

## **Brief Description of Completed Research**

This section may constitute the oddest of the open text boxes. It's odd because I have already described, in the main, my research interests in my 'academic' biography, my self-assessment of research and my ongoing and future research project segments. What I can do in the space provided is four-fold: (a) describe in greater detail my published research; (b) identify the axes around which my work tend to rotate; and (c) demonstrate how different research agenda actually reinforce one another; (d) show how outliers in my work are not outliers at all.

### **a. The Core of My Research: Books, Journals and Articles**

Five works -- *Constitutional Law of South Africa ('CLoSA')*, *The Selfless Constitution: Experimentalism and Flourishing as Foundations of South Africa's Basic Law*, *The Constitution in the Classroom: Law and Education in South Africa, 1994 – 2008*, *The Business of Sustainable Development in Africa* and the *Constitutional Court Review* – create a central hub around which quite a lot of my work over the last eight years has been directed and then dispersed. In *CLoSA*, I have driven a 5 volume, 77 chapter, 5500 page treatise, of which I have authored or co-authored roughly 25%. An introduction reflects the editors' method, and also shows the relation in which the book stands to the body of law upon which it expounds. From there, I authored chapters on constitutional history, co-operative government and inter-governmental relations, provincial constitutions and the provincial legislature, the security services, the auditor-general, the public protector, the commission for the promotion and the protection of cultural, religious and linguistic communities, application of rights, the limitation of rights, dignity, assembly, association, freedom and security of the person, education, community rights to religion, language and culture, freedom from slavery, servitude and forced labour – and that list is almost but not quite exhaustive. *CLoSA* bears a special relationship to the rest of my work because AFTER writing a chapter, I would often be well-placed to write articles on related subjects. 'Application', for example, has given rise to 4 subsequent articles. The chapter on Dignity has played a role in at least two articles, two book chapters, and a two-volume work, *The Dignity Jurisprudence of the Constitutional Court of South Africa*, as well as part of a chapter in *The Selfless Constitution*. The foundation of Freedom of Association – with its theories of constitutive attachments and social capital– features in a myriad of articles and book chapters, and drives important lines of thought in two monographs -- *The Constitution in the Classroom: Law and Education in South Africa, 1994 – 2008* and *The Selfless Constitution: Experimentalism and Flourishing as Foundations of South Africa's Basic Law*. Of course, with each new iteration on the subject, my engagement and understanding has deepened. Where I was 8 years ago with a *CLoSA* chapter is not where I am now: over that period, I have had the opportunity to think, re-think and re-write about associational life from a number of different, and often concrete, angles. But sometimes the directionality takes the form of downward causation – with no central command and control, information flows out from multiple sources and flows in from multiple sources. Articles on education led, ultimately, to a *CLoSA* chapter on Education. That chapter provided a foundation for new articles and, ultimately, *The Constitution in the Classroom*. That book has led to regular seminars with educators, two new articles, and a planned revision of the book. Finally, all this learning will be fed back into any chapter on Education in *CLoSA*. Freedom from Slavery, Servitude and Forced Labour produced two articles on sexual trafficking and forced labour. Community Rights – seemingly always in dynamic tension with rights to equality and to dignity – have led to numerous articles, and forced me to re-think their relationship to equality and to dignity in the egalitarian pluralist manner reflected in a recent article and *The Selfless Constitution*. I could go on with *CLoSA*'s effect, and its reciprocal effect, on my entire body of work. But this paragraph connects some of the dots.

Two monographs -- *The Constitution in the Classroom: Law and Education in South Africa, 1994 – 2008* and *The Selfless Constitution: Experimentalism and Flourishing as Foundations of South Africa's Basic Law* – also reflect the core of my work, and how it has developed over time. Individual articles on various subjects led to a book chapter. But more importantly, these initial efforts – and my thinking around experimentalism and flourishing – gave me the basis to take a test run as tying the facts on the South African ground to a variety of well-staked out positions, and to some more rarefied theories about constitutionalism. The resulting book now frames, though it does not limit, the new work in law and education that Brahm Fleisch and I have begun to produce.

*The Selfless Constitution* – finally published in 2013 – has enjoyed the best of all possible worlds. After 9 years of incubation, reading, mulling and writing on other subjects, I was able to take some of what I had written elsewhere and reshape it so that it fit the contours of the book. But where the book started and where it ended share little but a title. The articles and book chapters that I wrote in between conception and delivery of *The Selfless Constitution* regularly reshaped the content and the contours of the work. Reflexivity – a core concept in *The Selfless Constitution* – can easily be shown to have played a role in the development, writing and

completion of my second favourite child. Not only did the means to prove my overarching thesis change as I conceived of more cogent arguments, but the overarching thesis changed as I read more secondary literature, the courts and state actors altered course, and I applied my mind to new questions (sometimes raised by colleagues) that I had not yet considered. It also serves as something of a departure point for my next big work in law, philosophy and social theory – *The First Staging Post*.

I've said little about *The Business of Sustainable Development in Africa: Human Rights, Partnerships & Alternative Business Models*. It didn't start with a *CLoSA* chapter – nor was it even on the horizon when I began writing on the subject matter canvassed in the book. However, my interest in the UN's millennium goals as applied to South Africa and my history of direct involvement in the enforcement of an international human rights convention sparked an attempt to make sense of why South Africa, as opposed to Brazil, had failed to make serious progress around HIV/AIDS policy (circa 2005). Fieldwork, case studies and a seminal article followed my rooting around with my colleague Courtenay Sprague. When the opportunity to co-author and co-edit *The Business of Sustainable Development in Africa* came around, we were already prepared. I was already prepared. The analysis of the UN Global Compact tracked work I had done elsewhere, and the case studies had not only served their limited goal of aiding the UNDP's project of finding business driven solutions to public problems, they buttressed my conclusions regarding the manner in which particular problems of collective action.

The *Constitutional Court Review*, as is true of *Constitutional Law of South Africa*, is a place where I learn from others, whilst I do my fair share to improve the overall quality of the work. Hard editing – as opposed to reading and distribution – often requires a degree of intervention that looks to some more like co-authorship than reworking prose. When one takes this approach, then editing invariably becomes part of one's research.

When I look over the core, and the putative outliers, of my body of work, it becomes clear that I rarely write for instrumental reasons. Two pieces of relatively pure analytic philosophy answer vexed questions of constitutional law – one on category mistakes and constitutional waiver; the other on following a rule and constitutional and statutory interpretation. I wrote them because I wanted to do so – and could. The same holds other apparent departures from form – say the use of Freud and Klein to describe township violence in a manner far more compelling than the glibly used term, xenophobia. I saw a fit between the arc of Justice Albie Sachs' judgments and Walt Whitman's every expanding *Leaves of Grass*: what matters is the sense of democratic solidarity at which both authors ultimately arrive, and which underlies pieces of my own work.

#### **b. Axes**

Even the most academic of academic work invariably possess an instrumental cast: *One must finish one what begins*. But with no more than one or two exceptions, I have never written anything that did not intrinsically interest me or flow from the body of work that I had built up over time. Writing, and writing well, and writing for influence is simply too hard not to care about the objects of one's concern. So the axes are evident from the work described above – and listed elsewhere in this NRF application: (a) Constitutional theory, in all its myriad forms, from institutional design to the content of a provision in the Bill of Rights, (b) analytic philosophy as applied to problems thrown up by other constitutional law scholars and our courts, (c) education law and policy, (d) HIV/AIDS law and policy, and (e) development studies, law and policy (both domestic and international). These subjects all reflect to concerns mentioned in my academic biography: (a) that they are of intrinsic interest (to myself and others); (b) they permit me to work at the level at which I can have the greatest influence; and (c) they are directed at concerns that have, at their heart, the promotion of a society more just and fair than the one we inhabit now.

#### **c. Mutual Reinforcement and Reflexivity**

I've already shown how articles and book chapters shape the construction of books, and how books structure the contours of future articles, books and book chapters – the arguments in each, influencing, if not altering the conclusions that I reach.

#### **d. The Outliers**

Let's use it despite Gladwell misappropriation. So, for example, a recent work called 'Evidence of Patent Thickets in Complex Biopharmaceutical Technologies' might seem to be properly placed in a self-standing, tertiary, research area. It shouldn't. I continue to have an abiding interest in how cognitive biases, attributive biases and heterogeneous interests distort our understanding of the world. Patent thickets are, in part, a function of such biases and interests. In my most recent monograph *The Selfless Constitution*, and in a recent article, 'Law, Power and the Margin', I demonstrate how cognitive biases,

attributive biases and heterogeneous interests distort otherwise universally-shared truth propositions about the antics of various objects that populate our world (including ourselves). I suggest ways, in all three works, how we can avoid misunderstandings and biases, and improve everyone's lot at the same time. All sing off the same hymn sheet.

The same might be said of my extended set of articles and book chapters on HIV/AIDS law and practice, and related pieces in development studies and international human rights. They may have played a decisive role in constructing *The Business of Sustainable Development in Africa*. However, they reflect a distinct body of learning, and one I hope to capture somewhere down the line with Professor Sprague in an extended (but empirically grounded) meditation on the subject, *Women, Development and HIV/AIDS*.