

THE COMPARATIVE METHOD AND LAW REFORM

by

Darius Whelan, B.C.L., B.L.

presented to the National University of Ireland in fulfilment of the requirements
for the degree of LL.M. (Master of Laws) in the Faculty of Law

under the supervision of

Arnaud Cras

University College Dublin, November 1988

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SUMMARY

This thesis examines law reform, the comparative method, and the combination of these two elements. A broad definition of law reform is adopted, to include law reform by legislators and judges, and proposals for law reform from law reform agencies and from academics. It is explained that the comparative method (commonly referred to as comparative law) is still at an experimental stage, and that no particularly rigid method of comparison has been adopted for the purposes of this thesis. The theory of reception and legal transplants is discussed, from Montesquieu to date. Particular emphasis is placed on the debate as to the need to adapt foreign ideas to suit the needs of the donee's present system. It is argued that Montesquieu's strict views are counterproductive. The use of the comparative method in the preparation of legislation is considered -- the role of government departments, parliamentary committees and academics; the choice between codification and special statutes.

Law reform agencies (LRA's) are discussed at length. Useful data was provided by a survey, conducted for this thesis, which was sent to most of the common-law LRA's in the world. 29 completed questionnaires were returned, from the U.K., Ireland, Canada, Australia, U.S.A., Africa and elsewhere. The common-law LRA's are compared with European ministries of justice. Observations are made on the distinction between lawyers' law and social-policy law, the appointment of non-lawyer members to LRA's, the consultation process, implementation rates and finance of LRA's. A table of LRA budgets and a Table of LRA implementation rates are set out. There is a study of the use of the comparative method in LRA's.

It is argued that judges have a significant law reforming role, despite their *dicta* to the contrary. The combination of the comparative method and judicial law reform is then considered, as is the suggestive role of judges in law reform (when judges suggest remedial action to the legislature).

ACKNOWLEDGEMENTS

The staff and members of many law reform agencies are to be sincerely thanked for the information which they supplied in reply to queries. In particular, the respondents to the survey went to great pains to clarify the exact position in their jurisdictions. The names of these people will be found in Appendix 5, at the beginning of each reply to the survey. Where replies by letter were received, these are mentioned in Chapters III and IV.

Norman S. Marsh, Q.C., lent copies of the unpublished national reports to the Fourth European Conference of Law Faculties (1976) for photocopying. He remained admirably patient while there were delays of various kinds. Bernadette Kearns photocopied these reports in London. William H. Hurlburt, Q.C., responded within a day to an urgent request for a copy of Professor Andrew Martin's unpublished paper, *Law Commissions Bill: Some Comparative Notes* (1964).

Arnaud Cras, supervisor of this thesis, was always helpful and supportive. The UCD Inter-Library Loan staff provided an efficient service, despite the cutbacks. Marieva Coughlan assisted in the design of the questionnaire. Angela O'Reilly and Tony Fitzpatrick, fellow-LL.M. students, helped lift the spirit and enliven the library. My Pupil-Master, Michael O'Shea, tolerated repeated absences over the last six weeks. Fionnuala O' Driscoll helped with proofreading. Máire Hearty saved the day one Saturday.

Extra special thanks are due to Brenda Donohue.

This thesis would not have been possible but for my parent's continued kindness and support.

This thesis is dedicated to the memory of Tomás Whelan.

ABBREVIATIONS

Some abbreviations of periodical titles are explained below.

AJCL	American Journal of Comparative Law
Ark.LR	Arkansas Law Review
Austl.LJ	Australian Law Journal
Camb.LJ	Cambridge Law Journal
Can.B.J.	Canadian Bar Journal
Can.B.Rev.	Canadian Bar Review
Col.L.R.	Columbia Law Review
Curr.L.Probs.	Current Legal Problems
Cwth.L.Bull.	Commonwealth Law Bulletin
DULJ	Dublin University Law Journal
Ford.Urb.LJ	Fordham Urban Law Journal
Harv.LR	Harvard Law Review
ICLQ	International and Comparative Law Quarterly
ILT (ns)	Irish Law Times (new series)
ILTSJ	Irish Law Times and Solicitors Journal
Inc.Law Soc.Irl.Gaz.	Incorporated Law Society of Ireland Gazette
Ir.Jur. (ns)	Irish Jurist (new series)
J.Ir.Soc.Lab.L.	Journal of the Irish Society for Labour Law
Jnl.Afr.L.	Journal of African Law
JSPTL	Journal of the Society of Public Teachers of Law
LQR	Law Quarterly Review
La.LR	Louisiana Law Review
MLR	Modern Law Review
Melb.ULR	Melbourne University Law Review
NCL Rev.	North Carolina Law Review
New LJ	New Law Journal
NZLJ	New Zealand Law Journal
NZULR	New Zealand University Law Review
QLSJ	Queensland Law Society Journal
RabelsZ.	Rabels Zeitschrift für ausländisches und internationales privatrecht
Rev.Dr.Int. et de Dr.Comp.	Revue de Droit International et de Droit Comparé
Rev.Int.Dr.Comp.	Revue International de Droit Comparé
Reform	Reform: The Journal of the Australian LRC
Sask.LR	Saskatchewan Law Review
Stat.LR	Statute Law Review
Tenn.LR	Tennessee Law Review
U.Tas.LJ	University of Tasmania Law Journal
U.Tor.LJ	University of Toronto Law Journal

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"You are the only young man that I know of who ignores the fact that the future becomes the present, the present the past, and the past turns into everlasting regret if you don't plan for it!"

AMANDA, Scene 5, *The Glass Menagerie* by Tennessee Williams