Re-forming Law Reform: Functions, Processes, and Mechanisms

Trinity Long Room Hub

18 September 2025

Programme

To mark its 50th Anniversary, the Law Reform Commission of Ireland is partnering with the Trinity Centre for Constitutional Governance (TriCON) to host an academic conference on the history and future of law reform. The conference will take place in Trinity College Dublin on the afternoon of Thursday 18 September, the day before a related conference in Dublin Castle organised by the Law Reform Commission itself, *Half a Century of Change: The Journey of Law Reform*.

In a politically polarised world, the challenge of law reform is greater than ever. How can appropriate subjects for law reform be identified? What form of democratic processes are required to legitimise law reform? What roles do and should stakeholders and lobby groups play in the process of law reform? How can political support be built for urgently needed law reform? The papers selected for this conference address these and other questions.

12.30-1.30	**Registration and light lunch**
1.30-1.45pm	**Welcome and opening remarks**
1.45-3.05pm	**Session 1** **Legal Change outside Law Reform Institutions**
	Nevi Agapiou, Functional Law Reform: The Distinctive Case of Cyprus
	Alan Eustace and Michael Doherty, The Many About-Faces of Labour Law Reform in Ireland

	James Rooney, Multi-Party Litigation and the Limits of Law Reform in Ireland
	Jennifer Schweppe, Amanda Haynes and Luke Danagher, The Criminal Justice (Hate Offences) Act 2024: A Scottish Act 'emblazoned with the harp'?
3.05-3.25pm	**Coffee**
3.25-4.45pm	**Session 2** **Law Reform Institutions**
	Adam Elebert, The Role and Value of Law Reform Institutions in Constitutional Referendums
	Stephen Marren, From Disarray to Order: The Role of Codification and Law Reform Bodies
	David Plater and Emily Conroy, A Win-Win Situation? A South Australian Perspective on the Mutual Benefits of Collaboration between Law Students and Law Reform Bodies
	Mark Coen, The False Promise of 'Law Reform': The Law on Juries as a Case Study
4.45-5.05pm	**Coffee**
5.05-6.25pm	**Session 3** **Law Reform: Past, Present, and Future**
	Alice Diver, Law reform [as redress] for Survivors/Victims of Mother-Baby Institutions in Northern Ireland: Public Consultation as a perpetuation of unseen partialities?

	Niamh Howlin, Law Reform before the Law Reform Commission
	Michael McGrath, The Introduction of Land Registration
	Suzanne Scott, The Power of Stories to Influence Law Reform
6.26-6.35pm	**Closing remarks**

Nevi Agapiou, Functional Law Reform: The Distinctive Case of Cyprus

The Cyprus legal system, deeply influenced by its British colonial heritage, has undergone substantial transformations since the country's declaration of independence in 1960, with particularly accelerated developments following Cyprus' accession to the European Union in 2004. Despite its adherence to common law principles, Cyprus has increasingly embraced variable legal transplantation shaped by EU harmonisation requirements, international obligations, and domestic political realities. Law reform in Cyprus is largely seen as operating within a unique and complex framework that blends traditional legal structures with externally driven policy imperatives. This paper critically examines how the Republic of Cyprus navigates law reform in light of its unique legal, political, and historical context, and what insights can be drawn from a comparative law perspective on functional law reform in divided societies.

Unlike jurisdictions with well-established law reform commissions, Cyprus approaches legal reform through a combination of sector-specific, ad hoc legislative initiatives, judicial activism, and technocratic interventions. Reform efforts can be challenging, as they also must navigate the dual constraints of legal tradition and the island's enduring Greek-Cypriot and Turkish-Cypriot divide further complicating institutional law reform. This paper critically examines the role of various actors—including legal professionals, policy-makers, the judiciary, and European and international organisations—in shaping the trajectory of legal reform in Cyprus. The influence of EU law and supranational governance structures,

particularly through country monitoring mechanisms, is also critically assessed. These external influences are juxtaposed against Cyprus' internal legal culture, revealing the tensions between imposed legal modernisation and localised legal traditions and law reform processes.

The paper further discusses the legitimacy and efficacy of law reform in Cyprus by evaluating democratic engagement, public consultation processes vis-à-vis transparency, and the degree of political consensus achieved in legal change. A key argument advanced in this paper is that Cyprus, despite lacking a formal law reform commission, presents an important counterpoint to institutionalised law reform models, such as those in Ireland or the United Kingdom. The absence of a centralised reform body has led to a more decentralised, piecemeal approach that relies heavily on stakeholder negotiation, judicial precedent, and external guidance.

While this model presents clear drawbacks that will be explored such as inconsistencies in reform implementation and the absence of a clear long-term legal strategy, it also offers insights into the benefits of flexibility and adaptability in politically sensitive contexts and mixed legal systems.

By examining Cyprus' experience focusing on the recent civil justice reforms as a case study such as the new Cyprus Civil Procedure Rules, this paper contributes to broader debates on the role of comparative law in shaping contemporary law reform processes. The goal is to highlight the importance of functionalist comparative approaches in jurisdictions with fragmented society landscapes, underscoring the need for adaptive reform strategies that balance legal continuity with necessary innovation in the globalised legal era. Ultimately, the case of Cyprus can serve as an instructive example of how legal systems in divided societies can engage with law reform in ways that are both pragmatic and politically feasible, offering lessons for other jurisdictions navigating similar challenges.

Mark Coen, The false promise of 'law reform': The law on juries as a case study

When we think of law reform a variety of things may come to mind. These might include the identification of areas in possible need of reform, the carrying out of research on the content and operation of the current law, the formulation of possible changes accompanied by arguments in favour and against, processes of public consultation, input from subject matter experts, and the preparation of draft legislation. However, these are processes of law review, not law reform. If there is no implementation, there is no law reform.

We have been using the term 'law reform' too liberally to describe processes of legal review which may or may not lead to law reform. This over-use of the term 'law reform' is embedded in legislation, in the Law Reform Commission Act 1975. The Act established a body that should more accurately be called the Law Review Commission. While the distinction between law reform and law review may seem pedantic, even petty, over-use of the term 'law reform' is misleading and inaccurate. To make an obvious point, the Law Reform Commission cannot reform the Law. To initiate a process of law review is to have an open mind as to whether or not the law should be reformed. By contrast, announcing, for example, that there will be a public consultation on reform of the law in a particular area suggests that the starting point is that the law should and will be changed. In many cases, this apparent promise contains the seeds of future disappointment. 'Law review' more accurately captures the limits of a process that cannot result in reform in the absence of political will.

The law on juries is a good example of the false promise of 'law reform'. There has been a significant amount of law review on the subject, going back to the report of the Committee on Court Practice and Procedure in 1965, and more recently, the publications of the Law Reform Commission in 2010 and 2013. The degree of legislative inertia has been marked; had a recommendation of the 1965 committee been implemented the litigation in *de Burca v Attorney General* that resulted in declarations of unconstitutionality would have been

unnecessary. None of the main recommendations of the Law Reform Commission from 15 years ago have been implemented.

The Department of Justice has, however, engaged in a series of highly performative and badly-organised consultations in relation to what the Law Reform Commission recommended. These have been framed as exercises in determining how the LRC proposals might be implemented. However, both consultations have sought views on whether the changes the LRC recommended should be made, essentially redoing the Commission's homework. They have also been undertaken in a most unsatisfactory way. The first departmental consultation (2018) was shambolic. It was announced to great fanfare but subsequently abandoned without informing consultees. For the second consultation process (2024), a very poorly-drafted consultation paper was created and circulated privately to certain people, including non-governmental organisations operating in the justice sector. Notably, the input of academic experts on trial by jury was not sought, on the basis that this was 'a targeted consultation.'

When law review is badly done, and cloaked in the optimistic language of law reform, it can bear dispiriting hallmarks. In relation to the law on juries, these include the waste of resources, discourtesy to consultees, the under-valuing of relevant academic expertise and the inertia that often characterises official decision-making in Ireland.

Alice Diver, Law reform [as redress] for Survivors/Victims of Mother-Baby Institutions in Northern Ireland: Public Consultation as a perpetuation of unseen partialities?

Northern Ireland's recent (2024) Public Consultation on a proposed Public Inquiry ('*Truth Recovery, Mother and Baby Institutions, Magdalene Laundries and Workhouses, and their Pathways and Practices'*) stressed that it was aimed at focussing upon 'what the legislation *needs to do.'* It avoided however any indication of 'the precise legal language' likely to be used within the proposed Bill. This seems entirely at odds with the notion that meaningful,

justice-led legislative reforms require transparently clear wordings, to avoid the sort of unnecessary equivocation and ambiguity that can lead easily to unfairness or inequities of treatment. Put bluntly, it seems difficult - if not impossible - to know what a new law 'needs to do' without having had any sight of that new law's provisions. Likewise, if the languages of law – and legal reform – serve as 'litmus tests' for those aiming to convince potentially tough audiences of 'the acceptability of their proposals' (Andone, 2022), then it may well be counter-productive to not permit the consultees any glimpse of the relevant draft legislation. There is clearly a need to keep in mind the type[s] of persons who will be most affected by the new laws or policies under consideration (Majambre, 2011). Here however, the most relevant consultees include the thousands of relinquished children and adoptees (now adult) and their mothers (now ageing) who were frequently forced by law, policy, or sociocultural attitudes into familial separation and often permanent severance.

Going by the Consultation Document - and the research which underpins it[1] - the aimed-for legislation will seek to effect some measure of financial redress for survivors and victims, but only for those who qualify as eligible for the scheme. In this, it echoes the Republic of Ireland's ongoing processes, which have essentially looked to similarly limiting applicant entitlement, by tying it to specific venues and the lengths of time residents spent within carefully prescribed Institutions. Mothers and children who spent insufficient time there, or who were perhaps 'fortunate' enough to have instead delivered their babies within a private establishment or home, seem set to be similarly excluded from the proposed Northern Ireland scheme. In terms of achieving law and policy reforms that effect justice-led redress,

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[1] McCormick Leane and McConnell Sean et al (2021) *Mother and Baby Homes and Magdalene Laundries in Northern Ireland, 1922-1990* (https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mbhl-final-report.pdf; see also however
Mahon Deirdre et al '*Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland: Truth, Acknowledgement and Accountability'* (2021) 30092021-Truth-Recovery-Final-Report-FINAL-Online-Version.pdf (secureservercdn.net), and in particular
O'Rourke, Maeve '*A Human Rights Framework: Background Research for the Truth Recovery Design Process'* https://w2w113.n3cdn1.secureserver.net/wp-content/uploads/2021/10/ORourke-Background-Research-Report-27.9.21.pdf

definitions and terminologies matter: where forced relinquishment is concerned, lawmakers should take great care not to disregard past injustices and to avoid entrenching chronically discriminatory hierarchies of victimhood. Northern Ireland's Executive Office has offered as its rationale (on seeking views on proposed policies rather than draft legislation) that it intended for the drafters to 'consult on key policy areas in a *more appropriate* way'(10). It did not unfortunately clarify what a *less* appropriate method of consultation might have been, here. We are left to conclude that making the draft legislation publicly available for close reading and scrutiny might well have sparked some form of outcry or led to too-detailed critiques of some of its provisions.

The proposed Bill's focus will likely remain mainly on the sharp temporalities of bricks and mortar – specific places and times long past – rather than on the deeper *whys and hows* of forced infant relinquishment or on its ongoing rights violations (many of which have carried over to the present day e.g. access to information, identity, and reunion).[2] Determining *who* might be most worthy of redress (rather than concentrating upon identifying those who were culpable for overseeing so many systemic wrongs and harms) seems to be the aim of this exercise. And yet, a decades-long litany of secrecies, abuses, shaming, and stigma existed within and across several jurisdictions in connection with forced adoptions. This means that some particularly uncomfortable truths are likely to remain unaddressed, not least that such things were designed - and then tolerated or simply ignored - to enable an often lucrative 'industrial complex' (McKee, 2016) of adoption practices to take hold.

As a Panel of Experts observed of the 2017 HIAI Redress Recommendations, timings matter greatly when it comes to achieving meaningful public consultations involving

[2] A review of the care system in its entirety was categorically ruled out, which does ignore the fact that some modern adoptions do still rely upon the courts dispensing with parental consents, and that there may have been scope post-Inquiry to potentially inform future practices and policies on non-consensual relinquishments and/or the right issues surrounding post-adoption contact. See for example *A Biological Mother v The Adoptive Parents* (2022) NIFam 21; *In the Matter of Two Children: Freeing for Adoption* (2022) NIFam 5; on England and Wales see *Seddon v Oldham MBC (Adoption Human Rights)* [2015] EWHC 2609; *A Local Authority v Mother and Anor* [2017] All ER (D) 81.

survivor/victim-participation and the realization of their human rights via law reform: 'international standards on involvement in decisions which affect rights require involvement at the time when 'all options are open' and there is a genuine opportunity to influence outcomes.' [3] Consultation processes which exclude those most likely to be impacted by proposed statutory reforms seem at best ineffective and at worst disingenuous, becoming merely a 'tick-box' exercise with pre-determined conclusions. [4] That the NI Consultation Document stressed the value of – and likely need for - participant anonymity is also quite telling: shame, secrecy, and stigma are still, it seems, indelible features of many infant relinquishment processes. Likewise, there was repeated mention of the duty upon the state to preserve the finite contents of the public purse. This is perhaps the key aim of the unseen draft Bill, which will likely come into being against a backdrop of still-exclusionary terminologies, with a view to further delimiting the scope and reach of the proposed Public Inquiry, and the related schemes for redress.

Adam Elebert, The Role and Value of Law Reform Institutions in Constitutional Referendums

> *Yet his intentions were more radical than his careful and technical speech suggested. Lemass acknowledged that there was little criticism and no demand for a review of the constitution. He maintained that 'this position will continue only if we take the precaution of looking at it every now and again to consider whether any improvement is possible or desirable'. […] More specifically he argued that the constitution should*

[3] Amnesty International Panel of Experts '*Response To Historical Institutional Abuse Inquiry Redress Recommendations: Position Paper & Recommendation'* https://www.amnesty.org.uk/files/2017-04/Panel%20Position%20Paper%20April%2020%20pdf.pdf?LUgUHayg4iP9cPdKGeXsMwFK5llXUwHL

[4] See further the Civil Service Report (*Policymaker Perspectives on Reform,* 2020) where some policymakers reported feelings of having been 'given a solution and asked to implement it' even where 'the solution doesn't always meet the needs of people who will use the policy or service' (10). Policymaking-Reform-Full-Report-1.pdf (blog.gov.uk).

> *be reviewed every twenty-five years or so, suggesting 'it is now that this precedent could be set up'*.[5]

Articles 46 and 47 of the Constitution provide that the only means by which the Constitution can be amended is the referendum. The Articles further provide certain procedural requirements for bringing a referendum to the People, including that the amendment proposal must be presented in the Houses of the Oireachtas before becoming the subject of the People's vote. The Articles are silent, however, on what procedures must be followed in drawing up an amendment proposal. There are therefore no formal requirements for establishing what aspect of the Constitution should be amended and in what way. Despite this, Ireland has a long history of establishing law reform institutions of various kinds in order to do exactly this. These institutions have taken on a variety of different forms: some have been purely political committees, others have been expert-led review groups, and more recent examples have seen experimentation with deliberative democracy principles through citizen-led assemblies. Notwithstanding the difference in makeup, each of these institutions has enjoyed at least *some* influence over constitutional referendums, though the level of influence fluctuates dramatically between them.

In this paper I examine each of these law reform institutions and initially discuss two things: first, how successful was each in achieving its goal of constitutional reform, and second, what factors contributed to their success. The analysis of these questions reveals that the principal relevant factor for the success of a law reform institution in the sphere of constitutional referendums is institutional design. That is, how each institution is established influences: (i) what success for that institution looks like, and (ii) the likelihood of achieving that success. For some institutions, their success lies in seeing recommendations realised at referendum. For others, success arises also through engagement from politicians and the public alike. The history of law reform institutions

[5] Brian Girvin, '"Lemass's Brainchild": The 1966 Informal Committee on the Constitution and Change in Ireland, 1965-73' (2013) 38 Irish Historical Studies 409.

shows that they have limited success in seeing their recommendations realised, but more substantial success in achieving engagement from key stakeholders, with both intrinsic and practical benefits. This analysis therefore sheds light on an important over-arching question: what is the role and value of law reform institutions in constitutional referendums? In order to answer these questions, the paper proceeds in the following way.

First, I carry out a brief analysis of the law reform institutions related to constitutional referendums. The institutions examined include: the 1996 Informal Committee on the Constitution, the 1996 Constitution Review Group (and its subsequent All-Party Oireachtas Committee on the Constitution), the 2012 Constitutional Convention and the Citizens' Assemblies from 2016 onwards. Here I show that the gradual change in composition of these institutions (from solely politicians to include experts and citizens) has brought particular benefits, including more engagement from the public and, consequently, more engagement from politicians.

Second, I offer some insights into the various ways in which these institutions can be valuable. For example, I show that the value of these institutions lies not only in their influence on specific referendum proposals, but also their ability to identify divergences between public opinion and the text of the Constitution, and to engender widespread interest in constitutional debates. In short, there is both intrinsic and practical value to these institutions: greater deliberation and greater engagement are generally to be preferred to the alternative, but equally lead to a more informed electorate and, ultimately, a higher chance of the proposal (if brought to referendum) passing.

Third, I demonstrate how particular institutional design can maximise the value of law reform institutions. This part of the paper discusses the experiments with deliberative democracy identified above, but also the fundamental question of how recommendations are received and treated by Government actors. As will be shown, the benefits of law reform institutions to constitutional referendums can be seriously undermined when the status of

their recommendations is unclear. The absolute discretion enjoyed by political actors to adopt or ignore proposals for reform is a particular example of this.

Fourth and finally, I distil the most pertinent lessons for law reform institutions. While drawn from the context of constitutional referendums, these lessons are intended to guide the design and functioning of both formal and informal law reform institutions more generally. The over-arching conclusion is that good institutional design is a prerequisite in order to maximise and bring about the principal values of law reform institutions for constitutional referendums. Recent examples like the recent constitutional referendums on Family and Care bring this into starkest relief.

As Girvin's above quote shows, even barely 30 years after the Constitution was enacted, Taoiseach Seán Lemass was acutely aware that consistent, reasoned constitutional reform would be necessary in order to maintain public confidence in and fealty to Bunreacht na hÉireann. Moreover, he recognised that law reform institutions had a significant role to play in achieving this through the review and recommendation process first undertaken by the 1966 Informal Committee. Our history of law reform institutions in this area demonstrates how valuable they can be, and what steps are necessary to maximise this value. This paper undertakes to identify and distil those steps.

Niamh Howlin, Law Reform before the Law Reform Commission

2025 marks fifty years since the legislative establishment of the Law Reform Commission. Under its successive programmes for law reform it has had a significant impact on changes to substantive law and legal procedure. Commentators such as Gerard Hogan have pointed out that legal change and reform of the law in the first half of the twentieth century was gradual. However, it is not the case that law reform was unknown in Ireland before 1975. Indeed, there were several attempts to introduce processes, systems and institutions for the review of the law and the proposing of reforms.

This paper will focus on the history of law reform in Ireland in the 20th century. In particular, it will examine law reform proposals and activities which predate the establishment of the Law Reform Commission in 1975. It will make use of letters and memoranda held in a number of archival collections, official publications, parliamentary debates and newspaper archives.

The establishment of a Law Reform Commission, along with the establishment of an independent Director of Public Prosecutions, was a key objective for Attorney General Declan Costello when he took office in the early 1970s. Costello's father, John A. Costello, had also been interested in structures and mechanisms for law reform.

An early proposal to establish a law reform committee in the late 1940s involved President of the High Court George Gavan Duffy, successive Attorneys General Kevin Dixon and Cearbhall Ó Dálaigh, and newly-appointed Taoiseach John A. Costello. The committee they envisaged would have a remit 'to inquire into matters of law reform and furnish reports and recommendations thereon to the government.' It would consider 'changes and modifications to existing law as well as the provision of new substantive law.' Although the proposal had the support of a number of High Court and Supreme Court judges, the discussions over a number of years did not ultimately come to fruition.

There were other instances of systematic reviews of substantive and procedural law in the decades which followed. For example, in 1951 a committee was established to report on the reform of company law. It was initially chaired by Henry Vaughan Wilson SC, and then by Arthur Cox. After 57 meetings, the *Company Law Reform Committee* eventually published its first report (often referred to as the Cox Report) in 1958.

Constitutional reform was also considered. In 1966 an All-Party Informal Committee of elected representatives was established 'to review the constitutional, legislative, and institutional bases of government.' Described by Brian Girvin as 'Lemass's brainchild', it was established in the context of Ireland's decision to join the EEC, and an appreciation of the

need to consider the legal constitutional implications of such a move. It also operated against the backdrop assessing Church-State relations. Its members were TDs and Senators, most of whom had legal qualifications or experience, and it relied on legal scholarship by such individuals as Rory O'Hanlon and Donal Barrington. The *Report of the Committee on the Constitution* was published in 1967. Its recommendations included a proposed significant change to the law on divorce.

A 1962 *Programme of Law Reform* set out ambitious plans to review civil law, criminal law, court practice and procedure, as well as embarking on a process of statute law revision. It was announced that a 'clearly defined programme of law reform' would be 'pursued consistently and systematically over an extended period.' Rather than a formal law reform commission, committees were established to deal with specific issues. One such committee was the Committee on Court Practice and Procedure, presided over by Brian Walsh. Nineteen interim reports, on a wide range of issues, were published between 1964 and 1972, leading to various structural and substantive reforms.

This paper will explore these initiatives as precursors to the establishment of the Law Reform Commission in 1975.

Alan Eustace and Michael Doherty, The Many About-Faces of Labour Law Reform in Ireland

In its storied history, the Law Reform Commission has never directly addressed the law on employment and industrial relations. Nevertheless, this area of Irish law has experienced dramatic change during the lifetime of the Commission. Fifty years ago, a majority of the Irish workforce were members of a trade union and their working conditions were determined primarily by collective bargaining, including through sector-wide negotiations overseen by the Labour Court, with agreements extended to cover dissenting employers. Today, barely a quarter of workers are trade union members and a third are covered by

collective bargaining (most of these in the public sector). Instead, the last thirty years in particular have seen explosive growth in statutory employment law and individual litigation.

The reasons for these changes are myriad: economic, technological, political and cultural. This paper will focus on the processes by which these various changes in the Irish labour law landscape have come about, and what labour law teaches us about law reform. Labour law reform in Ireland has been conducted with and without the endorsement of trade unions; by executive agencies, the legislature and court decisions; under the influence of international institutions and in defiance of international trends; with political consensus and sharp social division. All the while there has been a steady growth in the volume and complexity of a field crying out for comprehensive rationalisation.

This conference seeks to address key questions about the future of law reform. Labour law is a prime candidate for substantial, comprehensive reform, as illustrated by the recent appointment of an Employment Law Review Group – and before that, the High-Level Working Group of the Labour-Employer Economic Forum (LEEF) – to join more well-established institutions like the Labour Court, Workplace Relations Commission and Low Pay Commission. Labour law is also a salutary reminder of the critical importance of the key questions raised by the conference. These include:

- How can appropriate subjects for law reform be identified?

Labour law reform in Ireland, for good and ill, has tended to be reactive – to particular corporate scandals or industrial conflicts, to technological developments, to influence by trading partners and international institutions, to court decisions, *etc*. Despite many calls to do so, on relatively few occasions has an explicit effort been made to reshape the Irish economy towards a particular political vision by means of labour law reform. This paper will compare the fates of different efforts at law reform which have arisen in these different circumstances.

- What form of democratic processes are required to legitimise law reform?

- What roles do and should stakeholders and lobby groups play in the process of law reform?

Labour law is unique among fields of law in having ready-made organisations with strong credentials to represent the stakeholders most affected by any reform – trade unions and employer organisations, together 'the social partners'. Much of the history of labour law reform in Ireland is the story of waxing and waning influence of each of these sets of organisations. A critical challenge for the legitimacy of labour law reform in Ireland, as elsewhere, is dwindling trade union membership. Trade unions have, in principle, an exceptionally strong claim to participate in law reform processes, since (unlike most NGOs, lobby groups and businesses) they are based on voluntary membership and internal democratic governance. But the extent to which trade unions are capable of demanding policy-making influence, and legitimating the fruits of the policy-making process, is undermined by low membership rates.

- How can political support be built for urgently needed law reform?

There is recognition within the political system that labour law reform is urgently needed. As mentioned, the new government has appointed an Employment Law Reform Group made up of academics, practitioners, civil servants and representatives of the social partners, to consider changes to a wide range of legislation across employment and industrial relations law. But the fate of the LEEF Working Group does not inspire enormous confidence. Its carefully negotiated report, advocating targeted but vital reforms to specific problems in the operation of the industrial relations framework, languishes unimplemented since October 2022. Nor, indeed, does the government's confused (and confusing) response to the adoption of the European Union's Directive on Adequate Minimum Wages. This paper aims to strengthen efforts to ensure that future rounds of labour law reform will be timely, comprehensive, and driven by clear political-economic objectives, featuring robust participation by the social partners.

Stephen Marren, From Disarray to Order: The Role of Codification and Law Reform Bodies

Codification offers a structured approach to transforming complex and fragmented legal frameworks into coherent systems of law. This article examines the theory and practice of codification, emphasising its significance across various legal traditions and the role of state law reform bodies in advancing codification's objectives. By offering a framework for analysing how codification addresses the challenges of fragmented and inaccessible legal systems, the article explores how it fosters coherence and simplification. This article explores the theory and practice of codification, its historical trajectory, its compatibility with common law traditions, and its role in modernizing legal systems through the efforts of law reform bodies.

The article explores the historical experience of codification. It traces the influence of key figures and movements—from William Sampson's advocacy for a Napoleonic style rupture with the past in the United States, to Jeremy Bentham's critiques of judge-made law in England — and in so doing illustrating their efforts to rationalise and simplify the law. Through these examples, the article demonstrates that the core objectives of codification—modernization, simplification, and coherence, amongst others—have remained consistent over time and have gained renewed relevance in the face of modern challenges.

A key theme of the article is that codification is often misunderstood as a foreign concept to common law traditions, which emphasise judicial precedent and case-based reasoning. Codification is not only compatible with these traditions but can be seen as an opportunity to enhance them. Rather than undermining the role of the judiciary, codification complements it by offering clear guidance and reducing ambiguity. Moreover, by codifying existing principles and rules, codification helps to create a more predictable legal

environment in which individuals can operate with confidence. Accessibility assists not only those who are affected by legal rules, but those who are tasked with interpreting them.

The article argues that law reform bodies, through their systematic efforts to simplify, modernise, and consolidate laws, achieve the core objectives of codification—even where formal codification remains elusive. A comparative analysis of the British Law Commission and the American Law Institute (ALI) and the Uniform Law Commission highlights this point. While the British Law Commission's early attempts to codify contract law ultimately fell short, the ALI and Uniform Law Commission have achieved notable successes. Despite varying levels of success and results, law reform bodies have striven to ensure that the objectives of codification have been met. This comparison demonstrates how law reform bodies can adapt codification strategies to suit the specific needs of their legal and political contexts.

This article also explores the broader implications of codification in the context of globalisation and the increasing complexity of legal systems. As societies face new challenges, there is growing pressure on legal systems to adapt rapidly to changes in technology, commercial practice, and human rights standards. Law reform bodies play a role in ensuring that legal systems are updated and remain up to date with the evolving demands of society and international influences. Codification, in this sense, is not just about simplifying laws; it is about ensuring legal systems evolve in a way that addresses emerging global challenges and that laws remain responsive to contemporary issues. Law reform bodies answer this need.

Ultimately, this article argues that codification and its objectives are a tool for legal systems striving for clarity, consistency, and accessibility. The efforts of law reform bodies to modernise law reflect a reality that there is necessity for legal systems to evolve and respond to the complexities of contemporary life. In so doing, law reform bodies advance codification and its objectives, enabling legal systems to meet the demands of modern

society with greater efficiency and effectiveness in a world which is characterised by ever-increasing complexity.

Michael McGrath, The Introduction of Land Registration

Perhaps the most significant law reform project ever undertaken in Ireland was the introduction of a system of registered title. This project took place before a dedicated law reform institution was in place. This article traces the calls for law reform in relation to the registration of title dating back to the eighteenth century with reference to the Down Survey in the seventeenth century. It will examine how that law reform project was advanced in the late nineteenth century with a focus on the role of civil society organisations including the Statistical and Social Inquiry Society of Ireland, with a focus on the mechanics of law reform in the area of land law (rather than on broader policy or social concerns relating to the land question). It will examine the influence of the Australian Torrens system, developed by an Irishman, Robert Torrens, who addressed the Registration of Title Association in 1864 and also the influence of the Prussian cadastral system on the introduction of registration of title in Ireland. Finally, it will examine the introduction of the Local Registration of Title (Ireland) Act, 1891 from the perspective of law reform.

James Rooney, Multi-Party Litigation and the Limits of Law Reform in Ireland

My paper examines the response, or more accurately non-response, of successive governments to the 2005 recommendation of the Law Reform Commission ('LRC'), repeated in 2020 in the Review of the Administration of Civil Justice ('the Kelly Report'), that some form of multi-party litigation should be introduced into Irish law.

Assessing the potential for reform of procedural legal rules, such as those regulating which parties can bring actions and in what manner, is a peculiarly well-suited area of activity for

a law reform commission. Concerning the administration of justice and the operation of the Courts system, consideration of reform of such deeply entrenched rules could easily be overlooked in political argument and given little deliberation by the elected branches absent the work of an advisory body like the LRC. Indeed, in a comparative perspective, law reform commissions have been indispensable to the introduction of multi-party litigation in other common law jurisdictions, such as England and Wales, Canada, and Australia. I argue that the 2005 report of the LRC is an impressive and thorough document, drawing on comparative research, and presenting cogent arguments in favour of adopting a form of group litigation as well as reasoned counterarguments against this reform. I consider the 2005 report on multi-party litigation to be a paradigm example of the value added to a legal system by the presence of law reform commissions, and of the high standard of analysis which has become expected of the LRC in Ireland.

However, while in its substance the 2005 Report is praiseworthy, twenty years on it has not led to law reform. I suggest this demonstrates an inevitable limit of the power of the LRC. Of course, the LRC correctly cannot oblige the government to adopt its recommendations; but more concerningly, successive governments can also ignore the recommendations of the LRC (and the Kelly Report) without incurring any significant political cost for this non-response. This is made all the more notable given that both the LRC and the Review of the Administration of Civil Justice only considered the topic of multi-party litigation upon direction to do so *by the government*.

In analysis of Oireachtas discussions of both reports, successive governments have not given a coherent explanation for why they have declined to follow the recommendations to bring in multi-party litigation. In this, it is not that the elected branches have even come to a reasoned disagreement with the LRC on their recommendation, rather their recommendations have to all intents and purposes been ignored. The recommendations of LRC reports have in most instances been implemented in some form and so, in this respect, the 2005 Report is a trend outlier; however I argue that this further makes the 2005 Report

worth consideration for what it tells us about the relationship between law reform commissions and the elected branches.

In my paper, I first outline the current law on multi-party litigation and representative actions in Ireland. I then detail how the 2005 Report came about and the substance of the report, before proceeding to analyse the reception the report has received. I note the broadly positive statements of members of the Irish judiciary in principle to the introduction of multi-party litigation and its ability to advance access to justice. I suggest that the role law reform bodies played in their introduction of multi-party litigation in comparator jurisdictions demonstrates the value of law reform, and highlights by contrast the limits of its impact in Ireland. I conclude that, whilst it is correct that the LRC's powers are merely advisory, it is regrettable that their advice, particularly provided in such a comprehensive report, can be so easily and inexpensively ignored.

David Plater and Emily Conroy, A Win-Win Situation? A South Australian Perspective on the Mutual Benefits of Collaboration between Law Students and Law Reform Bodies

> *'Law reform and legal education have traditionally been separate worlds, rarely in danger of collision or even constructive combination. This separation is not good for either law reform or legal education, or for the legal profession, the discipline of law, or the advancement of society. These two separate worlds can and should be brought together, so that legal education has a conscious and deliberate law reform ethos and focus' – Michael Coper*[6]

[6] Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233.

Law reform bodies are traditionally under-resourced and driven to do more, with less.[7] Modern legal education in common law systems is under various pressures.[8] By establishing effective and mutually beneficial links between law reform bodies and tertiary institutions (for example, through elective coursework units and publication opportunities), this paper argues that modern law reform bodies, despite the various challenges, can both enhance the quality and volume of their work and overall output, whilst developing various student skills. This paper demonstrates how the independent South Australian Law Reform Institute (SALRI) based at the University of Adelaide,[9] has successfully maximised its limited resources[10] and enhanced its output and impact through the Law Reform elective class at the Adelaide Law School. Whilst there are various and many Law Reform classes, SALRI as a formal law reform body is seemingly unique in its formal links to a Law Reform class. By outlining the role of SALRI, the linked Law Reform class, and the benefits that this brings for SALRI, the students, and law reform more broadly, we argue for the widespread adoption of law reform courses in legal education, and more specifically for established links between such courses and law reform bodies. This link between legal education and law reform, we argue, ultimately leads to a broader societal impact and aligns with the broader shift towards experiential legal education.

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[7] Alan Cameron, 'Law Reform in the 21st Century' (2017) 17(1) *Macquarie Law Journal* 1, 7.

[8] Pauline Collins. 'Australian Legal Education at a Cross Road' (2020) 58(1) Australian Universities Review 30; Margaret Thornton, 'The Challenge for Law Schools of Satisfying Multiple Masters' (2020) 62(2) *Australian Universities Review* 5; Patricia Leighton, 'Legal Education in England Wales: What Next' (2021) 55(3) *Law Teacher* 405.

[9] SALRI is established under a 2010 partnership between the University of Adelaide, the South Australian Attorney-General and the Law Society of South Australia in December 2010. It is based on the Institute model of law reform, which originated in Alberta and is also used in other jurisdictions such as Tasmania. See Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (Federation Press, 2005) 55, 62. You can find out more about SALRI and its work at https://law.adelaide.edu.au/research/south-australian-law-reform-institute/

[10] David Plater and John Williams, 'The South Australian Law Reform Institute a Decade On: "May You Continue Well into the Future"' (2022) 43(1) *Adelaide Law Review* 37, 63.

There is a significant body of literature on legal education and clinical legal education more specifically.[11] However, 'the focus on law reform is surprisingly small'.[12] There is also limited exploration of the mutual benefits and value of a structured collaborative approach between established law reform bodies and law reform classes.[13] The question has been raised: 'Can a passion for law reform and social justice be effectively taught, or at least inspired, at law school?'[14]

SALRI, similar to other law reform bodies, impartially examines and reports on areas of potential law reform in South Australia on references from the Attorney-General and other sources. These references involve wide consultation, multidisciplinary research and raise major issues of law, practice, social policy and human rights. Many of SALRI's recommendations in past projects in diverse areas such as surrogacy, abortion, succession, the forfeiture rule and discrimination have been accepted and are now law.[15]

SALRI is one of the smallest law reform bodies in the Commonwealth.[16] The Law Reform class plays a vital role to assist SALRI to research, review and respond to current and/or potential references.[17] SALRI facilitates class engagement with a wide range of guest

[11] See Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17(1) *Griffith Law Review* 1; Matthew Atkinson and Ben Livings (eds), *Contemporary Challenges in Clinical Legal Education* (Routledge, 2024).
[12] Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233. 241.
[13] See generally Kris Gledhill and Robin Palmer, 'Law Reform Clinical Programmes Should be Promoted in Law Schools: An Explanation' (2024) 32(1) *International Journal of Clinical Legal Education* Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233; Liz Curran, 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe Law' (2004) 7 *Flinders Journal of Law Reform* 287, 290.
[14] Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233, 238.
[15] See generally David Plater and John Williams, 'The South Australian Law Reform Institute a Decade On: "May You Continue Well into the Future"' (2022) 43(1) *Adelaide Law Review* 37.
[16] Ibid 43.
[17] Ibid. Past classes have assisted SALRI's major reviews into discrimination, provocation and the offensive 'gay panic' defence, the forfeiture rule in unlawful homicide, powers of attorney, succession law, surrogacy, abortion, witness competence, communication partners to assist vulnerable parties, adult safeguarding property law, suppression orders and mental health. Students have also looked at other topical issues.

speakers and the SALRI Director and Deputy Director, as well as others such as previous and current judges and Attorney-Generals, the Speaker and Aboriginal Elders. The course draws on the legacy of Justice Michael Kirby as the inaugural President of the Australian Law Reform Commission.[18] It covers the political, legislative and law reform processes and context and the roles of the Attorney-General, executive, Parliament, media and the courts in law reform. Students select a research topic aligned to SALRI's work and examine the current law in South Australia and elsewhere, identify and assess policy options and make their own reasoned suggestions for law reform. The assessment comprises a literature review and a research assignment with the students' own conclusions and recommendations, together with presentations, class participation and feedback and editorial/research activities on SALRI references.

Law reform courses, drawing on SALRI's experience, have the potential to enhance the capacity and impact of law reform bodies, particularly those with limited staff and funding. The SALRI class input has contributed significantly to SALRI's success and output in various ways.[19] SALRI finds students bring commitment and positivity in considering often difficult issues,[20] along with new and diverse perspectives on the projects, and the procedural aspects of SALRI's work.[21] Student research and written work from the assessments can directly feed into subsequent reports.

Courses such as SALRI's Law Reform elective, provide significant benefits for law students. By working on real-world law reform projects, students develop skills in student legal

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[18] See Justice Michael Kirby, 'Forty Years of the Alberta Law Reform Institute: Past, Present, Future' (2009) 46(3) *Alberta Law Review* 831; David Weisbrot, 'Law Reform, Australian-Style' in Ian Freckelton and Hugh Selby (eds), *Appealing to the Future: Michael Kirby and His Legacy* (Thomson Reuters, 2009) 607.

[19] David Plater and John Williams, 'The South Australian Law Reform Institute a Decade On: "May You Continue Well into the Future"' (2022) 43(1) *Adelaide Law Review* 37,

[20] Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233, 249. See also at 237-238.

[21] For example, SALRI's law reform students often are simultaneously undertaking double Bachelor degrees (for example, in Health Sciences, Commerce, Criminology or International Relations).

research, analysis, drafting, written and oral communication and persuasion. Students engage with complex issues and develop skills making informed recommendations for reform which are evidence-based, objective and apolitical. It further builds the professional identity and confidence of the students.[22] It also allows the younger generation to become further engaged and use their voices, therefore helping to secure the intrinsic value and impact of law reform.

Many previous students of the Law Reform class have become paid SALRI Research Assistants, including Ms Conroy, bringing with them a pre-existing understanding of the foundations of law reform and SALRI's process and aims specifically.[23] Various students have acted as co-authors on various SALRI reports. Students have literally seen their work translate directly into major changes to the law. Madeleine Thompson, for example, drew on her work in class on SALRI's surrogacy reference and was a lead author on the SALRI report.[24] The Hon John Dawkins MLC in Parliament singled out Ms Thompson's role and contribution.[25] This is far from unique.[26]

Consultation in modern law reform must do more than 'round up the usual suspects'.[27] Echoing Sir Peter Fraser's recent sentiment that law reform bodies need to modernise the way they approach law reform,[28] law students through SALRI can (and do) use their fresh eyes and skills to suggest and help implement improvements to law reform processes.

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[22] Similar to Clinical Legal Education, there is significant evidence to support the notion that active participation in law reform courses assists to develop professional skills. See Liz Curran, 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe Law' (2004) 7 *Flinders Journal of Law Reform* 287.

[23] David Plater and John Williams, 'The South Australian Law Reform Institute a Decade On: "May You Continue Well into the Future"' (2022) 43(1) *Adelaide Law Review* 37, 63 n 178.

[24] David Plater et al, *Surrogacy: A Legislative Framework* (Report No 12, South Australian Law Reform Institute, 2018).

[25] South Australia, *Parliamentary Debates*, Legislative Council, 29 October 2019, 4742.

[26] See also South Australia, *Parliamentary Debates*, House of Assembly, 28 September 2023, 5552 (Mr Teague, Shadow Attorney-General).

[27] David Plater and John Williams, 'The South Australian Law Reform Institute a Decade On: "May You Continue Well into the Future"' (2022) 43(1) *Adelaide Law Review* 37, 65. See also at: 65-71; Roderick MacDonald, 'Law Reform and Its Agencies' (2000) 79(1) *Canadian Bar Review* 99, 115-118.

[28] Sir Peter Fraser, The Future of Law Reform, Society of Legal Scholars, Hale Lecture, Swansea, 6 February 2025, https://lawcom.gov.uk/sls-hale-lecture-the-future-of-law-reform/.

Students of the Law Reform class have actively assisted SALRI to utilise current and emerging technologies to enhance its output and facilitate effective and innovative modern law reform consultation.[29]

In conclusion, drawing on the South Australian experience, this paper highlights the win-win dynamic of collaborations between law reform bodies and legal education, where law students gain valuable skills and experience, while law reform bodies benefit from increased capacity and fresh insights. They can offer a practical solution to resource constraints of law reform bodies whilst simultaneously equipping students with practical skills and a sense of purpose in their legal education. Looking forward, we suggest wider implementation and partnerships between universities and law reform bodies, taking insights from SALRI's success with the Law Reform class.

Jennifer Schweppe, Amanda Haynes and Luke Danagher, The Criminal Justice (Hate Offences) Act 2024: A Scottish Act 'emblazoned with the harp'?

The Criminal Justice (Hate Offences) Act 2024 was commenced on 31 December 2024 and, for the first time, Irish law has a statutory provision which recognises hate crime as a legal construct. Just six months previously, the Council of Europe Committee of Ministers unanimously adopted a new recommendation on combating hate crime, a "sibling" recommendation to the earlier CM/Rec 2022(16) on combating hate speech. The Act was preceded by a lengthy consultation process on hate speech which took the form of four discrete strands of engagement. This presentation will examine the 2024 Act through the lens of the Recommendation, considering its coherence with human rights standards, as well as setting it against existing relevant legislation. It will also present preliminary analysis

[29] See Sarah Moulds, 'Community Engagement in the Age of Modern Law Reform: Perspectives from Adelaide' (2017) 38(2) *Adelaide Law Review* 441. More specifically, this has included establishing and running SALRI social media accounts (ie LinkedIn) to attract consultees and submissions, creating video content (ie consultation videos for YouTube which increased accessibility), and new survey platforms for community engagement.

of the consultation process conducted by researchers at the STRATA Lab at the University of Limerick. We will conclude that the Act, while well-intentioned, has produced inconsistencies within the statute book as a whole, has shortcomings with respect to clarity regarding core legal principles, and that an opportunity to develop world class hate crime legislation which reflects international human rights standards and the views of Irish people, legal professionals, and civil society, was lost.

Suzanne Scott, The Power of Stories to Influence Law Reform

This paper will explore how traditional methods of law reform, including the important work carried out by law reform institutions, can be supported and strengthened through impactful storytelling that brings to light the real-world impact of the law. In this regard, the paper will examine how personal narratives and grassroots campaigns have acted as a catalyst for legal reform in the past.

By weaving together personal stories of how the existing law in a particular area affects people, shared community experiences, and historical accounts, storytelling has the potential to humanise legal issues and take the law reform conversation from the academic to the concrete. This in turn creates broader awareness of the relevant issues, fosters empathy across a wider audience, and therefore provides a compelling case for law reform.

The paper will commence by exploring examples, both in Ireland and further afield, where real-life stories of the impact of laws on individuals and particular groups within society have played a pivotal role in driving legal change. A clear example thereof is the work of the Together for Yes campaign in Ireland in the lead up to the constitutional referendum to repeal the eighth amendment to the Irish Constitution, which the paper will consider, among other examples.

Thereafter, the paper will explore past law reform efforts that may have been more successful had they incorporated an element of storytelling into their analyses and

recommendations. These areas will include, for example, recommendations that have been made to reform the law in Ireland on the recognition of foreign divorces.

Finally, the paper will set out a number of areas of the law in Ireland that are currently in need of reform and which, in the author's view, ought to be highlighted by sharing real-life stories of those who are negatively impacted by those laws in order to better make the case for reform.

The paper will not argue that storytelling and grassroots campaigns should be focused on to the exclusion of the work of law reform institutions. Rather, the central thesis of the paper is that these are complementary tools that can be harnessed by law reforming bodies to better advocate for impactful legal change and to increase awareness of the very meaningful work that these bodies already do.

Further, the paper will argue that incorporating impactful storytelling into research and analysis will build public trust and credibility in law reform institutions which, in turn, will engender political support for law reform recommendations, thereby increasing the prospect of implementation via legislative or other means.

Moreover, the paper will contend that law reform recommendations themselves will be improved through the use of storytelling, as it enables law reformers to better understand the relevant issues at play and to consequently propose more practically focused, solutions-driven recommendations.

Ultimately, the aim of the paper is to advance the proposition that law reform efforts can be enhanced and ultimately made more effective where research and recommendations are grounded in the authentic voices of those who are directly impacted by the laws and rules that are the subject of those reform recommendations.