

Some Comparative Aspects of Irish Law, by A. G. Donaldson, LL.B., Ph.D., Durham, N.C., Duke University Press (Duke University Commonwealth-Studies Centre), 1957, xii and 293 pp. (\$6.00).

Welcoming a new book from the vigorous juristic pens of Belfast is becoming a regular pleasure rather than an occasion for that delighted surprise there used to be when such a work came out of Ireland. These books are not isolated manifestations, but are supported by a wealth of articles from the Queen's University, the Northern Ireland parliamentary draftsmen, and, to a lesser extent, from practitioners of the law. Dr. Donaldson himself has been a regular contributor of learned papers to reviews on both sides of the Atlantic, and these have led one to look forward to a full length work.

The "aspects" to which he now pays attention are legal history and present-day legal systems, constitutional history and development down to the present, Ireland in relation to the Commonwealth and international law, administrative law, and land law (concerned mainly with the legislation on landlord and tenant, land purchase, and registration of title, arising out of the peculiar politico-economic land tenure problems of Ireland which came to a head in the nineteenth century). Throughout, Dr. Donaldson deals with developments on both sides of the land frontier. The treatment for the most part is along lines of broad principle, not examining legal minutiae except by way of illustration or emphasis. This approach, combined with the appendix of a large (though avowedly not complete) bibliography and an attractive style of writing, makes the book commendable to lawyers outside the country who want to acquaint themselves with the general pattern of Irish developments in the selected fields, rather than to give legal advice on specific disputes governed by Irish law.

The title of the book asserts that the "aspects" are "comparative". This was a little mystifying before reading the book, and after reading it it looks as though Dr. Donaldson would have preferred to describe them as "superlative". Professor Newark¹ has already criticised the title as being misleading. Dr. Donaldson does not regard comparison with other systems as the only possible justification for writing on Irish law, and is content, by and large, to let that system be interesting on its own account. But he does occasionally make comparisons, which is something he must have to do by way of routine as a parliamentary draftsman. More often, he suggests comparisons which someone else might subsequently make, and it was slightly irritating that he did not go ahead there and then and make them.

One serious criticism is that Dr. Donaldson is complacent about the state of Irish law, and especially its constitutional law. For example the constitutional provisions of the Republic of Ireland are set out regulating the relations between rights of private property and the conflicting objective of social justice. These are represented as a balance, a description applied to other branches of constitutional compromise (166). No inaccuracy is suggested, but the resulting impression is too rosy, for in fact the scales are tipped by extra-constitutional factors against social justice. The reader should be warned, in my opinion, of the astonishing weakness of trade unions and of political movements towards social justice — a weakness due to the permeation of Irish politics with arguments about the past, and to the inordinate influence of the clergy. The weakness is astonishing because Ireland, particularly the South, is industrially underdeveloped and suffers from chronic unemployment. Yet the posters do not generally ask for votes for forward policies, but commend the citizen to "Boycott British Goods" or "Remember 1690" according to which

¹ F. N. Newark, Book Review (1958) 7 *Int. and Comp. L.Q.* 630.

side of the border he is on. Consequently the brave new Ireland gets built in America, Australia and New Zealand, and at home the population is millions less than it was in 1800.

It may be that Dr. Donaldson was being circumspect about the present because of his official position, or because he felt that a Northerner needs be polite when writing of the South. Certainly he shows time and again in his treatment of the past that he is not indifferent to the connexion between legal developments and their social antecedents. Be that as it may, *Some Comparative Aspects of Irish Law* is a book to be read by anyone with an interest in Irish law specifically, or with an interest in the development of the common law or of constitutional law in general. Irish law is important to the Irish anyhow, comparative or not, and it is so outside Ireland also, especially as an example of English law operating in a separate jurisdiction almost as long as it has operated in England, and as a pioneering effort in independence after 1920.

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Bilateral Studies in American-Australian Private International Law, by Z. Cowen, New York, Oceana Publications, 1957. 108 pp. (£2/2/- in Australia).

The French have an idiom which may be fairly applied to this little book, and in a double sense. It is "*Faites aggrandir vos meilleurs clichés*". In its proper Gallic meaning it constitutes a useful piece of advice to Professor Cowen who is well qualified to make of Australian private international law something grander than a slim volume of this kind, a century of pages of which a quarter are non-textual in character.¹ Again, bearing in mind the limited contents of the book, the phrase can do service for the reviewer when he suggests that here is an opportunity to go beyond the *cliché* if not to make it greater, by saying that this little book is too long for its title. For, unlike the other essays in this series, the laws being here compared are very similar in their rules and, in the constitutional areas where there is no common English background at all, there is as yet no sufficient quantity of Australian material from which to draw comparisons, the courts having correctly spied the dangers of taking more than a casual sip from the maelstrom of American precedents.

Unfortunately for the Australian reader, moreover, this work apparently conforms to a plan of some kind, the structure of which is not clear. Thus a three-page section on the British and the Australian Commonwealth needs must have the information that foreign diplomats are exempt from income tax, sales tax, excise tax and customs duties in Australia (p. 7); the succeeding section on International and Interstate Conflict of Laws brings together, after some pertinent general remarks, *renvoi*, proof of foreign law² and exchange control — the interstate operation of the last being left to the imagination; and some Diceyan ghost of the past apparently influenced a section on Domicile and Nationality to the extent of including under the latter head a summary of the Australian nationality legislation. The plan too has, one assumes, excluded some topics in which clear developments of the common law have been made by Australian courts. Thus the subjects of domicile of lunatics,³ *lis alibi pendens*,⁴ adoption,⁵ legitimation,⁶ and recognition of foreign nullity decrees,⁷ have all

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¹ It is worthy of note that by an assiduous use of cross-references the Index has achieved thirteen pages to the seventy-nine of the text.

² A reference to the strangely neglected provisions of the British Law Ascertainment Act, 1859, 22 & 23 Vict., c. 63 would have been in point here.

³ *Kertesz v. Kertesz* (1954) V.L.R. 195.

⁴ *Gibbins v. Gibbins* (1948) S.A.S.R. 267. This case (cited as *Gibbons v. Gibbons*) is mentioned on another point at 56.

⁵ *Re Mackenzie* (1951) 51 S.R. (N.S.W.) 293.

⁶ *Thompson v. Thompson* (1950) 51 S.R. (N.S.W.) 102.

⁷ *Vassallo v. Vassallo* (1952) S.A.S.R. 129.