Das Buch vermittelt viele neue Einblicke und gibt seine fundierten Informationen gut lesbar weiter. Es hinterläßt beim Leser eine besondere Faszination und in jedem Fall Verständnis für ein uns im Westen immer noch fremdes Denkmodell. Hier hat ein Thema seinen Autor gefunden.

Dagmar Reimmann

Reinhard Zimmermann / Daniel Visser (eds.)
Southern Cross. Civil Law and Common Law in South Africa
Civil Law and Common Law in South Africa
Clarendon Press, Oxford, 1996, 892 pp., £ 65.00

Among the unique features of the Southern hemisphere, the cross between civil law introduced by 17th century Dutch settlers, and common law, added by 19th century judges of the British Empire provides a vivid example both of a successful harmonization of legal systems and present day application of Roman Law, i.e. Roman-Dutch Law, in a modern legal system. Following their conviction that knowledge of the past is of crucial importance both for the proper understanding of the present state of law and for its future developments, *Reinhard Zimmermann*, Professor of Private Law, Roman Law and Comparative Law in the University of Regensburg, and *Daniel Visser*, Professor of Private Law in the University of Cape Town, gathered a team of 23 co-authors primarily from South Africa and Great Britain to provide a detailed legal history of some of the main institutions of, *inter alia*, the South African law of contract, delict, and property. A compendium suitable both for South African lawyers wishing to understand the historical background of the legal concepts they apply in practice and – of even greater interest – for scholars of international comparative legal studies.

With the exception of the study and teaching of public international law and in contrast to almost all other subjects of university education, law has been a predominantly national feature. The editors see their book as an attempt to change what they call the anachronistic 'national isolation' of law and legal science (p. 1). Especially for systems of law which are facing a need for more harmonization, such as the European Union regarding the harmonization of private law, the book is considered to be of great importance.

South Africa is not the only country with a mixed legal system. The Introduction by the editors *Reinhard Zimmermann* and *Daniel Visser* gives an overview over other examples of other mixed legal systems combining both common law and civil law. Besides South Africa these are, *inter alia,* Scotland, Quebec, Louisiana, Sri Lanka and Zimbabwe. The authors point out that in South Africa Dutch-Roman civil law is uncodified, and unlike in Quebec, where the intention to shield civil law from common law influences led to its codification, Roman law remains a living source of law (p. 3). Another aspect the collection of articles

on some of the most important institutions of South African law shows is the inherent compatibility of the two main branches of the European legal tradition. The editors close their introductory statement considering the reasons for newly independent countries to retain common and civil law, mostly besides indigenous customary law, and append two editor's notes on the structures of legal reporting and legal literature in South Africa (pp. 15, 19).

Eduard Fagan, one of two professors of public law among the civil law authors, in his article on "Roman-Dutch Law in its South African Historical Context" (p. 33), gives a closer and critical insight into the general background of the genesis of the South African legal system, including the relationship to the resident peoples which was characterized by a sharp division between what the European settlers considered to be 'primitive' and 'civilized'. The historic review also proves the strong influence of historical events and developments as the Boer War on the interpretation and application of law.

Since Africans in South Africa have title to only 13 per cent of the country's total land area (p. 65) the necessity to take a close look at the history of land acquisition by European settlers, which is "also a history of dispossession", is obvious. *T.W. Bennett,* the other professor of public law, gives a broad overview of the international and constitutional legal aspects including their political implications of land tenure from colonial times to the Interim Constitution, including the new discussion on indigenous rules of land tenure.

In common law countries, judges have a very strong position taking the lead in shaping the law. Therefore, *Steven D. Girvin* introduces the judges who have been appointed to administer justice since colonial times as the "Architects of the Mixed Legal System". It is an introduction which is especially convenient for readers who are not familiar with the names or with the biographical background of the judges and their main contributions to the development of the South African legal system (p. 95). *Hennie J. Erasmus* rounds up the first introductory chapter with remarks on the "Interaction of Substantive Law and Procedure" elaborating on the procedural changes introduced, in the 19th century, to the traditional and unwritten Roman-Dutch law of South Africa by the English common law tradition: the legal profession, legal institutions, court procedure and evidence, to name the most striking examples of institutions shaped by the common law traditon (p. 141).

Part II is dedicated to General Principles of Contractual Liability. *Dale Hutchinson* surveys the history of the Formation (p. 165), *Carole Lewis* the "Interpretation of Contracts" (p. 195). As South Africa, unlike Britain, never had a distinction between courts of law and courts of equity, special attention is given, by co-editor *Zimmermann,* to "Good Faith and Equity" (p. 217) in South African jurisprudence. *Gerhard Lubbe* then takes a close look at "Voidable Contracts" (p.261), *Alfred Cockrell* introduces into the history of "Breach of Contract" (p. 303) and, finally *David J. Joubert* explains the role of "Agency and *Stipulatio Alteri*" (p. 335) in the South African law of contracts.

Part III is comprised of five articles on obligations in a commercial context: "Purchase and Sale" by *Jan Lotz* (p. 361), "Employment Relations" by *Barney Jordaan* (p. 389), "Surety-

ship" by *C.F. Forsyth* (p. 417), "Insurance Law" by *J.P. van Niekerk* (p. 435) and "Negotiable Instruments" by *Charl Hugo* (p. 481).
Only one article deals with obligations arising neither from contract nor from delict (Part IV): *Visser's* study on "Unjustified Enrichment" (p. 521). Part V on the law of delict is comprising "Aquilian Liability" (*Annél van Aswegen* covering the 19th, p. 559, and *Dale Hutchinson* the 20th century, p. 595) followed by the history of the "Protection of Personality Rights" by *Jonathan M. Burchell* (p. 639).
To give a general idea of the variety of articles collected in the book, Part VI on Property Law contains, the titles: "Ownership" by *J.R.L. Milton* (p. 657), "Original Acquisiton of Ownership" by *C.G. van der Merwe* (p. 701), "Transfer of Ownership" by *David L. Carey Miller* (p. 727), "Neighbour Law" by *Derek van der Merwe* (p. 759), "Servitutes" by *M.J. de Waal* (p. 785) and, finally, "Possession" by *Duard Kleyn* (p. 819). The list of articles is rounded up by Part VII on fiduciary transactions, in which *Tony Honoré* introduces into the history of Trusts (p. 847).
This rough overview and list of the specific subjects covered by international authors in their contributions to this comprehensive collection of articles on the South African System of Private law should allow users to identify their specific interest. Not only the detailed insight for South African lawyers, as a basis for a reconsideration of the legal traditions and ties of their legal system, makes this book recommendable. The book is a stimulating lesson also for foreign lawyers looking for an in-depth study and a distinct comparative legal approach to a unique system of private law.
One should hope that the compendium will strengthen the ongoing harmonization efforts in the field of private law - not only within the European Union – and reduce, where possible, as the editors hope, existing legal systems of private law to national variations of a common theme ... and turn the attention of legal scholars and practitioners from purely national concerns towards fundamental intellectual unity.

Ulf Marzik

William Reno
Corruption and State Politics in Sierra Leone
Cambridge University Press, Cambridge, 1995, 229 S., £ 35,00

Auch drei Jahrzehnte nach der Dekolonisierung haben sich in vielen Teilen Afrikas keine effektiven Nationalstaaten etabliert. Nicht selten definiert sich der Staat lediglich über seine völkerrechtliche Stellung, während die staatliche Autorität im Lande auf einige räumliche Gebiete (meistens die Hauptstadt und größere Handelszentren) beschränkt bleibt. Dieses Phänomen des Schattenstaates ("shadow state") wird vom Politikwissenschaftler William