

**Civil society vs. the people: the uneasy relationship between human
rights Non Governmental Organisations and the DUP & UUP in
Northern Ireland**

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Abstract:

Both Ignatieff (1999 & 2000) and Kennedy (2002 & 2006) have offered a critical perspective on the role international human rights organisations play in international and domestic policy contexts.

In addition, the role of civil society in the Northern Ireland conflict has been examined generally, by Cochrane (2005), Cochrane & Dunn (2002), Farrington (2008) and Guelke (2003).

This paper, using these analytical frameworks, will examine the character and dynamic of the relationship between the two main political parties representing the Unionist community in Northern Ireland (DUP & UUP) and leading human rights Non Governmental Organisations in the drafting of a Bill of Rights for Northern Ireland.

Through an examination of the public statements of elected representatives from the main Unionist political parties and parliamentary debates in the Northern Ireland Assembly and in the House of Commons, this paper starts from the premise that there is an uneasy relationship between this section of civil society in Northern Ireland and the DUP & UUP.

This paper will argue that the DUP and UUP's uneasy relationship with human rights NGOs during the drafting process of a Bill of Rights for Northern Ireland reflects more the particular circumstances of that debate than any wider ideological hostility, within unionist political thought, towards the role civil society can play, not just in a divided community but in any political community.

This paper will argue that this uneasy relationship can help offer some insights into Unionist scepticism about proposals for a Northern Ireland Bill of Rights.

Introduction:

In January 2004, the then Leader of the Ulster Unionist Party and former First Minister of Northern Ireland, David Trimble gave a keynote speech to the Council of Europe's First International Congress of Victims of Terrorism in Madrid¹ where afterwards he remarked to the press assembled that "one of the great curses of this world is the human rights industry...They justify terrorist acts and end up being complicit in the murder of innocent victims."² The comments were widely reported.

He refused to withdraw the remarks and consequently attracted universal, widespread criticism from a number of international human rights NGOs and human rights NGOs based in Northern Ireland.

For example the UK Director of Amnesty International said, "The threat of terrorism must never be used as an excuse for abusing people's human rights. David Trimble should remember that human rights organisations have condemned killings and other abuses by terrorist groups all over the world, while at the same time criticising governments who use the 'war on terror' as a pretext to abuse their citizens."³

More so than anything else, the remarks are an accurate reflection of the uneasy relationship that exists in Northern Ireland between the main political parties representing Unionism, the DUP & UUP and leading human rights NGOs in Northern Ireland, particularly within the context of the debate over proposals for a Northern Ireland Bill of Rights.

In 2008, the Bill of Rights Forum published their final report of recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland whilst the NIHRC presented their advice to the Secretary of State for

¹ For the text of the Declaration issued by the Congress please visit:
[http://www.coe.int/t/e/human_rights/cddh/3._committees/06.%20terrorism%20\(dh-s-ter\)/working%20documents/2004/2004_003_en.asp](http://www.coe.int/t/e/human_rights/cddh/3._committees/06.%20terrorism%20(dh-s-ter)/working%20documents/2004/2004_003_en.asp)

² The remarks were made to the Associated Press. These comments were attributed to the story as reported in the Guardian, Thursday 24th January, 2004

<http://www.guardian.co.uk/uk/2004/jan/29/northernireland.humanrights>

³ Ibid.

Northern Ireland on the contents, form and scope of a Bill of Rights for Northern Ireland⁴. Influential strands of Unionist opinion have expressed scepticism about these draft proposals for a Northern Ireland Bill of Rights from a number of different perspectives.

Human rights NGOs in Northern Ireland have been vigorous campaigners for Northern Ireland to have an expansive and fully justiciable Bill of Rights and have been at the centre of the Bill of Rights drafting process.

The Democratic Unionist Party (DUP) is the largest political party within the unionist community – their hegemonic status is largely unchallenged at present by the minority party within unionism, the Ulster Unionist Party (UUP). This paper is concerned with the relationship of both political parties with the CAJ and human rights consortium, partly because both political parties share a common position on most provisions for a Northern Ireland Bill of Rights and partly because DUP hegemony did not arrive until the 2003 Assembly elections and much of the discussion that has taken place about human rights NGOs in Northern Ireland took place before that time.

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[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/71/A_Bill_of_Rights_for_Northern_Ireland_\(December_2008\).pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/71/A_Bill_of_Rights_for_Northern_Ireland_(December_2008).pdf)

The inexorable rise of human rights

Costas Douzinas has caustically observed that “Human rights are the ideology after the end, the defeat of ideologies, or to adopt a vogueish term the ideology at the ‘end of history’” – that the dominance of human rights in discourses of international law and politics and domestic law and politics is almost complete.

Whilst fundamental disagreement may exist over what is meant by the term ‘human rights’, we can agree that regardless of their metaphysical, epistemological or political and legal standing, rights talk is an ever present feature of contemporary political discourse. Long lists of political, legal and moral claims are made using the language of rights.

Human rights as a concept, in many ways, represent a 20th Century manifestation of a concept, which first emerged during the enlightenment in the political thought of Hobbes, Locke, Paine and in the writings of the French and American revolutionaries who articulated their cause with an appeal to the rights of man.

As the philosopher James Griffin notes, “the notion of human rights that emerged by the end of the enlightenment – what can be reasonably called the enlightenment notion - is the notion we have today.” (Griffin, 2008, p13).

What we have witnessed across the globe since the end of the Second World War is the inexorable march of a myriad of international human rights treaties and the building of human rights cultures in sovereign states through the incorporation of international human rights norms in the form of constitutionally enshrined and entrenched charters of rights.

Indeed as Louis Henkin tells us, “the contemporary idea of human rights was formulated and given content during the Second World War and its aftermath” (1990: p1 – 2).

Mazower's explanation for the emergence of rights discourse in the post second world war comes down to two related and overlapping reasons: the 'Eleanor Roosevelt' version and the 'Adolf Hitler' version. The former sees human rights emerge in political thinking because of a strong commitment by a noble number of visionaries to implement the concept and enact the UN Declaration on human rights whilst the latter stresses the reaction of 'widespread revulsion' to the Nazi atrocities acting as a catalyst for a strong emphasis on human rights protection (2004: 380).

Alongside the 'inexorable march' of human rights treaties and domestic constitutional charters of rights has been the rise of international human rights NGOs to monitor the implementation of human rights obligations, report on alleged human rights abuses and lobby for more effective international and national human rights protections.

As the Secretary General of Amnesty International has stated,

"Over the past six decades there has an explosion of human rights NGOs, at the international, national and local levels, from small local community groups to large international organisations like Amnesty International with some 1.7 million members over 100 countries who fund AI and campaign for change."⁵

Enter Northern Ireland. Far from being immune to discourses of human rights, rights based arguments have emerged as a central feature of contemporary political discourse in Northern Ireland complemented by the existence of professionally organised human rights NGOs modelled on the best practice of how international human rights NGOs operated.

In many ways, human or civil rights have always played an important role in certain discourses, interpretations and explanations of the Northern Ireland problem but

⁵ <http://www.lse.ac.uk/collections/LSEPublicLecturesAndEvents/pdf/20050119-Khan-HumanRights.pdf> - 'Human Rights and civil society – the last frontier' Public lecture delivered at the LSE, 19th January 2005 by Irene Khan, Secretary General, Amnesty International

their hegemonic status was not secured until the signing of the Belfast Agreement in 1998. Human Rights issues were central to the negotiations that preceded the Agreement and have remained central to the political process in Northern Ireland since that time.

The signing of the Belfast Agreement in 1998 created an entirely new framework for human rights protection in Northern Ireland that included a new Human Rights Commission, Equality Commission and under the St Andrews Agreement 2006, a Forum to consider a Bill of Rights for Northern Ireland.

Both Mageen and O'Brien have evaluated and identified the significant role played by local NGOs in helping to secure the prominence of human rights issues on the political and constitutional agenda in Northern Ireland. Indeed, they are convinced that through examining the human rights dimensions of the Agreement, one can conclude, "that to a significant extent the proposals from the human rights community made in the 1994 Declaration⁶ have been met, and there is little doubt that the broad agenda that the non – governmental organisation (NGO) community was articulating emerged onto the political agenda in Northern Ireland." (1998: 1502 - 3)

Colm O'Conneide has also argued that in the UK context Human Rights NGOs will play an important role in driving internal constitutional change and the shift towards a more robust human rights culture. Indeed as O'Conneide notes, "Organisations such as Liberty and JUSTICE have proved very influential in shaping national debate on human rights issues. NGOs will remain a key change driver in this context in the years ahead, pushing, as with the EHRC, towards a greater legalisation of rights protection and an emphasis on compliance with international standards." (2008: 167)

⁶ Explain here what the Declaration is

Who are the leading human rights NGOs? What is their position on a Bill of Rights for Northern Ireland?

There is a methodological question over which civil society groups constitute the leading human rights NGOs in Northern Ireland.

In the course of this paper, the focus will be primarily on the relationship between the main unionist parties and the Committee on the Administration of Justice (CAJ) with a secondary focus on the human rights consortium. These are the human rights organisations that have explicitly defined and established themselves primarily as human rights NGOs concerned with what we highlighted earlier as the monitoring of the implementation of human rights obligations, reporting on alleged human rights abuses and lobbying for more effective international and national human rights protections.

For example, in the Bill of Rights forum, it was the CAJ who represented the human rights NGO sector on the Forum⁷ whilst the human rights consortium was afforded observer status.

Bell and Keenan (2004) have addressed the methodological issue over how to define who or what constitutes a human rights NGO. As Bell and Keenan point out, "Human rights NGOs come in many shapes and forms. There are a number of ways to define such groups based on the degree to which their work addresses "human rights" issues, how they self-define, and their modes of working or types of intervention." (2004: 335 – 336)

Bell and Keenan have devised a normative framework for categorisation of human rights NGOs based on three typologies. Firstly, there are those human rights groups who identify themselves primarily as human rights groups whose 'core mandate' is "the promotion and protection of human rights, as defined internationally." (2004: 336)

⁷ http://www.billofrightsforum.org/index/forum/forum_members-link

Secondly, there are those groups with a more oblique connection to human rights based work and who operate within the sphere of campaigning for equality for specifically marginalised communities, “where the community is defined around an aspect of identity, such as gender, sexuality, ethnicity, disability or age.” (Bell & Keenan, 2004: 336). A third typology are those groups whose primary work is in another area such as victims or ex – prisoners, which raises peripheral or adjacent human rights issues.

For the purposes of this study, the focus will be on the first typology identified by Bell and Keenan as this is where the CAJ and the human rights consortium would be best located.

The Committee on the Administration of Justice (CAJ) “was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights”⁸ and as they state on their website, is an organisation committed to “a just and peaceful society in Northern Ireland where the human rights of all are protected.”⁹ They state that they take “no position on the constitutional status of Northern Ireland and is firmly opposed to the use of political violence”¹⁰

The CAJ is engaged in a number of other human rights and criminal justice work in Northern Ireland in addition to its campaigning and work on a Bill of Rights for Northern Ireland.

As the CAJ stated in their recent position paper ‘The Best Bill of Rights – a guide’,

“The Committee on the Administration of Justice (CAJ) has been an advocate of a Bill of Rights for Northern Ireland since its inception in 1981. As such we have been

⁸ CAJ press release, December 10th 2008

⁹ <http://www.caj.org.uk/about.html>

¹⁰ Ibid.

actively engaged in the various stages of consultation and debate that have occurred, in particular over the last ten years since the commitment to a Bill of Rights was given in the Belfast/Good Friday Agreement of 1998.”

The CAJ is in favour of a strong, extensive and robust Bill of Rights, fully justiciable and enforceable in a separate human rights court for Northern Ireland. A Bill of Rights should be “a forward looking and impactful document - therefore it must positively promote and advance the protection of rights, not merely adopt a lowest common denominator approach.”¹¹

The CAJ believe in the importance of a Bill of Rights incorporating fully justiciable socio economic rights believing that the justification for this lies within the normative sphere of international human rights law and that “experience elsewhere demonstrates that these rights are not only capable of judicial enforcement but indeed must be judicially enforceable if Northern Ireland is not to fall far behind international norms.”¹²

The Human Rights Consortium are a civil society organisation established in 2000 following the establishment of the Northern Ireland Human Rights Commission and the launch of a consultation by the NIHRC on draft proposals for a Northern Ireland Bill of Rights “to encourage widespread community participation in the Bill of Rights consultation.”¹³

Its sole raison d’être as a human rights NGO is its campaign for a Northern Ireland Bill of Rights, which is ‘strong and inclusive’, which according to the human rights consortium means that a Bill of Rights should include the “highest possible standards of human rights protection possible. It should include a combination of social,

¹¹ Benchmarks for a ‘strong and enforceable Bill of Rights’, CAJ publication, October 2008

¹² Ibid. pp 13

¹³ http://www.billofrightsni.org/about_us/

economic and cultural rights (e.g. education, an adequate standard of living and language) and civil and political rights (e.g. religion and voting rights).¹⁴

The Human Rights Consortium represent over 120 civil society organisations community and voluntary organisations, trade unions, charities and NGOs all united around a common position on the nature, scope and detail of a strong and inclusive Bill of Rights for Northern Ireland.

¹⁴ http://www.billofrightsni.org/about_the_bill_of_rights/

What do we mean by Civil Society? What was its role in the Northern Ireland peace process?

Before continuing, it is important to outline a brief sketch of what is meant by civil society in contemporary political theory, philosophy and practice and offer a brief outline of what role civil society played in the Northern Ireland peace process.

In many ways the rise of the notion and study of civil society in Northern Ireland is caught up within wider trends in political theory, philosophy and practice.

As Eastern Europe emerged from years of communist rule and democracy states began to emerge, there was a renewed interest amongst academics and policy makers in the concept of 'civil society' – what it meant and how it might relate to competing conceptions of democracy and how society should be organised.

As Fergal Cochrane notes, “phrases such as social capital and civil society, have become absorbed into academic and policy making discourse, and are frequently cited as being essential ingredients of stable liberal – democracies.” (2004: 1)

So what is civil society? What do we mean by this concept within contemporary political theory, philosophy and practice?

As a term, it can be used in a number of diverse and wide – ranging ways and deployed in a similar number of varying contexts and situations within contemporary political discourse. Indeed as Robert Fine has noted, “The question, ‘what is civil society?’ has produced many answers. To the sceptic, this may be reason enough to dismiss the concept as a mere abstraction without substance or as a repository for a motley collection of differing political aspirations.” (1997: 7)

Therefore the elasticity of the concept is where some of the most forceful criticisms of its utility lie. Do competing accounts of civil society from the left and the right or from liberal and communitarian debase the concept of civil society so much that invoking it is almost meaningless?

As Farrington notes, “the concept of civil society can be thought of in two ways: civil as an adjective to society or civil society as a noun.” (2004: 2) Farrington distinguishes firstly, between philosophical and empirical reflections on civil society literature, which is concerned with the nature of civility and the question of barbarity and violence within society and secondly, between “the second idea, civil society as a noun”, which includes a series of political reflections in theory and practice dating back to the enlightenment and post enlightenment political philosophy of thinkers such as Montesquieu, Rousseau, De Tocqueville and Hegel and which gained wider currency in intellectual circles with the emergence of democracy in Eastern Europe. It is this second concept of civil society that this paper will be concerned with.

In an attempt to produce a definition reflective of the empirical and philosophical realities, the LSE’s centre for civil society states,

“Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy group.”¹⁵

Both Cochrane (2004) and Chambers (2002) prefer to see civil society as a “relational concept, rather than a static phenomenon with a universal meaning.” (Cochrane, 2004: 2) For Cochrane, civil society is contextual depending on the particular, not the

¹⁵ http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm

universal. In doing so Cochrane follows Robert Fine in arguing for an account of civil society without “romanticizing it and abstracting it from its social or historical ground.” (1997: 8)

A thicker understanding of civil society as a relational concept means that we take civil society as being a place where a range of political values, beliefs and objectives are defended and justified and that civil society inhabits an entirely different place to the state and the market.

As Simone Chambers puts it, “it is not only the state that is perceived to be a potential threat to the freedom of civil society, capitalist economic relations are also considered to be harmfully intrusive.” (1998: 90)

Michael Ignatieff further illustrates the point when he states “it is civil society in tandem with the state that tames the market. Without a strong civil society, there cannot be a debate about what kind of market to have.” (1995: 136)

Michael Walzer has referred to civil society as “the space of uncoerced human association and also the set of relational networks – formed for the sake of family, faith, interest and ideology – that fill this space.” (1998: 7)

Therefore we see in contemporary political philosophy an attempt to restate the idea from the enlightenment of creating civil society as the third space between state and the market.

Hegel looked to the state as the institution encapsulating the “embodiment of ethical life” and was concerned that civil society with its capitalist influences would require the state to regulate and maintain moral order in civil society whilst De Tocqueville argued that to resist excessive individualism and the intrusion of the state in the sphere of civil society must remain separate.

Indeed the role of the state in the political and its relationship with the individual, the market and civil society is one of the characteristic features of political debate since the enlightenment and it is to this debate that much discourse on civil society speaks to.

In Francis Fukuyama's view "civil society serves to balance the power of the state and to protect individuals from the state's power".¹⁶

Similarly, much of the contemporary conservative critique of big government or the encroachment of the state, in the UK context, is focussed on the state's unnecessary intrusion into the sphere of civil society. As Danny Kruger states in reference to Labour's time in Government, "the history of civil society since 1997 has been one of steady encroachment by the state into the private sphere of voluntarism."

He offers a narrative of British politics where equality on the left and liberty on the right have been the "organising principles at work in our politics." (2006: 1)

He claims that fraternity, the third part of the cry of the French Revolution is the real battleground in British politics – "where equality and liberty are political abstractions, levered into reality by statute, fraternity is real and self-generating; it has no need of the statutory imprimatur."¹⁷

Indeed as Kruger states, "Fraternity is the sphere of belonging, of membership, the sphere of identity and particularity. It exists in civil society, in the arena of commercial and social enterprise, of family and nation. It concerns neighbourhood, voluntary association, faith, and all the other elements of identity that relate us to some and distinguish us from others." (2006: 3)

¹⁶ Lecture on social capital and civil society delivered to the IMF on October 1 1999. Lecture available at <http://www.imf.org/external/pubs/ft/seminar/1999/reforms/fukuyama.htm#17>

¹⁷ Danny Kruger, 'The Right Dialectic', Prospect magazine, Issue 126, September, 2006 <http://www.prospect-magazine.co.uk/pdfarticle.php?id=7735>

The role of civil society in the Northern Ireland conflict has been examined generally, by Cochrane (2005), Cochrane & Dunn (2002), Farrington (2008) and Guelke (2003).

As Ignatieff notes, “when the dissident Eastern European intellectuals of the 1970s and 1980s were trying to imagine what kind of community they wanted in place of communism, they turned back to the concept of civil society, an archaic term rooted so far back in the enlightenment that most West European intellectuals had forgotten its meaning.” (1995: 128).

Indeed, in Northern Ireland, as a response to the dominant discourses of elite driven consociationalism, which broadly characterised approaches to the conflict in Northern Ireland, civil society discourses emerged as trade unions, business groups, community and voluntary organisations, human rights NGOs and other similar organisations began to articulate ‘what kind of community’ they wanted for Northern Ireland.

Farrington has noted a sceptical tone about the influence of civil society on the peace process in Northern Ireland. As he states civil society, “contributed to the environment in the 1990s which led to the Agreement but was not a determining factor.” (2004: 1)

He refers to some success that civil society has had in effecting change. For example he alludes to the role the CAJ played in mainstreaming human rights in Northern Ireland particularly through the creation of the Northern Ireland Human Rights Commission.

Paul Dixon has examined this debate between consociation (top down) and civil society (bottom up) approaches to resolving the conflict in Northern Ireland and outlines how a civil society narrative emerged in response to the consociation model of conflict resolution through advocating “an extension of democracy” and “greater interethnic contact as a means for resolving conflict”. (Dixon, 1997: 3)

The theory behind this approach advances the notion that the bottom up, civil society discourse will be inherently more compromising, moderate and inclined to unite disparate ethnic and religious groupings than their respective political representatives. As Dixon states, “in contrast to consociationalism, the civil society approach suggests that the mobilisation of the masses would promote a resolution to the conflict by pushing their political representatives towards compromise.” (1997: 9)

Whilst Dixon’s analysis pre – dates the Belfast Agreement and the subsequent political machinations, it nonetheless provides an important insight into the dynamics of civil society in Northern Ireland and its role in post conflict Northern Ireland.

Dixon’s discussion, of course takes place, within a wider discourse of models of conflict resolution in Northern Ireland and he is quick to identify the history of such civil society efforts in Northern Ireland tracing back to the campaigns of the peace people in the 1970s to the work of the O’Shal Commission in the early 1990s.

As Dixon points out there are a number of other important defining characteristics of the civil society approach to conflict resolution in Northern Ireland namely that opinion polls evidence are presented as preferential to electoral behaviour in demonstrating “the accommodating nature of public opinion in Northern Ireland” and the emphasis this approach has on the “negative role the political elites in Northern Ireland have played in the search for accommodation.” (Dixon, 1997: 10)

Guelke has attempted to locate the role and contribution of civil society to the peace process in Northern Ireland within what he has called the “British or metropolitan liberal perspective” on the conflict arguing it is that narrative or account of the peace process that affords the greatest role to civil society in making a significant contribution to the peace process. He argues that it is “more difficult to accord a positive role to civil society in either the Republican or the unionist version of the peace process.” (Guelke, 2003: 68)

The Human Rights Movement's dirty little secret – raising expectations

For the legal theorist Roberto Unger, one of the 'dirty little secrets of contemporary jurisprudence' is its 'discomfort with democracy'. To paraphrase this acerbic reflection, one of the dirty little secrets of the contemporary human rights movement in Northern Ireland is its apparent discomfort with democracy.

There is an apparent scepticism of traditional forms of democracy and robust debate over the place of traditional political parties within this discourse. As Dixon argues, "civil society advocates therefore search for an alternative mechanism by which a more authentic reflection of the popular will can be obtained." (1997: 14)

Indeed this sort of anti partyism is the romanticism of civil society and its possibilities that Robert Fine has warned against but which has become pervasive in Northern Ireland.

In Northern Ireland this anti partyism has become particularly more acute because of the democratic deficit that existed and the nature of the conflict. As Cochrane notes,

"The conflict in Northern Ireland gave rise to a polity in which normal democratic politics scarcely existed. Following the suspension of the devolved government in 1972, most of the day-to-day policy-making was in the hands of powerful civil servants and QUANGOs. The resulting 'democratic deficit' meant that space opened up for the voluntary and community sector. This sector grew consistently in size, influence, and the scope of its responsibilities. As opportunities for participation in conventional political structures declined, the voluntary sector emerged as an alternative site for citizen activism, and there was a discernable shifting of human energies away from party politics and into civil society. To put it more bluntly, those who wanted to do something within their community, were often more likely to be attracted into NGOs rather than into political parties during this period."¹⁸

¹⁸ <http://www.qub.ac.uk/csec/docs/Cochrane%20paper.pdf>

The think tank, the Cadogan Group has supported Cochrane's view on as they call it, "the emergence of an alternative political class in Northern Ireland after 1972."¹⁹

As voter turnout in western liberal democracies decline, new and more innovative ways are sought to increase and maximise participation. Citizens have become disengaged from the process of party politics and are seeking alternative forms of political expression and in doing so have found welcome homes in the vast network of international and domestic civil society organisations.

Chantal Mouffe has distinguished between 'politics' as "the set of practices and institutions through which an order is created, organising human coexistence in the context of conflictuality provided by the political" and 'the political' as the "dimension of antagonism which I take to be constitutive of human societies". (2005: 6)

People may be turned off by 'politics' but this does not necessarily mean that they are turned off by 'the political' – it doesn't necessarily follow that they cease to be, in the Aristotelian sense, political.

Costas Douzinas has encapsulated this phenomenon when he notes that, "the young people who join NGOs would have joined left – wing groups and campaigns a few years earlier. The quest for justice, the great motivating force of politics has become anti – political." (2007: 81)

However, the apparent paradox at the heart of the 'anti political' nature has been brought out by Michael Ignatieff who argues that; "effective human rights activism is bound to be partial and political." (2003: 9)

He continues,

"Human rights activism likes to portray itself as an anti – politics, in defence of universal moral claims designed to delegitimize 'political' (i.e., ideological or

¹⁹ Taking Liberties, Cadogan Group, 2002 - <http://www.cadogan.org/gpubs/rights.htm>

sectarian) justifications for the abuse of human beings. In practice, impartiality and neutrality are just as impossible as universal and equal concern for everyone's human rights. Human rights activism means taking sides, mobilising constituencies powerful enough to force abusers to stop." (2003: 8-9)

Human rights NGOs internationally have been beneficiaries of declining citizen participation in traditional democratic institutions. In Northern Ireland, groups like the CAJ and the organisations represented by the human rights consortium have benefited in similar terms as Cochrane notes, "those who wanted to do something within their community, were often more likely to be attracted into NGOs rather than into political parties during this period."²⁰

An example of the phenomena referred to by Cochrane is found as Henry Patterson argues in the proposals of the recent Consultative Group on the Past²¹ established to produce proposals on how to deal with the legacy of conflict in Northern Ireland. As Patterson argues,

"The Eames Bradley group's orientation to these issues was heavily influenced by the peace and reconciliation industry which has grown up in Northern Ireland under more than 30 years of direct rule and the peace process. The place of a local political class was usurped by NGOs, community groups, former paramilitaries and academics. A key characteristic of this group was an ideology that fused in different combinations local versions of liberal theology, recycled 1960s Marxism, human rights absolutism and the utopian legal theory of transitional justice."²²

As we have seen, David Trimble's comments about the curse that the human rights industry community represent caused much anger and outrage. The human rights community, both internationally and domestically in Northern Ireland has not been used to this type of criticism. As Harvard Professor, David Kennedy notes, "the human rights movement has become a central object of devotion." (2002: 2)

²⁰ <http://www.qub.ac.uk/csec/docs/Cochrane%20paper.pdf>

²¹ <http://www.cgpmi.org/>

²² Parliamentary Brief, February 9th, 2009 'Truth and reconciliation in NI? Not much hope of either'

In a lecture at the London School of Economics in 2005, the Secretary General of Amnesty International, Irene Khan stated that,

“I am convinced that our optimism, our creativity and our resilience will prevail, that human rights movement will recapture their subversive spirit – their spirit of challenge and change – redefine ourselves and rejuvenate the struggle for human rights.”²³

The problem facing the human rights community is that they raise expectations as to what can be legitimately achieved therefore creating a huge chasm between reality and utopia.

It is rhetoric like that of Irene Khan that creates the problem. Too often the human rights movement acts like it is the only entity with the moral authority to act. As Professor David Kennedy has stated, “perhaps most disturbingly, the international human rights movement often acts as if it knows what justice means, always and for everyone – all you need to do is adopt, implement, and interpret these rights. But justice is not like that. It must be built by people each time, struggled for, imagined in new ways.”²⁴ (2006: 5)

Indeed as Michael Ignatieff states, “Human rights activism would be less insatiable, and less vulnerable to disappointment, if activists could appreciate the degree to which rights language itself imposes or ought to impose limits upon itself.” (2003: 19)

There is a general failure on the part of human right NGOs to impose limits on the boundaries of the attainable. For example, as we shall come to later, human rights

²³ <http://www.lse.ac.uk/collections/LSEPublicLecturesAndEvents/pdf/20050119-Khan-HumanRights.pdf> - 'Human Rights and civil society – the last frontier' Public lecture delivered at the LSE, 19th January 2005 by Irene Khan, Secretary General, Amnesty International

²⁴ http://www.lse.ac.uk/collections/humanRights/articlesAndTranscripts/Crossing_the_boundaries_David_Kennedy.pdf

activists in Northern Ireland fail to take account or have any basic grasp of the political realities in Northern Ireland regarding the debate on a Bill of Rights.

It is important to establish that, in theory at least, within unionist political thought there is ideological space to embrace a conception of civil society.

Indeed, that the uneasy relationship between unionism's political elite and this section of civil society is more a product of the particular circumstances of the debate about human rights in Northern Ireland than any wider hostility within unionist political thought to conceptions of civil society and the role it plays in public life.

In particular, at an ideal theoretical level, Norman Porter's civic unionism²⁵ perhaps best offers a theoretical place for embracing civil society at the heart of unionist political thought. Taskforce report insert here

Indeed Porter is inclined to link civic unionism within a broader conception of civic republicanism within political theory. Porter talks of civic unionism having a thicker conception of citizenship that involves a more expansive notion of politics and the role of civil society. Unionism should embrace fully the concept of civil society and the benefits it can bring to civic participation in the polis.

The empirical world may have conditioned unionism to be sceptical of civil society with regards to the debate about human rights but there are plenty of organisations within civil society in Northern Ireland from a unionist perspective that provide forms of social capital within unionist communities.

²⁵ Norman Porter, 'Rethinking Unionism', Blackstaff press, 1996

The uneasy relationship

We have now seen how much of the discourse on civil society has evolved in the context of the Northern Ireland peace process, how it connects with wider debates in political philosophy and practice and where the human rights movement or human rights NGOs fit into that narrative. In this section we turn to examine the nature of the relationship between the CAJ and the DUP and UUP – exploring why the uneasy relationship exists.

What has led politicians from the Unionist tradition to consider the CAJ as nothing more than as one Unionist elected representative put it “a Nationalist front organisation”²⁶?

On Monday 15th October, 2007, the DUP introduced a Private Members Motion in the Northern Ireland Assembly on the membership of the Bill of Rights Forum, established to advise the NIHRC on proposals for a Northern Ireland Bill of Rights.

The motion read,

“That this Assembly acknowledges that the unionist community has been largely excluded from the human rights process in Northern Ireland and under-represented within the human rights sector, resulting in the Bill of Rights Forum having a clear imbalance in the composition of its membership; believes that without the support of all sections of our community any Bill of Rights process is fundamentally flawed; and calls upon the Secretary of State to address these problems urgently, by ensuring processes that will facilitate better engagement with the unionist community and ensuring that the membership of the Bill of Rights Forum is more reflective of all the people of Northern Ireland.”²⁷

During that debate a DUP MLA caused much controversy through the direct criticisms made, by name, of many of the civil society representatives on the Forum

²⁶ DUP MLA Sammy Wilson, Northern Ireland Assembly's Official Record,

²⁷ <http://www.niassembly.gov.uk/record/reports2007/071015.htm#3>

in terms of their claim to be representative of the community. The UUP supported the DUP in the motion.

These forceful claims, however, as we shall see are not made in isolation but fit into a wider critique offered by unionism's political elite of human rights NGOs in Northern Ireland.

From the public statements and official record of Parliamentary debates in the House of Commons, House of Lords and Northern Ireland Assembly, it is possible to discern four significant issues that have contributed to what I have called the uneasy relationship between the DUP, UUP and this activist strand of civil society in Northern Ireland: human rights NGOs.

The problematic relationship centres around: (1) The CAJ's focus in its work on state violations of human rights, not on the human rights abuses committed by paramilitary organisations. (2) The perceived influence the CAJ has had on the work of the Northern Ireland Human Rights Commission (NICHRC). (3) A perceived anti – unionist/anti – British agenda, which is manifested in opposing views between the CAJ and the unionist parties over policing issues in Northern Ireland, which leads to the perception that human rights NGOs in Northern Ireland represent a Trojan horse for the claims of Irish Nationalists/Republicans. (4) The existence of considerable disagreement over the nature, scope and content of a Northern Ireland Bill of Rights.

This paper will now turn to examine each of these points in turn.

(1) Focus on state violations of human rights

There has been a tendency for human rights discourse or more precisely for the agenda of human rights organisations in Northern Ireland to focus on state violations of human rights and not on infringements carried out by paramilitary groups or non – state actors reflecting a tradition in international human rights law; post World War II, to focus on state abuses of human rights.

The trend internationally has been for human rights organisations, to in the words of Amnesty International's Secretary General, "expose the hypocrisy, selectivity and double standards of governments."²⁸

Perhaps the CAJ is best known in Northern Ireland for its work and involvement in helping to bring a number of high profile cases to the European Court of Human Rights in Strasbourg engaging Article 2 ECHR in Shanaghan v UK, Jordan v UK, Kelly and Ors v UK, McKerr v UK. Each of these cases was concerned with the use of force by the state resulting in a breach of the right to life Article 2 ECHR. In each case the UK was found to be in breach of the procedural aspects of Article 2 ECHR."²⁹

In addition the CAJ has been involved in campaigns "for an independent inquiry into the circumstances of Pat Finucane's death"³⁰ and in lobbying for other inquiries into the death of Robert Hamill and Rosemary Nelson.

The focus of the CAJ on the violations of human rights carried out by the state tended to be at the expense of raising the human rights violations of non – state actors in the Northern Ireland conflict – namely the paramilitary organisations that in factual terms were responsible for the vast majority of deaths and human rights abuses in Northern Ireland.

Of the 3720 people killed in the Troubles from 1966 until 2006, 2152 deaths were caused by Republican terrorists, 1,112 deaths were caused by Loyalist terrorists and the Security forces were responsible for 361 deaths.

In percentage terms this means that over 87.7% of killings were perpetrated by proscribed terrorist organisations. This means that the right to life, as defined in

²⁸ See Fn 27

²⁹ For further information, please see http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/42/Investigating_Lethal_Force_Deaths_NI_Feb06.pdf 'Investigating Lethal Force Deaths in Northern Ireland' by Paul Mageean and Fiona Doherty, February 2006

³⁰ CAJ press release, 19th May, 2006

article 2 of the European Convention on human rights, was violated overwhelmingly during the Troubles by non – state Actors yet the focus of organisations like the CAJ and others has been and continues to be on the perceived human rights abuses of the state during the conflict with only passing mention made to human rights abuses conducted by non – state actors.

We are therefore presented with two competing discourses regarding violations of human rights in Northern Ireland. One narrative, advanced by groups like the CAJ holds that the focus should be on the state’s abuse of human rights whilst the other narrative, advanced by unionism, holds that the focus of human rights NGOs should be on those paramilitary organisations that have been responsible for the vast majority of human rights violations, with regard to Article 2 ECHR, in Northern Ireland.

The impression created within unionism is that this approach by the CAJ has created a hierarchy that privileges the actions of perpetrators of violence over victims of violence. The impression is given that the CAJ is in existence to defend terrorists and uphold their rights but not those of their victims.

As the Barrister and constitutional commentator, Austen Morgan has argued the “NI human rights community has exhibited nothing but bad faith. It has created a considerable hierarchy of victims. It went for the one in ten state killings...the nearly nine in ten, who were killed by Republican and Loyalist paramilitaries were, and are ignored.”³¹

Within this context, it is perhaps easier then to understand the comments from David Trimble noted at the beginning of this paper about human rights groups being

³¹ “Do the Victims of terrorism have human rights?” Austen Morgan, March 11th 2008

one of the world's greatest curses who "justify terrorist acts and end up being complicit in the murder of innocent victims."³²

The CAJ's justification for not engaging in criticism of paramilitary groups can be evidenced by this statement from Michael Ritchie in a submission to the Form for Peace and Reconciliation, when he said "we have set ourselves up as a non – governmental organisation to comment on how the State deals with non – State violence...you may not like it but it is our function. We are simply abstracting ourselves from the local situation and applying international law."³³

A section in the declaration that was issued after the Council of Europe's first International Congress of Victims of Terrorism, the conference at which David Trimble made the controversial comments, said that

"We call on NGOs and other civil organisations that stand for the defence of human rights to make a commitment to defend victims of terrorism and to identify terrorist acts for what they are, regardless of their cause or pretext and without striking balances or blurring the distinction between victims and executioners."³⁴

Implicit in these sentiments therefore is the notion that somehow through the work pursued by human rights NGOs that the distinction between victims and perpetrators was being blurred. Indeed, nowhere was the blur more pronounced than in Northern Ireland. This tendency for human rights discourse in Northern Ireland to indulge in moral equivalence over the status of paramilitary groups is one of the greatest sources of tension in the relationship between unionism's political elite and the CAJ.

³² The remarks were made to the Associated Press. These comments were attributed to the story as reported in the Guardian, Thursday 24th January, 2004

<http://www.guardian.co.uk/uk/2004/jan/29/northernireland.humanrights>

³³ Report of the Proceedings: volume 12: Friday 31st March 1995, pp44 -5)

³⁴ [http://www.coe.int/t/e/human_rights/cddh/3._committees/06.%20terrorism%20\(dh-s-ter\)/working%20documents/2004/2004_003_en.asp](http://www.coe.int/t/e/human_rights/cddh/3._committees/06.%20terrorism%20(dh-s-ter)/working%20documents/2004/2004_003_en.asp)

Loyalty to the idea of and commitment to maintain the union with Great Britain lie at the heart of unionism. The CAJ, therefore, in highlighting the human rights abuses of the British state creates an obvious point of tension to explore as for unionism to challenge the state in similar terms to make a claim for their human rights would not only be counter cultural but represents in the words of DUP MLA Arlene Foster stat “something of an anathema for grassroots members of unionism.”

Christine Bell and Mari Fitzduff have engaged in robust academic debate in the Northern Ireland context about the tension between a community relations approach to post conflict Northern Ireland which emphasises a more pragmatic approach to dealing with the conflict and a human rights approach which, emphasises justice issues.³⁵

Fitzduff, a former Chair of the Community Relations Council, has highlighted how human rights NGOs themselves in Northern Ireland have contributed to a perception within sections of the community that they had a selective approach to the promotion of human rights in Northern Ireland.

Writing from a community relations perspective she argued, “Let me suggest...that the problems the CR field had was not with human rights work *per se*, but with those institutions, and some individuals who were promoting human rights in Northern Ireland, and the unfortunate perception of many in the field about the selective and limited nature of their promotion of human rights. The HR field was generally seen to have only two major foci for its work, the first being to provide a challenge to state abuses of human rights, and the second to promote a Bill of Rights for Northern Ireland.”³⁶

³⁵ See exchange between Bell & Fitzduff, Carnegie Council, March 25, 2002. Available at http://www.cceia.org/resources/publications/dialogue/2_07/articles/243.html

³⁶ Papers presented at ‘Human Rights and Community Relations: Competing or Complementary Approaches in Responding to Conflict, Institute for Conflict Research, November 2002. Available at <http://www.conflictresearch.org.uk/documents/HR-CM%20-%20Conferance%20Papers%20-%20November%202002.pdf>

(2) The perceived influence the CAJ has had on the work of the Northern Ireland Human Rights Commission (NICHRC).

In Northern Ireland, both the DUP and UUP have expressed concern about the representativeness of institutions such as the Northern Ireland Human Rights Commission, the Equality Commission and the composition of the Northern Ireland Bill of Rights Forum.

Since its inception the Northern Ireland Human Rights Commission has been heavily criticised by Unionist politicians because of the Government's failure to ensure community balance from the outset in appointments to the Commission.

A similar story can be told about the newly constituted Human Rights Commission in 2005 where community balance again was an issue. Only one person, Jonathan Bell from the DUP, could reasonably be considered to be representative of the Unionist community³⁷.

The comments of DUP MP Peter Robinson, speaking during a debate in the Northern Ireland Grand Committee on the appointment of the newly constituted new human rights Commission, highlight the deep sense of hostility felt towards the Commission,

“The appointment of new commissioners could have allowed for a fresh start. It gave the Government the chance to convince the Unionist community, which has traditionally been sceptical about such matters, that the commission could be a positive force to protect fundamental rights and allow Unionists to engage positively. Unfortunately, rather than creating a commission that can command the broad support of the community, the Government have, by their appointments, condemned the commission to another four or five years of irrelevance, and the Unionist community to four or five years of alienation from the commission.”³⁸

³⁷ In December 2007, Lady Trimble, the wife of Northern Ireland's former First Minister, David Trimble was appointed to serve on the Commission.

³⁸ House of Commons Hansard text, Northern Ireland Grand Committee debate, 30 June 2005, Column Nos. 52

It would appear that the basis for much of the criticism stems from the perception that in the words of DUP MP Jeffrey Donaldson, “there is significant overlap between the membership of the Northern Ireland Human Rights Commission, and the Committee on the Administration of Justice.”³⁹ In the words of Austen Morgan, “it is not possible to understand the NIHRC individually or ideologically, without reference to this controversial pressure group.” (2001: 242)

The view that the CAJ exerts “undue influence” over the work of the human rights commission is one that is also shared by the UUP. As former UUP MLA Esmond Birnie observed, “persons with a CAJ background continue to have a disproportionate representation on the Northern Ireland Human Rights Commission”.

Are these criticisms based on myth or reality? A parliamentary answer revealed that when the Commission was first created, 6 out of the 10 Commissioners, including the Chief Commissioner, were members of the CAJ. The work of the Human Rights Commission has largely followed the ideological pattern supporting intervention under article 2 ECHR by focussing on state violations of human rights.

Indeed, as the Cadogan group point out, the Human Rights Commission in various platforms have failed to dedicate enough time and resources to the “question of 'personal and physical integrity'... It is quite shameful that it addresses the question in such a superficial manner. If Northern Ireland is distinct its distinction lies in the mafia subculture of intimidation and assault known as paramilitarism. This has been the cause of the major infringements of human rights in Northern Ireland.”⁴⁰

³⁹

<http://www.publications.parliament.uk/pa/cm200001/cmstand/nirelg/st010208/10208s09.htm>

⁴⁰ <http://www.cadogan.org/gpubs/rights.htm>

(3) A perceived anti – unionist/anti – British agenda

The CAJ have stressed, on their website, that they take “no position on the constitutional status of Northern Ireland”⁴¹ but yet in a debate in the Northern Ireland Assembly the DUP MLA Michelle McIlveen claimed that “the CAJ is no friend of unionism...it styles itself as an independent, cross-community, human rights organisation, but its documents reek of anti-unionism and anti-Britishness.”⁴²

There appears to be an automatic assumption adopted by some within unionism’s political elite that anything produced by the CAJ must inimical to the interests of the unionism – that what the CAJ say will always be “biased and jaundiced”⁴³ against unionism.

What is the basis for these claims? As I identified earlier this perception of anti unionist/British agenda is manifested in opposing views between the CAJ and the unionist parties over policing issues in Northern Ireland.

With regards to policing, the issue of 50:50 recruitment between Protestants Catholics to the police service was and is sharply opposed by unionist parties on the grounds that it represents an unacceptable form of institutionalised discrimination. The CAJ, however, have been strong advocates of positive discrimination in recruitment to the Police Service of Northern Ireland in order to redress the historic underrepresentation of Catholics in the police. Indeed, were in favour of extending the system to include women and ethnic minorities.⁴⁴

This rights and wrongs of this policy are beyond the scope of this paper; suffice to say that within the unionist community the issue of police recruitment still remains an emotive issue as reflected in the statements of unionism’s political representatives. As DUP MLA Jim Shannon states on the issue it “is perhaps the most

⁴¹ <http://www.caj.org.uk/about.html>

⁴² Ibid.

⁴³ DUP MLA, Jimmy Spratt, NI Assembly debate, Tuesday 2nd October 2007 - <http://www.niassembly.gov.uk/record/reports2007/071002.htm#2>

⁴⁴ CAJ Commentary on recommendations in the Patten report “A new beginning: policing in Northern Ireland” (published 9-9-99) – available at www.caj.org.uk

disgusting and discriminatory such policy ever to have been introduced in a so called modern country.”⁴⁵

The point is that on these emotive issues the CAJ and unionism’s political elite operate within different discourses and interpretations of the nature of the conflict in Northern Ireland. In their own words the CAJ were created to “comment on how the state deals with non – state violence” therefore putting them on a collision course with unionism’s political elite.

(4) Northern Ireland Bill of Rights

We have already seen how both the CAJ and the human rights consortium support a wide – ranging, fully justiciable Bill of Rights of Northern Ireland and a maximalist interpretation of the NIHRC’s remit to undertake this work. Their interpretation of the phrase ‘particular circumstances’ is expansive to incorporate a wide range of social and economic rights in addition to traditional civil and political. The human rights consortium is particularly committed to the enumeration of social and economic rights in any future Bill of Rights for Northern and indeed has presented such a Bill as a panacea for solving many of the problems associated with social and economic deprivation in Northern.

One of the main criticisms made by politicians in the Unionist community about proposals for a Northern Ireland Bill of Rights is that the Commission have acted outside the mandate given to it by the Belfast Agreement to:

Consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on

⁴⁵ <http://www.niassembly.gov.uk/record/reports2007/071015.htm#3> [2007, October, 20th] – Official Record of the Northern Ireland Assembly

international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland.”⁴⁶

This criticism is made at a foundational level about the way the NIHRC has adopted a maximalist interpretation of its mandate resulting in draft proposals for a Bill of Rights that go well beyond reflecting the ‘particular circumstances’ of Northern Ireland.

At this foundational level, there is therefore a fundamental disagreement between the UUP & DUP and leading human rights NGOs in Northern Ireland.

There are two dominant narratives that shape the debate on a Bill of Rights in Northern Ireland: a maximalist⁴⁷ and a minimalist⁴⁸ narrative. Broadly the maximalist narrative is supported by the Northern Ireland Human Rights Commission itself along with a range of civil society organisations, human rights NGOs and the Irish Nationalist parties. The minimalist narrative is supported by the larger Unionist parties: the DUP and Ulster Unionists, the British Government and other faith based groups in the Unionist community such as the Loyal Orders, the Church of Ireland, Methodist Church, Presbyterian Church, CARE, Evangelical Alliance and think tanks such as the Cadogan Group.

The maximalist narrative suggests that only through an extensive Bill of Rights, which protects a wide range of social, economic, civil and political rights can Northern Ireland truly move on from its divided and troubled past to a new future characterised by peace and stability. The proposals contained in the Bill of Rights

⁴⁶ Belfast Agreement: Rights, safeguards and equality of opportunity, human rights, section 4.

⁴⁷ For the justification for the maximalist narrative from the perspective of legal/constitutional theory see Aileen Kavanagh, ‘The role of a Bill of Rights in Reconstructing Northern Ireland’, *Human Rights Quarterly*, 26 (2004) 956 – 982 or Colin Harvey et

⁴⁸ For consideration of some of the arguments in favour of a minimalist conception of the NIHRC’s mandate: Austen Morgan, *What Bill of Rights*, 52 *N. Ireland Legal Quarterly*, 234 (2002)

would be consistent with international human rights law standards. This document should then be fully justiciable, enforced by the courts or a new Constitutional Court and fully constitutional in nature in that it should be afforded the status of higher law and placed beyond the reach of the democratically elected legislature.

The minimalist narrative suggests that there should be a strict interpretation of the terms of the Belfast Agreement meaning that a Northern Ireland Bill of Rights should only contain measures which *'reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem'*. This would be consistent with human rights protection in the rest of the UK and other parts of the common law world. The minimalist narrative is concerned about the impact an extensive Bill of Rights for Northern Ireland would have on the democratic process in Northern Ireland, that it would necessarily involve a transfer of power taking place from the legislature to the judiciary. This narrative is also concerned about the impact a maximalist Bill of Rights would have on 'equal citizenship' within the UK if Northern Ireland were to have different levels of constitutional rights protection than the rest of the UK.

Some conclusions: unionism and human rights

This paper is attempting to examine the extent to which the problematic relationship between the DUP & UUP and human rights NGOs in contributes to wider scepticism within influential strands of unionist opinion towards proposals for a Northern Ireland Bill of Rights and human rights in Northern Ireland generally.

An uneasy relationship exists and it is presented here that the nature and basis of this problematic relationship is a direct, significant contributory factor to unionism's wider suspicion of rights discourse in Northern Ireland and only indirectly towards a Bill of Rights in Northern Ireland.

The disagreement exists between these parties on proposals for a NI Bill of Rights and indeed unionist scepticism about such proposals is less a reflection of the uneasy relationship and more a reflection of differing ideologies and approaches to interpretations of what a Bill of Rights is for and what constitutes a Bill of Rights. The DUP & UUP advance a minimalist narrative, whilst the CAJ and human rights consortium advance a maximalist narrative.

Considerable disagreement that exists in Northern Ireland over the nature of rights, the definition of what constitutes a right, who the holders of such rights are, the utility of rights discourse and the need for a culture of human rights in Northern Ireland.

The pervasiveness of human rights discourse in Northern Ireland appears to represent an attempt at the creation of a new orthodoxy in Northern Ireland where rights talk permeates every aspect of political discourse. Human rights NGOs have contributed to this. Human rights discourse is now the scene for a fierce battle between competing traditions.

In the Northern Ireland context, human rights arguments have been advanced all too easily as a tool, which can be used in the process of transitional justice to, in the

words of the Chair of the Bill of Rights Forum⁴⁹, “cement the peace” and “address the legacy of the conflict”.

Political discourse in Northern Ireland has become subject to a phenomena known as ‘rights inflation’, which according to Freeman can be referred to as the “extension of the concept of human rights to an ill – defined number of causes”⁵⁰.

Ignatieff has reflected upon this phenomena and posed serious questions that have applicability in the context of Northern Ireland about the ability of rights discourse to bring people together in divided societies and questions whether such “it is a good thing that rights talk has become the primary language of contemporary politics”? (2001: 66)

The problem is that when unionism hears human rights or rights discourse used to criticise the state at the expense of terrorist paramilitary groups or to put another way sees human rights discourse in Northern ignore actions of non – state actors, it makes unionism suspicious and hostile of human rights. If it is paramilitary groups and terrorism that rights discourse aligns itself with, why would unionism want to be associated with such a discourse that is structurally biased against unionist interests?

Therefore if the human rights community in Northern Ireland perpetuate this discourse, it is inevitable that they will collide with unionism’s political elite.

The issues raised are complex and emotive. The problem is setting human rights up to find a way through the complex moral and political web of issues presented by the conflict in Northern Ireland such acts of terrorism, victims of terrorism and the state. In the words of A. Belden Felds, “human rights can all too easily be used as the

⁴⁹ Chris Sidoti, Chair of the Northern Ireland Bill of Rights Forum – 5 good reasons why Northern Ireland needs a bill of rights:
<http://sluggerotoole.com/index.php/weblog/comments/why-northern-ireland-needs-a-bill-of-rights/>

⁵⁰ see note 13

ultimate resolution of ambiguous or complex problems, so long, that is, as human rights themselves are taken as simple and self evident.”⁵¹

The problem with rights discourse in Northern Ireland is that interpretations of the conflict, where responsibility lies for the troubles are still essentially contested. There is a unionist narrative and a nationalist narrative. There is a narrative from the terrorist’s perspective and a narrative from the victim’s perspective. History and experience elsewhere would suggest that this has always been the case. Applying human rights in this context of conflicting narratives over questions of fundamental importance is problematic because we know, from political theory, practice and philosophy that rights based issue are essentially contested.

⁵¹ Fields, A.B. 2003, *Rethinking Human Rights for the New Millennium*, Palgrave Macmillan,