

## Foreword

### THE STELLENBOSCH PAPERS

Readers of past issues of the Forum are aware of the growing interest in comparative law circles for the mixed jurisdictions and other mixed systems of the world. These pluralist legal orders often internalize common law, civil law, and various personal and religious laws reflecting the diversity of its people and the complexity of its past. It has been asserted that mixed legal systems are the most prevalent type of legal system in the world today. In many respects they may be considered the wave of the future, given the trends toward globalization and international harmonization of laws. On the conviction that Tulane and the Forum should help promote an understanding of these systems, of which Louisiana and South Africa are examples, the Forum is pleased to present the collected papers of the international Colloquium that took place at the University of Stellenbosch in South Africa on May 14-15, 2009.

This Colloquium was jointly sponsored by the World Society of Mixed Jurisdiction Jurists and the International Association of Legal Science and its stated theme was “Mixed Jurisdictions as Models? Perspectives from Southern Africa and Beyond”. Our generous hosts were Professors Jacques du Plessis, Marius de Waal, and Dean Gerhard Lubbe of the Stellenbosch Faculty of Law, who provided gracious hospitality, excellent arrangements and an ideal venue for discussion of this subject. This conference led to an exceptional exchange of ideas about the challenges faced by mixed legal systems in Africa and beyond. It brought together thirty four scholars from twelve countries. The papers now presented look at mixed systems from angles and viewpoints that tend to illuminate their particular experience. They discuss such themes as the divergent and convergent trends of mixed systems in Southern Africa, the effect that the compartmentalization of personal laws has on everyday life, the challenges confronted in harmonizing business laws into effective instruments (bridging languages and the formal/informal sector of the economy), and the need to harmonize conflicting procedural laws in the courts and the arbitral tribunals. Another subject is the significance of European Union harmonization projects, notably the Draft Common Frame of Reference, on systems outside Europe, with particular reference to Africa. Further topics are the impact and role of national constitutions in reshaping these mixed systems, for example in

the quest to integrate customary law and English common law into a single Common Law or in restructuring state liability in South Africa. The essays close with the personal reflections of a distinguished comparatist, based on a lifetime of experience with African law, concerning the encounter between traditional law and modern law in the mixed systems of French-speaking Africa.

The Editor extends warm thanks to our hosts in Stellenbosch, to the sponsoring organizations, and to the individual authors for their cooperation in making this issue a success.

Vernon Valentine Palmer  
Editor in Chief