# *Thirty Years of Law Reform 1975-2005*

**delivered by**

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**Introduction: of the Code Civil and Law Commissions**

Two years ago in a great amphitheatre in the Sorbonne the two hundredth anniversary of the Code Civil, the instrument embodying the civil law of France, was celebrated with characteristic Gallic style and elegance. The heroes of the occasion were the great jurists - led by Portalis - who were associated with the birth and development of the code, but those present were of course reminded that its creation is also forever linked with Napoleon, then the First Consul and after whom it is frequently called. He would surely have been surprised by this glowing tribute to his greatness as a law reformer paid by Lord Brougham in the House of Lords a mere thirteen years after he had been defeated at Waterloo:

> "*You saw the greatest warrior of the age – the conqueror of Italy – the humbler of Germany – the terror of the North – account all his matchless victories poor compared with the triumph you are now in a condition to win – saw him condemn the fickleness of fortune while, in despite of her, he could pronounce his memorable boast, 'I shall go down to posterity with the Code in my hand.' You have vanquished him in the field; strive now to rival him in the sacred arts of peace! Outstrip him as a lawgiver, whom in arms you overcame*!"

This rhetorical tour de force came towards the end of an oration which even by the standards of the time must have sorely taxed its audience, lasting as it did for over six hours. That of itself was impressive testimony to the passionate commitment of Brougham to the cause of law reform. The rigidities and anomalies of the common law had given rise to the equitable jurisdiction which in turn had become as fossilised as the system which at one stage it was leavening with justice and fairness. The interventions of the legislature were sporadic. The time had come, he urged, for parliament to establish a body charged with examining the whole body of law governing Britain and Ireland and bringing forward proposals for its modernisation. This was his frequently quoted peroration:

> "*It was the boast of Augustus... that he found Rome of brick and left it of marble... But how much nobler will be our Sovereign's boast, when he shall have it to say that he found law dear and left it cheap; found it a sealed book and left it a living letter – found it the patrimony of the rich – left it the inheritance of the poor; found it the two edged sword of craft and oppression – left it the staff of honesty and the shield of innocence*."

But for all Brougham's eloquence, the common law world waited until the middle of the following century before establishing the independent law reform bodies which he had in mind. In the interval, of course, the problems which had exercised him had grown far more acute. The volume of precedents which constituted the common law had increased enormously and statute law consisted of a huge range of acts and instruments stretching over the centuries. Not only was the law disfigured by unjust and anomalous rules: its complexity and obscurity had grown so much that Brougham's hope that it could be made simple, clear and easily accessible seemed a distant dream. The magnitude of the task facing such bodies, including our own, cannot be overestimated.

**The role of the courts and the legislature in law reform**

In Ireland, as elsewhere, the primary role in law reform must be played by the legislature. While the development of the common law by the courts continues to be an important feature of our law, in a modern democracy it is the role of parliament to take the lead in ensuring that our law is just and fair, that anomalies and anachronisms are eliminated and that it is available to everyone in a simple and accessible form. Judges can only decide cases which come

before them and, in such cases as do, are bound by the principle of the separation of powers enshrined in the Constitution not to usurp the roles of the legislature and the executive.

This is not to underestimate the role played by the courts in the development of the law. The theory that judges simply pronounced what the law was and never themselves effected changes in the law has long been recognised as having no basis in reality: in cases for which the legislature had made no provision and there was no existing precedent to guide the court, judges were bound to formulate principles of law which ruled not only the case before them but other cases with similar facts. That was as much a form of law making as the enactment of a statute but as an instrument of law reform it was of its nature haphazard and lacked a democratic mandate.

But it was also ultimately accepted that leaving the reform of the law to the operation of normal political processes frequently resulted in no change, in areas where there seemed no prospective dividend from the electorate, and ill-considered and incoherent changes, in areas in which the voters were seen to be interested. Thus the case for the establishment of a permanent independent body composed of experts in the law charged with keeping it under review and bringing forward proposals for its reform was eventually seen as unanswerable.

**The nature and functions of successful law reform bodies**

The experience of law reform agencies in the various common law jurisdictions where they have been in operation suggests that two elements must be present if they are to be successful.

*Independence*

First, they must be independent of the government. A body which is simply another branch of the executive will inevitably be perceived as being concerned with implementing whatever may be government policy at any particular time rather than bringing forward proposals for law reform which, viewed objectively, can be seen as being in the interest of society as a whole. That independence is facilitated in Ireland as elsewhere by giving the Commission a statutory basis and by requiring the commissioners to be appointed for a fixed term. That independence is not, however, absolute: the Commission is not left entirely free to decide what subjects it will tackle. I shall return to that topic shortly, but in general it has to be recognised that even a statutory body such as the Law Reform Commission may have its existence terminated by the legislature which brought it into being. Moreover, a government which is sceptical as to the value of a law reform agency may leave it to perish from lack of support as indeed seemed likely to happen at an early stage in the history of the Irish Commission when the government of the day simply left vacancies in the position of commissioners unfilled. Ultimately, there was an acceptance of the need for a body such as the Commission and there seems no serious support now for the view which some ministers apparently had at one stage that it is an expensive and irrelevant luxury.

*Reform proposals that are relevant to society's needs*

The second precondition for a successful law reform agency is that the body must bring forward proposals for changes in the law which have a reasonable prospect of making our laws fair, relevant to society's needs, easily understood and accessible to everyone. At one time, the view was frequently expressed that law reform agencies should confine themselves to what is sometimes referred to as "lawyers' law," by which was meant the elimination by statute of absurdities and anomalies in the law the removal of which would create no controversy. Advocates of that view also urged that the agencies should avoid becoming engaged in areas of policy since that would inevitably involve the making of what might be called in a broad sense political judgements which, it was said, should be left to the executive and the legislature.

**Law reform in a changing society**

I think that most people who have worked in the law reform area would agree that this is an unduly narrow view of the proper functions of such bodies. Laws to be fair and relevant must take account of changes in society and advances in human knowledge and understanding in various areas. Experience suggests that leaving the necessary alterations to the vicissitudes of the political process is not a sensible option: governments are inevitably preoccupied for much of the time with responding to the pressure of events and law reform bodies can perform a vital function in drawing the attention of both politicians and the public to changes in the law which are plainly desirable but which for a variety of reasons are unlikely to figure prominently in the election manifestoes of the political parties. Clearly there are areas of intense social controversy in which it would not be appropriate for the Commission to become involved: thus, while family law has been one of the areas in which the Commission has always been particularly active, it was obviously no part of its function in the era before the Constitution was amended to make any proposals for or against the introduction of divorce. It can indeed be said that the Commission has not, in general, seen the advocacy of constitutional change as within its remit, although it has of necessity drawn attention to any constitutional inhibitions which may affect otherwise desirable proposals.

A law reform agency can undoubtedly within these constraints make a major contribution to the workings of democracy. As I have noted, establishing them as independent agencies is a necessary precondition: so too is a clear delineation by statute of their functions and the allocation to them by the legislature of sufficient resources in the form of staff and premises to carry out those functions.

**The Law Reform Commission Act 1975**

When the Law Reform Commission was established in 1975, on the initiative of the then Attorney General (and subsequent President of the High Court), Declan Costello, it was understandable that its structure would closely resemble those of the similar bodies already in existence in other common law countries. In particular, the legislation establishing Law Commissions in England and Wales and Scotland clearly influenced our own Law Reform Commission Act 1975, as did the models in use in Canada and Australia, where there were, in addition to federal commissions, commissions in the individual states and provinces. The Irish Commission was to consist of five members appointed for a fixed term each of five years, one of whom at least was to be full time and one of whom was to be the President. Although the legislation does not require the President to be a serving or retired judge, so far only judges, serving or retired, have been appointed to the office. Where, however, he or she is a serving judge, he or she cannot be required to sit during his or her term of office. In practice, serving judges who have acted as President have been happy to sit as judges on occasions, thus ensuring that they keep in touch with what is going on in the courts.

The British Commissions were charged with the task of keeping under review all the law:

> "*with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law*."

Our Act is somewhat differently worded. The Commission is required by section 4 to:

> "*keep the law under review and in accordance with the provisions of this Act... undertake examinations and conduct research with a view to reforming the law and formulate proposals for law reform*."

"Reform" is defined in section 1 as including:

> *"[the] codification [of the law] (including in particular its simplification and modernisation) and the revision and consolidation of statute law*."

**Consolidation and codification**

The fact that our Commission is not expressly required to embark on what may be fairly described as the mammoth task of making statute law simpler and more accessible by repealing obsolete and unnecessary statutes and reducing the number of individual statutes does not mean that they were precluded from making such proposals and in fact the Commission has done much work in this area. At present, for example, they are engaged in the monumental task of modernising our land law and conveyancing law, which involves among other things the repeal, replacement or amendment of more than 157 statutes dating from before 1922. They have also responded to the reference in the Act to the simplification and modernisation of the law with a report on Statutory Drafting and Interpretation called *Plain Language and the Law*. The requirement as to codification of the law is, however, more problematic.

The codification process should be distinguished from that of consolidation. The latter seeks to bring together in one statute measures in particular areas of the law which are to be found in a number of different statutes sometimes stretching over centuries which are frequently interlocked with each other by a complex process of amendment, repeal and substitution. In Ireland this is preeminently the province of the Statute Law Revision Unit of the Attorney General's office. Codification by contrast involves the setting out in one statute of all the law affecting a particular topic whether it is to be found in statutes or in common law. Although in the age of the computer consolidation is not an operation which should present major difficulties, there remain large areas of Irish law which should be but have not yet been consolidated.

Codification, which on the whole has been more associated with the civil law jurisdictions, may take two forms. The authors may confine themselves to setting out in the code all the principles of the law whether they are to be found in statute or in the common law in the form of court decisions. Or in addition they may not merely restate the principles of the law but may reform the law in specific areas.

The idea of codification has always had its attractions for those concerned with law reform; as we have seen, it was his part in the creation of the Code Civil which for Brougham justified Napoleon's place in the pantheon of law reformers. Brougham himself in his famous speech looked forward to the codification of the criminal law by a Law Commission. That ambition remained frustrated, principally because in common law countries, codification has also been frequently seen as at odds with the tradition in our jurisdictions of preferring detailed legislation to broad statements of legal principle. The latter, it has been often suggested, leaves too much room for differences in judicial approach and deprives the law of what should be its characteristics of certainty and precision. Yet in such Victorian statutes, still with us, as the Bills of Exchange Act 1882 and the Partnership Act 1890, important aspects of commercial law were codified without any great lack of certainty and precision.

*Codifying the criminal law*

However, although the Commission is expressly charged with the codification of the law, it has understandably approached this complex and daunting task with circumspection. In relation to specific categories of crime, the Commission has produced reports on Criminal Damage, Non-Fatal Offences against the Person and Dishonesty which have been implemented to a significant degree by the Criminal Damage Act 1991, the Non-Fatal Offences against the Person Act 1997 and the Criminal Justice (Theft and Fraud Offences) Act 2001. Thus, in these areas the law has been effectively codified and more recently the Commission has turned its attention to the whole area of homicide, defences such as provocation, duress and necessity and the question of inchoate offences.

More recently, a Report has been published by an expert group appointed by the Minister for Justice, Equality and Law Reform and chaired by Professor Finbarr McAuley, a member of the Law Reform Commission, on *Codifying the Criminal Law*. This Report acknowledges the substantial progress that has been made in codification of parts of the criminal law in the statutes to which I have referred but makes important recommendations for the establishment on a statutory basis of an Advisory Committee charged with ultimately producing a single codifying instrument setting out the entire criminal law.

*Codifying land law*

So far as the civil law is concerned, I have already referred to the major project undertaken by the Commission in the area of land law and conveyancing law. This, it is hoped, will result in the codification of the law in this area and will not merely make the law simpler, clearer and more accessible but will also introduce substantive reforms, such as the removal from the law of the whole concept of feudal tenure on which our law of real property is still based. Work on the project began at the end of 2002 and a draft Report is due for publication next month.

*The Courts Acts*

Another codification project of great value on which the Commission is about to embark is the codification and modernisation of the Courts Acts, which will be carried out in consultation with the Department of Justice, Equality and Law Reform and the Courts Service.

**Is law reform too important to leave to the lawyers?**

Returning to the statutory framework of the Commission, the qualifications required for members of the Commission should be noted. In one respect, our Commission differs from the English and Scottish models. The latter require the members of the Commission to have legal qualifications and to be either serving or retired judges, barristers, solicitors or teachers of law. Our Act, while providing for the appointment of persons so qualified, in addition facilitates the appointment of persons who in the opinion of the government have other special experience, qualifications or training. That freedom to appoint commissioners without legal qualifications has been availed of on only two occasions: one of the members of the first Commission, presided over by the late Mr Justice Brian Walsh, Dr Helen Burke (now Professor Burke), was a social scientist. In the next Commission, of which I was President, one of our members was a psychologist, Dr Maureen Gaffney. That Commission dealt with three topics to which Dr Gaffney brought a particular degree of expertise, child sexual abuse, rape and family law.

Dr Gaffney, I am happy to recall, contributed very significantly to the work of the Commission in those areas and her input was by no means confined to them. She was indeed an outstandingly active and committed Commissioner. However, I would not have thought that a law reform body composed exclusively of lawyers, such as the present Commission, need shrink from examining particular topics simply because it might be difficult to reach conclusions and make proposals for changes in the law without obtaining expert and informed views from non-lawyers. The working methods of the Commission have developed enormously since its establishment in 1975 and it has become standard practice to consult with a wide range of groups and individuals with a special interest or expertise in the relevant topic before the Commission's preliminary proposals are published or circulated in the form of a consultation paper. A similar process will normally take place before the Commission's final proposals are published in the form of a Report. In addition seminars are regularly held which provide an invaluable means of clarifying, refining and assessing the Commission's preliminary proposals.

An excellent example of the value of the wide-ranging consultation process is the project on which the Commission is at present engaged of examining the law in relation to the elderly and affecting persons with physical, mental or learning disabilities and making proposals for its reform. Consultation papers have already been published on the law and the elderly and

more recently on the legal capacity of persons affected by mental disability. It would be unthinkable that a body of lawyers would proceed to make proposals for reform in such areas without the widest practicable consultation with all those who have specific knowledge of or a special interest in the relevant field.

Some of the other law reform agencies, for example, the Canadian and Australian Commissions, also allow for the appointment of non-lawyers and the question whether the membership of such bodies should be confined to lawyers has been the subject of some debate elsewhere in the common law world. While there has been support from such distinguished judges as Mr Justice Cardozo and Lord Wilberforce for the view that, as it has been perhaps over simplistically put, "law reform is too important to be left to the Lawyers," I think that the greatly enhanced procedures of consultation employed today suggest that, in a relatively small Commission, such as ours, the case for non-lawyers being involved in the decision making process itself is less convincing.

**The Commission's programmes of law reform**

The selection of the topics which are seen as in need of reform is, of course, a matter of prime importance in the work of a law reform agency. Under our Act, the Commission must, in consultation with the Attorney General, from time to time prepare for submission by the Taoiseach to the Government programmes for the examination of different branches of the law with a view to their reform. Such programmes are subject to approval by the Government. In addition, the Attorney General may request the Commission to examine specific topics, whether included in the programme or not, and to make proposals for their reform and such a request must be complied with by the Commission.

The Commission's first programme of law reform was approved in January 1977 and was extremely wide in its scope. Thus, virtually every aspect of the criminal law was embraced and the Commission also envisaged wide ranging examinations of administrative law and family law. The limited resources available to the Commission, particularly in the early years of its existence, inevitably resulted in work on the programme taking a long time and by the time the Commission's second programme was approved in December 2000 parts of the earlier programme remained uncompleted. In the decades that had elapsed, however, since the approval of the first programme, changes in society pointed to the desirability of the Commission's embarking on new fields of reform. The second programme reflects concerns as to shortcomings in the legal system which affects the ability of citizens to have access to the law, with topics such as class and representative actions and alternative dispute resolution singled out for attention. In the area of administrative law, the topic of tribunals of inquiry, which have become such a feature of the legal and political scene in recent times, is given priority - and the electronic revolution has led to the selection of law and the information society as a specific area for consideration. The increased awareness of the problems of vulnerable groups, particularly the disabled and the elderly, is also reflected in the programme and in the family law area issues affecting non-married cohabitees are given special emphasis.

The Commission, as I have noted, has for long been engaged in a review of our conveyancing and land law and this has been continued under the Second Programme in the form of a joint project with the Department of Justice, Equality and Law Reform which, it is hoped, will eventually lead to, among other changes, on-line paperless conveyancing transactions.

The implementation of these programmes and compliance with requests from Attorneys General have resulted in the production by the Commission of over seventy Reports and a large number of consultation papers. The range of legal topics covered by these Reports and papers is truly impressive. Thus, to take the criminal law alone, they embrace the entire law on offences against the person (other than homicide), dishonesty, receiving stolen property, sentencing, indexation of fines and penalties for minor offences. In the civil law, defamation and contempt of court, occupiers liability, privacy and various aspects of personal injuries law are only some of the subjects which have received exhaustive attention. Moreover, it is only right to recall on an occasion such as this that in the early stages of its existence a steady

stream of reports and papers was produced by the Commission at a time when it was grossly under-resourced particularly in terms of staff.

**Implementation of the Commission's recommendations**

Since it is an almost invariable feature of the Commission's reports and consultation papers that they contain a detailed statement of the law on the topic under consideration, not simply in Ireland, but in other jurisdictions as well, they have been of great value to students and practitioners of the law and are frequently cited in court for that reason. However, the Commission was not established for that purpose, although it is undoubtedly an invaluable by-product of its work. While there are exceptional occasions on which the Commission will conclude that no reform in the law is called for, its reports normally include detailed recommendations for changes in the law. Unless a significant number of those recommendations find their way in some form into the statute book, the work of the Commission will inevitably be seen as an expensive irrelevance.

Judged by that standard, the Commission has some cause for satisfaction: to-date approximately sixty per cent of their recommendations have been implemented, a proportion which can stand comparison with that achieved in other common law jurisdictions. Undoubtedly, this reflects a degree of co-operation between the Commission and the government departments which can be regarded as having an interest in the topic under examination by the Commission, usually but not exclusively the Department of Justice, Equality and Law Reform as, for example, in the land law and conveyancing project to which I have already referred. Moreover, the Commission has not regarded their remit as necessarily at an end when they report; not merely have they carefully monitored in their annual reports the extent of any implementation of their proposals, but they have also taken interesting initiatives, such as meeting the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights to discuss their work programme.

An examination of the areas in which the Commission's proposals have been implemented leads one to the not particularly surprising conclusion that they are more likely to reach the statute book where they deal with issues that have provoked widespread debate and, in particular, comment from the political parties and the media. The partial codification of the criminal law to which I have already referred was unquestionably a most welcome development but the reports of the Commission which preceded it were dealing with a topic which has become of enormous public interest and concern over the last few decades during which Ireland made its transition from being a society in which large scale crime was rare to one confronted with the same problems as other developed societies. The vast number of Acts dealing with criminal justice which have reached the statute book since the early 1990s tell their own story. In another field of law, the enactment by the Oireachtas of the Commissions of Investigation Act 2004 was influenced by the Commission's provisional recommendations in its Consultation Paper for the establishment of low-key inquiries: one would not have expected such rapid action were it not for the public reaction to the length and expense of some tribunals of inquiry. In contrast, the Commission's Report on an area as patently in need of reform as Contempt of Court, now over ten years old, has never been implemented.

In fairness, however, it has to be said that the Commission's proposals to reform the law on the Statute of Limitations as it affected latent personal injuries and to enable the creation of enduring powers of attorney, both of which have been implemented, were hardly of wide popular interest and one could point to other examples of proposals which could not be said to set the pulses racing and yet have either reached the statute book or have a fair prospect of doing so in the near future. I will, I hope, be forgiven for citing instances with which I am particularly familiar as they were dealt with by the Commission while I was President.

On any view, accordingly, the Law Reform Commission would have to be regarded as having discharged its role over the three decades of its existence with considerable distinction. But a critical assessment would also, I think, conclude that in some areas changes might be beneficial. Thus, it was a noticeable feature of the Commission's Reports in its early stages

that only rarely did they include a bill to give effect to the recommendations in the Report. As I know from my own experience, the Commission has long been aware of the fact that the incorporation of a draft bill in a report significantly improves its prospects of speedy implementation or at all events should do so. But the difficulty of recruiting qualified draughtsmen- and when recruiting them retaining them - is well known. More recently, matters have improved significantly and the last 13 reports have all incorporated draft bills or, in one case, rules of court. It is to be hoped that this will prove to be a permanent feature of the Commission's work.

**Approval of the Commission's programmes of law reform**

Law reform agencies in common law countries have, on the whole, been their own masters so far as determining what subjects they should tackle. That is as it should be: if the function of such bodies is to ensure that a country's laws keep pace with changes in society, that is more likely to be achieved if the body itself has the responsibility of determining the areas of law which are most obviously in need of reform. But in Ireland, as elsewhere, they are not left wholly free from control and hence the requirement that their programmes be approved by the government of the day. In Ireland, the Attorney General, as I have noted, is given a particular role so far as the Law Reform Commission are concerned: they must consult with him when they are preparing their programme and he is also entitled to request them to deal with specific topics, a request that they must comply with.

Given the pivotal role of the Attorney General under the statute creating the Commission, it might be as well to remind ourselves of his legal and constitutional role. Apart from being the adviser of the government in matters of law and legal opinion and having certain residual functions in relation to the prosecution of crime, he also occupies a quasi-judicial position in the upholding of the Constitution which entitles him to invoke the assistance of the courts where necessary and he is also entitled to represent the public in cases where their rights, as distinct from the rights of individuals, are or may be affected. This quasi-judicial role is not spelled out in the Constitution but has been made clear in a number of decisions and, in explaining its dimensions, the judges have drawn particular attention to the fact that the Constitution expressly provides that the attorney is not to be a member of the government.

The Attorney General remains, however, in a broad sense a political figure. The Constitution contains no prohibition on his being a member of either House of the Oireachtas. The fact that his political sympathies are invariably with the government in power does not in any way preclude him from exercising his role as its legal adviser in a scrupulously detached manner. Nor does his support of a party in power prevent him from exercising his role as the upholder of the Constitution or the defender of the rights of the public in a wholly impartial manner without any regard to the interests of that party or its wishes.

I have found it necessary to stress this political aspect of the Attorney General's role because the quasi-judicial role which he enjoys as a guardian of the Constitution might at first sight lead to the conclusion that in exercising his functions in relation to the Commission he must leave out political considerations. That is clearly not the case. The Commission might indeed, in drawing up their programme, have been required to consult with a Minister (rather than the attorney), who would have unarguably been free to take political considerations into account: the choice of the attorney for the role rather than a Minister may well have been because in his position as legal adviser to the government he is likely to have an overview of law reform issues arising in different departments which would be denied to an individual Minister.

To the extent that the Commission's programme of reform is subject to the approval of the government and that they must consult with the attorney in drawing up the programme, the independence of the Commission, on which I have laid emphasis, is qualified. Circumstances may arise in which governments may withhold their approval of items in the programme or, conversely, may insist on items being included in the programme. These could be properly characterised as decisions in the political sphere although they might not be particularly

contentious. In the case of the two programmes so far adopted, the government of the day has given its approval without, so far as I am aware, requiring any changes to be made.

**Requests from the Attorney General**

The preparation of a law reform programme is thus in a sense the joint responsibility of the Commission and the government and this is also the case in other law reform agencies in the common law world. This is perhaps what one should expect in a democracy. It is not so obvious that it was necessary to give the Attorney General power to compel the Commission, in effect, to devote their energies to the examination of a particular topic, irrespective of what their own views might be as to its suitability in that context and despite the fact that it has not been found appropriate for inclusion in the programme of law reform by the Commission or the government. The attorney, in making such a request, cannot be said to be bound by the considerations which would constrain his exercise of the quasi-judicial role which he enjoys under the Constitution and he can quite legitimately take purely political factors into account. While a similar power is conferred on attorneys in other jurisdictions - the Australian Commission are indeed restricted to dealing with topics referred to them by the Attorney General - I do not think that it can be regarded as an essential feature of the statutory scheme established in this country under the 1975 Act.

That Act was piloted through both houses of the Oireachtas by the Attorney General, Declan Costello, who, unusually in recent times, was a Dáil Deputy at the time of his appointment. He gave two examples at the Second Reading stage in the Dáil of circumstances which might render the invocation of this power appropriate: a decision by the Supreme Court revealing a legal state of affairs which required urgent amendment and a development in EEC law which also required legislative action. However, although successive attorneys have made use of the power on 16 occasions, only one of them could be said to have been prompted by such circumstances. Following dicta by Walsh J in a case in the Supreme Court which indicated doubts as to the constitutionality of the doctrine of the dependent domicile of a wife, that topic was referred to the Commission.

On occasions, references by the Attorney General could be regarded as bringing within the remit of the Commission important topics which, for whatever reason, were not included in its own programme, such as Conveyancing and Land Law, Defamation and Contempt of Court. But it is hard to avoid the conclusion that there have also been occasions when the reference procedure has been used for reasons which had more to do with political considerations than the objectives which should normally dictate the programme of a law reform agency. A government under pressure to reach a decision on a particular problem to which different solutions are being urged by various interest groups - and on which they themselves as a government may be divided - may wish to buy time and a reference of the topic to the Commission by the Attorney General may provide that breathing space. While the power to refer is no doubt desirable for the reasons given at the time the Act was being introduced, it might be possible to amend the legislation so as to confine the exercise of the power to those or similar circumstances.

**Concluding comments**

Finally, while the rate of implementation of the Commission's reports gives cause for at least some satisfaction, the fact remains that a large body of its work has failed to achieve legislative form. This is a problem common to law reform agencies the world over and many suggestions have been made for remedying the situation. One in particular which has much to commend it in Irish circumstances is the establishment of a Joint Committee of the Oireachtas charged with examining the reports of the Commission and making its own recommendations as to the form of legislative action which should be taken in the light of the reports. This might help to fill the lacuna that at present exists when a particular department which would normally be responsible for legislation in the area concerned is overburdened

with other projects to which priority is being given or is lacking in enthusiasm for the projected reforms.

Ultimately, however, the greatest guarantee of success by a law reform agency in having its proposals implemented is the choice of areas for action which can be seen as relevant to the concerns of society in general. Just as important, of course, is the quality of the reports it produces and here, I think, our Commission has nothing to fear from comparisons with other law reform agencies. So far as the choice of topics for consideration is concerned, the Commission is, as we have seen, not wholly its own master, but within its statutory constraints it has shown a determination to ensure that its work contributes to a body of law which is fair, accessible and relevant to the needs of Irish society today. Armed with that determination and the dedication of its Commissioners and staff, it can look forward to the next three decades of its existence with justified confidence.