

PREFACE

INTELLECTUALS AND DEMOCRACY: FRANK I MICHELMAN'S IMAGINATION AND SOUTH AFRICA'S CONSTITUTIONAL JURISPRUDENCE

"Intellectual activity is a little bit like seduction. If you go straight for your goal, you almost certainly won't succeed. If you want to be someone who contributes to world historical debates, you almost certainly won't succeed if you start off by contributing to world historical debates. The most important thing to do is to be talking about the things that have, as we might put it, world historical resonance but at the level at which you can be influential. If your contribution to the conversation then gets picked up and becomes part of a larger conversation or part of conversations happening elsewhere as well, then so be it and so much the better."

Tony Judt "On Intellectuals and Democracy"

Every good idea begins somewhere. (Sometimes it begins in many places at the same time – such confluence being the hallmark of cogent currents of contemporary thought.) The symposium that gave rise to this festschrift for Frank Michelman took its cue from a symposium held at Harvard Law School earlier in 2012 to acknowledge his astonishing career. Professor Drucilla Cornell recognised early on that many South African legal scholars and jurists who might have wanted to attend the symposium would be unable to do so. She suggested that we might hold a similar symposium here in South Africa and threw her considerable weight behind the endeavour. Of course, no symposium would have been possible had Professor Michelman himself not been willing to undertake the journey to this home away from home.

With their support for this endeavour, it became possible to plot the actual contours of the event itself. We immediately enjoyed the backing of three universities – the University of Pretoria, the University of the Witwatersrand and the University of Johannesburg – the South African Institute for Advanced Constitutional, Human Rights, Public and International Law (as well as its Director, Professor David Bilchitz) and the Konrad Adenauer Stiftung. Of course, a symposium needs a host of individuals committed to the enterprise. The participants reflect the range of South Africans touched by Professor Michelman's steadfast, two-decade commitment to making this country's novel experiment in constitutional democracy work. Constitutional Court Justices, from Arthur Chaskalson, to Kate O'Regan, to Edwin Cameron, to Richard Goldstone, chaired the proceedings. The panellists represented no less than six universities from across South Africa: Michael Bishop (Cape Town); Mkhululi Stubbs (Wits); Aninka Claassens (Western Cape); Elmien du Plessis (Johannesburg); Sanele Sibanda (Wits); Mary Galvin (UKZN/Johannesburg); Boni Meyersfeld (Wits); Thaddeus Metz (Johannesburg);

Danie Brand (Pretoria); Karin van Marle (Pretoria); Dennis Davis (Cape Town); Stu Woolman (Wits); Redson Kapindu (Johannesburg). It's simply impossible, in this short space, to convey the range of topics that both engaged Professor Michelman's work and met the always urgent demand that South African commentators make their work directly relevant to the aspirations of our Constitution. The last word went to Frank himself. His public lecture in the Constitutional Court foyer – and the first essay in this volume – constituted yet another attempt by this self-ironically described “insider/outsider” to make plain just how far South Africa's basic law has evolved (given the positive charge that “evolution” invariably carries), and the extent to which it still remains a prisoner of our collective past.

This special edition of the *Stellenbosch Law Review* – made possible by the *Stell LR*'s editor Richard Stevens, the *Stell LR* board and numerous anonymous referees – reflects only one of many instances in which Professor Michelman's imagination has made its presence felt in South African jurisprudence. And it surely won't be the last. But as he himself would be quick to note, the manner of Professor Michelman's influence over the last score of years has been primarily indirect. While he has not eschewed direct written engagement with the decisions of South African judges and the works of South African academics who have fleshed out the meaning of our Constitution, Professor Michelman's influence has been most keenly felt through his efforts to make the work of others better (as they themselves understand “better”). We are all better off for his insatiable appetite for hard work, his invisible hand and his imagination. In sum, it's Professor Michelman's unique ability to see in our own work what we had not, and, in many cases, to express our thoughts more crisply, compellingly and cogently than we could ourselves that we honour in this edition of the *Stellenbosch Law Review*.

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