

Ongoing Research Projects

There's no road ahead that does not ultimately direct me back to *Constitutional Law of South Africa* and the *Constitutional Court Review*.

1. After the many years of effort it took by myself and others to place the second edition on everyone's shelves, it would be a quintessential case of operating without a clear conception of one's career were I to allow *CLoSA* to become irrelevant. We will move forward, over the next few years, with *Constitutional Law of South Africa, 3rd Edition*. (The 2nd Edition was completed in 2008.) The 2nd Edition has been partially revised and now appears as a new 5 Volume Edition on Amazon.com (2013) and electronically worldwide on Westlaw International.
2. The *Constitutional Court Review* has been as good, if not better, author for author (international and domestic), page for page, as any other law journal in South Africa over its first five years. No other journal of record looks as closely at the Court's jurisprudence, nor pulls back to take the synoptic view about what is going on in and around our apex court. It needs 5 more solid years of pushing to be firmly established.

Future Research Projects

1. *Directly Accountable? The Erosion of Deterrence by Director's Liability Insurance and the Capacity of the Companies Act, the Constitution and Other Legal Frameworks to Hold Responsible Officers Culpable for Corporate Misconduct* The book has a two-fold purpose. First it will investigate the extent to which the regulatory framework governing directors' accountability is undermined by directors' and officers' insurance (D&O insurance). Given the recently documented inhibiting effect of D&O insurance on director and responsible officer liability for firm malfeasance in other jurisdictions, I have every reason to suspect that it operates in a similar manner in South Africa. The book will use both qualitative methods (interviews) and quantitative methods (surveys) of directors, lawyers and insurers to determine whether this first hypothesis holds true. The book, however, is driven by a second hypothesis: namely, that Sections 76, 77 and 78 of the Companies Act of 2008, in tandem with other legal frameworks (including the Constitution) might work to hold directors and responsible officers directly accountable. Recent case law and reported downturns in the appointment of independent, non-executive directors (ostensibly because of the extension of potential liability to such novel conduct as 'omissions') suggests that the law may actually have some teeth. In addition to using qualitative methods (interviews) and quantitative methods (surveys), thus part of the book will look at recent case law for signs of awareness by companies that the law now imposes a higher burden on directors and responsible officers.
2. *The First Staging Post: Building a Robust Rule of Law Culture and a Civil, Civil Society in South Africa*. In radically heterogeneous but fragmented, post-authoritarian societies, the first staging post is: (a) for the governors and the governed to be seen to be subject to the same rules (say, the mutual respect, trust and procedural fairness associated with the rule of law) and (b) for individuals and groups – law-enforcement officials and citizens alike -- to treat one another with the equal concern and respect, loyalty, trust and dignity necessary for all of us to get on with our lives, individually and collectively. What can be done to reach the first staging post? There's no sure-fire recipe. That said, one working hypothesis is that you can, through small interventions, build the trust, loyalty, tolerance and mutual respect that enable development to occur in a 'largely but not solely' legal domain and the substantially broader civil realm. This parallel building has been shown to have a reciprocal effect. The more one trusts law enforcement officials and sees them as part of the same community, the more one is apt to obey the law and view other members of society as law-abiding citizens. The more one views one's fellow citizens as having similar, even if limited, degrees of respect for the law and thus other citizens, the more likely that such respect will be accorded in and across various non-state institutions in civil society. Although the book will draw on several extant publications, the book aims to frame its seven modest interventions in a decidedly novel manner. I also hope to test the viability of some of the interventions by replicating qualitative and quantitative studies used elsewhere.
3. The 2nd Edition of *The Constitution in the Classroom* gives Brahm Fleisch and I an opportunity to tweak the original copy and stay out in front of current developments in the law. We have articles in print, and new chapters in the works, that should enable us to produce *The Constitution in the Classroom: Law and Education in South Africa, 1994 – 2014* by the end of 2015.
4. The follow-up to *The Business of Sustainable Development* bears a new name and entirely new content – *The Architecture of Sustainable Development in South Africa: Ethics, Codes, Regulations, Legislation, the Constitution and International Norms*. We are already part way down the road. I have steered several of my MBA students toward writing MBA theses that will provide case studies that fit the needs of this specific work.
5. Another work -- *Wicked Problems and Novel Technology: Five Inventions that Can Reshape South African Lives of South Africans* -- has been mapped out with George Abraham. George is both a venture capitalist who

specializes in new technology and a lecturer at the Stevens Institute of Technology. New technology exists to solve a host of age-old problems. Two primary questions underlie the book: (1) How does one overcome problems of collective action that often block the rewards of innovation? (2) How does one ensure that any new technology will actually serve the target community as intended?