

Is an Orderly Transfer of Responsibility Legal News for Ireland?

■ Jennifer Czernecki, Lori Edwards and Kirk W. Junker

"[A]n orderly transfer of responsibility back to Britain, which has exclusively governed Northern Ireland for most of the past three violent decades" is a phrase that ended a recent world news brief in a Pittsburgh newspaper.¹ To the uninitiated, this may look like the same old Ireland; in fact, it may not even look like news. Certainly, it is not quick change. (See the companion essay "From Belfast to Dublin on I-79?") But if we unpack this simple statement, we find that there is much that is new here, and much that is of interest to those who might want to approach things Irish from a legal perspective. Indeed, approaching Ireland from a *legal* perspective may be precisely what is new. While our research has found much discussion of the social, political and historical aspects of Irish culture, there is not much that would both qualify as legal scholarship and is up-to-date in a situation that experiences significant changes daily.²

To place the current legal perspective in context, we begin with a brief review that is in part historical and in part political. This review sets up the discussion of the most fundamental legal change in Ireland—by way of amendment to Articles 2 and 3 of the Irish Constitution, the Republic of Ireland has removed its territorial claim to jurisdiction over Northern Ireland. For the people of the Republic, of Northern Ireland, and especially of the belligerent factions within

Northern Ireland, it is an historic change that of course does not single-handedly solve "The Troubles," but does help to ease long-standing tensions among these many and varied interests.

Before proceeding, it is worth making a point about the various labels that are used to refer to the interests involved. It requires study and patience to understand the differences between "Protestants" and "Unionists," between "Catholics" and "Republicans," and between "Loyalists" and "Unionists," just to name a few. The use of familiar dichotomies such as "Protestant versus Catholic" and "Loyalist versus Republican" can be as naively

reductionist as putting white hats on some and black hats on others. In addition, such labels, including "North" and "South," can be factually incorrect. For example, the northern tip of County Donegal, part of the Republic of Ireland, extends further north than any other point on the entire island, including the province of Northern Ireland. For the purposes of our legal perspective, we shall only make the point that the labels "Catholic" and "Protestant," as used by the news media and in common parlance regarding Ireland, need to be understood as class distinctions and labels of national loyalties, rather than as distinctions between Christian doctrines alone. Sometimes though, they do refer to religious doctrine—hence the need for study and patience.³

Constitutional-Historical Review:

"... The study of Irish history does not excite political animosity but leads to the very opposite result. Thoroughly to appreciate the history of this or any country it is necessary to sympathise with all parties . . ."

—A. G. Richey, from *A Short History of the Irish People*, 1869

There is an Irish proverb, "*Ní neart go cur le chéile*," which in translation means approximately "There is no strength without unity." While the Irish language



West Belfast Partisan Mural

may carry the sentiment of this proverb, it has not been until very recently that the votes of divided Irish people have carried legal action consistent with the sentiment. Recent amendments to the Irish Constitution—products of the 1998 Good Friday Agreement—exhibit a new unity and cooperation among the people of the various factions in Northern Ireland, the United Kingdom and the Republic of Ireland. One might say that the tension among the various factions in the North, and the very separation of sovereignty between the Irish Republic and Northern Ireland is a result of English colonization extending at least as far back as the 12th century.⁴ Prior to English colonization, there had certainly been recorded bodies of law in Ireland, notably the great collection known as the *Serchas Már* from approximately the first quarter of the 8th century, and also the less notable *Críth Gablach* (“the Branched Purchase,” a name for which the origin is unknown), which may be as old as the 6th century.⁵

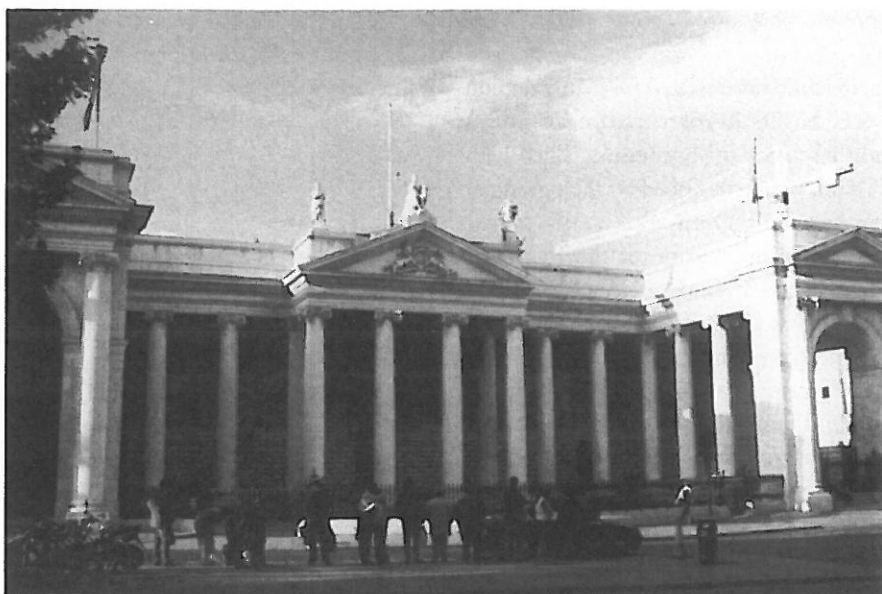
Law formed a very important factor both in public and private life in ancient Ireland. Because a judge was called a “*brehon*,” in Irish, the native Irish law is commonly known as the “Brehon Law.”⁶ Its proper designation is *Fénechas*, however; that is, the law of the *Féine* or *Féne*, or free land-tillers.⁷ The native legal system existed in its fullness before the ninth century. It was somewhat disturbed by the Danish and Anglo-Norman invasions and still more by the English settlement. One may regard the strongest act of English colonization to have been that of language, such that we treat Irish legal history as knowable only through English recounts. Although Richard FitzGilbert, Earl of Pembroke (known popularly as “Strongbow”) led the Normans to Ireland in 1170, it took some time before the common law was wholly received. Brehon Laws continued to be in use outside the Pale around Dublin even after the visit of King John in 1210, when he ordered that English law was to be observed.

Nevertheless, by the 16th century, England had a prominent grasp on Ireland.⁸ Not only did England establish

itself in Ireland through military force, but religion too played an integral part as the presence of Protestantism increased.⁹ Brehon Law was finally abolished in the beginning of the seventeenth century. In 1719, with the passing of the Dependency Act, the English Parliament became supreme.¹⁰ By 1800, England fully extended its reach when the Act of the Union was passed, joining Ireland and England as one to be governed by Westminster.¹¹

with the so-called Easter Rising by Irish Republicans.¹⁵ This uprising of Irish nationalists, proclaiming the formation of an Irish Republic, failed.¹⁶ The Easter Rising helped to create a following for the newly formed Sinn Fein, the party that advocated Irish independence. This following manifested itself in the 1918 general election in which Sinn Fein won a majority of the seats over the Unionists.¹⁷

The following year, Sinn Fein declared the formation of its own *Dáil Éireann*



First Parliament of Ireland Building, College Green, Dublin. That Parliament was disbanded by the Act of Union, 1801.

Ireland’s call to be more independent was evidenced by the many resistance movements over the next century. The most notable was the “Home Rule” movement of the 1870s, which “pushed for the establishment of a separate Irish Parliament to govern domestic affairs.”¹² Home Rule became a prime issue of debate as Protestants, who were strongly opposed to Home Rule, resisted the largely Catholic movement.¹³ It was 1877 before a full hierarchy of courts was put in place under English jurisdiction. Although the push for Home Rule was in part interrupted due to the start of World War I, the push for a more independent Ireland in other ways continued.¹⁴

Ireland’s next big push for independence from Britain began in 1916,

or Irish Parliament, seated in Dublin,¹⁸ and drew up a document, known as the Constitution of *Dáil Éireann*. Among other things, that Constitution promulgated a “Declaration of Independence” and a “Democratic Programme,” which reaffirmed the sentiments expressed in the Proclamation of the Irish Republic of the Easter 1916 Rising. This Constitution has had no subsequent constitutional or legal significance.¹⁹ Soon thereafter, Michael Collins led the Irish Republican Army (IRA) in armed action against Britain in an attempt to establish independence.²⁰ The war ended with the North geographically partitioned from the South.²¹ In December 1921, a Free State

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General Post Office (GPO), O'Connell Street, Dublin. Site of the Easter 1916 proclamation of independence – "Easter Rising"



in Ireland was declared with jurisdiction over the 26 southern counties and a northern state of six counties, allied with Britain, were established by the signing of the Anglo-Irish Treaty.²²

The Constitution of the Irish Free State (Soarstát Éireann) Act, 1922 was passed by Dáil Éireann sitting as a constituent assembly on October 25, 1922. The Constitution of 1922 still included the requirement that each member of the government (*Oireachtas*), consisting of the King, the Senate and the Dáil, take an Oath of Allegiance to the Constitution and to the British Monarch. That Constitution of 1922 did not meet with political approval by all parties, and gradually it was dismantled. The abdication of King Edward VIII in 1936 provided an opportunity to remove the Crown almost completely from constitutional affairs. Early in 1937, the new Constitution was drafted. It is this constitution that remains in effect in Ireland today. For present purposes, we are most concerned with Articles 2 and 3 of the Constitution of 1937. (The full text of these articles is in the insert, see page 28.) Article 2 states that the national territory is to consist of the whole island of Ireland (including Northern Ireland) and Article 3 contains the right to make laws for the whole national territory. It was in 1949 that The Ireland Act officially declared the Republic of Ireland in the south.²³ The unrest continued as did bloody conflicts between various factions, including Catholics and

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From Belfast to Dublin on I-79?

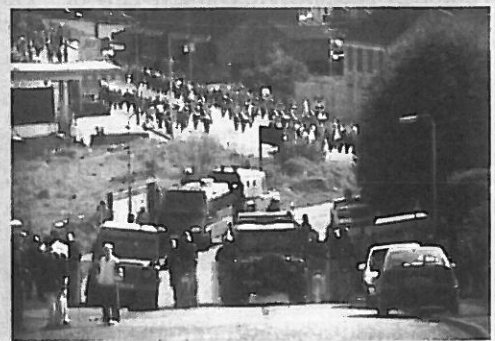
■ Kirk W. Junker

Leaving Belfast, as you turn onto the M-1 highway that leads to Dublin, the first sign that you come to says "Dublin 102." If I recall correctly, that is exactly the distance on the first sign that you see leaving Meadville and turning south on I-79 – "Pittsburgh 102." (In Northern Ireland, things are still measured in miles, not kilometers.) And when you are returning from Meadville to Pittsburgh on I-79, at just about the point when you would cross I-80, that great north-south divide where the glacier once ended and the snow often still does, if you could imagine yourself driving from Belfast to Dublin, you would be crossing the border between the Province of Northern Ireland and the Republic of Ireland.

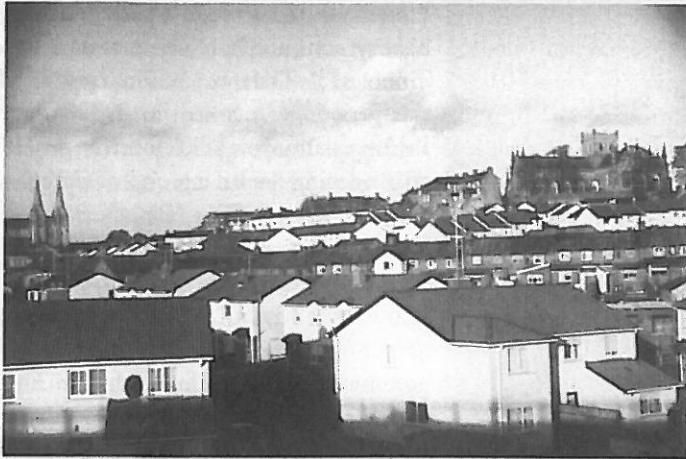
These days, cars are probably held up more often, and for longer periods of time, by road work on I-79 than they are by soldiers or police when crossing the Irish-Irish border. The Newry barracks was just last year removed from its perch on a hill in the Mourne Mountains at the border. The heliport remains. From behind the smoked glass of the barracks, a motorist could not tell whether Irish (or British) eyes were smiling upon him or not. Likewise, one cannot know whether messages bounce across the communication towers that line the border's hilltops. Gone, however, are the lines of cars and lengthy searches that once clogged this road. And permanent barricades at other border towns with names like Aughnacloy have been removed. When troubles flare up, soldiers do still patrol, and at times left unexplained, you still will see army helicopters circling at the border. After all, this is not the fall of the Berlin Wall, where the titanic struggle between East and West seemed to end abruptly in one celebratory crash as the barricade fell. No, the Irish border is more like the glacier at I-80—a slow thaw.

While working in Ireland, I make weekly journeys along the roads between Dublin and Belfast, and in between, I always stop in the city that is the Irish ecclesiastic capital of both the Church of Ireland and the Roman Catholic Church—Armagh. They say that Saint Patrick had his church where the Church of Ireland's Saint Patrick's Cathedral stands. On a day which represented an unusually quick moment in the political thaw—the inaugural meeting of the new North-South Ministerial Council, whose seat is also located in Armagh—the road north from Dublin was, rather ironically, coated with an unusual frost. But on this day, the helicopters circling in Armagh were not policing The Troubles, but rather the meeting of the new North-South Ministerial Council.

When the heat was a few degrees warmer in April of 1999, on a Saturday morning drive northward from Dublin to Belfast, a visitor joined me. Out of political interest, I promised that we would visit Portadown, the site of many marches of the Orange Order and their clashes with Catholic activists. The marches are essentially parades—parades of Orangemen and their pipe-and-drum music. If you like marching bands, these marches can be entertaining. If you cannot understand how a band of 1,500 men in bowler hats, white gloves and orange sashes, playing pipes and drums can be



Orange Parade, April 25, 1999



Armagh, Northern Ireland. On the far left (twin towers) is St. Patrick's Cathedral (Roman Catholic); up the hill on the right is St. Patrick's Cathedral (Church of Ireland). Armagh is the ecclesiastical capital of all of Ireland for both churches.

threatening, then you will need to visit Northern Ireland for yourself and have a chat with some of the locals.

Perhaps the most famous of these annual marches begins each July at the center of Portadown, and then makes its way out of town along the Garvaghy Road, out to the country church at Drumcree. On a wet December morning in 1998, I traced this parade path with a friend who knew the area. It was cold and quiet then. The country church sat peacefully at the top of the damp meadow, and farm animals next door, without politics or religion, strolled around the grounds next to the graveyard. Had I not seen television reports from this very meadow on earlier occasions, with soldiers and torches lighting the night, I would not have thought the scene could ever be so drastically different. On this Saturday morning, much more than the weather had changed.

The "march season" is usually described as two weeks in the beginning of July—and that is certainly when it is at its peak. In fact, in the past, some public buildings in Belfast closed during this time if they could, to avoid "The Troubles." But like Christmas shops, the marches never really go away, they just go a bit out of season at other times of the year. On this particular Saturday morning in 1999, as we approached the border, we saw several helicopters circling overhead. As much as I would like to have said that I knew why, the fact was that I obviously did not or I would not have been there.

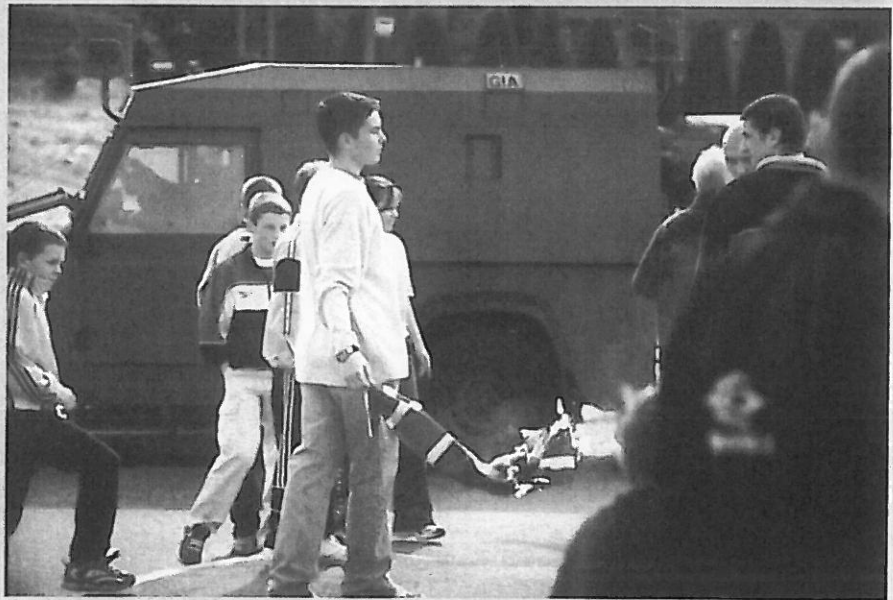
But on this particularly sunny April

Saturday, the circling helicopters and marching Orangemen did not provoke trouble. Rather, the spectacle attracted the same sort of interest that I used to experience as a child during Fourth of July parades in Brentwood. People were driving up to the barricade of Northern Irish police (Royal Ulster Constabulary, or RUC) armored land rovers, getting out of their cars, and pointing cameras, not guns. People parked on lawns much as they would to get close to public sports events or other celebrations. Some brought their children in strollers. And when one adolescent set fire to a British flag within a few feet of the police, onlookers turned to look in the same mixed manner of amusement and fear that people in

Brentwood would have had if a youngster had just set off a firecracker at a Fourth of July parade and burned his fingers—as this young man did on the burning flag. These are the slow degrees by which the glacier is melting.

As the drums, pipes and 1,500 bowler-bedecked Orangemen marched off to Drumcree Church down that same Garvaghy Road where I had driven the previous December, the spectators returned to their cars and drove back home. Some drove through the center of Portadown, where on this bright spring afternoon, shoppers shopped and children laughed. My visitor and I drove on to Belfast to eat dinner with friends in a new Moroccan restaurant. If the thaw in Irish politics continues, there is promise that for the first time, both sides of the border will be interested in investing money to construct and improve the roads between north and south. Then perhaps it will be possible to drive the 102 miles in under two-and-a-half hours' time. But if that happens, surely there will be a bypass around towns like Drogheda, Dundalk and Portadown, and drivers like me will not stumble upon the politics of the world. And if all that roadwork really happens, then perhaps the Irish will know what it is really like to drive between Meadville and Pittsburgh on I-79. ■

Portadown, Northern Ireland, April 25, 1999



In With the New Republic

On December 2, 1999, known as "Devolution Day," Michael Devine reported in *The Belfast Telegraph*, a Northern Irish newspaper often regarded as Unionist-leaning, that "The Republic's controversial claim to jurisdiction over Northern Ireland was scrapped today at a historic meeting of the Irish Government." In the interests of a balanced perspective, we have therefore elected to use Devine's account of the changes to the Republic's constitution.

The historic changes that were today made to the Republic's constitutional articles which had claimed jurisdiction over Northern Ireland.

OLD:

Article 2: "The national territory consists of the whole island of Ireland, its islands and territorial seas."

Article 3: "Pending the reintegration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of the territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann (Irish Free State) and the like extraterritorial effect."

NEW:

Article 2: "It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage."

Article 3: "It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the

diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed in both jurisdictions in this island.

"Until then, the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution.

- Institutions with executive powers and functions that are shared between those jurisdictions may be established by their respective responsible authorities for stated purposes and may exercise powers and functions in respect to all or any part of the island."

In addition to the changes to Articles 2 and 3, two new sections are added to Article 29:

- "The State may consent to be bound by the British-Irish Agreement done at Belfast on the 10th day of April 1998, hereinafter called the Agreement.

- "Any institution established by or under the Agreement may exercise powers and functions thereby conferred on it in respect of all or any part of the island notwithstanding any or other provision of this Constitution conferring a like power of function on any person or any organ of State appointed under or created or established by or under this Constitution. Any power or function conferred on such an institution in relation to the settlement or resolution of disputes or controversies may be in addition to or in substitution for any like power or function conferred by this Constitution on any person or organ of State as aforesaid.

- "The State may exercise extra-territorial jurisdiction in accordance with the generally recognised principles of international law."

(Michael Devine, "Constitutional Claim Dropped," page 7.)

Protestants. This began a period in Irish history commonly referred to as "The Troubles."²⁴ The most famous episode of this period was marked, in 1972, when British paratroopers killed fourteen people after opening fire on a group of Catholic demonstrators.²⁵ This "Bloody Sunday" heightened the animosities within the North, and between the North and the Republic. Britain, soon after, declared direct rule over Northern Ireland, governing the province from London. This period of direct rule lasted for the next 26 years.²⁶

The 1974 Sunningdale Agreement brought some hope for cooperation. It was an agreement between the United Kingdom and the Republic of Ireland to share some powers.²⁷ However, the Agreement fell through because of disagreement and strife over some of the power-sharing provisions.²⁸ The Article 3 Constitutional right of the Republic to extend legislative jurisdiction over Northern Ireland was exercised in the *Criminal Law (Jurisdiction) Act, 1976*, which permitted the arrest and trial in the Republic of persons alleged to have committed certain offenses in Northern Ireland. The bloodshed continued into the 1980s, which brought more paramilitary action, terrorism, riots, and little hope for compromise among the factions.²⁹

Finally, in the Anglo-Irish Agreement of 1985, the United Kingdom and the Irish Republic agreed that the Irish Republic would maintain "a consultative role on behalf of Catholics in some matters concerning Northern Ireland."³⁰ Although the hostility continued, the Anglo-Irish Agreement of 1985 provided some hope for a future of compromise. This was the first time that the government of the Republic of Ireland established itself as a "legitimate player" in Northern Ireland.³¹

Tired of the violence carried out by paramilitaries on all sides, in the early 1990s Britain launched multi-party talks to establish new relations among the parties of Northern Ireland and the Irish Republic.³² Britain's original plan fell through in 1992, but renewed expectations brought the "Downing Street Declaration"

the next year.³³ The Declaration was a milestone that invited all parties to the table to discuss the future of relations, and most importantly, the future of Northern Ireland, but only if the paramilitary groups settled peacefully and halted the violence.³⁴ In August 1994, the IRA responded to the renunciation with a declaration announcing "complete cessation of military operations," which precipitated talks between the Republic of Ireland and Britain for the first time in over 20 years.³⁵

For the next few years, however, heightened hostility and upheaval, along with the withdrawal of the IRA cease-fire, transgressed the road to peace.³⁶ In 1996, in an attempt to ease tensions, former U.S. Senator George Mitchell headed an international panel, which offered a "compromise to end the deadlock."³⁷ The discussion ultimately concluded with all-party talks in which Sinn Fein and the Ulster Unionists, headed by David Trimble, came to the table to discuss the future of compromise for the island.³⁸

Legal Perspective:

On April 10, 1998, a new legal period would begin in Ireland. It was on this day that the Belfast Agreement, also known as the Good Friday Agreement, was signed by the governments of the United Kingdom, the Republic of Ireland, and representatives of the province of Northern Ireland. The document set into motion many types of change, including significant legal ones that would attempt to quiet "The Troubles" and achieve peace in Ireland.

The agreement was set forth in three sections called "strands." Strand One concerns the Democratic Institutions of Northern Ireland. In restoring the rule of Northern Ireland to Northern Ireland (rather than direct rule by Westminster), it "provides for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community."³⁹ Strand Two relates to the North-South Ministerial Council whose purpose it is to develop cooperation

An Taoiseach (*Prime Minister, Republic of Ireland*), Mr. Bertie Ahearn (*left*) and Kirk Junker (*right*) in Armagh at first meeting of North-South Ministerial Council in 1999



between the two states and to assist one another in common interests. Strand Three establishes the British-Irish Council (BIC) to "promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands."⁴⁰ The BIC council is comprised of representatives of the British and Irish governments, Northern Ireland, Scotland and Wales, the Isle of Man and the Channel Islands.

The Good Friday Agreement also recognized that in order for the changes to occur, both the people of Northern Ireland and the Republic of Ireland must agree by separate referenda. If the results of the referenda were favorable to the change, the United Kingdom government had to agree to a form of united Ireland. This did not mean that the United Kingdom did not have legal jurisdiction over Northern Ireland, but rather that the Republican parties—most notably Sinn Fein—now had a political presence in Northern Ireland's government. Some regarded this as an effective repeal of the Government of Ireland Act of 1920, which formed part of the title deeds of the United Kingdom's sole sovereignty over Northern Ireland.⁴¹ To complement this, the Republic of Ireland agreed to re-word Articles 2 and 3 of the Irish Constitution so as to eliminate the territorial claim over Northern Ireland.

To accommodate these changes, the Republic of Ireland proposed the Nineteenth Amendment to the Constitution. The Bill was introduced into

the Dáil on April 21, 1998, and was passed by both Houses on April 22. The next step in the process would occur on May 22, 1998, when the agreement would be put to the people in accordance with Article 46⁴² of the Constitution of the Republic of Ireland. However, just two days before the voting was to take place, a case was brought before the High Court of Ireland seeking to restrain the holding of the referendum. In *Riordan v. An Taoiseach*,⁴³ Denis Riordan claimed that the procedures required by Article 46 of the Constitution were being violated. The court dismissed the claim on the merits and refused to delay the referendum.

In Northern Ireland, a copy of the Agreement was sent to every household. The authority for the order was provided by Section 4 of the Northern Ireland Act 1996. The Minister of State, Mr. Paul Murphy, noted that "peace in Northern Ireland has to be founded on a settlement, and this settlement is squarely based on the principle of consent... Consent was needed from the parties through the agreement; from the House of Commons and the House of Lords; and, of course, from the people of Northern Ireland..."⁴⁴

On May 22, 1998, the people of all of Ireland—the Republic and Northern Ireland—for the first time in 80 years had the opportunity to vote on an issue simultaneously.⁴⁵ Northern Ireland was voting on the propositions in the Good Friday Agreement, while the Republic of Ireland was voting on the referendum to the Constitution of Ireland. In Northern Ireland, 71.2% of the people approved the Good Friday Agreement.⁴⁶ In the Republic of Ireland, 94% of the people supported the amendment to the Irish Constitution.⁴⁷ The then-Secretary of State for Northern Ireland, Marjorie ("Mo") Mowlam, stated that "by these referendums, the people of Ireland, north and south, have voted overwhelmingly to say yes to the principle of consent; yes to using only peaceful means to resolve political disputes; yes to fairness and equality; and yes to building new relationships based on agreement, not coercion."⁴⁸

(continued on page 30)

As a result of these votes, two decisive actions occurred. First, in the Republic of Ireland, changes were made to Articles 2 and 3 of the Constitution. (See the insert for a comparison of the articles before and after Devolution Day.) Second, in Northern Ireland, The Northern Ireland Act was passed.

The changes to Article 2 of the Constitution are significant because the language shifts the focus from the territory of Ireland to the people who make up the Irish nation. The Article, in part, now states, "it is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be a part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland."⁴⁹ There is no longer a distinction between the different parts of the island, but rather a common relationship among the citizens of the nation that solidifies its unity.

In a similar manner, Article 3 now emphasizes the diversity of the people "in their identities and traditions, recognizing that a united Ireland shall be brought about only by peaceful means."⁵⁰ It identifies the need for democratic consent by a majority of the people in each of the jurisdictions of the island. The second section of Article 3 draws attention to the executive powers and functions that are shared by both jurisdictions and their ability to "exercise powers and functions in respect of all or any part of the island."⁵¹

In Northern Ireland, the changes that occurred as a result of the referendum were enforced in the Northern Ireland Act of 1998 ("Northern Ireland Act"). The purpose of this act is to give effect to the whole of the Good Friday Agreement. It was introduced to the House of Commons at Westminster on July 15, 1998 and became law on November 19, 1998. The act established the constitutional provision, the Assembly's legislative powers, the appointment and functions of ministers, the elections to and operations of the assembly, the relation between the North-South bodies and the commissions provided for under the Good Friday

Agreement. The constitutional position of Northern Ireland within the jurisdiction of the United Kingdom is addressed in section 1 of the Northern Ireland Act. It re-works the demanded inclusion of Northern Ireland within the United Kingdom. By contrast, the demand that Northern Ireland recognize an "all-Ireland" dimension is met through the creation of the North-South Ministerial Council, the six agreed-upon cross-border bodies, and a British-Irish Intergovernmental Council as well as a new British-Irish Council made up of representatives from all over the British Isles.⁵² Given that the United Kingdom does not have a written constitution, an act of Parliament such as the Northern Ireland Act is one of the most tangible and concrete legal mechanisms by which we can observe legal changes. As John Morison, Professor of Jurisprudence at the Queen's University of Belfast School of Law puts it: "There is now the full realization of the policy that successive British Governments have pursued of searching for a political compromise that could be crystallized into a constitutional structure of government."⁵³

The changes to the Constitution of Ireland, resulting in the relinquishing of claims to jurisdiction in Northern Ireland, and the establishment of a devolved and inclusive government in Northern Ireland through the Northern Ireland Act are significant because they focus less on the land and more on the people. Attention is placed on the citizenship of the nation in all of its diversity rather than the boundaries that comprise "Ireland." Whether an individual considers himself or herself British or Irish is far less important in the legal perspective and, in fact, is a permitted distinction. The new revisions allow for "all persons otherwise qualified in accordance with the law to be citizens of Ireland."⁵⁴ As a result, both countries have taken significant steps in a long process towards peace—this time using the legal system. Yet, even as this article was being written, the Assembly in Northern Ireland was in danger of being suspended once again, and ministers and political officials threatened resignations. But even these

setbacks do not change the facts that the Constitution of 1937 no longer claims Northern Ireland as part of the Republic's national territory, that it no longer claims law-making jurisdiction in Northern Ireland, or that the United Kingdom has put constitutional legislation in place for an inclusive Northern Irish Assembly and a devolved government. We give the last words to one who is there: "As it rediscovers the normalcy of political argument and administration through institutions of representative government, Northern Ireland has the building blocks to construct simultaneously a new version of constitutionalism that can support and augment traditional mechanisms."⁵⁵ ■

Note: In the next issue of Juris, we will be comparing the Irish constitutional changes with those that took place in Germany when the German Democratic Republic ceased to exist.

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The authors would like to thank David Torrans of Belfast for his comments and political novelist John K. White of Dublin for reviewing this text.

Photographs provided by Kirk W. Junker.

ENDNOTES

¹Pittsburgh Post-Gazette, October 9, 2001, A-2, "N. Ireland Coalition Split".

²John E. Finn, *Constitutions in Crisis: Political Violence and the Rule of Law* (New York: Oxford University Press, 1991) provides an excellent study in things constitutional for

Northern Ireland, but it stops with 1990. *Fordham International Law Journal*, 22:4, 1999 is an entire issue dedicated to George J. Mitchell, David Trimble, and John Hume on the topic of "Analysis of the Northern Ireland Peace Agreement." The monumental issue provides very balanced commentary from an entire list of "who's who" in Northern Irish politics. Therein, John Morison, "Constitutionalism and Change: Representation, Governance, and Participation in the New Northern Ireland," pp. 1608-1627 focuses on legal and constitutional changes in Northern Ireland.

³ For detailed study of who is who in Northern Irish history, see for example W. D. Flacks and Sidney Elliott, *Political Directory of Northern Ireland* (Belfast: Blackstaff Publishing, 1999). A quality scholarly history that needs updating but addresses these points—and there are many such histories of the Republic of Ireland—is Robert Kee's *The Green Flag* (three volumes) (New York: Penguin, 1972). This work was made into a thirteen part television special shown in Ireland, the UK and the USA.

⁴ Tim Ito and Aileen Woo, *Ireland's Troubled History*, < <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>> (updated April 1999), accessed October 10, 2001.

⁵ *Crith Gablach*, D. A. Binchy, ed. (Dublin: The Stationery Office, 1941).

⁶ Paul O'Higgins, "Ireland," *International Encyclopedia of Comparative Law*, volume I, National Reports, Drodniq Hubert, Editor (Tuebingen: J.C.B. Mohr (Paul Siebeck) 1972), page I-66.

⁷ Brian Walsh, *A (much) Smaller Social History of Ancient Ireland*, 1997, chapter IV, "The Brehon Laws," found at <http://www.alia.ie/tirnanog/sochis/iv.html>, accessed 19 October, 2001.

⁸ *Id.* The increased religious persecution of the Catholics during this period was due mainly because Elizabeth I, a Protestant, took the throne in 1558. *Id.* Queen Elizabeth insisted that all newly appointed government officials, or in "positions of trust" should function under the monarch in all affairs. R. F. Foster, ed., *The Oxford Illustrated History of Ireland* (Oxford: Oxford University Press 1989) 115-116. As positions opened in the Dublin administration, only English-Born Protestants were appointed. *Id.* at 116.

⁹ Robert Kee, *The Green Flag, Volume I: The Most Distressful Country* (New York: Penguin, 1989) 13.

¹⁰ Brian Doolan, *Principles of Irish Law* (Dublin: Gill and MacMillan, Ltd., 1981).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tim Ito and Aileen Woo, *Ireland's*

Troubled History, (updated April 1999) < <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>>. Irish nationalists, in search of independence from Britain, stormed the Post Office and other buildings in Dublin during Easter week. *Id.* Patrick Pearse, a recruit of the Supreme Council of the Irish Republican Brotherhood, mobilized Irish Volunteers and Irish Citizen Army for the rising. R. F. Foster, ed., *The Oxford Illustrated History of Ireland* (Oxford: Oxford University Press 1989) 237-239.

¹⁶ Tim Ito and Aileen Woo, *Ireland's Troubled History*, (updated April 1999)

< <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>>, accessed October 10, 2001. After only six days, Pearse surrendered after meeting "carnage and devastation" when the British forces responded. . R. F. Foster, ed., *The Oxford Illustrated History of Ireland* (Oxford: Oxford University Press 1989) 239.

¹⁷ Tim Ito and Aileen Woo, *Ireland's Troubled History*, (updated April 1999)

< <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>>, accessed October 10, 2001. In the 1918 election, Sinn Fein won 73 seats over the 31 for the Unionists (British loyalists) *Id.*

¹⁸ *Id.* Eamon de Valera, leader of Sinn Fein, became president of this Dublin Parliament. *Id.*

¹⁹ Doolan, *id.*, 5.

²⁰ *Id.*

²¹ *Id.* The partitioning was set forth by the Government of Ireland Act in 1920. *Id.* Separate parliaments were created by the partition: the six counties in the North were serviced by Belfast and the remaining twenty-six counties were under the auspices of Dublin in the south. *Id.*

²² *Id.* Members of Sinn Fein and British officials signed this agreement. *Id.*

²³ Tim Ito and Aileen Woo, *Ireland's Troubled History*, (updated April 1999)

< <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>>, accessed October 10, 2001.

²⁴ R. F. Foster, ed., *The Oxford Illustrated History of Ireland* (Oxford: Oxford University Press, 1989) 21-24.

²⁵ Foster, *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Tim Ito and Aileen Woo, *Ireland's Troubled History*, (updated April 1999) < <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>>, accessed October 10, 2001. Bobby Sands, an IRA member died as a result of a hunger strike to "protest his status as a common prisoner, rather than a political one." *Id.* His death, along with the death of nine other IRA members brought increased hostility and more riots. *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Tim Ito and Aileen Woo, *Ireland's Troubled History*, (updated April 1999) < <http://www.washingtonpost.com/wr-srv/inatl/longterm/nireland/overview.htm>>, accessed October 10, 2001.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ The Full Text of the Good Friday Agreement at http://www.wesleyjohnston.com/users/ireland/today/good_Friday/full_text.html, pg. 6.

⁴⁰ *Id.* at 15.

⁴¹ I.R.K. Paisley, "Peace Agreement—Or Last Piece in a Sellout Agreement?", 22 *Fordham Int'l L.J.* 1273 (1999), at Westlaw pg. 8.

⁴² Article 46 provides that every proposal for an Amendment to the Constitution be initiated as a Bill and upon being passed by both Houses, be "submitted by Referendum to the decision of the people."

⁴³ *Riordan v. An Taoiseach*, [1998] IEHC 77 (20th May, 1998).

⁴⁴ House of Commons Hansard Debates for 22 April 1998 at <http://www.publications.parliament.uk/pa/cm/199798/cmhansrd/vo980422/d.../80422-54.ht>, pg. 1, accessed October 10, 2001.

⁴⁵ An Irish View of the Northern Ireland Peace Agreement the Interaction of Law and Politics, 22 *Fordham Int'l L.J.* 1206 (1999), at Westlaw pg. 4

⁴⁶ *Political Progress Leading to Devolution at* <http://www2.nio.gov.uk/implement.htm>, pg.1, accessed October 10, 2001.

⁴⁷ *Id.*

⁴⁸ House of Commons Hansard Debates for 1 June 1998 at <http://www.publications.parliament.uk/pa/cm/199798/cmhansrd/vo980601/d.../80601-10.ht>, pg. 1, accessed October 10, 2001.

⁴⁹ *Bunreacht na hÉireann* (Constitution of Ireland), Government Publications Office, Dublin.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Further details of these bodies and the details of the power sharing of the executive are clearly outlined in John Morison, "Constitutionalism and Change: Representation, Governance, and Participation in the New Northern Ireland," at pages 1610-1613.

⁵³ *Id.*, page 1613.

⁵⁴ *Id.*

⁵⁵ Morison, 1627.