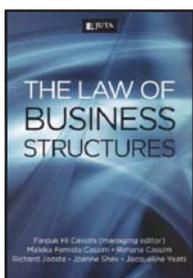


# THE PUBLISHERS *From*

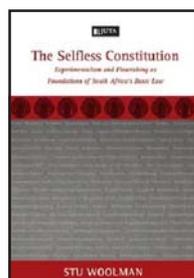


**The Law of Business Structures**  
**Farouk HI Cassim,**  
**managing editor**  
 Juta (2012);  
 First edition;  
 LXXii + 613pp;  
 soft cover

This book is written in a conversational style, which serves to engage the reader; it breathes life into a topic covering not only the new and voluminous Companies Act of 2008, but also reams of other company-law-related topics, such as close corporations and business trusts

The authors debate the concepts and philosophical underpinnings of company law, discussing common-law principles as well as corporate-law doctrines and concepts. The book draws useful comparisons between the old Companies Act and the new Act, highlighting interesting new issues the new Act has generated. It also covers the various transitional provisions. In addition to dealing with topics one would expect to find in a book like this, such as director's liability and business rescue, *The Law of Business Structures* also provides a useful synopsis of the King III report on corporate governance and deals extensively with auditors' liability. This work will surely be a useful addition to any practitioner's library; since the authors cover their chosen topic extensively, it is a reliable and ready-to-hand reference guide for even the most skilled practitioner. To this end, the book's layout is useful and practical. It is carefully indexed, and, for quick and easy reference, it provides a handy glossary and table of cases and statutes. **A**

Hannelie Gray, Johannesburg Bar



**The Selfless Constitution:**  
**Experimentalism and Flourishing as Foundations of South Africa's Basic Law**  
**Stu Woolman**  
 Juta (2013)

Stu Woolman's monumental work will appeal to those with an interest in metaphysics, particularly epistemology and the kinds of puzzles spawned by philosophy of mind. It certainly helps if you are interested in the relationship between these sorts of things and political pragmatism. This, after all, is a work that seeks to persuade you to view the self and its relationship with society in a certain way, with reference to contemporary philosophy and science, and then asks you to take that view and apply it to the South African constitution.

The book starts by asking the reader to view the self and its ability to act with "freedom" in a certain relatively naturalistic and determinist way. It then extrapolates this vision to society, and the ability of agents to shape it. Dennet, Walzer, Thaler and Sunstein are particularly strong influences here. The self is Dennet's "centre of narrative gravity" or Walzer's "thickly populated circle", and conscious will enjoys limited freedom to manoeuvre in a sort of evolutionary experimentalism via various "feedback mechanisms". An important political agenda is to pierce the attraction of freedom and instead to espouse a supernorm of flourishing. "Flourishing is freedom shorn of the latter's unhelpful metaphysical baggage" (393). If I were to venture into a critique of the treatment of the precise relationship between con-

stitutive norms like freedom and dignity, on the one hand, and the supernorm "flourishing" on the other hand, and say I have similar problems with what Amartya Sen does to Justice and its relationship to Everything That is Worthwhile, I would wander too far for present purposes. So I haul myself back. Suffice it to point to the following telling proposition: "The norms found within the South African Constitution – primarily those norms found within the Bill of Rights – are best understood in terms of contemporary understanding of flourishing" (203).

Having asked its reader to don a very particular pair of spectacles, the book then asks the reader to consider our constitution while wearing them. The method, or vision, is "constitutional experimentalism", of which the "Ur-text... is Michael Dorf and Charles Sabel's ... article 'A Constitution of Democratic Experimentalism'" (204).

What is most interesting is that there is no attempt to say there is anything peculiar about our constitution, as opposed to other politically charged texts, that demands it be read in this way. The work is unapologetic about the direction and sequence of its movement from the "is" to the "ought". It tells the reader: "this is what I want you to think about metaphysics, and then I want you to read our constitution, and the judgments, accordingly." The radical commitment to pluralism one undeniably finds in the constitution helps with making this a candidate for a sensible enterprise. But Woolman would want us to read anything wearing these spectacles, not just our constitution – perhaps as a Jesuit would ask us to view all art through the lens of glorifying God.

The book is clear that its "experimentalist" constitutional methodology does

not entail a kind of agnosticism about political truth that some may think logic would dictate: “Experimental constitutionalism, at least in so far as it is to have meaningful application in South Africa, must be committed to various forms of state intervention (a) that shake up existing restrictive, discriminatory hierarchies and (b) that create the space for new ways of being to emerge” (217).

The book espouses “the politics of democratic solidarity married to experimental constitutionalism”, or “experimental constitutionalism wedded to a politics of flourishing” (505), with an

avowed “egalitarian pluralist agenda” (506).

Deep into the work, twenty Constitutional Court judgments are analysed for the extent to which they promote constitutional experimentalism, and how they might differ if they did so more fully. Woolman persuasively finds a trend towards the kinds of methods, both in rights assessment and in remedy fashioning, that would appeal to the constitutional experimentalist project (if not necessarily self-avowedly espouse it in those terms). There is no doubt that this analysis, especially of the kinds of participatory interpretation and experimen-

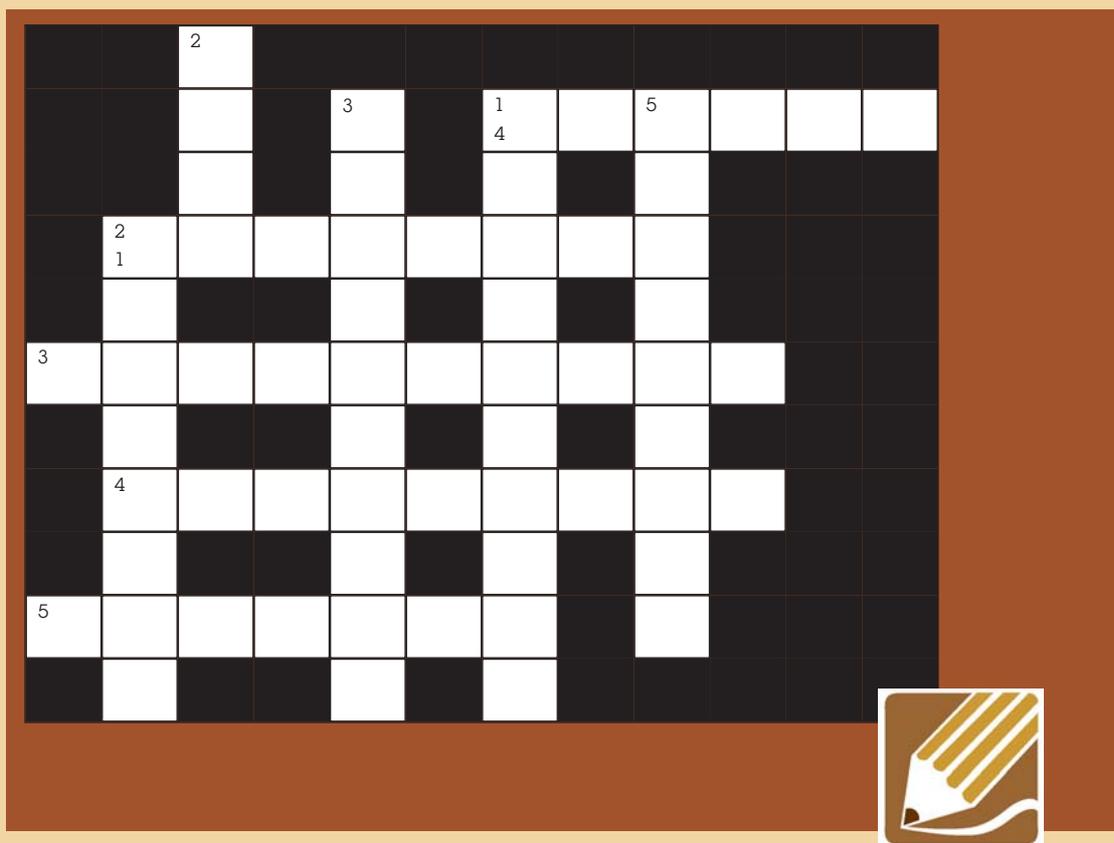
talism that are entailed by the Court’s approach to remedies (in particular that of “meaningful engagement” in the sphere of housing), offers insights even to metaphysically apathetic constitutional lawyers. If these were to have “drawn back the cover, kept [their] head[s] down and followed through” (505), they would certainly have found themselves as enriched as their more metaphysically inclined cousins.

To a performance of such breathtaking ambition, I can say only ‘bravo’.

*Frank Snyckers SC, Johannesburg Bar*

# Legal crossword

## Number 26



### Clues

Answers on page 48

#### Across (starting from top)

1. English doctrine amending charitable trusts (2 words)
2. Accused in older English law reports
3. Swift upheaval of social order
4. Undertaking to refrain from competition
5. Medium that tested free speech limits

#### Down (starting from left)

1. Necessary conference before going to court
2. You may sometimes serve documents on it
3. Granted if there is no case to meet
4. Rivals exercise this power when competing
5. Staff