

# JURISDICTIONS IN IRELAND:

## NOMENCLATURE, EXTENT & LEGITIMACY

There are two jurisdictions in Ireland, one obtaining in twenty-six counties and the other in six counties. That in the twenty-six counties amounts to a sovereign independent State, recognised in international law and a member of the United Nations. The other six counties are a part of the State of the United Kingdom of Great Britain and Northern Ireland, often just termed 'the UK' for short. Those six counties, however, also constitute a devolved area of the UK, sometimes referred to unofficially as a "province" thereof.

The question of nomenclature as regards the twenty-six county State is a messy one, principally because of the way in which the relevant articles of the 1937 Constitution were drafted. In English, Article 4 reads: "The name of the State is Éire, or, in the English language, Ireland." Article 5 reads: "Ireland is a sovereign, independent, democratic State."

To begin with, it is a wonder that Article 4 did not simply read in English: "The name of the State is Ireland" and in Irish: "Éire is ainm don Stát." The fact that it did not, very quickly gave rise to the practice of the State frequently being referred to even in English as "Eire" (including in British statute law), with somewhat varied pronunciations, the most amusing of which was "eerie". Confusion was then added to in 1948 when an Irish Act was passed saying that "the description of the State shall be the Republic of Ireland." This not only introduced the term "republic" into post-revolutionary Irish statute law regarding the State, but highlighted again a question which by that time had arisen as to whether or not the "State" was in fact "Ireland", the specific point to which we now turn.

From 1937 on, there was the question of the geographical extent of the State in constitutional law. In the Constitution of the Irish Free State, this was not dealt with explicitly, but merely understood by construction alongside the Irish Free State Agreement Act 1922 of the British Parliament enacting the Anglo-Irish Treaty of 1921 and the earlier Government of Ireland Act 1920. Following the opt-out of the six counties of Northern Ireland from the Free State, this meant that the Irish Free State consisted of the remaining twenty-six counties in Ireland.

In the 1937 Constitution, Article 2 read: "the national territory consists of the whole island of Ireland, its islands and the territorial seas." Article 3 read: "pending the reintegration of the national territory, and without prejudice to the rights of the parliament and government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that parliament shall have the like area and extent of application as the laws of the Free State and the like extraterritorial effect." This led to an ambiguity about the de jure and de facto status of the twenty-six counties. One view was that what was asserted was that the Irish State was de jure comprised of thirty-two counties and de facto of twenty-six. There came to be a certain degree of judicial support for this view. However, the general interpretation which developed was that the Irish State could only be both de jure and de facto comprised



of twenty-six counties, particularly in the context of international law. Therefore, according to this standpoint, a de jure State of thirty-two counties, while a matter of national right, had yet to be brought into being. Apart from jurisprudential debate, this position was also simply regarded as an expression of sheer realism.

In 1998, pursuant to the Good Friday Agreement, the Constitution was amended in respect of Articles 2 and 3. The new Article 2 referred simply to the "island of Ireland" and "the Irish nation", while Article 3 referred to "the territory of the island of Ireland" and "both jurisdictions in the island." However, there is no explicit reference to a State comprised of twenty-six counties.

Things get even more messy when one tries to combine the issues of nomenclature and territorial extent. If one accepts that the only legitimate sovereign State in Ireland consists of twenty-six counties, how is it most accurately and sensibly to be referred to in the light of all that has just been mentioned above? Various practices have come into existence in response to this situation. Nobody seriously refers anymore to the twenty-six counties as the Free State, apart perhaps from some fringe elements or in throwaway remarks. There is, of course, a tendency in common parlance to simply refer to the State as "the South" or "Southern Ireland". More formally, and quite frequently, it is referred to as "the Republic" in domestic discussion and "Irish Republic" internationally. Less frequently, one hears mention of "the Republic of Ireland" in either milieu. More and more, however, particularly in an official context abroad, and especially in the European Union, the twenty-six county State is just referred to as "Ireland". This jars for a number of reasons. First of all, it seems slightly ridiculous, when referring to the two jurisdictions on the island at the same time, to speak of "Ireland and Northern Ireland". Secondly, it is deeply offensive and hurtful to people who come from Belfast, Derry and so on, to hear themselves thus excluded from "Ireland".

Therefore, given all of this, how can we best handle the situation in a common sense manner?

A very straightforward, simple and realistic way of addressing it would be to have Article 4 of the Constitution adopt one of the established usages above and read: "The name of the State is the Irish Republic." And to have article 5 read: "The Irish Republic is a sovereign, independent, democratic State." Then, for example, it would not irritate when one sees an Irish Government Minister sitting at a Council meeting in Brussels with a nameplate in front of him or her reading not "Ireland" but "Irish Republic".

This approach would take account of the fact that the twenty-six counties are in fact a republic and are Irish, while by definition not amounting to Ireland. And these wordings could readily sit alongside the current Articles 2 and 3 which in effect retain the aspiration to a united sovereign Ireland or **Republic of Ireland**.

However, in all that has been said thus far, we have not dealt with the issue of the six north-eastern counties still within the jurisdiction of the United Kingdom.

After partition was introduced, which left the six counties described as "Northern Ireland" in the 1920 Government of Ireland Act, there were moves to redesignate the area in some political circles. One suggestion was that they could be called "Ulster",

even though Donegal, Cavan, and Monaghan would not be included. Another suggestion, believe it or believe it or not, was that they could be termed "North-West Britain". However, at the end of the day, the official statutory reference of "Northern Ireland" endured in British law, albeit some unionists still insist on talking about "Ulster". Republicans have tended to refer to the entity concerned as either simply "the six counties" or "the north of Ireland". However, while calling the six counties "Ulster" or "North-West Britain" would clearly be incompatible with a nationalist and republican outlook, it does not seem all that objectionable to accept the designation "Northern Ireland" as long as the reality of partition unfortunately persists. It may residually still seem a bit imprecise geographically in leaving out at least Donegal, but it is often difficult to always be definitively precise in life.

As for legitimacy, modern republicans, such as those in Sinn Féin, in effect recognise the full legitimacy of the twenty-six county State, its government, parliament, judiciary, police force, and army. This is palpably evident from their participation in and interaction with all these bodies.

On the other hand, republicans still do not recognise the legitimacy of Northern Ireland; it is, as the *Sunday Times* Insight team put it almost sixty years ago, "the first and biggest gerrymander" and instituted by a foreign power. However, as a consequence of the Good Friday Agreement, republicans are prepared to operate the special structures of governance achieved at all levels within Northern Ireland, as a transition towards a united national republic. This statement may not be to the liking of unionists, but it does not impede the practicalities of working with them until such time as a border poll will be held which will bring about a united Ireland.

The main bone of contention for republicans, and nationalists in general, therefore, is reduced to the question of how the twenty-six counties are to be described officially, and particularly in an international context, when being referred to as a specific entity, and without denying the integrity of Ireland. It is suggested that this can be done by stating the following: the **Republic of Ireland** is not yet established, but there is still an **Ireland** of thirty-two counties, albeit jurisdictionally split between an **Irish Republic** and a **devolved area** located in and known as **Northern Ireland**.

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