2. THE PEOPLE, THE NATION AND THE STATE

ARTICLES 1, 2, 3 & 4

THE NATION

Article 1

The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life, political, economic and cultural, in accordance with its own genius and traditions.

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

1. 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 the 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.

2. 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 of all or any part of the island.

THE STATE

Article 4

The name of the State is Éire, or, in the English language, Ireland.
NOTES……..

Bunreacht na hEireann draws a curious distinction between “the people”, “the nation” and “the state”. We will examine the use of this different terminology as it appears throughout the Constitution.

(i) The People

“The people” as seen in the Preamble, adopted and enacted the Constitution.

In Article 6 it is stated that all powers of government derive from “the people”

There are also other examples throughout the Constitution where “the people” are referred to.

(ii) The Nation

Articles 1-3 are headed “The Nation” – this suggests that the word refers to the people and territory of the entire island i.e the country as a whole.

“The Nation” and the Position of Northern Ireland - Articles 2 and 3

Legal Claim v Political Claim

Since the enactment of the Government of Ireland Act 1920 Northern Ireland has been a jurisdiction separate from the South of Ireland.

Thus, amongst the aims laid out in the Preamble of the Constitution is the reunification of the two jurisdictions on the island — “so that...the unity of our country [is] restored”.

To this end, Articles 2 and 3, prior to 1999, asserted a legal claim over Northern Ireland.

Subsequent to the Good Friday Agreement 1998, Articles 2 and 3 were altered, one of the results of which was the dropping of that legal claim in favour of a broadly aspirational clause.

The old Articles 2 and 3.

Before they were amended Articles 2 and 3 read as follows:

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

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Old Article 3: “Pending the re-integration 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 that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann [the Irish Free State] and the like extra-territorial effect”.

This clearly ignores the fact that the island is partitioned between 2 sovereign states but the reality is accepted in the words “pending the re-integration”. It contains a national claim to unity of territory.

The effect of these articles was considered in a number of prominent cases.

(a) **Boland v. Taoiseach (1974)**, the Supreme Court held that Articles 2 and 3 were not merely political aspirations but amounted to a legally binding claim over Northern Ireland. Therefore, Ireland was laying out a claim in law to the six counties, a claim that was clearly in direct opposition to the assertion that Northern Ireland is part of the United Kingdom.

(b) **McGimpsey v. Ireland (1990)**, the Supreme Court repeated the fact that this was a legal and not merely a political claim.

One of the problems this posed was that it potentially restricted those in this state who wanted to make peace in Northern Ireland from conceding that Northern Ireland was part of the U.K.

In both the Sunningdale Agreement (1973) and the Hillsborough Agreement (1985), Taoisigh Liam Cosgrave and Garret FitzGerald, respectively, conceded that the status of Northern Ireland as part of the U.K. would not be changed until the consent of the people of Northern Ireland was obtained.

In both Boland and McGimpsey the Court held, that these Agreements simply recognised a fact of political reality, that is that Northern Ireland is de facto a part of the U.K.

In McGimpsey v. Ireland, Finlay C.J. took the opportunity to explain the legal effects of Articles 2 and 3 as they stood before the recent changes.

1. The learned judge first reiterated the fact that the old Articles 2 and 3 created a legal claim over Northern Irish territory. Re-unification was not an option but, rather, a constitutional imperative, something that the State was required actively to work towards.
2. This claim was not merely political but legal in nature, a “claim as of legal right”.

3. Article 3 required that until there is actual re-integration the laws made by the Parliament and Government of the South would apply only to the 26 counties. In other words, in the normal course, the laws of the Republic were not applicable in Northern Ireland.

4. Notwithstanding the inapplicability of Ireland’s laws in the North, this “in no way derogate[d]” from the claim of jurisdiction over Northern Ireland as a claim of legal right. In other words, even though the State’s laws did not apply to the whole “territory”, Ireland still maintained its legal claim over the North.

The Good Friday Agreements, 1998

As a result of the Good Friday Agreements the Constitutional structures of Northern Ireland have been altered.

A new Assembly has been created for the jurisdiction.

From this Assembly a power-sharing Government (the “Executive”) is elected, representing a cross-section of the political parties in the Assembly.

Certain powers, once held by the U.K. Government in London, have been “devolved” to the Northern Ireland Assembly and its Government. This means that Northern Ireland is now largely run by Northern Irish people for Northern Irish people. New cross-border bodies have been established.

The new Articles 2 and 3

Articles 2 and 3 were introduced by the 19th Amendment to the Constitution.

• The old Article 2 defined the nation in terms of its geographical territory, i.e. the island of Ireland and its territorial seas. The new Article 2 defines the nation by reference to its people.

• Anyone who was born on the island of Ireland has a birthright and entitlement to be part of the Irish nation * The language of the article is noteworthy — those who were born on this island but do not want to be part of the Irish nation are merely given the opportunity (and not forced) to be part of the nation.

• Those who were not born on the island but who have otherwise acquired citizenship (through a parent, spouse or by naturalisation) are also part of the Irish nation.
• The Irish nation expresses an affinity with those of Irish origin living abroad. This does not automatically make such persons part of the Irish nation, however. Membership of the nation is reserved to those either born on the island or otherwise entitled to citizenship.

• The legal claim over Northern Ireland has been dropped.

• In its place is a broad aspiration to unity — the nation expresses a “firm will” for reunification, but this falls far short of a legal claim.

• This unity can only be achieved by peaceful and democratic means.

• In particular, Article 3 implicitly recognises the status of Northern Ireland as part of the United Kingdom. This cannot be changed without the consent of a majority of people in the North, and a majority of people in the South.

• This consent is to be determined by peaceful and democratic means. In other words a referendum would be required both North and South before the status of Northern Ireland could change. While Article 3 is somewhat unclear on the point, the better view is that separate majorities would be required in the North and South respectively.

• The changes allow for the establishment of cross-border bodies having jurisdiction over the whole island of Ireland.

Therefore, in short, the State has dropped its legal claim over Northern Ireland.

* NOTE: the insertion of Article 9 of the Irish born parent rule by the 27th Amendment of the Constitution in 2004 – you are only entitled to citizenship if one of your parents is Irish. This is a significant qualification of the rights set out in Article 2 and 3.

(iii) **The State**

The State would seem to mean the political entity created by the Constitution. It is a legal concept and framework by which a territory is governed. It has rulers and organs of government, owns natural resources, has revenues etc.

Article 4 provides that the name of the State is Ireland, or Eire.

Walshe J. summarized in *Byrne v Ireland* [1972] I.R 241 where it was held:

“The State is the creation of the People and is to be governed in accordance with the provisions of the Constitution which was enacted by the people and which can be amended by the people only... in the last analysis the governing authority is the people”
In *Byrne v. Ireland* [1972] IR 241 the Court held that the State enjoys no inherited or prerogative immunity from suit could be sued in its official name (in that case “Ireland”).

The phrase “Republic of Ireland” is a description and not the name of the State. The statutory basis for the use of the term “Republic of Ireland” is set out in *section 2* of the *Republic of Ireland Act, 1948*. This distinction arose in the following case:

**Ellis v. O’Dea (No. 1) [1989] IR 530**

At this time the United Kingdom referred to the State as the “Republic of Ireland” in its extradition warrants. Walsh J condemned this practice and said that “neither the Irish courts nor the Garda Síochána could condone or acquiesce in the refusal by foreign courts to recognise the Constitution or any part thereof.”

**Sample Question**

**What is meant by the people, the nation and the State?**  Question 1 May 06