A WORD FROM THE DEAN

Pj Schwikkard
Dean of the Faculty of Law

Law might be the smallest of the six faculties, but its footprint is large — whether you’re talking about the impact its staff and students continue to have on society, the largesse of its alumni, or the diversity of research coming out of departments and research units.

As a consequence of the excellent the diversity of research coming out of departments and research units.

We have over a thousand staff is remarkable. A multitude of authored and edited books are size and high staff-to-student ratio, and commitment to teaching practices and curricula.

In order to successfully change embedded in social structure and historical inequalities we should be reproduction; it needs to simply be reproduced; it needs to be constantly reinterpreted. Our research is essentially empirical, and we are in a position to contribute to the development of theories that can inform our understanding of the social and economic systems in which we live.

We are also committed to meeting the needs of a transforming society. In the three years since the inauguration of the university's social responsiveness award, it has been able to support talented black learners to UCT to do post-LLB studies.

Our strategy was primarily to attract scholarship and academic and financial support, and to involve law firms in some way engaged with socially responsible initiatives.

Hugh Corder and his team have been guided us in improving throughput and meeting the needs of a transforming society. In the three years since the inauguration of the university's social responsiveness award, it has been able to support talented black learners to UCT to do post-LLB studies.

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In the pursuit of all these goals we celebrate and promote diversity. Our faculty is the only one in Africa that is predominantly black, and in addition to their compulsory 60 hours of community service. All students are active in civil society – whether you’re talking about the impact its staff and students continue to have on society, the largesse of its alumni, or the diversity of research coming out of departments and research units.

For me, there is a direct link between diversity and excellence. It is not sufficient for scholarship to simply be reproduced; it needs to be developed. Diversity is an essential tool in optimising this capacity to develop. Diversity allows us to broaden our views of possibilities and question our own knowledge.

The way in which we interpret things is contextually contingent on past, immediate and imagined future contexts. The interactions of diverse histories and multiplicities give rise to multiple questions which allow us to discover the foundations of our own ends of conceptual knowledge and ethical values, to reconstruct our institutions.

Factoring in the University’s maximum number of students in other faculties. The demographic profile of our students is slowly normalising. At present 49% in the LLB, and 41% of all black, coloured and Indian students constitute 40% of the student body (49% in the LLB), and 41% of all black, coloured and Indian students constitute 40% of the student body (49% in the LLB), and 41% of all black, coloured and Indian students constitute 40% of the student body (49% in the LLB), and 41% of all black, coloured and Indian students constitute 40% of the student body (49% in the LLB), and 41% of all black, coloured and Indian students constitute 40% of the student body (49% in the LLB), and 41% of all black, coloured and Indian students constitute 40% of the student body (49% in the LLB), and 41%

LAw by numbers

GENERAL

Ranked 40th in the top 100 law schools worldwide – the only one in Africa

Oldest law school in SA with lectures first starting in 1859

STUDENTS

40% of 1,000 students are registered for post-LLB studies

66% of students are female, as are most of the academic staff

114% increase in number of black South Africans between 2009 and 2015

3 routes to an LLB

1. A combined degree of 5 years
2. An undergraduate degree of 4 years
3. A postgraduate degree of 3 years

STAFF

2 NRF chairs
19 NRF-rated researchers
4 Distinguished Teacher Awards
1 National Excellence in Teaching Award

ALUMNI

74% of law endowment funds came from individuals (vs the UCT average of 7%)

UCT’s 150th anniversary celebrations included fundraising for an endowment fund that today supports over 60 students

R13 million in scholarships from law alumni and law firms awarded since 2009

FACULTY FOCUS

Every two months, UCT’s newsletter brings out a special supplement to highlight faculty work in a particular field. This month’s focus is on one of the university’s six faculties, and the Graduate School of Business (GSB) and the Centre for Higher Education Development (CHED). Coming up this year is the Faculty of Engineering & the Built Environment, as well as the GSB and CHED.

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Law by numbers

Where are our graduates?

NGOs and academia

Public service

Corporate

8%

11%

28%

53%

Legal profession

114% increase in number of black South Africans between 2009 and 2015

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**SA's largest online law library**

The Southern African Legal Information Institute (SAFLII), established in 2002, is the largest online law library. SAFLII offers free access to journals, judgments and legislation from Southern Africa.

Located in UCT's Democratic Governance and Rights Unit, SAFLII hopes to promote impartial, judicial accountability that far超法, providing free and open access to South African legal information. It is part of the global Free Access to Law movement and is an initiative of the Legal Information Institutes Network (LIIN).

SAFLII currently hosts over 1 million documents across 53 databases. It also links up to other LIs in the region, making comprehensive legal information easily accessible.

**African legal info incubator**

AllAfrica is primarily an incubator of new legal information institutes (LII); and a facility for visiting LII from Africa and other national LIs to conduct individual training sessions or to train others in law libraries. AllAfrica's main goal is to build up a network of legal academics throughout the continent. It is also housed within the Democratic Governance and Rights Unit.

**Law in your pocket**

Pocket Law gives you access to legal materials via portable media such as USB or external hard drives. Content is updated every time the device is reconnected to the internet.

Developed by UCT's UCT Legal Clinic, Pocket Law is an answer to the difficulty legal practitioners face accessing the written law – considered by many to be the basic ‘tool of the trade’.

A pilot project of this legal information product is being rolled out to 25 judges of the Southern African Development Community (SADC). The pilot is successful: the products will be launched more widely later this year. Plans are also afoot to market it to judges in other countries.

Eligibility for the services is determined by a means test, which is adjusted each year, and clients do not pay for any of the legal services. Instead, payment extends to the actual expenses involved in running your case, such as sheriff’s fees.

**Free legal advice**

Established in 1972 as the UCT Legal Clinic, the Law Clinic is recognized as a law firm that offers free legal advice and assistance for the community. Service is offered through community legal programmes and in conjunction with the Law Union.

The Legal Welfare Community Organisation (LAWCO) is a UCT student organisation that provides free legal advice to the community. LAWCO counts towards the compulsory community service hours for law students.

**60 hours of community service**

It is a compulsory requirement for the LLB degree that all law students complete a total of 60 hours of community service during their degree.

The service must be legal in nature, and must directly benefit the communities served. Eligibility for the services on offer is determined by a means test, which is adjusted each year, and clients do not pay for any of the legal services. Instead, payment extends to the actual expenses involved in running your case, such as sheriff’s fees.

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AFRICA’S PARADOX OF PLENTY

That Africa is a continent of contradictions is starkly apparent in the great poverty that rides in tandem with its great mineral wealth. Researchers call it the ‘resource curse’, or the ‘paradox of plenty’. With its long mining history, South Africa has not escaped this paradox.

The Marketeer magazine in Lesotho notes that the mining landscape is 80% shaped, says professor of law Hanan Montiel.

“The mining elite is largely suffocating to the poor.”

And in Africa, the reality periphery, perhaps with the recognition of Botswana, the sad.

Some resource-rich countries, such as Nigeria, Australia and Canada, have recognised the resource curse. But that’s not the resource curse itself, rather, it’s the governance of that resource that the problem lies, and in the ideology and complicity of African governments in managing it, says Montiel.

The need to develop customary law goes hand in hand with the evolving nature of this law,” said Chuma Himonga.

That customary law is a challenging but dynamic, not static. Rather, it is dynamic.”

One of the key issues of customary law is that it deals to death and for everything in between. It’s about development, inclusive and sustainable, customary, traditional, and justice. South Africa’s customary law, customary law is the foremost of most black citizens.

Even in areas of law that are recognised by legislation and common law, such as succession and strategy, there is plenty of wiggle room that are recognised by customary law, says Professor Durston Hamilton. (Department of Private Law.

Customary law is one of the legal traditions in South Africa’s law. Before 1994, this legal tradition was considered to be inferior to the common law, recognized only in the extent that it was considered to be valid.

South Africa’s customary and final Constitutions of 1994 and 1996 recognized customary law along with other state laws, resulting in some interesting experiments.

Side by side, but under control.

Though the Constitution recognizes customary law and common law on the same terms, it is not dealt with from the application of the Constitution. It’s subordinate to the Constitution as the supreme law of the land, Himonga explains.

And legislation is being designed to reform customary law, to align it with the Constitution and the Bill of Rights.

The area that has most raised the issue is the compatibility of customary law with human rights. There have been several interesting cases in the broad scope of family law, for example, which have raised the constitutional implications of customary law vis-a-vis human rights — as well as the complexity of the judiciary, says Himonga.

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Fear of investment

The result is poor investment confidence (mining is Africa’s main source of foreign direct investment, perpetuating the cycle of poverty, corruptions and illegality).

The common feature of these African countries is that they are all potential states in a development phase, says Montiel in a project overview. That project – Mineral Law and Governance in Africa (MLiA) – is proving to be crucial.

Collaborating with UC3, Centre for Comparative Law in Africa, the initiative will stop mining laws across the continent through a network of legal academics, practitioners and universities to build capacity, disseminate information, and meter knowledge.

“The project responds to the clear need to support the governance and climate of mineral-rich countries with tools to adopt and develop legislation, enhance the global informed participation derived from broad citizen participation to create the right environment for the sustainable use of mineral resources for shared prosperity.”

Mineral Law Library

The primary goal is developing an African mineral law library. The team will send a series of academic books on African mineral law and governance – one for each jurisdiction identified that for South Africa, Namibia, Botswana, Zambia, Mozambique, Eritrea, Tanzania and Nigeria.

The second goal is to build a network of practitioners and scholars in mineral law in these countries, and to hit in Lusaka, Ghana and Cameroon.

To do this, we provide any access to mining law information, the World Bank has initiated the Mining Information Action Line (MLiA), a web-based, open-source platform containing all mining law in Africa.

LAND RIGHTS

Lesotho is sub-Saharan Africa’s largest exporter of clothing to the United States, supplying retailers such as Gap, Levi Strauss, Tj Maxx, and Walmart. At least ten clothing factories, which include South African-owned companies, such as Gap, Levi Strauss, Tj Maxx, and Walmart.

Labour law specialist Shane Gullek has been helping the country improve the compliance of clothing firms with labor standards.

The Independent mountain ranges face enormous development challenges, says Montiel of the Labour and Enterprise Policy Research Group in the Institute for Mining.

The Center for Comparative Law in Africa established to build a network of scholars in the African continent, and to support the autonomous, supra-national institutions.

The mining sector relies heavily on preferential trading arrangements such as the African Growth and Opportunity Act (AGOA), says Montiel. AGOA is a non-reciprocal trade preference programme that provides duty-free access to US imports of certain products from eligible sub-Saharan African countries, such as Lesotho.

A number of these projects have been for Better Work Lesotho, a partnership of the ILO and the International Finance Corporation that aims to improve compliance with labour standards in the clothing sector in developing countries.

Better Work Lesotho conducts assessments of employer compliance with labour standards, provides training and capacity building within the sector, and works to help local joint worker-management committees in establishing collective bargaining.

More recently, Gullek has consulted on a labour law reform project to standardize and streamline the country’s existing labour legislation.

Critical issues for the researchers include questions of worker safety and health; the use of labour brokers in Lesotho; compliance with labour standards in the clothing sector; and the sustainability of development intervention.

LAW

Beyond BioIParc,

African’s oldest legal systems began in Africa. In the north, the ancient Egyptian kingdom used a civil code, founded on the idea of Maat: the cornerstone of which are tradition, material, social, equity and impartiality. Today, many legal historians and traditions – some local, others imported with colonialism – create the warp and weft of law in Africa, informing everything from marriage and mining to intellectual property and gender rights. Helen Swingler looks at some of the work UC3’s law scholars are doing in Africa.
A recently punitive approach to criminal justice leads more people being housed in prisons. The legal fraternity knows this well, says Kelly Phelps, senior lecturer in criminology at UCT. A purely punitive approach to criminal justice leads to more prisons being built and more people being housed in prison. “Put simply, prison doesn’t work most of the time – and we know that, but we haven’t got a better idea for most of the problem itself,” Howell argues. “We talk about justice and stuff, but the ones who would suffer are unemployed communities in the Western Cape. Users of the drug trade? In the context of the drug trade, the punitive model can actually do policing and prison make a dent in the drugs trade?

Policing a last resort

Do policing and prison make a dent in the drugs trade?

Massive salary disparities between those in the upper echelons of corporate management and those lower down the ladder are fodder for heated debate in a country raked by social inequality. Co-authors of the 2014 book Executive Salaries in South Africa: Who should have a say on pay, Associate Professor Debbie Collier (deputy dean of UCT’s Faculty of Law) and Kaylan Massie discuss whether there’s a ‘best practice’ for remunerating those at the top of the earnings pile.

Best practice: A guide to fair executive compensation

1. Link pay to performance

Remuneration policies should link to pay and performance and be paid in a non-vesting (deferral) or vested and immediate way. Essential performance indicators should cover areas like revenue growth, economic growth.

2. Link incentives to performance

Incentives should be tied to multiple performance conditions that should not be repeated across metrics. The current period for long-term incentives should be at least three years (preferably five or more) to confirm performance. If performance criteria are not met, they should not be continued in subsequent years.

3. Eliminate external factors

External factors affecting company performance that are beyond the control of the executive (such as commodity prices) should be minimised and any executive pay that is linked to such performance should be included in long-term incentives.

4. Don’t offer termination bonus or ballon payments

Executive remuneration should not include a termination bonus or baloon payments that are paid immediately upon termination.

5. Disclose one clear figure for remuneration

Disclosure of executive pay should be done in a clear and understandable manner. Companies should disclose the value of termination granted, vested and immediate or earn-out. Pay andperformance incentives should cover areas like revenue growth, economic growth.

Can good executives make good neighbours?

State police might be good at solving crimes, but they aren’t always the best at preventing them, says Julia Berg, of UCT’s Department of Public Law. To illustrate her point, all it took was some chickens, a fence, and a neighbourhood scuffle. “They do it because in the Transkei, it’s the only cash crop you can really grow – they do it to support their families.” The police, then, in creating economically viable options outside of the drug trade: “They need to find a cash crop that gives the animals families can be harvested up to four times a year — but few are as viable,” is Howell’s thesis.

How to break the cycle?

In parts of Uganda, women spend days brewing a particularly strong alcoholic drink. Not unlike the chickens, they are growing like cannabis [which can be harvested up to four times a year]. Where’s the Chicken? Making South Africa Safe

Policing a last resort

Dr Simon Howell of the Centre for Criminology uses the drug trade as an example to demonstrate that more policing won’t make a dent in the problem.

“South Africa has recognised that the position approach doesn’t work,” says Howell. “But the reason is not that the birds are not eaten and it’s left blank. We’re talking $1 billion your sport on policing drugs globally, and it doesn’t do anything!”

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WHAT’S IT LIKE TO SEEK ASYLUM IN SOUTH AFRICA?

There’s a great divide between the rights afforded refugees under the South African Constitution, and how they are treated in their day-to-day dealings with bureaucracy and ordinary citizens. Fatima Khan, director of UCT’s Refugee Rights Unit, takes us through some of the challenges refugees - and the people trying to support them - face on an ongoing basis.

Photo by Michael Hammond

While Somalis, Bengalis and Pakistanis shopkeepers were being attacked and their businesses looted in Soweto in January, Lindiwe Zulu offered scant comfort to the victims: “Foreign nationals – refugees or not – are not just South Africans but everyone as human beings, and it cannot just be taken away, because they’ve been afforded those rights in terms of the Constitution,” says Fatima Khan, director of UCT’s Refugee Rights Unit.

That ethos is also at odds with the Refugees Act. South Africa’s immigration laws are generous and progressive, says Masengu, of the Democratic Governance & Rights Unit (DGRU). “We have some of the most progressive laws on the continent, if not in the world,” she says, although she adds that these laws are not always fair to everyone who comes into the country, legally or illegally, especially to the most vulnerable individuals in South African society.

Disjunction between law and policy

“The law provides for a protection of human rights – in the Constitution it’s well defined,” says Masengu, referring to the Constitution’s right to the highest attainable standards of physical and mental health. She’s adequately protected, the Constitution says. “But the way it’s practised, it’s not the same.”

“The South African definition of ‘refugee’ is broader than that of most countries in the world, because it’s not just to our Constitution,” she says. “There’s a lot more protection given to refugees, xenophobia is illegal, and there is a disparity between the law and policy.” The challenge faced by some of the most vulnerable individuals in South African society is an ongoing struggle.

If you read too many of the stories, you’ll know it’s a problem. For example, a refugee child with a temporary asylum permit who tries to enrol in a school may find that many schools will not accept or be unwilling, saying that the permit is only valid for those months or, even in cases where the child has refugee status, that the permit is only valid for two years, so we’re not registering the child.

“Clearly the system is not working, or the system is not making the distinction: ‘Are these refugees?’”

“The problem is that we’re not just South Africans or even human beings, and it affects someone who comes into the country, legally or illegally, especially to the most vulnerable individuals in South African society.”

Very difficult, exceptionally difficult, because we have to deal directly with the Department of Home Affairs. ‘Habiba states that ‘90% of Home Affairs’ determination of our clients’ refugee status is flawed. There are clear cases, these people should be granted refugee status on the first instance, but they’re not. About 90% of them are not being stated.

Because you cannot just take away the rights of refugees – rights that have been afforded to them in terms of the Constitution, says Khan, yet the Department of Home Affairs closed their Cape Town, Port Elizabeth and Johannesburg offices, leaving only three places to apply for asylum in the country – Graham, Pretoria and Bloemfontein.

“What is this government has created now, with its restrictive policies. Because of that you now have large numbers of unacknowledged refugees in the country, that is a huge problem.

“The answer is a lot of advocacy work… and we find that if you explain the difference between a refugee and an economic migrant, you find that there is empathy. We say, ‘People flee that.[…] it is a person genuinely in fear of being tortured or killed anywhere in the world’.

Asylum seekers should get asylum status, and making sure that they are not deported to where they’ll face torture or harm, says Khan. How difficult is this initial process?

There is a huge gap in terms of rights. There are clear cases, there are clear cases, and the Department of Home Affairs has not yet acted in the most vulnerable cases. “We have people in those cases that have been in the country for more than a year, and yet they have not yet been granted refugee status.”

Mandela’s former chief advisor, Fatima Khan, an advocate of the Democratic Governance & Rights Unit (DGRU), has worked with partners and civil society organisations.

In addition to laws being out of date, there are also factors outside our control that increase the likelihood of people participating in unlawful activity. For example, copyrighted material from overseas is often either not available locally, or offered at a price beyond the budgets of the majority of South Africans. “We don’t think it’s a piece of copyright law… but it is a piece of copyright law.”

Beyond your personal responsibility to inform ourselves, Schonwetter suggests it is our duty to consider the potential consequences of our online actions. “We’re spending more and more of our time online, but what does the law have to say about some of our most common online activities?”

WEAPON WOMEN’S WORK

In spite of South Africa’s advanced Constitution, gender inequalities still characterise the country’s judiciary, says legal researcher Tabea Masengu, of the Democratic Governance & Rights Unit (DGRU).

An applied research unit with the public law department, the DGRU was launched in 2007 to play a strategic role in establishing democracy and human rights in Southern Africa. Its research and advocacy initiatives, both in the unit and with partners and civil society organisations.

The gender disparity is evident when we look at the courts. “Women in the magistracy is 40%, it’s 29% in the Supreme and 24% in the Constitutional Court,” says Masengu, referring to the courts’ gender composition. “In the Supreme Court of Appeal, less than 10% of judges are women.”

And although the proportion of women judges in the engineering is 40%, its still a dismal statistic, says Masengu.

“In the engineering, women are in the engineering classes, and the judgement women are in the engineering classes.”

This affects the legitimacy of our judiciary, and gender equality in general.

As a result of this, the South African judiciary, says Masengu, “remains unconcerned. Schonwetter suggests it is our duty to consider the potential consequences of our online actions. “We’re spending more and more of our time online, but what does the law have to say about some of our most common online activities?”

WEAPON LAW

With a record number of wins in 2017, the DCC has led a number of successful campaigns, including a high court challenge against the country’s laws that criminalises consensual same-sex activity.

The statement on the back of the non-commercial licence is: “This is the kind of licence that Wikipedia uses.” Attribution-NonCommercial-NoDerivs allows for formal or informal collaboration with varying degrees of openness that can be a crucial engine for innovation and innovation.

On a deeper level, and specifically in the area of intellectual property, Schonwetter questions whether the general concept of ‘appropriating knowledge through IP rights’ is supported in a society in which commercial values and systems of collective ownership are still prevalent. “Our research in this area – especially on copyright – is that systems that support more flexible systems are attractive, and more relevant locally, as they allow for local or informal collaboration with varying degrees of openness that can be a crucial engine for innovation and innovation.”

As for the law, the best single thing we can do is become better informed about the legal consequences of your online actions.
ON THE RECORD

Law staff, students and alumni explain what drew them to the profession, and what keeps them going.

Curated by Thaheer Mullins. Photos by Michael Hammond

Chelsea Bruk-Jackson
Final-year LLB

I’d like to contribute to furthering the pursuit of equal access to justice for all, and not just those who can afford it. In terms of what I’m doing now that works towards that goal, I started a community service project with another student that partners with the Triangle Project, an NGO that focuses on the protection of LGBTQI rights. The project goes out to various Triangle ‘safe spaces’ and conducts legal education workshops.

Mandla Radebe
Final-year law

Hopefully I can use law to drive social change – to do something that’s going to have a positive impact on people.

Christina Murray
Professor, Department of Public Law

Law matters but it doesn’t necessarily do good. A strong and just legal system must be built on good lawyers and rigorous thinking about every aspect of life. Teaching and research guided by a commitment to social justice is one part of this, and that’s why I do it.

Jordyn Petersen
2nd-year LLB

I want to focus on family law – especially in terms of divorce, maintenance and child support. There needs to be a huge difference made there.

Beric Croome
Tax specialist at Edward Nathan Sonnenbergs

The rich tradition of UCT’s legal scholars in upholding justice, as well as the law, inspired me to study at UCT’s Faculty of Law. Obtaining my Doctorate in Taxpayers’ Rights from UCT has opened many doors in the legal profession, both internationally and locally. The high standard of work demanded by my supervisors instilled in me a world-class knowledge of my area of specialisation.

Marumo Nkomo
Senior Lecturer, Department of Commercial Law

The role lawyers played in our country’s political liberation inspired me to enter this profession. What keeps me going is the desire to contribute to the development of policy and regulation that will enhance Africa’s competitiveness in the global economy.

Fumisa Ngqele
3rd-year BA law

A lot of people don’t know their rights. They don’t know that these laws exist. They don’t know that they can be protected. That’s one of the differences that I want to make, and I want to do it at a grassroots level for communities that are isolated.

Muatham Carlie
Final-year postgrad LLB

I hope to make the law a bit easier for general people to understand. I’m using technology, by developing an app where someone can type something in and get a general answer with regards to the law, so it’s not so technical.

Lee-Ann Tong
Senior Lecturer, Department of Commercial Law

Intellectual property law is one of the most dynamic fields to be in at the moment, but it also has many unanswered questions. Where there is a question, there will always be a research interest. What motivates me most though is engaging, working with law students. I think my biggest impact is through the contributions my students make – as practitioners, lobbyists, teachers. Hopefully I played a small, positive role.

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