Efforts at Constitutional Comparison: The German-South African Experience (A Partial Review)

Obeng MIREKU: ***Constitutional Review in Federalised Systems of Government – A Comparison of Germany and South Africa*****,** Schriftenreihe Recht und Verfassung in Südafrika, Band 10. 171 pp. Baden-Baden: Nomos 2000. ISBN: 3-7890-5900-9; Price: € 61

Jörg FEDTKE: ***Die Rezeption von Verfassungsrecht – Südafrika 1993-1996*****,** Schriftenreihe Recht und Verfassung in Südafrika, Band 6. Baden-Baden: Nomos 2000. 469 pp. ISBN: 3-7890-6678-8; Price: € 143.

By Hanri Mostert

A. Introduction

A contribution by Francois Venter in 2000 about constitutional comparison[1] illustrates an important recent addition to legal research in South Africa: Subsequent to the dawn of a new era of democracy and constitutionalism, the scientific method of legal comparison (which was for long annexed by South African private lawyers),[2] suddenly gained renewed significance, particularly in the constitutional context. At first, lawyers were necessitated to look beyond the obvious, to other, more established constitutional orders, in attempts to find inspiration for the development of a liberated constitutional democracy. Later, this trend was continued in the judiciary and in scholarship, to alleviate the growing pains of the new constitutional order. Since those early days, the comparative work on constitutional law emanating from the courts and the universities has proliferated. This development is eagerly followed and supported by some scholars from other jurisdictions. One such strand of supporters gave rise to the present review.

B. Schriftenreihe für Recht und Verfassung in Südafrika

[1] Venter, F. CONSTITUTIONAL COMPARISON (Juta/Kluwer Law International, 2000. ISBN 90-411-1510-2.)
[2] Venter, F. CONSTITUTIONAL COMPARISON 19.

https://doi.org/10.1017/S2071832200015868 Published online by Cambridge University Press

Professors *Ulrich Karpen, Ingo von Münch* and *Hans-Peter Schneider*, three champions of research capacity building with an interest in law and constitutionalism joined forces in 1998 to create the *Schriftenreihe für Recht und Verfassung in Südafrika* (published by Nomos), in an attempt to promote legal comparative endeavours of upcoming academics with an interest in both these jurisdictions. Since its creation, it has contributed greatly to the consolidation and distribution of knowledge in this particular field, particularly in rendering works of comparative constitutionalism more accessible in Germany as well as in South Africa. The board of editors reads like the Who's Who of Comparative Law and Constitutionalism in South Africa and Germany, containing names like Justices *Laurie Ackermann* and *Yvonne Mokgoro*, and Professors *Gerhard Erasmus, Philip Kunig, Lourens du Plessis* and *Reinhard Zimmermann*. This attempt at research capacity building and knowledge distribution must be commended. The purpose of this contribution is, however, not so much to evaluate the significance of this effort and the involvement of these figures in the process of promoting law and constitutionalism, as it in assessing the significance of (some of) the subject matter of this series of monographies.

Up to now, seventeen contributions have been published through the series. The research topics range from themes of private law (e.g. *Raitz von Frentz*, Lex Aquilia und Negligence, Band 6) through mercantile law (e.g. *Pautke*, Die kartellrechliche Erfassung konglomerater Konzentration in der Republik Südafrika, Band 2; *Widder*, Die Entwicklung des Insiderrechts in der Republik Südafrika, Band 14), to a variety of outputs on various aspects of constitutional law. The latter include rather rudimentary analyses of broad themes such as the South African Constitution (*Grupp*, Südafrikas neue Verfassung, Band 4,[3] and the adjudication of the Constitutional Court (*Schmid*, Die Grundrechtsjudikatur des Verfassungsgerichts der Republik Südafrika) but also a most impressive and comprehensive contribution on applied comparative constitutional theory (*Fedtke*, Die Rezeption von Verfassungsrecht, Band 8). It also contains contributions on particular aspects of constitutional and international law, such as the works of *Duchrow*, *Oelkers*, *Hahn-Gedeffroy* and *Schmidt-Jortzig*.[4]

In order to properly assess the significance of these contributions to the body of knowledge about comparative law and constitutionalism, comprehensive reviews of each of these contributions would be ideal. This is, for present purposes, too broad a task. Instead, with a view to assess, in part, the state of comparative German-South African constitutionalism, two of the works from the series are reviewed here. These are the already mentioned books by *Obeng Mireku* and *Jörg Fedtke*.

[3] Reviewed in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 1999 (59/2), 601-603).
[4] For a comprehensive list, see http://www.nomos.de [30-01-2003].

https://doi.org/10.1017/S2071832200015868 Published online by Cambridge University Press

1. Mireku, *Constitutional Review in Federalised Systems of Government – A Comparison of Germany and South Africa*

The work by *Mireku* formed the basis of a doctoral thesis, which was accepted by the University of Hannover in 1999, and which was published in its present form in 2000. The work consists of five chapters. In the introductory chapter, the author convincingly assesses the necessity of researching the topic of federalism from a comparative stance (pp. 11-13, 16, 17-18). Existing literature on the topic is reviewed before a very comprehensive list of research objectives is advanced (pp. 16-17). *Mireku* provides the reader with a brief constitutional history (pp. 18-19) to point out that both the German Basic Law (*Grundgesetz*)[5] as well as the two post-apartheid constitutions of South Africa[6] symbolize a particular reaction to past injustices in the politics of the respective jurisdictions, and that both the German and South African constitutional documents may be described as liberal.

Chapters 2 to 4 form the body of the research output, containing discussions of (a) the general constitutional indications of federalism in Germany and South Africa (pp. 21-54), (b) the reasons for and nature of constitutional review of intergovernmental relations in both systems (pp. 55-96), and – although the author initially makes no specific link between federalism, human rights and constitutional review – (c) some aspects of human rights jurisprudence (pp. 97-135).

The conclusion contains both an analysis as regards impact of the present state of the law, as well as recommendations for reform and further research. It is here that the reader realizes that *Mireku* is concerned mainly with the "constitutional ramifications of federalism on human rights law" in Germany and South Africa (pp. 136). The success of the author's compliance to the very broad range of research objectives, stated in chapter one (pp. 16-17) and restated in the conclusion (pp. 137), should be assessed against this backdrop, and chapters two, three, and four should be read with this concern of the author in mind.

---

[5] English translations of the German Basic Law are available online, *inter alia* at: http://www.jura.uni-sb.de/law/GG/gg0.html and http://www.iuscomp.org/gla/statutes/GG.htm [30-01-2003]. For a comprehensive list of links to Legal Resources, Statutes and Courts, go to http://www.germanlawjournal.com and click on "links" in the main bar. Additional suggestions to the list of links are always welcome and should be directed to info@germanlawjournal.com.

[6] These texts are available in English, and can be accessed online at: http://www.gov.za/structure/constitution.htm [30-01-2003].

https://doi.org/10.1017/S2071832200015868 Published online by Cambridge University Press

To summarize the main body of research done by *Mireku* briefly, it may be said that the author structures his argument on three distinct levels. First, by reviewing the presence of federalist characteristics in both the German and South African systems, he argues that both jurisdictions contain a healthy measure of federalism, tailored to fit a particular kind of constitutional scheme. Here, the author explores the manner in which legislative powers are distributed between central and regional governmental institutions, and concludes that, in spite of differences between the German and South African systems, it is apparent that various measures of intergovernmental cooperation are necessary to harness and institutionalize the relationship of interdependence between central and regional governments, as well as among regional governments *inter se.*

This brings the reader to the second leg of the argument, in which the significance of constitutional review of such intergovernmental relations is analyzed. The important point here is that the judiciaries of both systems tend to perceive the federal principle as an "enabling and constraining factor on the actual exercise of power" (pp. 138) of different governmental institutions. However, although the author in broad terms explains that "the federal principle is not only inherent in the structure of German and South African constitutional arrangements, but … has been perceived as the lodestar that guides a court in the adjudication of intergovernmental conflicts", he fails to elucidate the inherent contradiction that seemingly lies at the heart of constitutional review on the basis of federalism.

The case analyses undertaken for both the German and South African systems take note of some of the leading cases, although more recent decisions are ignored:[7] As concerns German law (pp. 66-76), the author first discusses the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court - FCC), printed in *BVerfGE* 1, 14 (1951), in which legislative interference from central government in the merger of three earlier regions in the South-West of Germany was contested, and eventually struck down for being unconstitutional. According to the author, this must be seen as an indication of federalism perceived as a basic principle of state, which should be applied to constitutional adjudication along with other like principles, like democracy and the *Rechtsstaat* (rule of law or, constitutional state). A second case discussed is the FCC's judgment in *BVerfGE* 12, 215 (1961), in which the doctrine of federal comity (*Bundestreue*) was applied and elaborated in the context of the creation of a second television channel in Germany, and the concomitant threat to the governmentally controlled telecommunications system. This doctrine refers to the reciprocal obligations for constituent regions or states, embodied by the federal principle and espoused by article 20.1 of the Basic Law.

[7] Admittedly, this might be due to the date of publication, which from the Acknowledgements (p. 9) appears to have been some time after April 2000.

https://doi.org/10.1017/S2071832200015868 Published online by Cambridge University Press

The author views this case as vital in the delimitation of regional governments' power of monopoly in general. Other cases discussed in the context of the doctrine of comity (*BVerfGE* 6, 309 (1957), *BVerfGE* 81, 310 (1990)) indicate the fine line between law and politics, although this issue is not explored by the author. As a third issue, the author considers the very contentious matter of cooperative federalism, or rather the conceptual framework for negotiations and collaboration between national and regional governmental institutions. Three finance equalization cases (*BVerfGE* 1, 117 (1952); *BVerfGE* 72, 330 (1986) and *BVerfGE* 86, 148 (1992)) are mentioned, once again brimming with issues of law and politics, which are sadly not satisfactorily explored by the author in a satisfying manner. Especially in view of the context within which these discussions are undertaken – as a contribution to comparative constitutionalism in English – a more thorough analysis here could have been useful not only in the South African context, but indeed in the whole Anglophonic world. Moreover, the absence of at least a rudimentary review of the most recent struggle (during the years 1999/2000) in the context of finance equalization, limits the significance of this discussion. The latter finance equalization dispute, which was triggered by objections from the "giving" *Länder*, has been described as a paradigm shift from cooperative to competitive federalism.[8] The constitutional court did deal with this matter in part,[9] but existing (and, for some, quite unsatisfactory) practices have since given rise to many a discussion, and indeed several research projects.[10] In the final instance, the author discusses the principle of *subsidiarity* in its significance as principle of government between individual member states and supranational organizations such as the European Union. The reason for this discussion must be understood against the backdrop of the continuing debate about the nature of 'federalism', both in the context of the European Community and the United States.[11]

---

[8] See, e.g., Vesper, K. "On the reform of the fiscal equalization scheme in Germany", online at http://heaven.diw.de/english/projekte/docs/stt_finanzausgleich_brdbrg_summary_e.html); and see also Hanebeck, A. "Zurückhaltung und Maßstäbegesetz: Das Urteil des BVerfG zum Länderfinanzausgleich", *Kritische Justiz (KJ)* 2000, 262ff.; Becker, J. "Forderung nach einem Maßstäbegesetz. Neue Maßstäbe in der Gleichheitsdogmatik?', *Neue Juristische Wochenschrift (NJW)* 2000, 3742ff.; Waldhoff, C. "Reformperspektiven der bundesstaatlichen Finanzverfassung im gestuften Verfahren", *Zeitschrift für Gesetzgebung (ZG)* 2000, 193, 207ff.

[9] See the decision of 11 November 1999 (*BVerfG*, 2 BvF 2/98 of 11.11.1999, available online at http://www.bundesverfassungsgericht.de/cgi-bin/link.pl?entscheidungen [30-01-2003]).

[10] See the sources mentioned at note 8 above, and also, e.g. Lunze, S. / Zisky, S. "Federalism and financial power" online at http://www.lunze.de/studies/federalism.htm [30-01-2003]; Berthold, N., Drews, S. & Thode, E. "Die föderale Ordnung in Deutschland – Motor oder Bremse des wirtschaftlichen Wachstums?" *Zeitschrift für Wirtschaftspolitik* 2001, 113-140; and Von Hagen, J. / Hepp, J. "Regional Risksharing and Redistribution in the German Federation" 2000, online at http://www.zei.de/download/zei_wp/B00-15.pdf [30-01-2003].

[11] See the canonical text by Bermann, B. "Taking Subsidiarity Seriously: Federalism in the European Community and the United States", 94 Col. L. Rev. 331 (1994); for a comprehensive discussion of the

As for the South African example (pp. 78-93), the author discusses (a) delegation of legislative power; (b) the basic structure doctrine; (c) abstract review; (d) constitutional certification; and (e) sovereignty and cooperative federalism as examples of federalist principles which became subject to constitutional review. The discussion in this regard remains cursory, with reference to some of the most important cases decided in the short history of the Constitutional Court. As such, the discussion barely ventures beyond the informative to the analytical. In the summary at the end of chapter three (pp. 94-95), some attempts at comparison are made, but these remain superficial in nature.

Eventually, the analytical shortcomings in the second leg of the author's argument impair the third and most important stage of argumentation, namely the influence of federalism on human rights jurisprudence (pp. 97-135). The author here provides an exposition of the perceived constitutional framework for fundamental rights jurisprudence in Germany and South Africa, which may be summarized as an adjudicative paradigm based on human dignity and equality. The discussion is then continued by the identification of trends in German and South African case law in the context of human dignity and equality. It seems as if the author here confuses the distinction between human dignity and equality as basic constitutional *values or principles*, as opposed to particular *rights* constitutionally protected.[12] This, however, may be beside the point. More importantly, the discussion of human rights jurisprudence fails to link properly the idea of federalism and constitutional review for the specific issue of human rights. One particularly noticeable oversight is the absence of an analysis of the *DVB Behuising* decision of the South African Constitutional Court[13], in which the division of powers between central and regional government in South Africa was tested in the wake of a dispute about the continued reliance on apartheid-based subordinate legislation by some provinces in attempts to speed up delivery on promises of access to land. The author, obviously realizing the thesis' shortcomings in this regard, indicates the necessity for further "comparative study into the manner and extent to which the underlying constitutional values are infused into the meaning of periphery rights" (p. 157).

---

subsidiarity principle in the light of recent federalism research, see the contributions in: Howse/Nicolaidis (eds.), THE FEDERAL VISION, 2002; cf. Phil Syrpis, "Legitimising European Governance: Taking Subsidiarity Seriously within the Open Method of Coordination", European University Institute Working Paper in Law No. 10/2002, available at: http://PUB/law02-10.pdf.

[12] On this distinction, see, e.g. Kroeze, I. "Doing Things with Values: The Role of Constitutional Values in Constitutional Interpretation" *Stellenbosch Law Review (Stell LR)* 2001, 265–276; and Kroeze, I. "Doing Things with Values: The case of Ubuntu" *Stellenbosch Law Review (Stell LR)* 2002, 252ff.

[13] *DVB Behuising (Pty) Ltd v North West Provincial Government and Others* CCT 22/99 (available at http://www.law.wits.ac.za).

https://doi.org/10.1017/S2071832200015868 Published online by Cambridge University Press

2. Fedtke, *Jörg: Die Rezeption von Verfassungsrecht – Südafrika 1993-1996*

The work by *Fedtke* formed the basis of a doctoral thesis, which was accepted by the University of Hamburg in 1998/1999. This work, too, was published in its present form in 2000. The author sets out to explain, in the form of a short introduction (p 15-20), the scope of modern-day receptive jurisprudence, quoting the statement of *Watson's* LEGAL ORIGINS AND LEGAL CHANGE (1991) 73, that "borrowing from another system is the most common form of legal change." *Fedtke* then delimits his own inquiry to an analysis of reception in the context of constitutional law, and more particularly the adoption of German law in the drafting process of the Interim Constitution of South Africa of 1993 and the Final Constitution of 1996. This inquiry significantly clarifies the reasons for this particular event of reception, and the levels at which reception took place. It is, however, of more than mere historic importance, since it also identifies the adaptations of content and grammar which was necessary for successful transplantation of law, as well as trends in the development of the transplanted concepts. Finally, it also assesses the success of the reception of constitutional structures in their subsequently developed form. As such, this work is of immense importance in the South African context, because it provides a thorough, scientifically sound scrutiny of the policies and considerations behind the creation of relatively new constitutional-legal structures in South African law, in a manner not since equaled.

Fedtke's work comprises three general parts. The first part serves as theoretical basis and deals with general aspects of reception of foreign law, discussing the concept of reception (pp. 21-30), the causes for it (pp. 31-42) and the level on which reception can take place (pp. 43-50), before dealing with the making of decisions as to the possibility of reception of particular concepts (pp. 51-52), and particular aspects of the development of such concepts in the receptive jurisdiction (pp. 52-56).

The second part forms the body of the author's investigation. It is divided into five broad sections and sets out to determine the premises upon which an inquiry like the present one should be predicated. The phased approach of constitutionality review characterizing not only the South African process, but also the process in many other jurisdictions, including Germany and Canada, plays an important role in such an inquiry (pp. 58-60). Further, the constitutional context, as well as economy and ethnicity combine to influence the inquiry. *Fedtke* further considers the role of reception from a variety of jurisdictions, which is characteristic in particular of the 1996 drafting process as well as of the issue of constitutional drafting seen as a political process. This approach allows the author (and the reader) to embrace the - by now almost universally accepted - contradiction between law and politics, and *politics as law*. This is supplemented by a review of

the material used for the inquiry, in which special attention is given to the importance of policy documents, political statements and draft versions of the constitution (pp. 70-71). The result is a very sophisticated version of constitutional comparison, in which not only particular clauses from different jurisdictions are compared and their influence on each other is determined, but in which different versions of draft clauses in the South African context are compared with each other to determine the extent of receptive influences at various stages of the drafting process, and the results thereof. *Fedtke's* analysis systematically proceeds from a consideration of reception of basic constitutional principles, in particular the constitutional state principle (pp. 86-122) and its concretization (pp. 123-137), to the formulation of the limitation clause (pp. 138-179), the formulation of the interpretation clause (pp. 180-199), the incorporation of specific fundamental rights in the bill of rights (pp. 200-354) on to the question of federalism (pp. 355-390). It concludes with a consideration of the important contribution of the Constitutional Court in the reception of foreign law.

For the moment, this discussion will concentrate only on *Fedtke's* treatment of Human Rights reception, since this is practically the most comprehensive part of his inquiry. This section of his work is, however, representative of the rest of his research, and this review applies equally to other parts of his comprehensive analysis, even if the latter cannot be fully discussed in the present context.

The first issue that the author tackles under the heading of "Fundamental Rights in the Interim Constitution",[14] is the horizontal application of rights (pp. 204-229). This issue seems to have been selected carefully in view of the ongoing debate in South Africa about direct or indirect horizontal application ("seepage" or "*Drittwirkung*") of fundamental rights. As is his method throughout the inquiry, *Fedtke* employs different policy documents, working drafts and suggestions from various political parties at different stages of the constitutional drafting process, and compares them with each other and with similar clauses from other jurisdictions. Of course, the "outward" comparative standard throughout the work is the German *Grundgesetz* (Basic Law), but other constitutional documents (e.g. the Constitution of Namibia, the Canadian Charter etc.) are employed where relevant. *Fedtke* integrates the comments from scholarly literature and political commentary on specific versions of the application clause, in order to explain the forces underlying the eventual compromise contained in section 35 of the Interim Constitution. Then only a thematic comparative analysis with the position in Germany is undertaken, in an attempt to explain what the expected development of this particular provision could be. Finally, the differences between the first and second drafting process are indicated, with an accompanying projection of the differing forces of interpretation

[14] See pp. 203 ff. For the online text of the Interim Constitution, follow the link provided in note 3 above.

invoked by differences in the eventual phrasing of South Africa's Final Constitution. A similar method is followed with regard to the issue of human rights protection of juristic persons, the equality clause, the right to dignity, economic freedom and the property clause. The third part of the work contains a handy summary of results achieved from the analysis in the quite extensive second part.

C. Constitutional Comparison

In his preface (pp. v-vi), *Venter*[15] mentions a number of considerations which are relevant for the present review. For one, it is indicated that it remains impossible to define a universal comparative method, due the variety of reasons which may inform a decision to undertake a comparative analysis in law. However, the lack of an over-all methodological structure for legal comparison should not result in a watering-down of the science to the mere juxtaposition of material from two or more systems. Collecting and reporting on material from another jurisdiction may in itself be a legitimate aim, but actual comparative work goes beyond these initial steps, to analysis and processing of initial results to provide insights into the operation of specific legal principles in different legal contexts. *Venter* remarks: "Mere juxtaposition leaves the comparatist with information, but little knowledge."

Venter's discussion of specialized themes in constitutional law (in chapters 2 to 4 of his book), may be of very limited relevance as far as the development of a body of work on constitutional issues is concerned, as the author also acknowledges (preface, p. vi). His discussion of the nature and issues of comparative law, and his application of basic principles to the specific area of constitutional comparison may, however, be a handy measure of the success of specific comparative attempts, such as those above. In assessing the significance of the works discussed above, it is then useful to take heed of some of these general considerations of comparative constitutionalism.

Another important point made by *Venter* concerns the very *nature* of Comparative Law. Differing premises with regard to the aim, the method and the function of legal comparison render it almost impossible to provide an acceptable and all-encompassing explanation as to the essence of legal comparativism. Without going into detail about the question whether comparison in law is a method, a discipline

[15] *Op cit* note 1 above.

or a science,[16] it is assumed for present purposes that legal comparison is - at the very least - a methodological approach. As an "intellectual activity with law as its object and comparison as its process,"[17] it seeks solutions to specific legal issues through juxtaposition and analysis of the law of different legal systems.[18] The mere study of the law of a foreign jurisdiction, however, falls short of being "comparative law." To be truly comparative, the study would have to *weigh* the similarities and differences of two or more legal systems or traditions or selected aspects, institutions or branches thereof, and analyse and process the results of such an inquiry.[19] The results of such research should be employed to give effect to the initial aims and functions of that specific research endeavour, which may vary from the intention to improve the law of a specific system, or the design of a single acceptable solution to a specific legal problem for more than one system.

In this context, if the respective studies of *Mireku* and *Fedtke* must be assessed to determine their contribution to comparative constitutionalism in South Africa and Germany, one achieves quite different results: *Mireku's* work is a short, compact account of issues of federalism influencing constitutional review in Germany and South Africa. The topic of the inquiry is well suitable to the employment of the comparative method, especially in view of existing German-South African relations in this regard, as set out also by *Fedtke* (p. 381 ff.). However, *Mireku's* inquiry seldom ventures outside the sphere of reporting existing law and different scholarly or judicial opinions with regard to it. The reading matter is informative, but the reader receives only little support (see the "Recommendations," pp. 147-158) in reaching conclusions or drawing new insights from the material.

Although quite extensive (the book comprises 469 pages), *Fedtke's* analysis is time bound. The subtitle refers to the period between 1993 and 1996, which signifies the

---

[16] Van Reenen, T. "Philosophical Underpinning of Modern Comparative Legal Methodology" *Stellenbosch Law Review (Stell LR)* 1996, 37–60 provides an excellent overview of this issue. Cf also Venter CONSTITUTIONAL COMPARISON (2000) 15 – 17. Note ought to be taken also of the now available, German translation of Rodolfo Sacco, EINFÜHRUNG IN DIE RECHTSVERGLEICHUNG, Baden-Baden: Nomos 2001, translated from the Italian by Jacob Joussen. (Original Title: INTRODUZIONE AL DIRITTO COMPARATO). For recent reflections on the nature of Comparative Legal Science, see the contribution of one of the German *doyens* in this field: Hein Kötz, "Alte und neue Aufgaben der Rechtsvergleichung", in: *Juristenzeitung (JZ)* 2002, 257-264. See also the wonderful essay on the Centennial Congress of Comparative Law, held in New Orleans 2000, by Michaels, R. "Im Westen nichts Neues?", in: *Rabels Zeitschrift für ausländisches und internationales Privatrecht (RabelsZ)* 2002, 97-115.

[17] Zweigert, K. / Kötz, H. (translated by Weir) INTRODUCTION TO COMPARATIVE LAW (1998) 2.

[18] This definition renders obvious the close correlation between scientific system and scientific method, to which Van Reenen, T. "Philosophical Underpinning of Modern Comparative Legal Methodology" *Stellenbosch Law Review (Stell LR)* 1996, 39 refers.

[19] De Cruz, P. MODERN APPROACH TO COMPARATIVE LAW (1993) 3; Zweigert, K. / Kötz, H. (translated by Weir) INTRODUCTION TO COMPARATIVE LAW (1998) 6; Venter, F. Van der Walt A.J. et. al. (eds.) REGSNAVORSING – METODE EN PUBLIKASIE (1990) 71.

"childhood" of constitutionalism in South Africa. *Fedtke's* analysis is, however, of much more than mere historic significance. The successful processing of policy documents and working drafts, which is rather hard to come by nowadays, provides anyone interested in the course of constitutional interpretation and adjudication in South Africa with a sound basis from which to identify political undercurrents in the constitutional text, and to deduce trends for future constitutional development. The only visible disadvantage of the book in its present form, is the fact that it is written in German, thus rendering its value for a South African readership of limited nature. It is, however, a book to which every scholar of post-apartheid constitutionalism in South Africa should have ready access.

It is, admittedly, difficult – and therefore all the more unfair – to come to any final conclusions as to the state of constitutional comparison between German and South Africa law, based only on an assessment of the volumes here under review. For the moment, and in light of this brief review attempt, one might recognize that constitutional comparison, specifically in the German-South African context, serves a definitely useful purpose, due to the fact that German law played such an instrumental role at specific points in the receptive history of the South African constitutional order. One might further realize that the advantages of German-South African constitutional comparison are not yet exhausted. Hence, although some of the individual contributions may be more satisfactory than others, the importance of a series such as the *Schriftenreihe Recht und Verfassung in Südafrika* is beyond doubt, and its contribution to the development of a specific sub-discipline within the context of Constitutional Comparison is laudable.