

**Speech delivered by the Attorney General, Paul Gallagher SC, at the Launch of the
Law Reform Commission's Third Programme of Law Reform 2008-2014
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Legal philosophers help us to understand the meaning and function of law. Sometimes however in their anxiety to achieve dominance for their own particular theory of law they ignore important aspects of rival theories. I do not believe that any one theory of law successfully captures the Law's multi-faceted dimensions in a dynamic and democratic society. Most would agree however that law is used as a reason for or standard of behaviour.

In according Law this exalted position it is appropriate that a society governed by Law and based on the Rule of Law should engage in a process of law reform. As a society we are fortunate to have a Law Reform Commission which not only conducts this essential task but does so with such great distinction.

The Third Programme of Law Reform is both ambitious and relevant. I have little doubt but that the Programme will be successfully completed within the anticipated timeframe. Equally I have little doubt concerning the relevance of the topics included in the Programme. The relevance has of course been enhanced by the very comprehensive consultation process engaged in by the Commission before formulating its Third Programme. The continued relevance is also ensured by the Commission's decision to conduct a mid-term review of the Programme.

Natural scientists are proud to proclaim their science as consisting of tested evidence. Their clear implied criticism is that other forms of intellectual activity cannot boast of such an objective system of verification. However even the natural scientists admit to an evolution of knowledge and not to *a priori* wisdom. Law (at least in large part) is about a system of evolved rules.

One of the great natural scientists of the 20th century Stephen Jay Gould evolutionist and palaeontologist described science in terms to which other bodies of thought can relate. He said *"the cardinal principle of all science is that the profession as an art, dedicates itself above all to fruitful doing, not clever thinking, to claims that can be tested by actual research and not to exciting thoughts that inspire no activity"*.

The work of the Law Reform Commission demonstrates the applicability of these principles to law. The Law Reform Commission is above all dedicated to fruitful doing.

The fruitful doing of the Law Reform Commission is evidenced by the important areas of the law which it subjects to careful scrutiny and illumination.

The Law Reform Commission

It also seeks to validate laws by considering their suitability to modern society and the extent to which they cater for the needs of that society. The process in which it engages and the outcome which it achieves is characterised by extensive research and a careful look at the experience of other relevant jurisdictions.

Law Reform

The Commission's work product is not just a compilation of exciting thoughts it also inspires activity.

The activity that it inspires is evidenced by an examination of the Commission's detailed table of implementation. It can point to some 38 Acts of the Oireachtas which have been influenced by (or which contain sections that have been influenced by) Reports of the Law Reform Commission. Added to this are two Acts where the Commission modestly comments that its recommendations have been implemented "in part". Three Bills working their way through the Oireachtas, five other published Bills and five Bills to be published have been influenced by the Commission's Reports.

The Third Programme has 37 topics. The Commission has proposed to give immediate priority to the law relating to juries and to documentary evidence and technology and have kindly agreed to my request to also give immediate priority to hearsay criminal civil cases, legal aspects of bioethics and legal aspects of assisted human production.

The hearsay rule is not merely a rule of evidence but has a constitutional foundation as a requirement of fair procedures and an ingredient of a fair trial. In *DPP –v- McGinley* Keane J. (as he then was) said that the rule against hearsay "*is capable of producing injustice in individual cases, particularly if applied in a rigid and unyielding manner*". In *Eastern Health Board –v- MK* Keane J. a year later said the result of the development of a number of intricate exceptions to the hearsay rule has been "*a body of law which is confusing, complex and entirely logical*".

President McGuinness' mention in her foreword of the emergence and flourishing of inter-disciplinarity in the work of the Commission is particularly apposite to the legal aspects of bioethics. The medical and scientific issues, which form the essential framework in which the legal issues must be considered will take the lawyer beyond the purview of his/her normal domain.

The traditional strength of LRC Reports and consultation papers, a willingness to consider overseas experience is particularly important as regards bioethics, and not least as regards its cutting edge scientific component. Developments in this area are extremely fast moving. Under four weeks ago two teams of scientists reported that they had turned human skin cells into what appeared to be embryonic stem cells.

The Government has established an Irish Council for bioethics under the very able chairmanship of one of my predecessors Dermot Gleeson SC. The Bioethics Council continues to do work of major importance and I have no doubt that its work will be assisted by the Commission's proposed review of the legal issues arising in this complex and difficult area.

The legal aspects of assisted human reproduction is another area requiring careful study. The complex issue of the ownership of frozen embryos was recently litigated in the High Court in the case of *MR –v- TR [14th November 2006]*.

The presence in the programme of these latter topics is a sign of our times. It is important that these issues are grappled with, not in a confrontational or prescriptive way but in a

deliberative and intellectual sense. If this is done it will aid policymakers in evaluating the various options and will aid understanding in the community as a whole.

One of the great challenges of modern society is the control and assimilation of information. The pressure of data is so great that it sometimes affects our ability to know and understand. At the same time a process which ignores or does not seek out relevant information is fatally flawed. The work of the Law Reform Commission provides a safeguard against the latter. It assists the legislators in distilling the necessary information in order to make informed decisions.

There is a Latin saying *tempora mutanatur et nos mutanamar in illis – times change and we change with them.* It is appropriate to recall this on the occasion of the launch of the Third Programme. The two antecedents of the Third Programme have brought changes to our Statute Book and to our society, perhaps even to ourselves, and our outlook in ways of which we are not fully conscious. I am sure in time this Third Programme will achieve the same.

Before concluding I would like to remind you of the words of Pliny the Elder who ventured too close to Vesuvius at the worst of all possible moments but who earlier in his life urged us to treat impossibility as a relative claim. He pointed out that many things are looked upon as quite impossible until they have been actually effected.

The task of achieving throughout our legal structures transparent responsive and just legislation may at times look very daunting but it is a task which is immeasurably eased by the work of the Law Reform Commission and one in respect of which we might hope to say that impossibility is not just a relative, but also a refutable claim.

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