

Self-Assessment of Research Outputs

Let me begin with a simple two-fold proposition. Over the past 8 years, no other public law and constitutional scholar in South Africa has (a) produced as many treatises, monographs, edited collections, journals, articles and book chapters; (b) had as many citations to as wide variety of publications produced in both domestic and international publications, and as importantly, our two apex courts, the Constitutional Court. The statistics in the application dedicated website bear out these two claims. Here's a related proposition: one cannot set out to achieve meaningful impact on one's sphere of influence. One can only conduct research, and write well about what little one knows well, and hope that other members of the academic community recognize the value in such work. Moreover, one must have a passion for what one does – a mix of creativity and hard work. Some have it. Most don't. I do.

So, prior to recognition is the work itself. By any measure, **2013** has been a bumper year.

Three new works appeared on Amazon.com: (1) *The Selfless Constitution: Experimentalism and Flourishing as Foundations of South Africa's Basic Law* (a 650 page full-blown exercise in philosophy and constitutional theory – a first in South Africa); (2) *The Dignity Jurisprudence of the Constitutional Court of South Africa* (a two volume collection of critical essays and redacted Constitutional Court decisions); and (3) *Constitutional Law of South Africa, 2nd Edition* (the recently revised, 5 volume, 5500 page, paperback edition of *the only world class treatise* on the subject). I drove the production wrote lead essay, and was the co-editor of *Festschrift* in honor of Harvard Law School's Frank Michelman – one of the leading legal and political philosophers of our time. I was the lead author – with colleagues from the Stevens Institute of Technology – on an entirely novel article on patent thickets in complex biopharmaceutical technologies for *IDEA* – long one of the top five North American journals on intellectual property. In the middle of 2013, I, as founding and managing editor, organized the fifth *Constitutional Court Review* conference. With seven leading foreign academics and a hefty sixteen domestic academics and practitioners in attendance and writing for this year's edition, we should produce the best volume yet. Amongst its 21 pieces is a new work on language policies designed to promote multilingualism and, I would contend, to make our civil society more civil. This article – 'The Problem of the Other Language' -- is but one of three new pieces on education and the law already published or in production that will give Professor Fleisch and I an opportunity to revise our earlier, path-breaking, and oft-cited monograph *The Constitution in the Classroom: Law and Education in South Africa, 1994 – 2008* (to 1994 - 2014). Yet another positive push by Professor Steve Ellmann of New York Law School and an invitation to speak at the University of Cape Town in honour of the late Chief Justice Pius Langa led to the development of a new book project. Called *The First Staging Post*, this monograph will assess various interventions that might leverage existing and novel stores of social capital to build a more robust form of rule of law culture and a more civil, civil society. The paper – 'Catch and Release' -- will appear *Acta Juridica* (2014).

That's 2013. What's to be said of the remaining seven years.

Again, *Constitutional Law of South Africa, 2nd Edition* (CLoSA, 2003-2008/2013) remains my most important contribution to my primary area of specialization – South African constitutional law. By any bibliometric assessment – citations by the courts, or the secondary literature in multiple disciplines -- it is by far the most influential and most cited work on the subject. (For support for this important proposition, please see the Excel Spreadsheet on my NRF Application website.) It is the first port of call for judges, practitioners and academics, both domestic and foreign. Its format varies in order to create greater access: it appears as a looseleaf, a CD-ROM, softcover, and a licensed database for domestic and international users. The Department of Justice has a special annual licence that ensures both access to most law enforcement officials and production of regular revisions of chapters by the authors. (According to the publisher, CLoSA is the most widely used database by students in South Africa.) It is available internationally via Westlaw's electronic database and in softcover through Lightning Source and Amazon.com. Again: nothing like CLoSA exists in the academy. Through sheer force of will, more than a bit of imagination, and the assistance of others (Michael Bishop and Theunis Roux, in particular), South Africa has a world-class treatise on constitutional law.

If CLoSA remains my pride and joy, then *The Selfless Constitution: Experimentalism and Flourishing as Foundations of South Africa's Basic Law* (2013) is my nine year labour of love. This monograph first challenges readers to do something difficult indeed: forget the metaphysics and the politics of 'free will' and 'freedom'. After it weaves together recent revelations in neuroscience, empirical philosophy, behavioural psychology, social capital theory and development economics, the book contends that only a politics that promotes experiments in living and the enhancement of individual capabilities is likely to produce the egalitarian pluralist social order to which our Constitution aspires and which will allow most South Africans to flourish. By refracting the decisions of our courts and the policies of lawmakers through the linked lens of experimentalism and flourishing, it's able to show readers just how far we have come – empirically and doctrinally -- and how far we still have to go. Having started as an NRF concept document and a RULCI conference paper in 2004, it provides a detailed 650 page road map for those

who might wish to further flesh out our constitutional jurisprudence in *one* reasonably coherent and compelling manner.

I take great pride in the virtually coterminous publication of *The Dignity Jurisprudence of the Constitutional Court of South Africa* (2013). The work provides a critical window, for a foreign audience, into one of the two most important doctrinal developments of the Constitutional Court. *The Business of Sustainable Development in Africa: Human Rights, Partnerships and Alternative Business Models* (2009) (winner of the 2010 Hindiggh-Currie Award for Best Book) makes a similar, albeit different claim to uniqueness and importance. The authors, along with the United Nations Development Programme, wished to assess whether the aspirations of the UN Global Compact and the UN Millennium Development Goals, could be partially met through (a) novel multi-stakeholder, for-profit business models and (b) voluntary self-assessment and external assessment. The critical essays and the case studies provide some evidence that these polycentric arrangements can change the way firms operate and the way businesses conceive of their over-arching purpose. (With the backing of the United Nations and the United Nations University Press, it is my second best-seller. Google Scholar searches indicate the size of its international audience.) Two other books warrant mention. *Constitutional Conversations* (2008) and *Is This Seat Taken? Conversations at the Bench, the Bar and the Academy about the South African Constitution* (2012) brought together 6 Constitutional Court Justices, several internationally recognized scholars and lots of local talent to reflect upon the state of the law and to push the envelope of legal theory. These two works – along with *Constitutional Law of South Africa* – serve two ends that I have already mentioned as drivers of my work: (1) the creation of a community of scholars; and (2) publications that do their bit to hold things together. Those goals may seem rather modest. But in the fragmented South Africa in which I have long lived, they most assuredly are not.

Of course, I can assess my work in other ways.

Over the last eight years, my peer-reviewed articles (29) and book chapters (33) required co-authorship with 21 different authors from eight different academic institutions. My co-authorship and co-editorship of 6 books has required written collaboration with over 100 authors from 9 domestic law schools, 14 foreign law schools, 8 non-legal departments of other universities, 7 NGOs, 6 law firms, numerous members of the bar, several judges on the High Court and Supreme Court of Appeal, and six justices from the Constitutional Court of South Africa. My editorship of the *Constitutional Court Review*, and guest editorship of the *Stellenbosch Law Review* and *Southern African Public Law* has further extended the range of the international and domestic scholars that I engage. As Academic Director of the South African Institute for Advanced Constitutional, Public, Human Rights and International, I run research based seminars and conferences that enable me to be in regular contact with most South African public law scholars and most of the international constitutional law academics that frequent our shores.

But if it's numbers that you want to shore up my claim to having the broadest reach of South African constitutional law scholars, this application draws on two primary sources. As mentioned above, a researcher and a statistician were hired to put together the database that appears as an Excel spreadsheet as part of this application. A prior form of evidence for this empirical claim flows from searches of well-known databases and manual research carried out by the University of Pretoria Faculty of Law in 2009. In a mere five year span of publications (2004 – 2009), I became the most widely cited full-time member of their law faculty (some 60 members). That said, my standing as a researcher has already been independently recognized by the most important collection of scholars possible – my fellow colleagues across and above me in the University. I have received the top academic prize awarded annually in my university wide peer-group at two of the top five South African Universities – by Wits in 1996 with the Vice Chancellor's Award for Best Researcher under 40 – and by Pretoria in 2007 as Extraordinary University Researcher. They were awards for which I did not apply and which required no special pleading: straight up, no chaser.