

# *Tshwane 2055* and the (im)possibility of spatial justice

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## OPSOMMING

### *Tshwane 2055* en die (On)moontlikheid van Ruimtelike Geregtigheid

Die *Tshwane 2055* beleidsdokument bevat verskeie verwysings na ruimtelike geregtigheid. Deur te steun op die werk van Henri Lefebvre en Doreen Massey verskaf die artikel 'n inhoud aan die konsep van ruimtelike geregtigheid en reageer daardeur op Philippopoulos-Mihalopoulos se kritiek dat ruimtelike geregtigheid onvoldoende teoretiese grondslag het en nie bloot kan dui op geregtigheid binne ruimtes nie. Teen die agtergrond van hierdie teorieë, tesame met die uitkoms en nadraai van die *Schubart Park* beslissing, is die sentrale argument dat *Tshwane 2055* beide die moontlikheid en onmoontlikheid van ruimtelike geregtigheid inhou. Die UN-HABITAT verslag van die verenigde nasies en *Joburg 2030* dien as voorbeelde van die spanning tussen stedelike opknapping-oogmerke en geregtigheid.

## 1 Introduction

In October 2012 the Constitutional Court ordered the Tshwane Metropolitan Council (“the City”) to meaningfully engage with the residents of Schubart Park regarding their interim relocation and the restoration of the housing complex. This interfered with the City’s plans to demolish the apartment blocks and the *Tshwane 2055* plan now includes the rejuvenation of the Schubart Park housing complex in phase 1 of the West Capital Project, at an estimated cost of R1.25 billion. In this article I critically consider the definition of, and references to, spatial justice in the *Tshwane 2055* plan. The central question is whether these references present the possibility of spatial justice as envisaged by Philippopoulos-Mihalopoulos. Spatial justice, understood from a radical geographical perspective, acknowledges that space produces and is produced by unequal social relationships and insists on inhabitation as opposed to habitat. Against the backdrop of spatial justice and with reference to the aftermath of the *Schubart Park* case I explore the relationship between law, space and justice. I take up in turn the history, present and future of the Schubart Park apartment complex and the *Tshwane 2055* plan. Thereafter, I look at what the concept of spatial justice could and should entail by referring to the work of Andreas Philippopoulos-Mihalopoulos, Doreen Massey and Henri Lefebvre and lastly, I compare the *Tshwane 2055* plan with *Joburg 2030* and the United Nation’s UN-HABITAT policy, in order to illustrate a discord between the aims of gentrification and spatial justice.

## 2 Schubart Park and Meaningful Consultation

During September 2011 approximately 700 families were forcibly removed from the Schubart Park housing complex by the City of Tshwane Metro Police.<sup>1</sup> After a year of litigation, the Constitutional Court found in favour of the Schubart Park residents and against the City of Tshwane metropolitan municipality. The Constitutional Court ruled that the City's alleged evacuation of the residents actually constituted an eviction from their homes and, because the City had failed to enter into meaningful engagement prior to the removal, the evictions were unlawful. Another year after the judgment of the Constitutional Court, in 2013, Frank Chikane, facilitator of the negotiations between the City and the former residents, reported that 388 families were furnished with alternative accommodation and that 69 of the families that have been "verified as genuine former residents" were still awaiting accommodation.<sup>2</sup> While the more immediate relief of alternative accommodation is still pending, the City of Tshwane has published a longer-term vision for the Schubart Park housing complex in the *Tshwane 2055* policy. I read the rest of the references to spatial justice in the *Tshwane 2055* against the backdrop of the events that transpired around Schubart Park and the new plans for the rejuvenation thereof. The words of City of Tshwane Mayor Kgosientso Ramakgopa, "[e]fforts to clean up Pretoria city centre will be a painful process that must be tackled", aptly capture the tension between world-class city status and spatial justice within these so-called world-class cities.<sup>3</sup>

In terms of the order of the Constitutional Court, the former residents of Schubart Park were entitled to the occupation of their homes as "soon as [was] reasonably possible".<sup>4</sup> This order was based on the finding that the order of the North Gauteng High Court (the court *a quo* that heard the urgent application for an interdict to prevent the evacuation of the residents from Schubart Park) did not constitute an order for the eviction of the residents, as required by section 26(3) of the Constitution. In order for the residents to occupy their homes again, the Constitutional Court ordered the parties to enter into meaningful engagements and stipulated a number of aspects on which the parties should reach agreement.<sup>5</sup> These aspects included the identification of residents who occupied the apartment complex just prior to the evictions, the date when the occupants who were identified would be granted occupation of Schubart Park again, the way in which the City would restore occupation, how

1 *Schubart Park Residents' Association and others v City of Tshwane Metropolitan* 2013 (1) SA 323 (CC) par 2.

2 "Former Schubart Park residents unhappy with rehousing schedule" *Mail and Guardian* 21 October 2013 available at <http://mg.co.za/article/2013-10-21-first-388-schubart-residents-rehoused> (accessed 2014-02-25).

3 "Cleaning up Pretoria 'painful'" *Independent Newspaper* (16 June 2012) available at <http://www.iol.co.za/news/south-africa/gauteng/cleaning-up-pretoria-painful> [accessed 26 Feb 2014].

4 *Schubart Park v City of Tshwane* point 4 of the order.

5 *Schubart Park v City of Tshwane* points 5.1 – 5.6 of the order.

services will be paid for once residents occupy the flats again, the alternative accommodation that the City will provide pending the restoration of the complex, as well as a method according to which the consultations will take place and differences will be resolved. It is clear from this part of the Constitutional Court's order that the meaningful consultation between former residents and the City of Tshwane were not only on the issue of alternative accommodation, but definitely also on the fate of the dilapidated apartment complex. *Tshwane 2055* is, amongst other things, a policy directive on the future of Schubart Park.

Despite the *Tshwane 2055* document setting out the public consultation processes followed in drafting the plan, it is uncertain whether the policy is a result of the "meaningful consultation" that the Constitutional Court ordered. Newspaper reports suggest that the residents and the City do not share the same vision for Schubart Park. In April 2013, residents' committee coordinator Mashao Chauke, said that the City of Tshwane is merely "trying to ... demolish the building to build cheaper flats, which would be private".<sup>6</sup> In the same newspaper report a spokesperson of the City of Tshwane, Blessing Manale opined that a "quick fix structural renovations and face lift of the building at current estimates of R700m with no costs shared by the Schubart Park residents was not equitable or fair to [the] rest of the city's ratepayers".<sup>7</sup> This report was in response to the state of the city address by the executive mayor of the City of Tshwane delivered on 4 April 2013. Under the heading "Promotion of Safe and Secure Communities", the mayor stated:

"One of the burning issues on our agenda with respect to safe and secure living in the city was the situation at the Schubart Park flats. Arising from this, we have engaged with Schubart Park residents and used all means provided by our democratic system, including the decision by the highest court in the land, the Constitutional Court, to pursue meaningful discussion to resolve matters of dispute".<sup>8</sup>

The wording in the mayor's address almost suggests that the City was the party who approached the Constitutional Court for guidance on the matter, while the facts surrounding the Schubart Park case shows only unwillingness on the side of the City to follow the procedures prescribed by and a disregard for the rights that the Constitution afforded to the residents. Furthermore, according to the address the city and former residents are still engaged in consultations. According to press releases

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6 *The New Age* (15 April 2013) available at [http://www.thenewage.co.za/92002-1008-53-Schubart\\_Park\\_row\\_simmers](http://www.thenewage.co.za/92002-1008-53-Schubart_Park_row_simmers) (accessed 2013-10-15).

7 *Ibid.*

8 State of the city address (4 April 2013) available at <http://www.tshwane.gov.za/AboutTshwane/NewsandEvents/news/Pages/State-of-the-City-Address-by-His-Worship-the-Executive-Mayor-of-the-City-of-Tshwane.aspx> (accessed 2013-10-16). His address continued to explain that the City was still engaged in consultations with the residents and that a facilitator had been appointed to facilitate the discussions.

on the SERI and LHR websites,<sup>9</sup> consultations barely took place to secure alternative accommodation, let alone that the former residents had a say in the grand scheme for Schubart Park envisioned by the City. Schubart Park was again mentioned in the 2014 state of the capital address delivered on 3 April 2014. This time, the tone was slightly different and acknowledged that the order of the Constitutional Court was contrary to the original plans of the City:<sup>10</sup>

“In order to comply with the Constitutional Court order regarding the former Schubart Park residents, the City’s Mayoral Committee resolved to refurbish Schubart Park against the initial proposal of demolishing it. This is the result of a meaningful engagement required by the Constitutional Court between the City of Tshwane and the former Schubart Park residents. This refurbishment will be in line with the City of Tshwane’s West Capital Precinct Development and the Inner City Regeneration initiative”.<sup>11</sup>

In August 2013, the website of the City of Tshwane reported on the *Tshwane 2055* policy under a heading “Cash injection for the West precinct” that “plans are going ahead to redevelop and uplift the inner city, with R6-billion earmarked for the West Capital Project. It is an ambitious plan for housing, mixed land use, retail, commercial and health facilities”. According to this report, the redevelopment will consist of different phases and the first phase will “start with the Schubart Park residential complex which, in light of the recent Constitutional Court decision, serves as a natural first phase that can be implemented over a relatively short period”.<sup>12</sup> An October 2013 media release by the City claimed that there was meaningful consultation in accordance with the order of the Constitutional Court because the “parties held a series of intensive meetings in June 2013”.<sup>13</sup> The report continues and states that the “buildings will be refurbished in terms of designs that will adapt the buildings to be a modern day mixed development precinct including both social housing and rental stock to cater for the returning residents”.<sup>14</sup> The City “shared its broader vision of redevelopment of the site with a more futuristic thinking guided by a new growth trajectory and

9 <http://www.seri-sa.org/index.php/2013-04-09-14-18-31/press-statement-archive> & <http://www.lhr.org.za/publications>.

10 The opening lines of the state of the capital address: “To us, the people of Tshwane, ours is not merely a city but the capital city of democratic South Africa, reborn and remade out of the struggle. We declare for all to know that this address, therefore, is not just about the ‘State of the City’ but about the ‘State of South Africa’s Capital City’ – a place where all South Africans want to be and many of them are.”

11 State of the capital city address by his worship, the executive mayor of Tshwane, councillor Kgosientso Ramokgopa, (3 April 2014), city hall, 12. In the address the Mayor reported that the refurbishment cost is estimated at R900 million (the estimated cost of the development of Schubart Park, according to the 2013 address, was R1.25-billion) and that the project will be concluded within 24 months.

12 City of Tshwane website.

13 <http://www.tshwane.gov.za/AboutTshwane/NewsandEvents/news/Pages/Schubart-Park-media-statement.aspx> (accessed 2014-02-24).

14 *Ibid.*

the special development direction which takes the City development forward” with the former residents during the consultation sessions.<sup>15</sup> This mode of operation reflects the words of Froneman J in the Schubart Park decision:

“[The City] proceeds from a ‘top-down’ premise, namely that the City will determine when, for how long and ultimately whether at all, the applicants may return to Schubart Park. Unfortunately the history of the City’s treatment of the residents of Schubart Park also shows that they appeared to regard them, generally, as ‘obnoxious social nuisances’<sup>16</sup> who contributed to crime, lawlessness and other social ills. If there were individuals at Schubart Park who were guilty of, or contributed to, these ills, they should have been dealt with in accordance with the provisions of the law relating to them”.<sup>17</sup>

The plans for Schubart Park capture are representative of the tone of the *Tshwane 2055* policy.

### 3 *Tshwane 2055* and Spatial Justice

The *Tshwane 2055* policy envisages the “[r]emaking of South Africa’s Capital City” It has in mind a city that “is liveable, resilient and inclusive, whose *citizens* enjoy a high quality of life, have access to social, economic and enhanced political freedoms”.<sup>18</sup> The vision also refers specifically (exclusively) to “citizens” that should be “partners in the development of the African Capital City of excellence”, while it acknowledges that one of the obstacles in the development of the city would be the “continued spatial imbalances of the past”.<sup>19</sup> The vision is phrased within the metaphor of a “game”:

“These choices of action to influence the future will have to take into account the following options: Playing the game better: implementing incremental changes using the current rules of the game and becoming more efficient and effective; Playing the game differently: lessons from two decades of democracy therefore a need [for] rapid implementation; and [p]laying a different game: implementing strategic actions that are aimed at driving development, increasing the competitiveness of the economy and strengthening the city’s sustainability capacity”.<sup>20</sup>

Spatial justice is defined as one of the key terms used in the *Tshwane 2055* document:

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15 *Ibid.*

16 He quotes from the *PE Municipality (CC) case: Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) 41.

17 *Schubart Park v City of Tshwane* 23.

18 *Tshwane 2055*. Own emphasis.

19 The vision continues: “Further, the challenges include rising unemployment, urbanisation, population growth, inequality, poverty, and accommodation conundrum, huge infrastructure backlogs and continued spatial imbalances of the past, among others”.

20 *Tshwane 2055* 7.

“Spatial justice is about reversing the historic policy of confining particular groups to limited space, as in ghettoisation and segregation, and the unfair allocation of public resources between areas, to ensure that the needs of the poor are addressed first rather than last”.<sup>21</sup>

The document acknowledges the historical development of spaces in South Africa and presents the possibility of spatial justice:

“While the City of Tshwane is home to a number of government departments, embassies, tertiary and research institutions, and several heritage sites, the City’s historical spatial development approach has resulted in the: *Apartheid-bound experience* of social and economic exclusion of the larger part of residents from the city space; [*p*]ersistence of apartheid-bound settlement patterns of residents in the City which continues to define the city space; and [the] *City’s historical identity* as an unreachable social space”.<sup>22</sup>

In light of this the process of remaking proposed by the *Tshwane 2055* plan claims to also intervene in the transformation of “human settlements, space economy as well as the creation of functioning nodes”. The plan includes references to the Reconstruction and Development Programme and in reiterating the call for the “eradication of apartheid geography” states that Tshwane’s remaking will be “premised on achieving the principles of spatial justice, spatial sustainability, spatial resilience, spatial quality, and spatial efficiency”.<sup>23</sup> The doubt in the radical and transformative potential of the spatial justice espoused by *Tshwane 2055* comes with the other terms that it is used in conjunction with, apart from this combination of justice, sustainability, resilience, quality and efficiency it is also grouped with “Smart living”

21 Tshwane 2055 14.

22 Tshwane 2055 83, Own emphasis.

23 These concepts are all defined in the document and categorised as “Spatial Transformation Principles” – see Box 3.1. The definitions are derived from the “National Development Plan Vision 2030: Our future – make it work” at page 277. “Spatial sustainability is about promoting living environments whose patterns of consumption and production does not damage the natural environment. Spatial resilience is about building the capacity to withstand vulnerability to environmental degradation, resource scarcity and climatic shocks. Spatial quality is about improving the aesthetic and functional features of housing and the built environment to create liveable, vibrant and valued places that allow for access and inclusion of people with disabilities. Spatial efficiency is about supporting productive activity and jobs and reducing burdens on business. Efficient commuting patterns and circulation of goods and services should be encouraged and ensure that regulatory procedures do not impose unnecessary costs on development”. This combination also appears on page 26: “Coupled with this new paradigm is the implementation of spatial development approaches geared towards the realisation of spatial justice, spatial sustainability, spatial resilience, spatial quality and spatial efficiency”. The rest of the context is as follows: “To achieve Tshwane Vision 2055, a new growth path resilient to future shocks must be adopted not only from government, but also sectors of society partnering with the City ... Furthermore, the key message of the Freedom Charter is that working together, as the residents and communities of the City, the government, civil society as well as the private sector, we can mobilise our resources so that together we can achieve the visions of a better South Africa and Tshwane”.

and “Informal settlements transformation”. Marie Huchzermeyer exposes similar tensions in the United Nation’s UN-HABITAT policy,<sup>24</sup> which, she claims, was aimed at improving the lives of slum dwellers, but instead led to forced removals in efforts to fulfil the misunderstood target of the policy, namely to free cities of slums.

*Tshwane 2055* places emphasis on being a “citizen” in the city and connects spatial justice to the status of citizen: “Spatial justice and transformation is central to ensuring social inclusivity. This is about the City providing access to all the necessary services one needs to be an equal citizen in the City”.<sup>25</sup>

Towards the end of the document, it is clear that *Tshwane 2055* has in mind a specific notion of spatial justice and one that will be “re-engineered” in order to give effect to the grand plans of the document.<sup>26</sup> As law has become more and more comfortable with the vocabulary of space, the idea of spatial justice emerged in various forms. My call in this article is for a radical and critical understanding of spatial justice that would not automatically fit with the other visions of *Tshwane 2055*.

#### 4 Spatial Justice and the Right to the City

The co-option of geographical terminology in law and policy does not necessarily mean that law is spatialised.<sup>27</sup> On the contrary, Philippopoulos-Mihalopoulos suggests that law’s spatial turn is a turn away from space and specifically away from the unique and unpredictable characteristics of geography. He specifically argues that this turning away from space can most clearly be discerned in the use of the notion of spatial justice.<sup>28</sup> This, he proposes, is partly due to a “fear” of space. Spatial justice should connote something more than social justice or regional justice with some regard to the spatial, and in fact, it is almost unthinkable that justice cannot be spatial when it is concerned

24 Huchzermeyer *Cities with ‘Slums’: From informal settlement eradication to a right to the city in Africa* (2011).

25 At page 110 of *Tshwane 2055*.

26 At page 114 of *Tshwane 2055*: “The City of Tshwane has undeniably been shaped by a legacy of apartheid urban form, space economy, and settlements that has resulted in spatial inequity and equality. In 2055, it will be South Africa’s capital city, with an identity that represents the aspirations of South Africans. Spatial justice and urban form will be re-engineered. It will be Africa’s most liveable, healthy, safe and sustainable capital city to live, work, visit and invest in. Mobility and public transport in the City of Tshwane is improved and significantly contributes to the City’s high connectivity and low carbon status... As part of ensuring spatial justice and space economy, the City of Tshwane will continue to revisit its spatial vision to reverse the ‘spatial divide’ (see n 188 in *Tshwane 2055*) that dominates the country as a whole. In this chapter, the focus is on how the City of Tshwane provides quality infrastructure that will support its liveability concept.”

27 See Massey *For space* (2005) 16-18.

28 Philippopoulos-Mihalopoulos “Law’s Spatial Turn: Geography, Justice and a Certain Fear of Space” *Law, Culture and Humanities* 2010 7(2) 187 – 202.

with the distribution of resources in a given area.<sup>29</sup> The critical potential of spatial justice can only fully be harnessed if it entails a fundamental rethinking of justice that encompasses the “peculiar characteristics of space”.<sup>30</sup> What are the peculiar characteristics of space and to what extent can law, and policies such as *Tshwane 2005*, truly approach justice from and through these characteristics to move towards spatial justice?

#### 4 1 Spatial Justice

Philippopoulos-Mihalopoulos, after rendering critique against the way in which spatial justice is perceived, suggests two characteristics in terms of which spatial justice should be radically rethought, the one ontological and the other epistemological. Ontologically speaking spatial justice should be conceptualised as radically different from its “habitual temporal” and “social conceptualisation”.<sup>31</sup> This means that spatial justice is something different from justice viewed within the usual historical framework and also different from what has been established as social justice. Spatially situated justice is distinct from historically situated or socially situated justice. On an epistemological level the location of justice should be between law and space.<sup>32</sup> This raises the questions of point of departure and of where spatial justice itself is situated. If what Philippopoulos-Mihalopoulos says about the point of departure being placed somewhere on the meeting point of space and law, then a geographical understanding of space is integral in the understanding of a concept of spatial justice. The notion of spatial justice is in general insufficiently theorised. I rely on Henri Lefebvre’s “right to the city” and Doreen Massey’s relational conception of space to inform an understanding of spatial justice for the inner city of Tshwane, an understanding that is not necessarily in keeping with the way in which the term is used in the *Tshwane 2005* document.

#### 4 2 The Right to the City

Lefebvre’s “right to the city”, in his 1967 essay of the same title, encompasses an urgent call for different intellectual tools to approach the city.<sup>33</sup> Theoretical engagements on cities merely serve the bureaucracy of controlled consumption. It perceives of cities as collections of needs for consumption, whereas, as Lefebvre highlights, needs are anthropological.<sup>34</sup> This includes the need for creativity and for information, for knowledge, art and play, physical activity and sexuality.<sup>35</sup> The right to the city can therefore not be reduced to a

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29 *Idem* 189.

30 *Ibid.*

31 *Idem* 197.

32 *Idem* 200.

33 Lefebvre *Writings on Cities* Kofman and Lebas (translated and selected) (1996) 146-159. The Abahlali base Mjondolo movement (Durban) embraces the concept of the right to the city.

34 *Idem* 147.

35 *Idem* 147-148.



cumulative right comprising a collection of existing human rights placed within an urban context,<sup>36</sup> just as spatial justice cannot simply be a spatial interpretation of social justice. Patrick Bond supports this by asserting that the right to the city is not primarily about liberal constitutionalism, but rather a vehicle for political empowerment.<sup>37</sup> He asks whether the right to water, within the broader right to the city can be radicalised when cast in the terms of, what Bond calls, “urban revolutionaries”.<sup>38</sup> In Bond’s view, the reason why the idea of a “right to the city’ as a rallying cry” has gained popularity, is because it can possibly present a “profound critique of neoliberal urban exclusion”.<sup>39</sup> With reference to the well-known debate by critical legal scholars in South Africa that the rights narrative is not the optimal language for progress in South Africa,<sup>40</sup> and through reliance on the failure of the Soweto water case, he warns against “considering rights as a foundational philosophical stance”.<sup>41</sup>

Specific urban needs should constitute specific places of “simultaneity and encounters, places where exchange would not go through exchange value, commerce and profit”.<sup>42</sup> Lefebvre problematises the science of the city, which has the city as object of study, and the silence of the working class in conceiving of cities. Bringing this back to the Schubart

36 In a South African context Marius Pieterse has given content to the right to city with reference to justiciable socio-economic human rights Coggin and Pieterse “Rights and the city: An exploration of the interaction between socio-economic rights and the city” (2012) 23 *Urban Forum* 257 & Pieterse “Development, the right to the city and the legal and constitutional responsibilities of local government in South Africa” (2014) 131 *SALJ* 150-177.

37 Bond, “The ‘Right to the city’: Limits to rights talk and the need for rights to the commons” *Theomai: Perspectivas diversas sobre la problemática territorial y urbana* (2013) 42-63.

38 Bond 44. He lists Henri Lefebvre & David Harvey.

39 *Idem* 43.

40 Bond refers in particular to Brand “The politics of need interpretation and the adjudication of socio-economic rights claims in South Africa”, in Van der Walt AJ (ed.) *Theories of social and economic justice* (2005), Madlingozi “Good victim, bad victim: apartheid’s beneficiaries, victims and the struggle for social justice”, in Le Roux and Van Marle (eds.) *Law, memory and the legacy of apartheid: ten years after AZAPO v President of South Africa* 2007, Pieterse “Eating socioeconomic rights: the usefulness of rights talk in alleviating social hardship revisited”, in *Human Rights Quarterly* (2007) 29 796-822 and Roithmayr “Lessons from Mazibuko: persistent inequality and the commons”, in *Constitutional Court Review* 2011 1.

41 Bond 52, with reliance on Roithmayr “Lessons from Mazibuko: persistent inequality and the commons”, in *Constitutional Court Review*, 2011 and Desai “The state of the social movements” presented to the *CCS/Wolpe Lecture Panel Social Justice Ideas in Civil Society Politics, Global and Local: A colloquium of Scholar-Activists*, Durban, Centre for Civil Society, 29 July 2010: “As we have seen, however, critics point to the opposite processes in the water case, and consider a move through and beyond human rights rhetoric necessary on grounds not only that – following the Critical Legal Scholarship tradition – rights talk is only conjuncturally and contingently useful”.

42 Lefebvre 148.

Park housing complex, the initial evacuation of the residents was the silencing of the working class, the continued operations around Schubart Park displays a further disregard for the working class, despite the claims to public participation and consultation processes during the drafting of *Tshwane 2055*. This silence, Lefebvre argues, brings about an absence of both the subject and the object and he suggests two ways to address this:<sup>45</sup> firstly a political programme of urban reform not defined by the framework of the current society, not limited to reform and not subject to a “realism”, and secondly mature planning projects that do not shy away because of the feasibility of their utopian aspects. “Urban life has yet to begin” and the current imperative is to take up new intellectual tools and develop new theories.<sup>44</sup> Lefebvre envisages theories that will build towards the right to the city, without proposing the right to the city as an end goal that should (or could) be reached. The right to the city should not be understood as a “single visitation right”, nor as a “return to traditional cities”.<sup>45</sup> For Lefebvre space reflects social relationships and at the same time space also influences social relationships. Therefore space is what mirrors and replicates both justice and injustice. Spatial justice approached in this manner should therefore also include an engagement with spatial injustice. In this vein David Harvey explains Lefebvre’s essay on the right to the city as both “a cry and a demand”.<sup>46</sup> It was a cry that responded to the crushing state of everyday life in cities and it was a demand that was actually in the form of a “command to look that crisis clearly in the eye and to create an alternative urban life that is less alienated, more meaningful and playful but ... conflictual and dialectical, open to becoming”.<sup>47</sup> Harvey refers to the context and circumstances<sup>48</sup> within which Lefebvre wrote the essay and argues that the revival of the right of the city should not lead us to Lefebvre’s intellectual legacy for an explanation, but rather “[w]hat has been happening in the streets, among the urban social movements, is far more important”.<sup>49</sup> Chris Butler’s book *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* places Lefebvre within legal studies and analyses the relevance of Lefebvre’s thinking for the study of state power and of law. He offers a critical approach to the involvement of law and state power in struggles over the inhabitation of space. Through a discussion of the importance of the “everyday” in Lefebvre’s work, Butler

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43 *Idem* 155

44 *Idem* 150-151.

45 *Idem* 158.

46 Harvey *Rebel cities: From the right to the city to the urban revolution* (2012) x.

47 *Ibid.*

48 Harvey deems it “highly significant that The Right to the City was written before (*The Irruption* as Lefebvre later called it) of May 1968” and makes special mention of the fact that the essay was written for the centennial celebrations of the publication of Volume 1 of Marx’s *Capital*.

49 *Idem* xi-xii.

highlights the fact that Lefebvre situates the everyday in the centre of the ethical and aesthetic aspects of Marx's project of social transformation.<sup>50</sup>

### 4.3 "Throwntogetherness"

The right to the city of Lefebvre requires a class-conscious understanding of community. Doreen Massey, in her most recent book *for space*, radically re-imagines space and argues (as she does in her book *Geography Matters*) that the manner in which we think about space matters and that space is gendered through and through.<sup>51</sup> She questions the distinction between space and place. For some place is the sphere of the everyday, of real and valued practices while for others a "retreat to place" represents a protective pulling-up of drawbridges and walls.<sup>52</sup> Place, on this reading is the locus of denial and attempted withdrawal. She therefore calls for refusing the distinction between place (as meaningful, lived and everyday) and space (as the outside, the abstract, the meaningless). A relational politics of the spatial is an "attempt to urge an understanding of place as permeable, to provoke a living of place as a constellation of trajectories, both natural and cultural, where the question of 'belonging' has to be framed in a different way".<sup>53</sup> Place as an ever-shifting gathering of lines of flight poses the question of our "throwntogetherness", as Massey explains. For her, space is the dimension of the social, radical simultaneity, multiplicity and it presents contemporaneous existence. Her understanding of the relationality of space relies on the premise that all things are flux, but this should not be construed as a general state of evanescence, because entities has the ability to withstand and bear.<sup>54</sup> Whereas Lefebvre's concept of the right to the city calls for an acute class-consciousness in thinking of urban spaces, Massey introduces the importance of a gender-consciousness. Both of these views of space/place and spatial justice relate the visions of urban space directly to the type of community that will be constituted by the space. What this means for *Tshwane 2055* is that the policy is not merely indicative of the kind of space envisioned by the document, or in the case of Schubart Park, the kind of social housing that will be built, but *Tshwane 2055* also reflects the sense of community and belonging that the city of Tshwane subscribes to.

In light of the theorists discussed above, I would suggest that spatial justice in South Africa should be open to the uncertainty introduced by the inclusion of a variety of different voices and knowledges. It should

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50 Butler *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* (2010) 104. Through the work of Lefebvre he investigates power's spatial dimensions, in particular legal and administrative power, he also considers different and contemporary forms of and struggles for spatial justice and looks at radical political movements and participatory models of reaching decisions.

51 Massey *For space* (2005) 6.

52 *Idem* 10.

53 *Idem* 149.

54 *Idem* 152-154.

take seriously the warning of Froneman J in the *Schubart Park* case, that inhabitants of the city should not be seen as nuisances and the voices of the poor and marginalised should not only be heard during scheduled consultations to appease the Constitutional Court, but should be “heard” in the very policies that will affect their futures. The *Tshwane 2005* document acknowledges only the right of the citizen of the city to the city. For Lefebvre the right to the city cannot be limited in this manner and spatial justice should open up to other inhabitants of the city and specifically engage and include the working classes in re-visioning the capital city. Such an understanding of spatial justice would be in tension with the modernist aims of rejuvenation and development tabled by *Tshwane 2005*. This tension is argued by Huchzermeyer with reference to the United Nation’s UN-HABITAT policy and by Johan van der Walt with reference to the *Joburg 2030* policy.<sup>55</sup>

## 5 UN-HABITAT and *Joburg 2030*

*Tshwane 2005* refers in many instances to the concept of spatial justice and presents the possibility of spatial justice for the City of Tshwane. However, amidst messages of upliftment, rejuvenation and gentrification, the concept of spatial justice is appropriated and co-opted in a larger project of spatial reform along capitalist, neo-liberal lines to the exclusion of the voices of the poor. The *Schubart Park* project serves as an example of this, exposing the impossibility of a radical and transformative concept of spatial justice.<sup>56</sup> The United Nation’s UN-HABITAT 2010 plan envisioned lifting city dwellers out of slum-conditions without giving regard to those who rather want to defend the slums as their homes against relocation, forced removals and eviction, as was the case with *Schubart Park*, and not “escape” life in the slums.<sup>57</sup> For Huchzermeyer, the impossibility of spatial justice in the UN-HABITAT policy was due to “the unfortunate language, particularly as packaged in high-level press releases and introduction or forewords”.<sup>58</sup> She seems to be saying that despite the use of certain keywords or concepts in policy documents, the broader intention reflects in discussions, summaries and the execution of these policies. It is for these reasons that the possibility

55 Huchzermeyer *Cities with ‘Slums’: From informal settlement eradication to a right to the city in Africa* (2011) & Van der Walt ‘Johannesburg: a tale of two cases’ in Philippopoulos-Mihalopoulos Andreas (ed.) *Law and the City* (2007) 221 – 235.

56 *Tshwane 2005* at 215 refers to the UN-HABITAT report: “A[n] UN-HABITAT report indicated that despite government’s attempt to address issues of poverty and underdevelopment, South Africa still remains one of the most unequal societies in the world. In most emerging economies, the levels of inequality have increased in both urban and rural areas, whereas in South Africa the level has increased more in urban areas than rural areas due to urban migration. Thus, while in comparison to other municipal areas in the Gauteng Province the City of Tshwane had the lowest level of poverty at 22% in 2010, it is unacceptably high”.

57 Huchzermeyer 5.

58 *Ibid.*

of improving the living conditions of slum-dwellers encompassed simultaneously the impossibility thereof and was further made impossible by forced removals as the less carefully worded call for “Cities without Slums”<sup>59</sup> was adopted by the UN and construed to mean the eradication of slums in opposition to “slum upgrading” as suggested best practice by previous UN policies.

In the City of Tshwane context Huchzermeyer, and applicable to the *Tshwane 2055* vision, remarks that it is one of the unspoken premises of cities “not to attract a population that is superfluous to growth in the formal economy, or embarrassing to those aspiring to world-class city status”<sup>60</sup> A strategy, employed by cities in South Africa to keep this “unwanted population” out of cities, is to fail to provide adequate affordable living environments within cities and to then refuse to deliver services to the informal settlements that develop on the fringes of cities due to this lack of supply of accommodation for lower-income groups.<sup>61</sup> In this regard Huchzermeyer refers specifically to the way in which the poor are prevented from building new shacks and other metropolitan councils are also adopting the City of Tshwane’s approach to outsource and privatise the control of informal settlements to security companies.<sup>62</sup> The issue of privatisation of services in the city is closely connected to that of exclusion of the poor.

In his commentary on the *Joburg 2030* policy van der Walt also raises concerns connected to privatisation.<sup>63</sup> Through the spatial history of Johannesburg he explains that the white population and black population of Johannesburg had been living apart for most of the city’s history. Well-off citizens spend most of their lives within the highly secured enclaves of gated neighbourhoods and office parks with limited exposure to the city-life in general. Van der Walt is doubtful whether the regeneration of the central business district of Johannesburg will lead to the return of city life.<sup>64</sup> He suggests that the return of city life in Johannesburg “will ultimately turn on the cultivation of a public-minded concern with an exposure to otherness” and therefore proposes city life as public life

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59 Slogan of the Cities Alliance as explained by Huchzermeyer 2010 1.

60 Huchzermeyer 53.

61 *Ibid.* With reference to Semeczi (2011) at 65 she calls this “‘withdrawal or denial of basic services’ in South Africa’s informal settlements” a “new form of influx control”.

62 *Ibid.* She mentions specifically the Ekurhuleni Metropolitan municipality as an example of a municipality that follows this approach to “the ‘management’ of informal settlements” and “finds no fault with this approach”. She relies on a personal communication by Williamson dated 28 July 2010.

63 Van der Walt ‘Johannesburg: a tale of two cases’ in Philippopoulos-Mihalopoulos Andreas (ed.) *Law and the City* (2007) 221-235.

64 *Idem* 222-223.

based on the works of Jean-Luc Nancy, Iris Marion Young and Gerald Frug.<sup>65</sup> He laments the lack of political vision in *Joburg 2030* and the fact that it is, apart from mentioning fighting crime and poverty, devoid of any values other than economic growth.<sup>66</sup> The policy over-emphasises Johannesburg's economic importance at a national level and, Van der Walt argues, that the political confidence expressed by the document comes from the realisation that "Johannesburg is a formidable economic force" in South Africa. In terms of the executive summary of *Joburg 2030* the "historically black townships will be redeveloped and upgraded" so as to "become new suburbs designed like historically white suburbs".<sup>67</sup> Against the backdrop of *Joburg 2030* he then proceeds to consider two cases on public expression decided by the Johannesburg High Court: *Deneys Reitz v SA Commercial Catering and Allied Workers*<sup>68</sup> and *Four Ways Shopping Mall v SA Commercial Catering and Allied Workers*.<sup>69</sup> In the first case the court granted an interdict preventing members from the union to picket outside the building of the law firm in protest against the firm's anti-union practices. Van der Walt argues that the court's reasoning, based on the subjective comfort of clients and employees entering the building, illustrates an attempt to extend such private-sphere considerations of peace and quiet, as one expect in one's own home, to the public sphere.<sup>70</sup> In respect of the second case, he points out that the granting of the interdict against picketing in a public space was made subject to concrete evidence to be provided. The applicants had to prove that the picketing will lead to the wrongful infringements of others' rights.<sup>71</sup> On account of this last judgment he remarks that it is still open for the Johannesburg High Court to decide on the issue of public expression in the city. Van der Walt highlights the interaction between the policy of the city of Johannesburg and the decisions by its high court and speculates that the Constitutional Court will (hopefully) have the final say on public expression in the city and will then (hopefully) be influenced and lead by its architecture that encourages embracing city life, not as a concern with the comfort of the home, but as a concern with "the curiosity and courage that celebrate difference and alterity".<sup>72</sup> Schubart Park equally captures the interaction between a city policy and a city court case. According to *Tshwane 2055* the engagement process commenced immediately after the launch of the *Tshwane 2055*

65 Frug *City making. Building communities without building walls* (1999), & Frug "The geography of community" 48 (1996) *Stanford LR* 1047-1066, Nancy *la Communauté Désœuvrée* (1999) and Young *Justice and the Politics of Difference* (1990). Through these theorists Van der Walt supports an understanding of community in terms of "the communality or 'in common' that does not precede, but results from the experience of difference and lack of community".

66 Van der Walt (2007) 229.

67 *Joburg 2030* (executive summary) 7-8 as quoted by Van der Walt (2007) 228.

68 1991 (2) SA 685 (WLD).

69 1999 (3) SA 752 (WLD).

70 Van der Walt 232.

71 *Ibid.*

72 *Idem* 235.

Discussion Document and the stakeholder consultation process started from 31 July. The document claims that this consultation process demonstrated the City of Tshwane's "commitment to being a progressive developmental metropolitan government capable of being a change partner and leader of society".<sup>73</sup> However, at the same time that these consultations were taking place, the Constitutional Court, on 23 August 2012, hear arguments from the City that attempted to justify the eviction of the Schubart Park residents in lieu of any consultation with the inhabitants. Schubart Park and Van der Walt's examples show how litigation by and within the city echo its policy and exposes the true sentiments of a city.

Similar to the UN's policy and *Joburg 2030*, the *Tshwane 2055* policy presents both the possibility and impossibility of habitat and therefore of justice and injustice. It seems as if a vigorous notion of spatial justice sits uncomfortably amidst the language of rejuvenation, gentrification and redevelopment and policies that primarily envisage these aims, despite references to spatial justice and aspirations of addressing South Africa's very unjust spatial history, in their uncritical application and high-level execution lead to spatial injustice instead. The founding narrative of the *Tshwane 2055* plan is that of renewal at the expense of inhabitants in the city. These kinds of policy documents should be informed more radically by alternative voices and knowledges in the city in order to change the dominant discourses that underlie them.

## 6 Conclusion

*Tshwane 2055* is a policy document consisting of 135 pages. It contains several references to spatial justice and sets out the consultation process that was followed in its making. It envisages collaborative development based on the Freedom Charter slogan: "The people shall govern". Furthermore, it acknowledges spatial injustices of the past, the deep divides of the city and the need for "addressing the needs of the poor first, rather than last".<sup>74</sup> It states an awareness of how societal fragmentation is usually reflected in the manner in which opportunities and spaces are appropriated, transformed, produced and used. It calls for improved public spaces to enhance cohesion, civic identity and quality of life. These aspects all present the possibility of spatial justice as understood through the theories of Lefebvre and Massey. It acknowledges that unequal relationships produce and are produced by space and takes cognisance of our "throwntogetherness". What presents the impossibility of spatial justice in *Tshwane 2055* is not the fact that its implementation will not do justice to its aims. The argument is not that *Tshwane 2055* is a flawless policy, but that it will fail on implementation level. It is not in the future of the policy that the impossibility is lurking, but already in its present and in its past. The argument of this article is

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<sup>73</sup> Tshwane 2055 29.

<sup>74</sup> *Ibid.*

therefore rather that spatial justice is an impossibility firstly because of the existing discrepancies between the aims of a city of excellence and spatial justice and secondly because the Schubart Park case illustrates that the claims to consultation that allegedly lead up to the policy did not encompass the involvement of the working class as envisioned by Lefebvre.