power, in

class societies surplus in concentrated spatially (as well as socially), in country houses and parks (as the example above shows), but most notably on the city. Eliminating his point is the methodological devotion to the use of rational, geometric forms in the design of cities, namely, the circle, square and axial orthogonal or gridiron road system have all persisted. These geometric figures contrast dramatically with the curves and wave like smoothness of natural landscape. Euclidian geometry is thought to represent human reason and intellect, its dominance in urban form is undisputed and can be viewed in ancient Greek, Roman, Renaissance, Baroque and Victorian city plans. In addition it can even be seen in unsuspicious garden city plan of Ebenezer Howard and in Chinese, Indian and Mayan urban organisation. The tradition has persisted, the geometric form can be seen manifesting in modernist city landscapes like Le Corbusier's Radiant City or the cubes of Manhattan or the Dallas skylines (Cosgrove in Oakes et al. 2008:182).

Cosgrove elucidates the argument by framing it within a detailing of the Washington DC. Washington, the intended seat of power for the new nation was inscribed with the values set out in the American Declaration of Independence. Commissioned with the design of the urban plan, the French architect L'Enfant presented the founders with a plan that included two geometric designs. A combined design, it included the orthogonal radiating pattern that was custom in European monarchies where there was a desire to depict power as radiating from the monarch and their courts, and the pattern of the repeatable grid that had been utilised in colonial towns, this was intended to be a democratic and egalitarian form that privileged no location with status.

The amalgamated design of Washington's street plan is a physical manifestation of the détente between European centralism and colonial localism, of federalism and of the rights if states. In the plan, there were fifteen nodes to represent each existing state of the union with symbolic buildings located at the centre. The power of the executive and the legislature were postured in the White House and Capitol (respectively). Forming an L, the Washington Monument (commemorating the founding hero of the revolution) links the two sites along with Pennsylvania Avenue, so called after the 'keystone state'. Subsequently, Cosgrove reads Washington's urban landscape as a

declaration of American political culture written in space (Cosgrove in Oakes et al. 2008:183).

Certainly not static or formal statements, the cultural values inscribed in symbolic landscapes are constantly reproduced for their meaning to persist. This is accomplished subtly through the daily recognition of buildings, place names etcetera, but also more forcefully through public ritual during ceremonies and commemorations. Cosgrove points to the annual 'opening' of Parliament by the British monarch, the ritual has public elements and large parts of it are enacted in London's landscape. The monarch, accompanied by her retinue, travels (in a state carriage) from Buckingham Palace along the Mall and through Admiralty Arch - via a gate for the exclusive use of the monarch – passing Trafalgar Square (site of certain monuments to the military victories of Britain) and the finally along Whitehall to Parliament. The monarchy and the parliament are thus joined through the travelling of a ceremonial route, marked by extraordinary public ritual. In such scenarios, urban space conjoins with tradition and patriotic references (whether constructed or not) to celebrate national values that are presented as common heritage of all citizens (Cosgrove in Oakes et al. 2008:183). Cosgrove argues that it is instructive to analyse design and use of space through careful reading of ritual and symbolic design in any community. Examining and decoding these sites not only reveals the ways that such hegemonies are articulated and reinforced but also offers an opportunity for one to examine our own roles in reproducing the culture and human geography of the spaces we influence, inhabit and interact with.

Alternative Landscape

Alternative cultures are less visible in the landscape, but have the potential to appear or become dominant with change in the scale of observation. Often alternative culture is practised on appropriated sites, or sites that were created formally and articulated as being in service of other purposes. For example statues and monuments in the Johannesburg city centre might be utilised by a street vendor, establishing a makeshift stall under its shade, or the posters of evangelicals might plaster a street of Victorian bye-law terraces. Importantly, despite however dominant the alternative culture may appear or be to a local community it remains subdominant to the official national

culture. Cosgrove organises these alterative cultures into residual, emergent and excluded cultures.

Residual

There are an abundance of landscape elements that hold little of their original meanings, many relict landscapes have been allocated meanings by geographers who view them as clues in uncovering former geographers. These meanings, though, are contested and often reveal more about the cultural assumptions of the interpreter than about their original significance. Stonehenge, a case in point, has enjoyed many interpretations from being ruin of Roman theatre, to the site if a Druid temple. What is true however, or what emerges, is that each interpretation makes clear the role of residual landscape symbols in unearthing contemporary alternative cultures (Cosgrove in Oakes et al. 2008:184).

Emergent

Emergent cultures are often transient entities that have a limited impact of the landscape, despite their temporary nature, they posses a unique geography and symbolic systems. In a sense these cultures challenge the dominant culture offering an alternative vision or future. These landscapes, tend to have futuristic and utopian features, Croswell cites the geodesic domes favoured by 1970s commune dwellers in the America as an example to that effect. The utopianism has, however, often resulted in paper landscapes – imagined futures or blueprints.

Excluded

Excluded cultures are those that are eliminated or excluded, in spite of this the human landscape is saturated with the symbols of and symbolic meanings for excluded groups. Ultimately, this points to Cosgrove's main conclusion – which is that the landscapes of daily life should not be taken for granted. They should be decoded and interrogated.

This chapter has traced the idea of space in place through their intellectual and academic frameworks. It has argued that space and place are relevant factors for analysing culture and power which can be done through reading landscape. In the next chapter, the discussion will move to consider the transformation of Johannesburg

in the post-apartheid era. This will be considering and analysed through the framework established in this chapter.

REINVENTING THE CITY

Introduction

Johannesburg is a city of hidden faces, these faces exist beyond the parameters of the official, formal ambition, purpose, character and rhetoric of the city, their existence is practised in the veiled, informal and unacknowledged spaces. It's fitting then that below the surface of Johannesburg, below its skin, there is a second city, constituted of layers of sedimentary rock, this veiled second city is embedded with gold, gold that exists in magnificent concentrations that has, since its discovery, conditioned the landscape of the city that exists on the surface.

1994 brought with it the first inclusive democratic elections in South Africa and the formal demise of Apartheid, but this single act was far shy of consolidating the new nation and was in fact merely a representation of the changes that would have to take place politically, economically, socially and culturally. Included in, and arguably amplifying, the tension in the transformation process was the consideration of visual, material culture and public space (and culture) (Kros. 2010: 63). The issue was not only relevant to officials of the city, it had also prompted lively public debate especially within the academy where the politics of memorialisation were coming into the fray. [1]

As the apartheid city fell apart the local city authority embarked on two local economic development initiatives aimed at reinventing, re-imagining and restructuring Johannesburg's inner city landscape. At the centre of this project has been the ambition to reposition the city in a more preferable location within the global economy, while escaping the urban economic decline that had been rampant since the 1970s. To achieve this ambition, the city has procured images of the city's future around which investment, public opinion and social accord have been mobilized (Bremner 2000:185).

[1] For example consider the 1992 conference of the History Workshop at the University of Johannesburg titled 'Myths, Monuments and Museums'.

Johannesburg has at its essence a geological and not a geographical origin (Kentridge. 2006: 76). In 1886 gold was discovered in Johannesburg, some 230 years after the first white settlers arrived in South Africa. The discovery resulted in the city of Johannesburg, from its inception the city was regarded as one of *'uitlanders',* of foreigners. Initially the title was applied to the English by the Afrikaners but surely and certainly the title came to be associated with black people in the city. The apartheid philosophy rendered the city to be an exclusive space of white socialization, in which black people were cast as temporary figures, permitted only as workers to serve the mines, industries and homes. This philosophy persisted till the 1980s despite the existence of a large urban black population, who were forced to return *'home'* to the rural areas following the end of their working life. The numerous crude manifestations of this ideology included forcibly removing Africans, Indians and Coloreds from the city and repositioning them in the urban periphery. Johannesburg was to be a place of white exclusivity (much like the rest of the country) (Tomlinson et al. 2003:3).

In 1994, along with the first democratic elections, the city began being reconstructed against the previous order of racial segregation and under one local government. As a result the city's population was considerably increased while the fiscal base remained relatively unchanged.

Having just recently reinterred the global economy it was believed that once the city became integrated into the global circuits of capital, the city would prosper. Initially civic leaders seemed committed to transforming Johannesburg into a 'globally competitive African world-class city', but they battled to give substance to this vision (Rogerson, 1996). In the end it was decided that necessary to first address the lingering effects and consequences of apartheids racial policies in the city in order for Johannesburg to make a meaningful bid to be a world-class city. These consequences included poverty, unemployment, racial segregation, a flight of capital, sub standard levels of education and other social and economic hindrances to transforming the city into one that was more equal.

This chapter begins by introducing Johannesburg inner city through its historic context and then outlining its changing character, against which the local economic initiatives and images mentioned above are examined. Of importance is establishing the ways in which the city functioned (though not exclusively) as an instrument of the apartheid political economy. The chapter then exhibits the consecutive approaches to urban revitalization in Johannesburg and identifying the leitmotifs and contrasts between them, in particular their commitment to realising *'world city'* status and their varying, but equivocal relation to the rest of Africa. It concludes that the Constitutional Court is part of this larger project to reconstruct and transform the inner city.

Historical Background

Only ten years after its inception, Johannesburg found itself to be the largest city in the country and by 1936 was billed as the largest and most densely populated city *"European"* city in Africa (Chipkin, 1993:105). The growth in population and infrastructure has been attributed to the building boom and economic expansion that followed the Boer War (1899-1902). Moreover the abandoning of the gold standard resulted in a surge of foreign investment into the city, which along with successive waves of economic activity produced a city that by 1990 housed the headquarters of the country's largest corporations, the Johannesburg Stock Exchange and the National Reserve Bank (Chipkin, 1993:93).

Whilst the city certainly (just barely) predated the gold rush, the discovery of Witwatersrand gold reef in 1886 catapulted Johannesburg to the center of financial and commercial activity in sub-Saharan Africa. In just one decade, the city sprouted banks, finance houses and mining company headquarters (Chipkin 1993). A 'boom town', it grew rapidly both in terms of population and buildings as well as styles. The city came to be characterised and dependent on its entrepreneurial potential – a feature that has persisted and has been translated into what Chipkin terms its 'entrepreneurial culture' (Chipkin 1993:vii).

The Johannesburg boom saw a foreign capital flooding into the city and the city thrived. The Johannesburg stock market swelled, with new listings, acquisitions and

mergers being recorded and tower blocks proliferated in the inner city. Similarly, factories were built and between 1951 and 1970 employment in manufacturing increased to over 75 percent, which accounted for 230 000 workers (Beavon, 1997:159). A mood of confidence and invulnerability prevailed.

By 1990 this entrepreneurial potential translated into a city containing the headquarters of 65 of the 100 public companies listed on the Johannesburg Stock Exchange, 13 of South Africa's biggest companies (out of 30), six from the eight mining conglomerates and nine of the 18 life assurance companies (Bremner 2000:185). Furthermore, the city served as the national banking centre, the Johannesburg Stock Exchange and the National Reserve Bank (Tomlinson et al. 1995). Residentially – high-density suburbs developed in the 1960s, these were exclusively inhabited by Europeans, with apartheid legislation relegating the black working class to townships from which they commuted to the city.

This translated into a 'rentier culture', in which buildings were constructed in the latest fashions and trends in order to maximise returns and partially accounts for the lack of cohesion in style and scale and general lack of architectural trends in the city. (Chipkin. 1993:vii). Since its establishment, the buildings in Johannesburg were crafted in the image of Western modernity. During the first building boom architectural designs were inspired by the Fin de Siecle European style, while the imperial buildings that conjoined the gold mining industry and the financial district of the post Boer War boom of 1889-1902 mimicked the British Edwardian style (Chipkin 1993). Due the depression of the 1930s and the subsequent abandoning of the gold standard, Johannesburg became rife with foreign capital that transformed the city into a *'little New York, or if not New York, then at least Chicago or Saint Louis'* (Bremner 2000:186). Chipkin (1993) notes that by the time of the 1936 British Empire Exhibition, Johannesburg was being described, in publications like the *Times*, as the *'largest and most densely populated European city in Africa'* with *'fascinating shops and smartly dressed shoppers'* (Times Weekly Edition, 1936, in Chipkin, 1993: 105) furthermore it was securely established as 'the Empire's great gold centre' (Rogerson, 1996: 141).

The city's most enduring economic upsurge emerged from the crises and tragedy known as the Sharpeville massacre, where 69 people were killed after police shot at a peaceful crowd protesting the pass laws. Following the massacre, was a massive outflow of capital and a critical fall in gold reserves. The government responded harshly and by 1962 their draconian measures appeared to be working, the economic situation had been dramatically reversed and growth was said to have reached nine percent per annum by 1963. This economic *'miracle'* was well underway and would endure for at least a decade (Chipkin, 1998:250).

By the 1970s, and especially following the Soweto uprising in 1976 this image began to be tarnished. The mounting resistance to apartheid revealed the city's racial segregation and political divisions and the past glorification of white dominance, while dismissing the alternative black experience was no longer acceptable (Rogerson, 1996).

The divisions were the product of successive white governments. Following the Boer War, an interventionist British government undertook to stabilize the white proletariat as well as the segregation of white and black workers. Initially workers were located close to their productive bases in the working class suburbs of Jeppe and Fordsburg or in the compounds on mining property, but they were slowly segregated and eventually relocated. The first forced removals took place in 1904, it saw Indian residents being relocated to the south of the city and marked the beginning of the character of the city being based on rigid segregation of race, class and space (Tomlinson et al. 2003:5).

These efforts manifested in the Urban Areas Act of 1924, which compelled local authorities to designate land for black occupation and formalized existing segregation policies. Under the new legislation a program was executed to systematically expel black people from the municipal area and mandate their relocation to the area south of the city that would come to be known as Soweto. Further legislation in the form of the Native Urban Areas Act was passed in 1929 and criminalized the renting or sale of land to black people in white designated areas. By 1933 Johannesburg was proclaimed to be white and by 1938 most of the black population in the city had been

relocated to the townships of Orlando and Orlando East in Soweto (Carr, 1990), this amounted to 60 000 of a total population of 500 000 people in the city.
A symbiotic relationship between growth in the local economy and population, and with each surge in the local economy the population rose. By the 1936 the population in Johannesburg amounted to over 425 000 legal residents and by the mid 1980s this figure had swelled to approximately 2.5 million a figure that would reach 2.7 million by 1996 (Tomlinson et al. 2003:6).

When in 1948, the National Party, elected on the platform of separate development, came into power the segregated landscape of the city had already been largely determined. However it was the party's callous combination of discriminatory legislation, influx control and the creation of the ethnically based *'homeland'* areas and administrative zones that worked to finally realize grand apartheid.

The policy had disastrous effects on the lives of people which included the forced relocations of black people living in the racially mixed area of Sophiatown, established in 1905, to Meadowlands in the 1950s. The Locations In The Sky Act saw domestic workers living in staff quarters in the roofs of buildings being relocated to sing sex hostels in Soweto. In the 1960s Indian people living in Pageview were relocated to Lenasia, while Colored people were sent to Eldorado Park and Ennerdale.

From 1948 onwards there was massive developments of vast, sprawling townships, as they came to be known. The townships were devoid of any sustainable commercial or industrial base and their extraordinarily inefficient layout was designed for security reasons to make internal circulation difficult. Where there were roads and railways these went only to places of work and retail shops in the inner city.

The city of Johannesburg was then exclusively white however as the 1980s approached the inner city began to *'grey'* and slip from white dominance and as it did capital began an exodus from the inner city.

The greying of the inner city began roughly in the 1970s, when swelling opposition to apartheid began to expose the city's crude system of racial segregation, tarnishing its

once appealing image. The constructed image of the city was orientated around white culture, celebrating white dominance, ignoring the alternative black experience of the city (Rogerson, 1996:141). In 1986, at the moment of the city's centenary celebrations overwhelming black opposition to the exclusive image of the *'city-with-a-golden-heart'* rendered the celebrations meaningless and the authorities realized that the city needed reinventing (Bremner, 2000:186). During this period the relaxing of influx control and growing repression and violence in townships due to the State of Emergency coupled with opposition to the image resulted in an increase in the gradual movement of black people into inner city suburbs. According to Morris (1996), by the time of the 1986 celebrations, roughly 20 000 of the 120 000 person population of Hillbrow were now black. Migration into inner city suburbs swelled and by 1993, 85 percent of the inner city residential population was black (Morris, 1996), by 1996, only five percent were white (Crankshaw, 1997). This migration pattern was limited to affluent black people, while poorer black people continued to reside in the separated black townships (Crankshaw, 1997).

The prominence of black people in the inner city was received with a general decline in the physical conditions coupled with a tendency to stereotype along racial lines (Morris, 1996). The flight of white inhabitants of the inner city, was also expedited by landlords who, exploiting the illegal status of the black residents, escalated the price of rent while decreasing building maintenance (Morris, 1996). Overcrowding, inferior service and maintenance accompanied with increasing rental costs aggravated racial prejudice amongst the previous white inner city residents, who romanticized the previous era before the arrival of black residents (Morris, 1996).

Still in flux, the demography continued to vary and in the 1990s Africans from different countries began to reside in the inner city. By 1995 the number of Congolese residents in the inner city of Johannesburg was believed to be at approximately 23 000 (Kadima, Kalombo, 1995), while Nigerians are though to have totalled 300 (Morris 1996). Subjected to mounting persecution from South Africans, these groups are accused of saturating the informal trading sector, responsible for the increasing trade of narcotics and the decline of the physical environment (Simone, 1998). This increasing xenophobia has produced as defensive, ethnically defined spatiality (Bremner, 2000).

Since 1980 the economy of the inner city has been on the decline, losses were felt in the manufacturing sector and while financial and government sectors increased, commercial activity remained static (Pienaar, 1994, in Bremner 2000: 186). In the space of twelve years (1982 to 1994), 17 of the 65 top 100 national public interest companies (previously) situated in the inner city moved from its Central Business District (CBD) to decentralized locations (Tomlinson et al, 1995). Furthermore, by 1994 only 27 percent of the of the total top national business enterprises were based in the CBD, with only two of the top ten retail corporations located in the inner city. Similarly, by 1994 only three of the top accounting firms persisted in the city centre, as compared to 1982 when all seven were to be found there. The exodus from the inner city included the loss of major advertising firms, who also relocated to decentralized areas. The relocations were said to be premised on varying causes, such as infrastructure requirements, convenience factors, corporate restructuring and prestige (Tomlinson et al. 1995), however the outcome was a perception of capital abandoning the inner city CBD. While Johannesburg has maintained its status as the economic centre, the inner city centre has been jilted for decentralized areas like Sandton (Muyanda, 1996).

What remains, are the primary financial institutions; life assurance companies like Old Mutual, Sage and Sanlam; national banking institutions, including ABSA, Standard Bank, First National Bank and Nedcor and mining houses - Anglo American and the Johannesburg Chamber of Industry, who have invested considerable amounts into property over the past 90 years (Tomlinson et al. 1995).

Certainly, the greatest transformation of the inner city since the 1990s has been growth of the informal trading and catering sector (Biller, 1997 in Bremner 2000:187). So much so that informal trading has been described as the most *'spectacular expressions'* of the desegregation of urban space associated with the demise of apartheid (Tomlinson et al. 1995:123). The growth is seen as a result of the modification of official policy from one of repression to one of tolerance or promotion, the regression of the formal economy, the rescinding of influx control measures and an escalation in international migration (Tomlinson et al. 1995).

The Johannesburg City Council and the Greater Johannesburg Metropolitan Council (who followed the former and then persisted) responded to these changing conditions with an evolving program of local economic development initiatives to reinvent, re-image and re-market the Johannesburg inner city.

Gateway to Africa

According to Rogerson (1996), the first of these responses was drawn from the North American and Western European models of urban entrepreneurialism and regeneration (Imrie and Thomas, 1993). The initiative focused largely on physical regeneration and investment in buildings and infrastructure, subscribing to the *'mainstream'* approach to urban economic revival (Beauregard, 1993:26). The program took little cognizance of the economic, social and physical changes that had taken place in Johannesburg over time and capitalized instead on South Africa's reintegration into the world as an opportunity for regeneration and reconstructing the image of the city. The approach included *"glossy plan preparation; public sector infra- structure investment; partnership development of flagship schemes in retailing, leisure and commercial development; an emphasis on arts and culture; and strong marketing to reverse or alter existing poor images of the city"* (Fitzsimons, 1995: 7–8, in Roger- son, 1996: 139). Integral to the plan was am emphasis on the shift to public-private partnerships for development.

An ambition to achieve the status of being a *'world city'* motivated urban policy making in late apartheid Johannesburg (Shachar, 1994). Portrayed as the *"Tokyo or New York of Africa"* by the city's authorities (Wright, 1992:13), who began framing Johannesburg in the new geography of global capitalism by styling itself as the *"Gateway to Africa"* (Rogerson, 1996: 141).

The campaign for re-crafting and re-branding the city, borrowed largely form the experiences of British cities like Glasgow, Sheffield and Birmingham) involved programs for property-led development, and a marketing initiative orientated around sport and culture, which were seen as vehicles for investment (Tomlinson et al 1995). Johannesburg's appeal was presented to the world as being its locational advantages, communications infrastructure, and mature financial dominance – in essence it was portrayed portal into the rest of Africa (Rogerson, 1996). The program promoted and

utilized a somewhat contradictory dichotomy – on the one hand Johannesburg is located on the far tip of Africa, separated from the civilized world, yet concurrently presents vast, untapped resources for exploitation. Executive directors of commerce and industry, sport and culture were appointed by the City Council and in 1991 Johannesburg was declared to be the fourth of the top ten growth cities in the world. The city became the site of international business delegations and corporate business partnerships geared at growing business and partnership arrangements between Johannesburg and other cities, like Altalna, New York and Birmingham (Bremner, 2000:188).

The developments outlined above were coupled with an attempt by the city's authorities to trounce the negative perceptions of the city's racial exclusivity by unilaterally declaring it as South Africa's most *"integrated city" (Johannesburg, 1993a, in Rogerson, 1996: 143).* Efforts the package the city *"inviting and integrated"* were orientated around an emphasis n the importance of culture and urban design (Rice, 1993:15). A *"Civic Spine"* was procured by conjoining existing public buildings in the CBD into a cohesive designed precinct, while the neglected council-owned area on the western edge of the inner city was morphed into the Newtown Cultural Precinct (Bremner, 2000:189). With inaugurating events like the annual Arts Alive Festival and the bi-annual Johannesburg Biennal, city authorities aimed to local and international cultural imaginations, establishing the city as a recreational and cultural hub, similar to those found in the waterfront developments of Baltimore, Boston, San Francisco or even Cape Town (Horak, 1994).

These initiatives were deployed in the project to depict the inner city as a *"world city showroom"*, they key economic centre of this region in the subcontinent (Rogerson, 1996:148). In 1991 ten strategic projects were unveiled, these aimed to involved the private sector in the mission to rebuild the local economy as well as help Johannesburg achieve *world city* status. Premised on a *"boosterist"* strategy of attracting and then retaining investors in the city, the projects included: inner city housing; light rail linking between the inner city residential suburbs and the CBD, costing R200 million; the *"Bara-link"* project, that would develop the area around Baragwanath Hospital in order to integrate Soweto with the inner city; the establishment of markets for inner city street trading; the creation of a convention

centre in the inner city, estimated at between R200–300 million; in the eastern sector of the CBD a R100 million commercial theme park, to be called *"Jewel City"* was to be established; and a series of projects using culture and sport as entities to promote local economic development. In addition the Newtown Cultural Precinct and the Ellis Park Sports Precinct on the eastern side of town were initiated, while in 1995 an athletics stadium with the capacity to seat 35 000 people seater was completed in 1995. Johannesburg was ambitiously and prematurely titled as the *"premier cultural centre of the country"* (Francis, 1992: 53) and the *"premier sports and entertainment venue in Africa"* (Rogerson, 1996: 152).

The efforts did not pass un-noted and in 1994, Johannesburg was included in Fortunes top 50 cities (Rogerson, 1996), furthermore, in the same year, it was marked as the new home for the newly formed Provincial Legislature, which relocated from Pretoria into the inner city CBD (Bremner, 2000:189). Despite these successes it failed to impress the new metropolitan who voiced their discontent through the city councillors, elected in 1995 to replace the previous councillors drawn through the racially based local councils. Subsequently, the primary architects of the old new Johannesburg, the executive directors of trade and industry, culture and sport were demoted or fired and the budgets of the aforementioned strategic projects cut dramatically. Within a short space of time a new, more inclusive program to reinvent the city, more, in line with local imperatives was established (Bremner, 2000:189).

Golden Heartbeat

Abandoning the pursuit of *world city* status, the new program to redesign and re-imagine the city was based on stabilizing decline and promoting neighbourhood organization as a precursor to growth (Roysten, 1997). The program was the result of a collaboration between government, civil society, labour and the private sector, known as the Johannesburg Inner City Development Forum (JICDF). Its vision, finally adopted in 1996 aspired towards and inner city that was:

> *The Golden Heartbeat of Africa.*
> *A dynamic city that works.*
> *Liveable, safe, well managed and welcoming.*
> *People centered, accessible and celebrating cultural diversity*
> *A vibrant 24 hour city.*
> *A city for residents, workers, tourists, entrepreneurs and learners.*

> *Focused on the 21st Century, respecting its heritage and capitalizing on its position in South Africa, Africa and the world, a truly global city.*
> *The trading hub of Africa thriving through participation, partnerships and the spirit of ubuntu.*
>
> (Roysten, 1997: 5)

The new vision marks a departure from the previous program by acknowledging Johannesburg as part of Africa, no longer a gate keeper, it was incorporating Africa as part of its identity, in fact it was claiming to be Africa's heartbeat. Development, in the new program was not geared at luring foreign investment, instead it was aimed at local upliftment, at creating a *"livable, safe, well managed and welcoming... a city for residents, workers, tourists, entrepreneurs and learners"* while not abandoning the aspiration to reach global status. Furthermore the main imperative for economic development was trade as opposed to sport or culture (Bremner, 2000:198).

The initiative was launched in 1997, with a great event at the library gardens in the inner city, where then Deputy President Thabo Mbeki officially 'opened' the program (Reeves, 1997). The launch was met with many statements of support by all sectors and a feeling of optimism about the future of the inner city prevailed (Alfreds, 1997:1).

The stated strategy was to focus on developing programs for the environment and infrastructure targeting crime, congestion, homelessness and deteriorating public sector services through public-private partnerships (Russell, 1996). Business Improvement Districts (BIDs) were legalized through legislation that facilitated private sector supplementation to local authority service provision. The management of these districts were largely successful in reducing crime, improving cleanliness, reducing office vacancies and increasing commercial rentals and saw the Johannesburg project winning international Downtown Association award New York (Bremner, 2000: 190). By 1999, there was a 90 percent reduction in muggings in BIDs were down 90% from the1994 figures, retail surveys also showed that 42% of people in the formal retail sector in BIDs were optimistic about staying in the inner city, furthermore 250 people were now also being employed in the cleansing and security staff in the areas affected (Bremner, 2000: 190).

The main projects if renewal in the new reinvention of the city demonstrate the transition from spectacle to environment as the cornerstone of urban regeneration. While it is true that there has been little resources made available to sustain the previous investments into sport and culture, there has been major public and private investment into developments into infrastructure for the relief of the environment or social problems including taxi ranks, informal trading markets or homeless people's shelters. Specifically, these manifested in a R160 million upgrade of the Johannesburg central station (Radebe, 1996), three taxi management facilities catering for 6000 taxis, the re-imaging of squares and parks in the inner city and the provision of six housing facilities for homeless people (Bremner, 2000: 190).

The organization, management and development of street trading, taxi services and other micro-business activity are high priorities in this program and are viewed as integral to building and stabilizing the inner city's economic environment. This is evidenced in the progressive and accommodating attitude towards informal activity and manifested in a quasi-government development agency known as the Informal Management Company (Bremner, 2000:190).

Other key focus' have been to stabilize the inner city residential environment (Chalmers, 1996), and existing housing has since been upgraded for ownership through joint ventures between public and private sectors and maintenance and proper management of buildings has been promoted through incentives and various public relations exercises. This project in essence represents a shift from a high profile, leisure driven industry to one focusing in people's working environments, employment creation and social equality.

Since 2004, the city's cultural policy positions has reflected a desire to creatively reformulate the city in a way that that would undo the legacy of urban segregation and apartheid the city's authorities began to re-imagine Johannesburg's spatial dispensation. This project embodied a commitment to social re-integration that was also manifested in a re-formulation of symbols, names and identities to mark the re-birth of the city in a new democratic and inclusive nation. As a result city authorities embarked on policies that were geared at creating a new spatial order for an integrated

multi-cultural city where a greater sense of inclusivity and belonging for the black majority of the city could be achieved.

Key to this was the utilization of heritage as a tool for promoting social integration and healing. Interventions orientated around heritage were employed to transform the ways that public spaces were experienced as well as to re-shape cultural identity in support of the symbolic transformation from a city of apartheid to one embracing the values of democracy, multi-culturalism and spatial justice.

Heritage, read through images and memories, symbolizes belonging in spaces creating place for people. New symbols and images were used to testify and acknowledge the diversity of the identities that have historically staked claims in the inner city, these identities were long ignored during the apartheid era (as demonstrated above), but have persisted and continue to influence its changing dynamics. It was believed that such re-imaging could heal old divisions and promotes a more inclusive democratic culture and image of the city (Zulu, 1995:20).

Undeniably heritage relies and draws heavily on the past, but it has the potential and functions also as a mobilizing force for change during the current. In a sense heritage mobilizes the past in service of the future (Hall and Bombardella, 2002). This sentiment has been adopted by the City and lies at the centre of the City of Johannesburg Heritage Policy (adopted in 2004). The policy casts cultural and symbolic capital as strategic resources serving a set of larger agendas for economic development, urban reconstruction and social integration. Heritage is cast as an agent for social change, reconstruction and development, as can be viewed in the Heritage Policy document:

> "Heritage is widely acknowledged to have an important potential as a catalyst for development. Johannesburg's heritage resources should therefore be marshalled in support of the City's long-term development goals and 2030 Strategy. The challenge is not only to preserve historic resources, but also to use them as positive instruments for growth and change" (City of Johannesburg. Arts Culture & Heritage Services 2004, p. 9).

The policies of the City of Johannesburg are positioned either as being part of the upper tier or the second tier. The former, includes over arching policies that are designed to establish the direction of the City as a whole, while the latter are specific policies, such as the Public Art Policy, the Policy on Naming Public Places and the Heritage Policy Framework.

Joburg 2030, a high-level, first tier policy, first published in 2002, outlined the City's economic vision and strategy, presenting a long-term growth strategy for the economic revival of the city over the following 28 years. The focus of the program was economic growth, which was billed as the driver for creating a better city, with the local authority tasked with the responsibility of creating an environment conducive to investment.

Central to the initiative of building a *"a globally competitive African World class City"* was the task of transforming the central Johannesburg into an attractive and viable location for investment. The inner-city is to be revamped in order to reclaim its status as a prime location for business, as detailed above. As the regeneration process has progressed is has also developed and the renewal strategies have become more diversified. Instead of focusing exclusively on the primary issues of cleansing the city and achieving physical security, the program has also embraced the idea of improving the aesthetics of the city as well as marketing it through image. This has included improvements in areas like Ghandi Square and the adjoining Mill Street Mining Mall, which have been developed as visual spectacles aimed an enhancing the image of those places in the city. The drive to re-invent, re-image and re-market the inner city must also be read as a response to the flight of capital from the inner city detailed above. Constitutional Hill should be viewed in this context.

Part of reimagining the city also included the re-naming of public places, initially there were only a few changes, these included the renaming of Van der Bijl Square to Gandhi Square (Jenkins, 1997:136). A forerunner in the campaign to re-name public spaces, the renaming of Van der Bijl Square to Gandhi Square was followed by the renaming of the Library Gardens as Beyers Naudé Square in 2001, in 2003 and 2004 the naming of streets in Newtown after popular artists and musicians and the re-naming in 2006 of Harrow Road to Joe Slovo Drive.

As part of this policy certain iconic places in the city centre were redeveloped, beginning with Gandhi Square, the City then progressed to transform Constitution Hill, Mary Fitzgerald Square and the Drill Hall. These iconic spaces were seen as sites with strong heritage or cultural significance, and which are seen by city strategists as providing geographical anchor points to the urban form and fabric of the inner city (City of Johannesburg, 2007:19).

While *Joburg 2030* was wielded creatively to include heritage, it is its essence concerned primarily with economic development and is in fact silent on issues of heritage and cultural development. Ensuing policy formulations have since attempted to foster engagement with the cultural sphere. Subsequent policy directives have since come to frame art, culture and heritage not only in economic terms but also as useful tools for enabling social integration and inclusion.

In 2004, the City's first post-apartheid cultural policy was published, titled the Heritage Policy Framework, it followed in the vein of *Joburg 2030* and highlighted the economic benefits of heritage development as a catalyst for investment and urban renewal. Heritage was formulated as a critical asset in the construction of a world class city which celebrates its own diversity:

> *"Johannesburg's heritage creates a unique sense of place and has a critical role to play in the construction of a World Class African City as envisioned by Council. Key assets from Johannesburg's past provide the makings, in cultural terms, of a world class African City which is at the same time both cosmopolitan and distinctively African" (City of Johannesburg, 2004:7).*

Social inclusion emerges as the key principle under-riding the City's heritage programme, while heritage is cast as inclusive, multi faceted and open, recognizing and respecting the memories and heritage of all those living in Johannesburg and existing in the city.

A further policy, *The Public Art Policy,* was launched on 2006, its stated goal was to promote cultural diversity and building social inclusion. Art, in the policy, is formulated as a powerful instrument for re-claiming and activating public space into

place that is accommodating of all people and interests. As can be seen in documents preamble, which highlights and celebrates diversity:

> *"A vibrant public art programme offers a range of benefits and opportunities for enhancing the urban environment, increasing the use and enjoyment of public space, and building social cohesion. Public art provides a means of celebrating Johannesburg's unique culture, diverse communities and rich history. It offers shared symbols which build social cohesion, contribute to civic pride and help forge a positive identity for the city"*
>
> (City of Johannesburg. Arts, Culture & Heritage Services 2006).

An orientation around celebrating diversity, of promoting social inclusion and of place-making manifest also in the *Policy on Naming and Re-naming Public Places* (2007). The preamble of the policy document makes explicit the importance of naming as means of giving meaning and of claiming territory and criteria for motivating and prioritizing name changes are guided by the aim of making public space more inclusive and democratic.

Social exclusion has also been retained as a priority of the City, as was evidenced by the release of a new high-level City policy and strategy document, *The Human Development Strategy* (HDS). Released in 2005, it was intended to accompany the City's economic blueprint, *Joburg 2030* as a major pillar of City policy.

HDS emerged partially in response to critiques that argued that *Joburg 2030* had failed to address the immediate problems of poverty, inequality and social exclusion affecting the urban poor. The programme dedicates itself to humanising the City's economic development strategy, responding primarily to the needs of marginalised and excluded communities, particularly among the urban poor.

Conclusively it can be seen how the goals of social inclusion and spatial justice have becoming increasingly important in the policy developments of the City in the period from 2004 t0 2007. New visions have been advanced of post- apartheid public spaces, denoted by unifying new names, graced by public art that speaks to the cosmopolitan identity of the city, and offering appealing venues where people interact in their full diversity.

This chapter has considered the transformation of the city of Johannesburg. The next chapter offers a discussion of the transformation of the law, through constitutional transformation.

TRANSFORMING THE LAW

Introduction

In his seminal article, *Our Administrative Law – A Dismal Science?*(1986) WHB Dean lamented the *'depressing'* nature of administrative law in South Africa. His lugubriousness was attributed to the unfettered freedom enjoyed by the then government and the corollary passive response by the judiciary. Surveying cases dealing with the Internal Security Act (74 of 1982.) (ISA), is a useful method for illustrating point, revealing a vista of the pervasive inclination of the courts towards 'executive mindedness' and obeisance to the legislature and executive. The adoption of the final Constitution in 1996 engendered a new era in administrative law in South Africa marked by a commitment to transformation that is grounded in a respect for the rule of law and *'fundamental rights and is accountable to the broader public'*. [2]

Curiously, or perhaps interestingly, the commitment of the post-apartheid order to the supremacy of the constitution and the rule of the law does not mark a deviation from the attitude of the apartheid regime, that was (formally) invested in the supremacy of the rule of law. This conception lies at the core of this paper, which is geared towards a discussion of the rule of law in both pre and post democratic South Africa in light of the goal of constitutional transformation. This will include an elaboration on the rule of law, the concept of transformative constitutionalism and the interplay between the two (rule of law and transformative constitutionalism). The discussion will be contextualized by consideration of sections 29(1) and 29(6) of the ISA.

The Rule of Law

The rule of law, although an *'exceedingly elusive notion'*(Tamanaha, 2004:9) generally makes reference to the notion that the same law applies equally to all citizens, and furthermore that the state must act within the parameters of the law (Humbly et al. 2004:9). The concept was revitalized in the 1800s by the British Jurist Dicey and has since been developed and reformulated (Dicey, 1885). There are two dominant interpretations or approaches of the rule of law namely, the formal

[2] *President of the Republic of South Africa v South African Rugby Footbal Unio*n 2000 (1) SA 1 (CC) at para 133.

interpretation and the substantive interpretation. The former, is proposed by writers, like Fuller, who deduced procedural guidelines for the enactment of laws from the rule of law (Humbly eta al. 2004:27). Those who ascribe to this interpretation maintain that the law should be prospective, well-known, with characteristics of generality, equality, and certainty. While the substantive interpretation, is marked by the conviction that the rule of law incorporates protection of certain individual rights. As can be seen in the three main propositions gleaned from Tony Mathews' *Freedom State Security and the Rule of Law. '* (Mathews, 1986:20).

Apartheid and the Rule of Law

As was previously mentioned, the apartheid regime was committed in the rule of law. In fact save for the ideological underpinning of racism and separation, the constitutional structure closely resembled that of the British order (Corder, 1989:16). The judiciary was tasked with interpreting the law and was authorized to access the actions of the executive, determining whether they fell within the parameters established by the legislation, however they did not have the authority to invalidate statues (save for a few exceptions). [3]

The written constitutions at the time rendered the judiciary as structurally independent, but as time progressed the judiciary became increasingly accommodating of the executive, at times consolidating the authoritarian rule of the government. This is particularly evident in the judiciaries dealing with national security detentions. Because the legal structures remained the judiciary were able to use the common law principles that would allow them to constrain executive power in this matter. However the judiciary, generally, shied away from strong judicial activism and instead legitimized the states actions and power (Dyzenhaus, 1998:168). There were anomalies among the cases and occasionally the judiciary did step forward. One such exception can be seen in the judgment of *Hurley v Minister of Law and Order,*[4] here the court held that that reasonableness should be the marker in accessing whether and an action performed under the auspice of the ISA is legitimate.

[3] *Harris v. Minister of the Interior* (1952), *Minister of the Interior v. Harris* (1952).

[4] 1986 (3) SA 568 (A).

This was in contrast to the general position of the courts that usually used a subjective test when assessing actions.

The ISA, which sanctioned pre-trial and preventative detention, was at the centre of the case and is a useful example to contemplate the untrammelled power that the doctrine of parliamentary sovereignty afforded to the legislature and the executive. Section 29(1) authorized certain police officers to detain persons for an indefinite period, if they suspected that the person had committed or was about to commit acts of terrorism or subversion. Section 29(6) introduced an ouster clause that prevented the courts from assessing actions committed under this act.

Reading section 29(1) of the act through the prism of the formal rule of law reveals the harrowing reality that the exclusively procedural nature of this approach places little limits on the substance of laws. The formal interpretation of the axiom, requires only that the same law apply to everyone, including the state, in effect pairing itself with legality.

Surveying the response of the judiciary when dealing with matters that revolved around the Internal Security Act, reveals a disappointing attitude on the part of the courts, who failed to challenge state power through the common law, and instead ratified state power, delivering *'steel to the hand that crushed the people'* (McBride, 1997:28). This is evident in *Omar v Minister of Law and Order,* [5] whose challenge of the emergency regulations was rejected by the majority, with only a dissenting judgment up holding the right to a hearing and counsel. The judgment was confirmed in *Ngqumba v. Staatspresident,* [6] where the court found in favour of the state despite the fact that it was proven that the State had acted in a manner that violated the act. [7]

Section 29(2) amounted to an ouster clause, prohibiting the judiciary from monitoring actions performed under this act. This would be a violation of the rule of law (in both a formal and substantive reading) as it amounts to lawlessness for the state, because

[5] 19878 (3) SCA,

[6] 1988 (4) SA

[7] Ibid at 229

their actions can't be judged or assessed in a court, elevating them to a position above the law. This although not articulated was recognized by the courts who did assess actions performed under the act. Unfortunately, save for the exception of *Hurley,* the court chose a subjective standard of analyses and not the objective test of reasonableness. Neglecting the opportunity to impose an objective standard the courts in *Omar* and *Bill* and instead adhered to the differential textualism of Chief Justice Steyn.

What is clear from this, albeit superficial, rendition of the courts performances, is that the courts chose to interpret the rule of law through the formal approach, limiting itself to increasingly narrow readings of individual rights, and embracing ever growing executive power. A formal reading of the rule of law has the potential to legitimate the worst draconian laws - provided that they comply with the formal procedural guidelines. However the judgments in *Hurley*, and the dissenting judgment in *Omar* and *Goldberg v Minister of Prisons,* prove that alternative readings of the rule of the law can secure some individual rights.

This refutes the common presumption that the establishment of the structures that objectively appear to be committed to the rule of law will automatically manifest in a legal culture that is committed to justice. Furthermore it calls into question the moral significance of the rule of law, in the post-apartheid era.

Rule of Law in post-apartheid South Africa.

1994 saw the first inclusive democratic elections in South Africa and the formal demise of Apartheid, but this single act, far shy of consolidating the new nation, merely represented the transformation that would have to take place politically, economically, socially, culturally and legally. After much negotiation, tension and consultation at CODESA the interim of constitution of South Africa was finally produced. The adoption of the interim constitution in 1994 marked the wake of a new order and most importantly - a sentiment that the era of legally sanctioned oppression and authoritarianism of Apartheid had ended. As an institution the Constitutional Court was tasked with the protection of the democratic principles and values enshrined in the Constitution.

Post-apartheid South Africa has seen a deep commitment to the rule of law, which is included in the founding values of the Constitution is the *'supremacy of the constitution and the rule of law'*. However this is a formal commitment that translated means that all actions of the state and legislature must be in accordance with the constitution. What really distinguishes this era from its predecessor is not a commitment to the rule of law but rather that the content of the law, the nature of the ideology that is being committed to. This ideology manifests itself in the securities and promises established in the Constitution and furthermore the commitment of the constitution and its court to constitutionalism transformation. As a term, constitutional transformation is difficult to define and often contested (Langa, 2006). In search of a definition, the previous deputy chief justice of the court, Pius Langa reaches for the Constitution itself, suggesting that the epilogue, describing the constitution, might offer a useful way forward. It describes the constitution as follows:

> *'...a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.'*
>
> (Constitution of Republic of South Africa Act 1996).

Langa's conviction that constitutional transformation amounts to a commitment to use the constitution to remodel society to greater resemble one that is just and fair while remedying the injustices of the past is compatible with the readings of both Klare and (surprisingly) Van der Walt (Klare, 1998) (Van der Walt, 2006:22).

In deconstructing the term, constitutional transformation, Van der Walt separates the two words, exploring their genealogy he reveals the term to be an oxymoron. With the imperative element in the term, constitutionalism suggests stability, peace and security, while the transformative component conjures presentiments of radical change. Van der Walt's reading might lead one to conclude that the term is paradoxical. However this is refuted once one considers Klare's emphasis on the long-term notion of the project, this allows for a useful middle ground that is cognisant of the tumultuous context within which democracy was negotiated.

The project of constitutional transformation of South Africa incorporates the transformation of legal culture, a transformation from 'a culture of authority to a culture of justification' (Mureinik, 1994:32). Where decisions by the state (executive, judiciary and legislature) must be substantively justifiable in terms of the values and rights enshrined in the constitution.

This means that the judiciary would no longer be able to use a narrow interpretation of the rule of law, dogmatically applying the laws of the legislature. Rather the judiciary must defend their decisions in terms of authority and constitutional rights and values of.

Furthermore, the dominant tendency towards a formalistic, technical approach to law seems inconstant with constitutional transformation and its commitment to substantive reasoning (Klare, 1998:168). Substantive reasoning, Langa argues, is premised on observant scrutinizing of the principles informing legislation and the judicial response to them (Langa, 2006). As was seen earlier in this chapter a purely formalistic approach derogates that responsibility of the judiciary with often egregious results. As was the case when interpreting the ISA, one imagines that had the act been introduced today the court would be compelled to apply a substantial reasoning to the act. In doing so the court would evaluate the act against constitution values in order to determined whether the act passes constitutional muster.

Section 29(1) of ISA violates a number of rights and values such as Equality, Human Dignity, Freedom and Security of the person, Freedom of Movement, Just Administrative action, Access to Courts, Rights to a Council. While the courts have developed a process for interpreting these rights, it will suffice to say that the extreme derogation of the rights that section 29(1) entails would render it unconstitutional and not in line with the rule of law.

Similarly the ouster clause in section 29(6), would violate the separation of powers enshrined in the constitution as it would impress on the independence of the judiciary (s165(2)). This violation would render section 29(6) unconstitutional and not in line with the rule of law.

What emerges from this discussion is that the rule of law is little more than a principle that is dependent on responsible judicious politics and ethics. Transformative constitutionalism demands a substantial reading of the rule of law, in which the state is accountable to the constitution. In comparison, during the apartheid era the captive imagination of the judiciary limited it to a formal reading, resulting in a conflation of the rule of law with rule by law and the banality of evil (Arendt, 2006).

The phrase, *'the banality of evil'* first appeared in Arendt's accounts of the trial of Adolf Eichmann, which were later coalesced into the book Eichmann in Jerusalem. Published in the same year as On Revolution, the boo, while minting a certain continuity with her previous work, also introduces a new interest to Arendt's canon, that of the interrelated activities of thinking and judging.

On the last page of Eichmann in Jerusalem, Arendt concludes by characterising Eichmann's actions as a Nazi official as the banality of evil. Eichmann's role was as chief administrator and architect of the genocidal "final solution" (Endlosung) for the "Jewish problem."

Arendt's use of the word *banality* to characterise these actions that had resulted in such horrendous consequences was not employed to make light of the tragedy of the holocaust. Instead Arendt aimed to challenge the popular conceptualisation that located the cause of the inexplicable atrocities committed by the Nazi's with malevolence, evil and a delight in murder. Arendt concluded, instead, that Eichmann's actions were the manifestation of the failure of the faculties of sound thinking and judgement.

A spectator at his trial in Jerusalem, Arendt observed that Eichmann did not seem to possess or exhibiting a malevolent hatred of Jewish people, that may have explained his involvement in the holocaust, in fact Eichmann presented as a relatively innocuous individual. According to Arendt, Eichmann operated without thinking or reflecting on his actions, stemming from the demands made on him, or their consequences. He acted unthinkingly, following orders, efficiently carrying them out, with no consideration of their effects upon those he targeted. These actions were mechanical

and so the extermination of the Jews became indistinguishable from any other bureaucratically assigned and discharged responsibility for Eichmann and his cohorts.

While it did not mean that Eichmann was entirely innocent, Arendt maintained that he was in fact constitutively incapable of practicing the kind of judgment and consciousness that would make the suffering of his victims appreciable.

It was not the presence of hatred that enabled Eichmann to perpetrate the genocide, but the absence of the imaginative capacities that would have made the human and moral dimensions of his activities tangible for him. Eichmann failed to exercise his capacity of thinking, of having an internal dialogue with himself, which would have permitted self-awareness of the evil nature of his deeds. This amounted to a failure to use self-reflection as a basis for judgement, the faculty that would have required Eichmann to exercise his imagination so as to contemplate the nature of his deeds from the experiential standpoint of his victims. This connection between the complicity with political evil and the failure of thinking and judgement inspired the last phase of Arendt's work, which sought to explicate the nature of these faculties and their constitutive role for politically and morally responsible choices.

This chapter has argued that the new Constitution is at the centre of the project to transform and reshape the law in South Africa, but also the they obeisance to the rule of law does not mark a substantial departure from the ethos of the law during the apartheid era. The next chapter, will consider the Constitutional Court, arguing that the Court is a physical embodiment of a vision a vision of the law, integral to the post apartheid democratic vision.

CONSTITUTIONAL COURT, A PREMATURE MONUMENT

Introduction

Museums are collections, they are specific collections that are used to preserve and promote different agenda's or tell different stories. The Constitutional Court functions in a similar way to a museum in that it tries to document the cruelty of the previous legal system and inspire faith in the law in post 1994.

The tenth anniversary of the South African Constitution saw the commissioning and publishing of *Light on a Hill: Building the Constitutional Court of South Africa* (2006). The book is an interesting amalgamation of the reflections and analyses of those who have been identified as key actors involved in the construction of the court which it boldly claims is the 'most important building of South Africa's Democracy'. This chapter is build largely (though not exclusively) from this source, personal documentation of the site and the work of others who have documented and analyzed the of the site.

In 2004, a new building housing the Constitutional Court was opened. Situated on the site of the old fort prison complex in Johannesburg and innovative in design because of its deliberately dismissive attitude toward traditional court structures, the court soon found itself at the centre of interest, debate and discussion within legal and architectural fraternities in South Africa and abroad.

The stated ambition underpinning the project was to create a building that would:

> *'celebrate the ideals of a progressive Constitution, commemorate the suffering and struggles of the country's past without slavishly doing obeisance to history and give visible form to the belief that all are equal before the law'.*

The Constitution itself was formalised some several months after the 1994 elections. The Judges were appointed but occupied a temporary office for almost two years, when they finally embarked on a search for a permanent home for the court. Unlike other public offices the Constitutional Court had no historic home to inherit and recycle, it was after all a new court in a new South Africa, symbolic of a new transformed legal order.

The Judges considered several options and finally settled on the Old Fort Complex on the Braamfontein Ridge in JHB, what we know today a Constitutional Hill (C.H). A large part of their rationale for positioning the Court in this specific location was embedded in spatial politics and considerations around access. It was imperative that 'normal' people be able to access the court.

History of Constitution Hill

The Constitutional Court is located on Constitution Hill, previously known as the Old Fort, it was erected in 1896 during Paul Kruger's South African Republic built around a pre-existing prison in the hopes of controlling the town, railway and mines. The Fort then changed hands and came to be controlled by the British who had secured the city during the Anglo Boer War, using the Fort as a prison. As time progressed the complex was extended with more and more buildings being added onto the site. This included the 'native prison' – Number Four, the Women's Jail and the Awaiting Trial Block.

The prisons were closed in 1983, but the dormant structure remained in the heart of the city, amongst the apartment buildings of Hillbrow.

The Fort itself was declared a national monument even before the site was chosen to house the Constitutional Court, as a result the National Monuments Council (NMC) was required to authorize the building of the court on that particular site. Once it did the Department of Public Works and the Johannesburg Metro Council advertised an international architectural competition that would determine the candidate to build and design the court.

The judges (of the competition) included architects, some of the constitutional court judges, the mayor of Johannesburg and the then Gender Commissioner. In the end the competition was won by OMM design workshop whose principle actors were Janina Masojada, Andrew Makin and Erik Orts Hansen and Urban Solutions who whose principal representative was Paul Wygers (Viljoen,B. 2006:8).

Funding for the building of the court was initially drawn from the coffers of the Department of Justice but was also subsidised by Blue IQ, a semi-autonomous agency

of the Gauteng Provincial Government. Finally in 2001 The Johannesburg Development Agency appointed the project and ground was broken.

It is true that constitutions often succeed great tragedy and in such situations are generally expected to serve as mechanisms that ensure that such tragedies never occur again. It is fitting then that the new constitution, designed deliberately to protect all groups, should be built over a site that at some point during history has seen the oppression of all groups the Boers, the British and non-white people as a result it was also a place of positive unification, where people felt solidarity with one another - creating imagined unification, but also creating an individual – human right dialogue. (Sachs,A. 2006:15)

The Constitutional Court and Constitution Square as well as the beginnings of a museum was inaugurated in 2004, on Human Rights Day. At the ceremony, the renowned architect Charles Correa likened the Court to the invention of the axe, arguing that the impact of the court would be as instrumental and influential to future court structures as the axe was to revolutionising craft and construction.

In his analyses Correa alludes to the novel nature of the court, which is after all an exceptionally unorthodox building, especially when considering the conventional character of court buildings and the fact that old materials from past buildings on the site are incorporated into it. The stated aim was to create a court building for the people, expressing a range of cultural expectations of the concepts of justice and democracy and it would become one of the central buildings around which questions of architectural identity in the new SA would circulate.

The Competition brief had two components. The first, the 'performance expectations' detailed what the building aims to do, what it stands for, how it should be experienced and what its values are. The second component spoke to the practical needs of the court. Some of the questions posed in the first half included the following questions, *how is the personality of our democracy to be manifested in a building? What does the face of democracy look like when manifested in a building? What does that democracy say when it speaks through the experiences of the users and visitors to a building designed to reflect the values of that democracy?* (Viljoen,B. 2006:11)

Location

As previously mentioned, the newly appointed judges of the court were instrumental in settling the geographic home for the court, in particular Justices Albie Sachs and Yvonne Mokgoro were instrumental in this process. The group was presented with a few different sites by the Johannesburg Metro Council. Amongst these were some older, unoccupied buildings in Johannesburg's city center – but the judges felt that the space was too crowded and that it needed a little more independence. They were also shown a vacant space at Crown Mines, which did offer a certain geographic symbolism in that it is situated in between Johannesburg and Soweto. But this was too exclusive in that its symbolism is specific to the geographic politics of Johannesburg. Another option included a space in Midrand, but being dominated by corporations and office parks the Judges insisted that it had the wrong feel. Finally the judges were taken to The Old Fort Prison complex and they 'knew immediately' that it was the right space (Sachs,A. 2006:15)

The history and accessibility of the site were ultimately the deciding factors when settling the location. The judges felt that the Old Fort Prison Complex contained a history that was relevant for the theme of human rights. This history, of the site as a prison complex, had resulted in severe fear towards the site, negativity that the judges hoped the court would counter and transform into optimism and hope.

As was mentioned earlier the geographic location of the site was instrumental in the judges decision of where to located the court. (Kriegler, J. 2006:16) On a primary level the court itself had to be accessible. In the past the site, especially as a prison was intended to be isolated, despite the fact that it was in the middle of a city, in this sense (and of course in many others) it was an unusual building. (Wygers,P. 2006:21).

From a design perspective the strategy was to reintegrate the site into the Johannesburg precinct. In order to make it physically accessible, it was important that people be able to walk freely through the site. (Masojada, J. :26). This also fell into the part of the general mission of re-socialising the urban spaces in the post-apartheid era, what was once closed by apartheid would now be opened. In order to 'open' the space routes were created along the site but in order to create space for these routes

and for other features of the court part of the awaiting trial block had to be demolished. (Wygers, P. :21)

Importantly for the architects the Court doesn't attempt to replicate international standards – the intention, according to Sachs, was for the building to be 'organic'. (Sachs. A. 2006: 27). As a result the architects shied away from traditional court structures that are usually characterized as being physically daunting, authoritative and aggressive. Instead, as stated by one of the architects Thenjiwe Mtintso, the court is 'happy, inclusive and open'. (Mtintso, T.2006 :28).

Former Justice, Yvonne Mokgoro goes further stating that the court was deliberately not imposing. Alluding to the central role that the legal system held in the old apartheid era, Mokgoro argues that participation and interaction with the court is of incredible importance in undoing the stigma of the site and of courts generally. She maintains that image of the Constitutional Court should be different that instead of being a mechanism of punishment the court should be seen as tool for protection. The former judge was, and is, however at pains to me insist that whilst the court should be warm and open to all there must be an element of power that would lead to respect. What some might call gravitas. (Mokgoro, Y. 2006:31)

The court itself is physically in the center of various features on the site and symbolically tries to bring people together under an idea of human rights. Constitution Hill lies between Hillbrow and the Civic Centre of Johannesburg, and is intended to be a bridge between these two worlds. The symbol of the bridge is a continuous one that features extensively in the court structure and the constitution in that the court and the constitution are symbols that are designed to take people forward into 'a life of dignity' (Viljoen, 2006: 36).

In keeping with the trend of recycling and papering over inherited heritage to create new inclusive ones, the architects and designers of the court retained some of the original features of the site. This deliberate intermingling of past and present in the building with specific aspects being used to physically embody a symbolic bridge between history and place. The result is that the past and present or the old and new stand side by side.

This included brick from the awaiting trial block in the foyer of the court, also some prison doors have also persisted along with the staircase of the original prison that has been left intact and now is a functional feature in the court. (Masojada, J. 2006: 36)
The awaiting trial block itself was demolished in order to create the Constitutional Square, the rest of the space was used to house the court chamber and foyer. (Masojada, J. 2006: 39).

Makin makes the point that there was only one historic architectural reference for public buildings and spaces or at least only one consistent model. It was 'authority, monumentalism (or aspiration towards it) and the symbolising of material or spiritual greatness and achievement. This method was of course wrapped up in the centralisation of serious authority, power and wealth. (Makin. 2006: 46)

There was an expressed expectation (in the design brief) that the court should represent the aspirations of SA. It should not follow the traditional model but rather reflect the hopes and aspirations of a people. (Makin. 2006: 46)

The judges were also instrumental in choosing the actual design of the court building and dismissed various models. These ranged from generic or clichéd interpretations of what a South African court should look like (for instance a submission modelled on circular huts) to obvious copies built in the model of the so-called 'international' style, which on closer inspection was simply a western style. (Sachs. 2006: 42)

In terms of style, the Constitutional Court draws on traditions of early modernism, with a strong focus on light, flow, movement and volume as opposed to mass. Craft and the human hand are also greatly celebrated resulting in a diversity of media and material. This allows for the abstract, structural features to carry emotion. The South African quality to the building according to Sachs is the 'openness, the inside-outside character, the transparency of justice under a tree.' (Sachs. 2006: 42)

Structure

The building is triple volume, but all of these are open. At the entrance stands an eight-meter wooden door, which might be perceived as intimidating but according to Masojada was there to inspire respect for the court despite the fact that the building is also meant to serve as a place where people gather and aren't afraid. (Masojada, J. 39).

Caste Concrete was the predominant material used in the construction of the site the reasoning is that it is relatively easy and cheap to construct. Concrete wall at the entrance of the portico has text in the eleven official languages. The glass triangles in the wall are the colours of the national flag – 'rose window of this cathedral to our democracy'. (Makin. 59)

According to Makin, the foyer is more important than the court chamber in communicating and relaying the symbolic message of the building. (Makin, 2006: 46). Traditionally, in buildings that are meant to project authority the inner most sections are the most important, as such there is some sort of processional process that results in filtering. This can be seen in buildings like the Taj Mahal, The White House, and the Mungal Palaces in India. They wanted to move away from this trend by making the most important spaces the point of entry, in this case the foyer. (Makin. A. 2006)

An entablature adorns the entrance to the foyer, this concrete beam bears the opening words of the Bill of Rights: human dignity, equality and freedom. As opposed to using a formal font (Roman lettering or serifs) they used the handwritings of the eleven judges – who wrote the words in the eleven official languages. It was intended that the foyer be used for public events, debates and various other gatherings it was inspired by the concept if justice under a tree, which makes reference to traditional mechanisms if justice in South Africa. The foyer was meant to be the space to welcome people into the building and was partially inspired by the term Lekgotla, which means a gathering or council. As a result, the foyer is designed to be an 'inside-outside' space. (Sachs. 2006:45). This is done through various incorporations and oddities notably the panels of hand-made ceramics that are shaped as leaves, lucky beans, flowers and grass, they were placed on the curved concrete columns. The

chandeliers are constructed out of woven wire and beads in the shape of leaves, they form a ‘canopy of leaves’ above the foyer. (Viljoen. 2006: 49)

The foyer also has practical aspect, it was designed to offer protection from the weather, and it also holds symbolic power though, in that the court gives protection and shade to the people gathering there. The glass doors and screens open up from the foyer onto the square. The building is meant to be a direct extension of the public space. This is in contrast with formal colonial buildings, in which one normally walks up toward a building encountering authority. The Court tries to undo those barriers and the foyer is meant to make you feel less alone and part of a community. (Masojada. 2006: 51)

The foyer is meant to serve as a doorway between Constitution Square and the Court Chamber. With the different rooms having different feels to them, the court chamber feels like its own building.

The court chamber is supposed to offer a combination of ‘gravitas’ and ‘openness’.
The court chamber itself is thought by most of the judges to not be intimidating, indeed it is not built in the model of traditional court chambers. Former justice, Pius Langa went so far as to claim that building itself evokes the value of human diginity. (Langa: 66)

The court chamber is meant to extend dignity to people in the use of familiar materials and textures. The colours are ‘earth colours’, there is the use of traditional patterns but not one particular culture or style.

The panels in the front of the judges bench are covered with Nguni cattle hide, it’s a reference to the traditional royal courts which were adorned with draped animal skins. Whilst the carpet is inspired by the image of light filtering through the trees and speaks to the themes of justice under the tree, nature and the concept of the outside-inside. (Makin. 2006: 68)
The Court chamber is particularly important in that it is the space in which the public interacts with the judges. The judges seating is elevated but when council stands to present they are at eye-level whilst authority is still maintained. Sachs says that this

was inspired by the sense of equality identified in the constitution. And that the judges didn't want people to feel as though they are expected to plead for their rights, the judges, he said, are not 'oracles', instead they are expected to secure rights. (Sachs. 2006:70)

A long ribbon window runs along the bottom of the exterior wall of the court. Sachs said that 'As judges, our only concern was that we would have people with their noses pressed to the window watching our proceedings'. (Sachs. 2006: 75). The ribbon window allowed them to connect with the outside world by watching the feet of people passing by. Sachs makes the point that in the winter you can barely distinguish between races and gender etc. The window also is a subtle reminder of the world outside.

The library is the fourth aspect of the building and is comprised of individual components. Along with the administrative wing, it is meant to complete the public spaces of the building. The ground floor of the library and the exhibition gallery are supposed to be accessible to the public. It also connects to the judges chambers via different ramps and routes.

Although the library is at the bottom of the slope of the site, it also forms its tallest part and is supposed to be a glowing beacon of knowledge or 'the chamber of wisdom'. (Wygners. 2006: 92)

In the middle of the library, the exhibition gallery, the foyer and the chamber is the internal courtyard. It is literally in between the space where rights are protected and the space where knowledge is stored. The Judges' Chambers are free standing three buildings that are attached to the courtyard. The individual buildings for the judges chambers are meant to symbolise the autonomy of the judges. The chambers stand in ponds of water that form part of the evaporative cooling system. The Courtyard is one of the most private spaces in the building. It is a place for quite contemplation; such a place was stipulated as a requirement in the brief. From it there is a view of the Hillbrow buildings. (Masojada, j. 2006: 102)

The building also holds a conference room, where the judges meet to discuss a judgment. In it there is an oval table. Arendt argues that the table facilitates democracy, the table both separates people gathered around it and joins them together. Symbolically is represents the individual in a community. (Makin. 2006: 124)

The materials of the building were specifically chosen for the textural structure and mechanical capacity but also for the way light interacts with them. Transparency is a politically loaded concept. In terms of the building it is meant to secure visual access. From every point in the building you can see other spaces, for example the African steps you can look up onto the square and you can see the exhibition space through the glass. On the other side of the steps in the wall if the number four prison. The transparency creates a relationship.

The interaction of the public with the court is essential for the character that they hoped to build. Human interaction is their starting point, not style. The style is defined by this. (Masajoda,J. 2006)

The Court is made up by a series of distinct parts or buildings – the Foyer, the Administrative Wing, the Court Chamber and the Library. These space are linked by a series of streets or arcades with courtyards in between them. The foyer is a connecting courtyard, it is a square with other buildings around it. The exhibition gallery is a like a public street running alongside a collection of buildings with courtyards between them. They deliberately made a series of building and not one solid building. (Masajoda. 2006: 148)

The library is ‘a box that holds books’, the Court Chamber ‘an internal, contained, protected environment’, the Foyer offers a ‘Place for gathering’ and the Exhibition Gallery is ‘Like a public street’. (Masajoda. 2006: 148)
The architecture is the result of gluing these pieces together, its fragmentation is reflected the fragmentation of C.H, which in turn represents the fragmentation of the broader city and its structure.

The Exhibition Gallery was built in the image of a public street, it is separated from the African steps by glass and shutters. Exhibition Gallery holds various artworks that have largely been donated to the Court, but this will be discussed in detail in the chapter which follows. (Vijoen,B. 2006: 156)

The Great African Steps are a 'seam' they run between things. (Masojada, J. 165) They lie between the gallery and the Number Four Prison steps. The wall that lie on either side of the steps are at odds with one another: the one wall is impenetrable the other open and transparent.

The wall of glass is covered by sunscreen panels that depict stories told by local residents and the bricks for the path was taken form the awaiting trial block. Again, the building aims to weave the past and present together.

'A building and a Nation for Everyone'

The Court is largely concerned with re-imagining the conceptual bases that informs the expectations and hence construction of public buildings. As has been mentioned the building is a complex of working buildings, a heritage site, and a community centre. Importantly it had undertaken the difficult task of creating a tangible point of reference for the notion of redemptive over repressive justice.

By papering over the old fort complex there is a recognition in the general project that architectural history can be manipulated to suit shifting ideologies. In this way it is reminiscent of the Berlin Reichstag (figure 142) which also offers an example of how architecture can concretise the imagining of unity, this is mediated and achieved through the concepts of 'transparency' and 'rebuilding'. Similarly the Constitutional Court uses large glass expanses to connect observers with the internal dynamics of the building. These formal references to the Reichstag – and the useful symbolic associations that they bring to bear on the Constitutional Court – are a reminder of the 'noteworthy modernity' that, as we have seen, is one of the ways in which national identity is propelled into the international arena in architectural terms. However, the symbolic coding of the Reichstag (and not least in the choice of the British architect Norman Foster as the author of the new buildings) attempts, as Delanty and Jones (2002: 458) put it, not to be "too particularistic, too rooted in a particular nation

code." It thus embraces, they argue, a "contested, ambiguous identity that makes it representative of post- national sentiments and identity." The Constitutional Court, on the other hand, while embracing diversity as fundamental to its symbolic coding, is quite unambiguous in terms of the extent to which these notions of 'transparency' and 'rebuilding' reinforce ideas of nation building, firmly rooted in the politics of a 'particular nation code'. The most symbolically significant elements of this 'rebuilding' in the Constitutional Court are to be seen in the 'Great African Steps' (figure 144), a walkway built with red bricks salvaged from the demolished Awaiting-Trial Prison, and which divides the new building from the old Women's Gaol. The same bricks have also been dry-packed in the main courtroom behind the judges' dais.

The decorative elements on the façade engage this idea abundantly. The eight- meter high entrance doors bear the carved numbers one to twenty seven and carvings in sign languages of each of the twenty-seven basic human rights enshrined in the constitution (figures 145 and 146). These rights are repeated in etchings on glass by various artists placed along the western length of the building; above the entrance inside the building each judge has engraved in his/her own writing the words 'dignity, freedom, equality' in one of South Africa's eleven official languages, with one in Braille. Thus, the decorative programme reiterates symbolically what the Constitution expressly states: the upholding of equality and dignity and the protection of individual expression, not least of minority voices. Inside the building, an extensive collection of artworks (some of them donated), mostly by South African artists working in a broad range of media and with diverse subject matter, reinforces the importance of the individual voice over the more conventional approach of a didactic mural programme. The references to the local – that is, the 'African' – are implied rather than explicitly stated, and carry strong symbolic associations. Most significant amongst these is the stylised tree that informs both the design of the court's logo, as well as aspects of the structure itself (figures 147 and 148). This is based on a somewhat generalised interpretation of the Southern African tradition of dispensing justice from beneath a tree,8 but has nonetheless become one of the most potent signifiers of place. As Alan Lipman (2004: 11) puts it, "[it is a] specifically local reference that is at least as apposite as the familiar scales held in a blindfolded, non-partisan symbolic representation." Structurally a 'forest' of angled piers in the entrance hall reinforces

this idea, their shaded green and brown mosaic cladding evoking a sense of bark and foliage (figure 149 and figure 150). Wooden benches, stools fashioned from tree stumps, and ceiling lights fashioned from wire by artist Walter Oltmann to look like leaves complete the effect (figure 150). In the courtroom the mottled shapes of the carpet also suggests dappled light under a tree, while formally echoing the cowhides – perhaps the most explicit reference to 'Africa' – that decorate the judges' dais, and that put an unequivocally local stamp on the court and its deliberations.

Thus, while this project may at some level be informed by a sense of a civil religion – in a democratic, secular state the constitution is, after all, the highest moral authority – it nonetheless aims at striking a fine and optimistic balance between memorialisation and constructive social intervention. This is due in no small part to the building's location on a ridge separating the densely populated, predominantly black area of Hillbrow from bureaucratic Braamfontein with its Civic Centre, and commanding a view of the predominantly white Northern Suburbs. The project is thus conceived as part of a larger context of social development and urban renewal in the city of Johannesburg, and, as such, it aims to be an accessible point for heritage, tourism and culture, rather than a self-conscious and self-reflexive symbol of nationalistic endeavor per se.

Notwithstanding the avoidance, in its decorative programme, of either somber didacticism or triumphal posturing, the Constitutional Court – like the Northern Cape Legislature – nonetheless still perpetuates the conventional fictions of nation building. Murray Edelman (1995: 83) describes these as "buildings that reinforce a belief that people's ties to a heroic past or a promising future are their important identities: that the immediate effects of their actions are trivial compared to their historic mission."

Furthermore, and despite its attempts at subdued regionalism and accessibility – what Albie Sachs describes as "a building that inserts itself in the African landscape, both physically, climatically and culturally" (O'Toole, 2004: 64) – the overriding characteristic is that of a middle-of-the-road post-modern structure that, but for aspects of the applied ornament, could be located anywhere in the industrialised world. In this context Sachs's elaborate claim that the building "will become a symbol of the transformation, a university of the people, a tribute to courage, resistance, the

ability to overcome pain, a definition of idealism" (O'Toole, 2004: 70) rings rather hollow. In fact, it exposes the extent to which the project conforms to what has become, as Lawrence Vale trenchantly observes, one of the standard ways in which new regimes – especially those struggling to wrest themselves from an odious colonial past – assert their identity. "What is often built to buttress 'national identity'", he writes, is really about three other more basic needs: the need to re-assert the sub- national identity of the sponsoring regime by equating its own specific ethnic heritage with 'the national'; the need to extend international identity through staking some new claim to noteworthy modernity; and the need to develop the personal identity of the client or designer, who views any single building project as a highly individualised imprint of self (Vale, 1999: 396).

The rhetoric of 'unity in diversity' that underscores much of the logic of this building is not entirely without precedent in the South African context. The cultural nationalism of the 1930s thus provides a compelling reference point against which to assess contemporary constructions of national unity in South Africa, not least in the extent to which this is expressed in terms of public art and architecture.

As was the case in the United States of the 1930s under Roosevelt's New Deal an exponential increase in urbanisation, coupled with the need to create employment, resulted in a number of large-scale public works projects – town and city halls, libraries, schools, post offices, and government buildings – being undertaken in South Africa's burgeoning towns and cities. And also like the public works projects in the United States, these new buildings provided a highly visible public platform for extolling the virtues of good government and the rights and responsibilities of citizenship. This was most easily achieved by means of murals and other decorative elements, which often also constructed idealised versions of history that pointed unctuously.

Guiding the writing of this thesis, has been by the notion that public buildings are relevant in the debates around the beliefs and perceptions that constitute citizens' real or imagined longing for the tangible proof of identity that is afforded by the notion of an inalienable sense of place.

The architectural solutions of these new buildings are driven by the need to establish a rhetoric of 'community' (to the extent that they consistently engage community driven processes such as mosaic workshops, craft projects, etc. in their realisation). In this way, their decorative programmes enable a shift in the discourse of public architecture away from staid notions of civic decorum and conventionalised grandeur towards open-endedness, inclusivity, and a sense of a deliberate playing with the elements and expectations of the public space in relation to notions of individualised and personal place. This raises interesting questions not only around the notion of constructing, both literally and metaphorically, 'imagined communities' (to use Benedict Anderson's tireless phrase), but also the centrality of visual experience to urban experience in the construction of a postcolonial, urban identity.

This, however, is not entirely unproblematic. The ostensible 'normalising' of issues of race and identity that informs the court effectively presents a spectacle of benign nationalism rooted in 'the community.' This is, in turn, a manifestation of the kind of 'populist' nationalism that both Gellner (1983) and Hobsbawm (1990) suggest is more 'genuine' since it (ostensibly) responds spontaneously to its political context rather than being manufactured by a cultural elite. However, exactly what defines and who speaks for this unproblematic community is, as Donald McNeill and Mark Tewdwr-Jones (2003: 739) note, a "key issue of hegemonic politics and the fact that these issues are themselves ideological is often ignored by both politicians and media." This observation is amply borne out, as we have seen, both by the media and by political responses to both projects.

Benedict Anderson is instructive on this point in so far as he refuses, as David Carroll (2000: 119) points out, to "privilege other (i.e. 'authentic' ethnic, linguistic, geographic or tribal) forms of community as original or genuine ... lived or directly experienced rather than imagined'. "In fact," writes Anderson, all communities larger than primordial villages of face-to-face contact (and perhaps even these) are imagined. Communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined (Anderson 1983: 6).

The implication, therefore, that there is such a thing as a good, natural nationalism as opposed to a bad, manufactured nationalism is fundamentally flawed – by definition,

nationalism is a highly subjective ideological construct and can only function in terms of exclusions, the 'us' and, in the absence of a clearly definable 'them', the 'not us'. In these terms, I tend to agree with Christoph Marx's assertion that cultural nationalist ideology is "inherently conformist and hence inimical to the pluralism implicit in the democratic project" (Marx, 2002: 50).

Secondly, the building, despite the very best of democratic intentions, still buys into a somewhat dated and conventional (that is, 'first world') notion of the morally uplifting and didactic potential of public buildings. Extrapolating from Anitra Nettleton's (2003) enquiry into the form and function of monuments in post-colonial Africa one might well ask, then, 'can public buildings speak in African languages?' The Constitutional Court's answer to this seems to be 'yes', if given a grammar of whimsicality, eclectic regionalism, and open-endedness. I would argue, however, that while this new grammar may appeal to a broader audience, it also constitutes what Michael Billig (1995) has identified as "banal nationalism", or a nationalism that is neither obvious nor oppressive, and therefore more likely to lodge unnoticed in the collective unconscious. Of course Billig's concept of 'banal nationalism' refers to the way in which identity politics are reinforced in the stable, affluent, and ostensibly 'anational' societies of the developed world. However, I would nonetheless argue that, given globalisation and the accelerated rate of identification with 'first-world' social, cultural, and economic values, it is, mutatis mutandis equally applicable in post-apartheid South Africa.

On the surface of it, this is unproblematic, particularly in view of South Africa's miraculously peaceful transition to democracy, and the resultant complexities of balancing ethnic with social identities, widespread poverty with free market capitalism, and Africanism with internationalism. Nonetheless, it is the very insidiousness of this banality that we should be mindful of. As Billig (1995: 175) reminds us, national identities are always rooted within powerful social structures, which "inevitably reproduce hegemonic relations of inequity." Given the accessible and odious examples both of Afrikaner nationalism and the propensity for African nation states to degenerate into one party dictatorships, I think that one may well conclude with Billig (1995: 177) that "if the future remains uncertain, we know the

past history of nationalism. And that should be sufficient to encourage a habit of watchful suspicion."

Conclusion

In the final analysis, the lessons of the 1930s are clear: assumptions about cultural identity, no matter how inclusive, are never neutral, and imagined communities – and their representation in the visual arts – are never permanent. This thesis has considered the ways that national identity is constructed in the modern nation state and has concluded that ideology is of paramount importance in this project. Ideology can manifest in the landscape too, and part of this paper has been to detail the ways in which landscape can be read in order to uncover ideology in creating culture. This reading was applied to the chapters on transforming the Johannesburg and the Constitutional Court. In reading the landscape of the Court this paper concludes that the Court is a physical manifestation of a vision of the law that is removed from its tainted past and is transformed. However while the vision is one of brilliance, it has yet to be realised and in this sense the Court is a premature monument to a transformed legal system.

Images of the Court



The new Constitutional Court, viewed from the south, Johannesburg. 2001 – 04. Built on the site of, and incorporating into its precinct sections of, Johannesburg's infamous fort and 'native prison', the new Constitutional Court is at once a complex of working buildings, a heritage site, and a community centre. As such, it is a concrete symbol of the notion of redemptive over repressive justice, that is at the heart of South Africa's democratic constitution.



The Constitutional Court viewed from the east, Johannesburg. 2001 – 04. The references to the local – i.e. the 'African'– are implied rather than explicitly stated, and carry strong symbolic associations. Most significant amongst these is the stylised tree that informs both the design of the court's logo, seen here on a balcony on the east façade (and inset detail) – as well as aspects of the structure itself (see figures 148 – 150 below). This is based on a somewhat generalised interpretation of the Southern African tradition of dispensing justice from beneath a tree, but has nonetheless become one of the most potent signifiers of place.



The Constitutional Court, Johannesburg. 2001 – 04. Built on the site of, and incorporating into its precinct, Johannesburg's infamous fort and 'native prison', the Constitutional Court project, like Berlin's Reichstag (figure 142 above), recognizes that architectural history can be manipulated to suit shifting ideologies. Also like the Reichstag, this is engaged structurally partly through a metaphor of 'transparency' – large expanses of glass provide glimpses of the inner workings of the building – as well through the metaphor of 'rebuilding': sections of the original buildings have been incorporated into the new structures, while red bricks salvaged from the demolished Awaiting-Trial Prison have been used to construct the 'Great African Steps' (figure 144 below).



The ‘Great African Steps,’ Constitutional Court, Johannesburg. 2001 – 04.



The entrance doors to the Constitutional Court, Johannesburg. 2001 – 04. The eight metre high entrance doors bear the carved numbers one to twenty seven and carvings in sign languages (see detail, figure 146 below) of each of the twenty seven basic human rights enshrined in the constitution.



Detail of the carving on the entrance doors to the Constitutional Court, Johannesburg. 2001 – 04. The carvers' names are included with the carvings in sign language of the twenty seven human rights enshrined in the constitution.



The foyer of the Constitutional Court, Johannesburg. 2001 – 04. A ‘forest’ of angled piers in the entrance hall reiterates the idea, first suggested in the logo of the African tradition of dispensing justice from beneath a tree, with their shaded green and brown mosaic cladding evoking a sense of bark and foliage (detail, figure 149 below). The wire chandeliers by artist South African artist Walter Oltmann are fashioned to resemble leaves.



Detail of the angled piers in the foyer of the Constitutional Court, Johannesburg. 2001 – 04. The shaded green and brown mosaic cladding of the angled piers in the foyer evokes a sense of bark and foliage, and thus reinforces the 'African' notion of justice being dispensed from beneath a tree. The use of mosaic, however, is not entirely unproblematic: Judging both by the Constitutional Court and the Northern Cape Legislature, as well as by a plethora of recent commercial buildings throughout South Africa, mosaic seems lately to have become a signifier of 'Africa'. This is of course patent nonsense if one is concerned with 'authentic' notions of regional materials and techniques – mosaic, after all, is not a 'traditional' decorative technique anywhere in sub-Saharan Africa. It seems to me rather that mosaic, in addition to its pleasing decorative qualities, represents also to the first world sensibility the notion of the 'hand made' or 'craft' and has thus, by some uneasy logic, comes to represent 'Africa'.



Wooden stools in the foyer of the Constitutional Court, Johannesburg. 2001 – 04. Stools fashioned from tree stumps complete the effect of a ‘forest’, and thus reiterate the notion of the ‘African’ tradition of justice being dispensed from beneath a tree.

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