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**Two Lands on One Soil: The Northern Ireland Question from a
Property Rights' Perspective**

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ABSTRACT

This paper considers the degree to which the Rothbardian restatement of natural rights concepts -in practice, the quest for a social order that strictly adheres to the rights of private property and that of necessity excludes the institutionalised violence of the state- is applicable to the present conflict in Northern Ireland. The structure of the paper is as follows: the first section identifies the conflict as being ethnonationalist in nature. The second section details libertarian principles both in the Ulster Presbyterian and in the Brehon Law traditions. The third section briefly restates and makes some observations on the various proposals that have been offered by way of resolution of the conflict as a prelude to an examination of the Belfast Agreement (the agreement that is presently in suspension). A critique of the agreement along de Jasayian lines is then offered. The final section employs property rights principles as a means towards a solution to specific problems in Northern Ireland and reconsiders the libertarian project in the present Irish context.

‘‘Out of our quarrels with others we make rhetoric.Out of our quarrels with ourselves we make poetry’’

W.B.Yeats , Irish poet and dramatist.

The theory of *ethnonationalism* has been held since the early nineteen-sixties to have significant explanatory power in the analysis of political conflict in ethnically divided societies (Connor,1972,1978,1993).With only about one in ten of today’s states being defined as ethnically homogenous,the potential political consequences of *ethnonationalism* are almost ubiquitous as well as being deep-rooted and intractable (Haymes,1997).Moreover,at the research level,the expectation that modernity,widespread material affluence and mass communication necessarily reduces ethnic political conflict has been found to have little support.Recent history has shown that ethnic conflict is as likely to occur in economically developed countries such as Canada or Switzerland as it is in less economically developed ones such as Sri Lanka or Indonesia.The persistence of ethnic conflict has also confounded social democrats who once believed,especially in the post-war period, that the nation state could be employed as a vehicle for benign social engineering.The fall of the Berlin Wall and its political consequences offers a second set of examples:the disintegration of the former communist nation states in central and eastern Europe has been due,in some instances, in no small part to the incapacity of the nation state to resolve almost intractable social problems of an *ethnonationalist* nature.

The North of Ireland is yet another interesting case.Perhaps more so than in any other modern society,it has been subject to the full range of theories that have been advanced to explain communal conflict. Academic research on the subject has moved through several phases,often in parallel or slightly ahead of government policy initiatives.The first phase of research,which commenced before the present phase of the conflict began in nineteen sixty-eight,emphasised political and economic inequality as a source of the conflict.This approach found favour with the British government,which moved to secure the political and legal interests of the Catholic minority through such measures as anti-discrimination legislation.

The second phase,which can be traced to the early nineteen-seventies,viewed Northern Ireland as an ethnic conflict rooted in colonialism,albeit with religious and economic dimensions,involving a dominant and a subordinate group.This approach stressed comparative features,setting it in the context of similar conflicts in South Africa,the Lebanon and Algeria.The policy consequence of this approach was the development of social engineering projects that were expected to ensure full political participation of both communities at the executive level in government as an indirect consequence.

Since the early nineteen-eighties,there has been an emerging academic consensus that the conflict is essentially *ethnonationalist* in origin.Ethnonationalism in Northern Ireland is fuelled,perhaps more than in any other society,by its multi-faceted and complex nature of that society.It is much more than a simplistic clash between Protestants and Catholics,those with a British and those with an Irish identity or unionists and nationalists or even those who support the link with Britain and those who wish to see both parts of the island of Ireland reunited.Rather it is rooted in significant intra- as well as inter- community differences based not only on differences

in ethnic and national identity, but also on conflicting views concerning the very legitimacy of the state and its boundaries. At a conceptual level, according to Ruane and Todd (1996), it is reinforced by three 'sociocultural dimensions of conflict': religion (Catholicism versus various strands of Protestantism); ethnicity (Gaelic-Irish versus English and Scottish); and colonialism (native versus settler). At a more basic level, *ethnonationalism* there is reinforced by the primary agents of socialisation that are to be found in any modern society: parents, family, education and social networks.

The literature indicates that much of the ethnic conflict in modern society arises because of the lack of congruence between ethnic identity, national identity and the state. Although these three terms are often used interchangeably, they are very different concepts. Ethnic identity refers to the collective memory and consciousness that is shared by a group and is passed from generation to generation through socialisation. Not all those who share an ethnic identity seek the same national goals; for example, ethnic Catalans or Kurds respectively may regard themselves as such, but may differ in the national identities that they assume; some Catalans seeing themselves as Spaniards, some Kurds as Turks.

There is an even greater potential incongruence between ethnic and national identities and the state. Although the term state is often used to describe an often powerful and monolithic or quasi-monolithic political entity, few states are ethnically or nationally homogenous. In many instances, the territory over which the state exercises control is contested - as had been the case in Northern Ireland for many years until the establishment of the Belfast Agreement and for a significant percentage of a minority within a minority still is - and, as a result, the legitimacy of the state is put in question. In many other cases what is regarded as a state is often more akin to a quasi-state where the control that is exercised by the ruling power is weak and non-binding. Often such quasi-states have emerged from the collapse of larger states or empires, the states of the former Yugoslavia being a good contemporary example.

Using the three dimensions of ethnic identity, national identity and state preferences, it is possible to identify four major social categories in Northern Ireland. Those whose identities correspond to that of the state and to its ethnological configuration on all three dimensions can be regarded as strongly pro-state: their ethnicity and national identity are in accord. These, in turn, cohere with the territorial boundaries of the state. Protestants who see themselves as British, describe themselves as unionist and support the British link would be classified as strongly pro-state, in this approach. Those whose ethnic and/or national identity do not overlap tend to be weakly pro-state in their outlook. For example, individuals who see themselves as British and wish to retain the link with Britain, but who are not unionist, would fall into this category.

The third and fourth categories are both counter-state in their political attitudes. Catholics who identify themselves as Irish and nationalist and who support Irish unity as a territorial arrangement would be regarded as strongly counter-state. Those who are weakly counter-state share less definitive views about ethnic and national identity; they do, however, support the objective of ending the link with Britain.

Using this fourfold categorisation in the case of Northern Ireland in the nineteen-eighties and beyond, we find that those who favour the present political arrangements are more numerous than those who oppose them:

- the weak pro-state category was at 45% in 1989 and at 34% in 1998
- the strong pro-state category was at 27% in 1989 and at 38% in 1998.
- the weak counter-state category was at 18% in 1989 and at 16% in 1998 and
- the strong counter-state category was at 10% in 1989 and at 12% in 1998ⁱ.

In general, Protestants were more pro-state in their views than Catholics are counter-state. Strongly pro-state Protestants outnumbered their weakly pro-state counterparts throughout the decade, most notably in the survey conducted in mid-1998; at that time, six out of every ten Protestants were strongly pro-state, compared to one in three who were weakly pro-state. Catholic ethnonationalist opinion in these years was more evenly distributed across the categories, with a significant minority - up to four in every ten - expressing weak pro-state opinions. In parallel with changes in the Protestant community, opinions became more polarised by 1998: at that time, 42% were strongly counter-state.

In the last twenty-five years, the literature on the Northern Ireland conflict has become increasingly specialised. One major theme in some of this is that societies unlike states are not bounded realms, but structures of social relationship that are infinitely extensible. Moreover, Northern Ireland can lay few claims even to be considered a full 'society'; it is a region and, like all regions, is formed by the wider systems and cultures in which it is embedded. Overt conflict and violence may be concentrated within Northern Ireland, but the causes of conflict are not necessarily so concentrated. All of this, of course, does not preclude an examination of the Northern Ireland case as a distinct socio-spatial unit. It may, however, prove more useful to consider the present conflict as the product of a historic system of relationships that in its origins and dynamics operates at the level of the two islands, that is, Britain and Ireland. The partition of the island in the early nineteen-twenties restructured this system but did not dissolve it, and at the level of the system as a whole Northern Ireland is both a contingent and a fully open social world.

The relations of dominance, dependence and inequity are other important themes in the literature on the conflict. The relative powerlessness of one community over against the relative power of the other - as claimed by some, not few in number - has received much attention, although its extent, causes and effects are in dispute. The contribution of the British state to the relations of inequity is also disputed. At this time, some see Britain as external to the conflict, a neutral mediator taking on, at least to some degree, the role of social engineer within Northern Ireland (this last being viewed in a positive light by both the political elites in London and Dublin). Others (very much a minority) deny that British policy in Ireland has ever been benign. Ruane and Todd (1996) hold that the relationships between Protestants, Catholics and the British state were forged initially into a structure of dominance, dependence and inequity. In this

view, the structure changed over time, but it nevertheless at each stage defined the interests and parameters of action of the parties to it.

The socio-cultural and ideological differences that are frequently found in Northern Ireland could not, however, in themselves have produced the oppositional communities or intense communal conflict that are found there. Differences only became conflictual and lasting when they served to differentiate the communities as regards access to resources and power. The source of that structure of dominance and dependence can be found in the manner of Ireland's integration into the English/British state in the sixteenth and seventeenth centuries. This was achieved and secured by an alliance between the British state and loyal settler Protestants. A relation of mutual dependence developed between the British state, that needed Protestant support to secure its own control, and Protestants, who needed British support to maintain their position. To hold Ireland for the Crown, Protestants had to be accorded power in Ireland; thus British dominance over Ireland was further reflected in Protestant dominance within Ireland.

Subsequent political conflict in Ireland was a working out of the logic of this situation. From a British and Protestant point of view, once the structure of dominance had come into being it could not easily be altered; for the alienation of Catholics from the established order was a threat to both dominant parties. The only possibility for change would have been through the removal of Protestant privileges and the admittance of Catholics to equal participation in political power - a policy that was bound to provoke Protestant resistance and in itself offered no guarantee that Catholic loyalty would be gained. As a result, the latter option was only slowly, cautiously and uncertainly embraced by the British government. Catholic pressure, Protestant resistance and British reform became the recurrent elements in the political struggle.

It may thus be argued that this pattern of conflict was reproduced in the newly founded Northern Ireland and that it still exists today. These arrangements - by which the two communities have had very different patterns of economic achievement and access to political power - was stabilised by the British state's presence, even if gradually eroded by British reforming policies. These last have been a response to Catholic and nationalist pressure - from the Irish state as well as Northern Irish Catholics (and latterly the US Administration) - and they increase Protestant insecurity and resistance to change. This structure of dominance, dependence and inequity continues to generate interests that are radically opposed, as well as communal polarisation and power struggles.

Libertarian traditions in Ireland:

Rothbard (1975) notes how libertarian thought in Colonial America:

‘was not saddled with the enormous encumbrances on liberty that faced the English liberals: a pervasive and oppressive feudal land system- which had broken in America on the rock of the vast new land, a drive for proprietary profit, and an American refusal to pay quitrents; an established church hierarchy; a large central state apparatus; and a thoroughly oligarchic polity. Americans suffered from these ailments to some degree, differing from one colony to the next’ⁱⁱ

Conditions in Ulster were even worse than those in England. By the end of the seventeenth century, the conquest of Ulster seemed as complete as in any other part of Ireland, and a different social pattern had been imposed in which ethnic origin, property, religion and political allegiance were closely connected. The new structure was as hierarchical as any form of feudalism and as inflexible as any caste system. In the way in which it distributed land and in the manner in which power was concentrated in a few hands, it provided, so far as the great majority of the province’s inhabitants were concerned, the exact opposite of civil and religious liberties the Protestant constitution was supposed to defend. (Campbell, 1991).

At the top of the social pyramid was the oligarchy of landlords, aristocrats, administrators, high-ranking army officers and Church of Ireland bishops who formed a small (no more than a few thousand in the whole country) but immensely powerful ruling elite.

The Presbyterians, who because of a further influx of settlers from Scotland in the 1690’s and early 1700’s eventually comprised about one third of the province’s population, belonged to an intermediate stratum of Ulster society, neither as wealthy and influential as the Episcopalian landlords, army officers and parsons, nor as submerged and poverty stricken as the Catholics. Half in the Ascendancy because of their Protestantism and half out because of their inferior legal status, they formed a substantial group of the kind that was so obviously missing in the rest of the island - a middle or yeoman class. In the rural areas of Antrim and north Down where most of them were concentrated, the majority were tenant farmers who earned extra money from spinning and weaving linen. Very few actually owned any appreciable amount of land. Their farms were generally small, fifteen or twenty acres, and their living standards usually modest.

At the bottom of the economic and social scale were the Catholics, who comprised about three-quarters of the population of all Ireland and about half the population of the nine counties of Ulster. Landless and voteless, they were barred from education and subject to various other forms of persecution. The great majority were labourers or poor tenant farmers.

A critical point in all of this is that the Protestants of Ulster in the period up to the end of the eighteenth century were not of one view either politically or theologically. The Presbyterians claimed - with good reason - to be the most ardent defenders of freedom in so far as they placed great emphasis on the rights of the individual conscience and the liberty of all men and women to make up their minds on the basis of biblical

teaching rather than the authority of any church. Some went so far as to call themselves republicans, though it must be admitted that they used the word in a rather special sense in line with Calvin's notion of the city-state. During the late seventeenth and early eighteenth centuries, the religious scene in Ulster was deeply affected by controversies, often prolonged and bitter, spilling over from England and Scotland. These debates raised issues of the most profound significance relating to the rights and duties of the citizen, the Church, the Crown and parliament. Certainly, the Presbyterians disapproved of any idea of the state-endowed and state-controlled church, and the concept of a hierarchy of bishops was repugnant to them.

The Test Act of 1704, though not nearly so severe towards the Presbyterians as the Penal Laws were against Catholics required anyone who wished to hold a post under the Crown to take the oath of allegiance and participate in religious services according to the rites of the Established Church. Non-Anglicans generally refused to accept such humiliating conditions and were accordingly debarred from posts of authority under the state. The mercantilist laws passed at Westminster were another cause of discontent, because they discriminated against Irish manufacturers who might compete with British merchants. There was also a series of grievances concerning payment of tithes and the refusal of authorities to accept the validity of Presbyterian marriages. (Campbell, 1991).

It was from among such groups that in the 1790's the United Irishmen, the secessionist movement, drew much support. The United Irishmen movement was a major step forward because not only was it secessionist, it also had as one of its key principles the formation of an alliance between the Dissenters and the Native Irish. Wolfe Tone, a rationalist and leader of the United Irishmen movement, published a pamphlet in 1791 entitled *An Argument on Behalf of the Catholics of Ireland*. Tone began by pointing out that Ireland had all the necessary natural resources to make it prosperous and peaceful. Why then, he asked, was it so poor, backward and oppressed? The country's failure to progress, he suggested, was due largely to the divide-and-rule policy that had been deliberately encouraged for so long. The Irish Volunteers (the predecessors of the United Irishmen), said Tone, had made a profound error in arguing that liberal Protestants on their own could reform parliament. 'No reform is practicable that does not include Catholics', he wrote. If the enormous powers of the government were to be redressed, then the poorest and most oppressed three-quarters of the population must be drawn in. To give Catholics the vote was both morally just and politically expedient.

In Tone's approach, the time was now right for Protestants to cast off their old fears and prejudices. The view, which was widely held by those calling themselves progressive, that Catholics were poor, ignorant and superstitious did not take into account the fact that they lived in subjection - 'absolute poverty' was the phrase he used - for more than a hundred years. As for the claims that Catholics were dominated by their clergy, the bond between people and priests was 'drawn tight by oppression; relaxation would undo it'. In a long paragraph in which he paraphrased Shylock's speech about the persecution of the Jews, he argued that given the right political circumstances, Catholics could be as free and independent as any other people.

Tone concluded his pamphlet by rejecting the old argument that Ireland was too small and backward to have its own government. The Irish people, in his view, were as

justified as anyone else in having 'their own independent existence'. He called for the abolition of 'the odious distinction of Protestant and Presbyterian and Catholic, and for the binding together of the three great sects under the common title of Irishmen'.

Thomas Paine's *Rights of Man* published at the same time, but more universal in its appeal, also had great influence on the Northern Presbyterians. So great was its popularity that Tone described it as 'the Koran of Blefescu'. Paine's *The Age of Reason*, published in 1794, was not so well received in Ireland because of its ridicule of the Bible and its attacks on all forms of revealed religion.

Paine was not the only radical Englishman with close affinities to the United Irishmen. Dr Richard Orice, a Unitarian minister from London and Dr Joseph Priestly from Birmingham, the noted libertarian and chemist were also supporters whose reputation was known throughout Europe.

Two Volunteers from Ulster who were to become leading United Irishmen, were the Reverend William Steel Dickson and William Drennan.

Steel Dickson, who was born in Carnmoney in the heart of dissenting Antrim, was educated locally and at Glasgow University where one of his tutors was the economist Adam Smith. He was licensed to preach as a Presbyterian minister in 1767. At an early stage during his long service at Portaferry on the Ards Peninsula he made plain, in spite of those congregation members who called him a traitor and a papist, that he supported the American colonists in their struggle against British rule. Later, he courted further unpopularity by proclaiming his sympathy for Catholics suffering under the penal laws.

Drennan, a physician, was a capable writer and employed a Swiftian style of language when attacking the Ascendancy, which he described as a 'rooted moral and national evil...the peculiar curse of this country'.ⁱⁱⁱ The land system was 'at best a mitigated feudality, and, at worst, the connexion of planter and slave'.^{iv} Every rotten borough in the kingdom was 'nothing more or less than a feudal castle'.^v Sectarianism was 'tearing to pieces the seamless robe of our Saviour'.^{vi} and the alliance between church and state 'preserved and fructified the abuses of both'.^{vii} The constitution was no more than 'a fig leaf ...to hide away the indolence, timidity and corruption of the country's rulers'.^{viii}

The Whigs in Ireland were rather more reserved in their approach. A campaign, such as that organised by the United Irishmen, with bold national aims was not what Grattan, Flood, Charlemont and the other moderates of the Irish parliament in Dublin wanted. Their objective was partial, not full, freedom for the Irish people. Coming from the ranks of the squirearchy, legal profession and richer traders, they sought a greater say in how the country should be run, but at the same time they feared the spread of real democracy. As Whigs influenced by such men as Edmund Burke, they wished to introduce reforms very slowly and gradually, to lead from the top and above all to avoid revolution.

In addition, the United Irishmen often lacked cohesion. In the eyes of those who were hostile to them, the United Irishmen's propaganda and recruitment methods exacerbated sectional and sectarian tensions in Ulster. By their alliance with 'the lower

orders' and sometimes with the French Jacobins, they not only weakened the mass movement internally, but provoked mass hostility as well.

Most Protestants, moreover, did not come to believe in Tone's analysis and expectations. For them, the United Irishmen were a momentary convergence of diverse social elements, united only in opposition to the immediate threat of oppression. And that threat was soon better met by Protestant institutions, by the Orange Order and then transformed by the new threat from Catholic nationalism. This new danger to the Protestants was best met by co-opting British support, rather than opposing British policy.

What is important in all of this in the present context is that there was a significant undertow of libertarian thinking in Protestant Ireland at this time and that it was also shared by many Catholics. America was to be the immediate beneficiary.

For instance, from the early part of the eighteenth century, Pennsylvania had become the chief focus of attraction for Irish immigrants as fertile soil was abundant there and the political atmosphere was tolerant towards religious dissent. The connexion with Ireland was strong; its founder William Penn from Kinsale, County Cork, and the governor at this time was George Bryan, who was born in Dublin. Benjamin Franklin reckoned that at the outbreak of the American War of Independence one-third of the total population of the state was of Irish descent. The Ulster imprint was marked by the names of local towns, for example, Armagh, Donegal, Letterkenny, Antrim, Fermanagh, Tyrone and Strabane. Philadelphia, a rapidly growing city full of Germans as well as Irish, became the centre of anti-British opinion, and it was there that a compositor from Strabane, John Dunlap, printed the American Declaration of Independence in 1776. The strength of radical Irish influence may be seen in the fact that no fewer than eight of the fifty-eight signatories of that historic document had an Irish background - Thomas McKean (Derry), Matthew Thornton (Limerick), Thomas Lynch (Galway), Edward Rutledge, George Rutledge (Dublin). James McHenry, George Washington's secretary, came from Ballymena, and Charles Thompson, secretary of Congress, from County Derry. It was to Philadelphia, two decades later there also came the United Irishmen leaders, Wolfe Tone, Hamilton Rowan and Thomas Emmet.

The American volunteer army, so badly equipped, but so vigorously in revolutionary spirit, had at its core a group of officers and men, some fresh from Ireland, others long settled in the colony, who - like Patrick Sarsfield two generations earlier - saw themselves fighting for their new homeland, but also settling old scores with Britain. Bigger (1910) refers to these soldiers as 'the wild geese of the North'.^{ix1} The highest ranks in the rebel army included men from the four provinces of Ireland. General Richard Montgomery, who was killed at the siege of Quebec, General Andrew Lewis and Colonel Walker Stewart of the Continental Army, were all from Donegal. General William Irvine, the famous surgeon, came from Enniskillen, Major-General Edward Hand from Offaly, Major-General John O'Sullivan and quartermaster-General Stephen Moylan from Cork, Brigadier-General Richard Butler from Dublin, and most celebrated of all, Admiral John Barry, father of the American navy, from Wexford.

Washington always spoke highly of his Irish troops and to show his appreciation became a member of the Friendly Sons of Saint Patrick. In March 1780, he issued a proclamation stating that the Irish national saint's day should be commemorated as a token of respect 'for a brave and generous people'.

Austrians will recall the references to Brehon Law in Rothbard (1982). Rothbard, in noting that there are many fatal flaws and inconsistencies in the concept of limited, laissez-faire government and in that of the state as being necessary for the creation and development of law makes reference to the following:

'...in ancient Ireland, a society existed for a thousand years until the conquest by Cromwell (where) 'there was no trace of state administered justice'; competing schools of professional jurists interpreted and applied the common body of customary law, with enforcement undertaken by competing and voluntarily supported *tuatha*, or insurance agencies. Furthermore, these customary rules were not haphazard or arbitrary, but consciously rooted in *natural law*, discoverable by man's reason'.^x

This and its implications so far as statehood is concerned has, at critical points, been at the heart of political debate in Ireland about the nature of Irish identity in the last one-hundred-and-twenty years.

For instance, Beckett (1976), on the Unionist side, lays his claim to be both Protestant and Irish in a quite specific way. He wishes to establish that the very identity of Ireland has been shaped by the English presence since the twelfth century, so that it is not possible simply to talk of a country which was conquered and which had in the twentieth century attempted to break away. A major part of his argument is that the Ireland that has engaged in armed struggle has existed as a cultural force only since the end of the nineteenth century. For Beckett, Ireland as a nation is an invention and not an ancient historical reality (which could give rise to an historical title in international law). So it is in the work by the leading Ulster academic on Irish history, published in 1976, after the present 'troubles' had started that one finds a full statement to the effect that for the purposes of international law there was, in the twelfth century, no such place as Ireland:

'In the 12th century, Ireland lay on the very fringe of Europe.... It can hardly be said to have formed any part of the European political system: a European ruler, counting upon possible friends and enemies, felt no need to include in his calculations. Ireland was unregarded because it lacked the political machinery through which it could take corporate action. No king, no council, no assembly could negotiate on Ireland's behalf with a foreign power, make a treaty binding on the whole country or assemble and direct a national army. Yet no country in Europe had had a fairer opportunity of finding its own political unity. During the century-and-a-half before the coming of the Normans, Ireland had been free from external attack. It was a period during which other countries were achieving some measure of national solidarity and building up institutions.... through which an effective central administration could develop. But Irishmen, living apart in a world of their

own,made no attempt to follow this pattern;and Ireland remained,as it had been for centuries,no more than a congeries of independent kingdoms, often at war with one another,under a High King,whose authority when he could assert it at all stretched no further than his right to collect tribute.A common language and a common cultural tradition provided the basis for a sense of national distinctiveness;but there was no tradition of common action;nor any machinery for organising it.Ireland,in fact,was not a state in the contemporary European sense.Had Irishmen possessed the same degree of national solidarity as the Scots had attained,the Norman settlers would have been absorbed or expelled;and Henry's lordship,had he established it at all,would have proved as transient as his suzerainty over Scotland'.^{xi}

In contrast to Beckett, MacNeill (1919)^{xii} was rather more sanguine about the politics of the *tuatha*:

'The Celtic people were divided into a large number of states without any organised superior power.From time to time,however,one or other of these states might acquire a degree of political pre-eminence over a group of neighbouring states,forming a loose federation in which in which it took chief direction of the common affairs.We find the same tendency among the states of ancient Greece'.^{xiii}

In addition,in a chapter of the same book entitled 'Ireland's Golden Age', he elaborated a justification of nationality -very much as a response to arguments offered by the unionists of his time- as something perennial in history.It meant simply that in a people,such as the Greeks, '(resided) the elemental power of transformation....In every intense and distinctive development of a nation,there dwell(t) the actuality or the potentiality of some great gift to the common good of mankind'.^{xiv} He was contemptuous of the 'organisational genius' of feudalism,a culture which,with its charters,statutes,registers and inquisitions has not in four centuries (presumably contemporaneous with Ireland's Golden Age) left no school of note and no literature except 'the melancholy records of anti-national statecraft'. Indeed,MacNeill elaborated a more general criticism of official learning for 'whatever learning there was,was for the most part suborned to the purposes of dominating officialdom'.^{xv}

MacNeill was not intimidated by those who pointed a contrast between the centralised monarchies of Europe and Irish localism in the late mediaeval period .There was, in his view,no sentiment of country in the popular mind or in that of the ruler in the Europe of this time.Such a sentiment might sometimes be found in a delimitation of centralised power:

'but the sentiments which found expression in centralised power were those of fear on the one side and domination on the other;and students who study mediaeval history with a map will quickly apprehend that these two sentiments,fear and domination,shaped the boundaries of country,race, language,nationality.In Ireland,on the other hand,we find the

clear development of the national consciousness, associated with the country to a degree that is not found elsewhere”.^{xvi}

Peden’s (1977) major survey of Brehon Law has also been of much interest to Austrians. He writes in the following terms:

“My survey of the literature indicates that (1) private ownership of property played a crucial and essential role in the legal and social institutions of ancient Irish society; (2) that the Irish law as developed by the professional jurist -the brehons- outside the institutions of the State, was able to evolve an extremely sophisticated and flexible legal response to changing social and cultural conditions while preserving principles of equity and the protection of property rights; (3) that this flexibility and development can be best seen in the development of the legal capacity and rights of women and in the role of the Church in assimilating to native Irish institutions and law; (4) that the English invasion, conquest and colonisation in Ireland resulted in the gradual imposition of English feudal concepts and common law which were incompatible with the principles of Irish law and resulted in the wholesale destruction of the property rights of the Irish Church and the Irish people”^{xvii}

Peden found that Irish law was almost wholly the product of a professional class of jurists called *brithim* or brehons. Originally the Druids and later the *filid* or poets were the keepers of the law, but by historic times jurisprudence was the professional specialisation of the brehons who often were members of hereditary brehonic families and enjoyed a social and legal status just below that of kings. The brehons survived among the native Irish until the very end of the free Irish society in the early 17th century. They were particularly marked for persecution, along with the poets and historians, by the English authorities. The statutes of Kilkenny (1366) specifically forbade the English from resorting to the brehon’s law, but they were still being mentioned in English documents of the early 17th century.

The absence of the function of law-making of the Irish kings may seem anomalous. But Irish kings were not legislators nor were they normally involved in the adjudication of disputes unless requested to do so by the litigants. A king was not a sovereign; he himself could be sued and a special brehon was assigned to hear cases to which the king was a party. He was subject to the law as any other freeman. The Irish polity, the *tuath*, was merely an embryonic state. There was no legislature, no bailiff or police, no public enforcement of justice. In practice, where kings sought to enforce justice, they did so through the system of suretyship which was utilised to guarantee the enforcement of contracts and the decisions of the brehon’s courts. Or they appeared as representatives of the assembly to contract on their behalf with other freemen *tuatha* or churchmen.

Peden also makes the following observation:

‘a fair test of the sophistication of any legal system might be to examine the extent to which women enjoy legal capacity and property rights. By this standard Irish law in the 8th century may have been more sophisticated than English law in the days of Queen Victoria.’

As a footnote to this, it will be recalled that Bethell (1998) in his celebrated study begins his argument by noting that the institution of private property fell into intellectual disrepute in North America and much of Europe over a hundred years ago. The tragedy for Ireland was that it happened a lot earlier: following the destruction of the Brehon law system, title to property became precarious. Expropriation was commonplace.^{xviii}

Proposals for a solution: a review:

Whyte (1990) identifies ten different proposals or approaches that are found in the existing literature with regard to a solution of the Northern Ireland problem. They are as follows:

- the development of integrated education
- a united Ireland by consent
- integration with Great Britain
- an independent Northern Ireland
- power sharing with an Irish dimension

- repartition
- a united Ireland by coercion
- no-hope analysis
- joint authority
- the pursuit of intermediate objectives.

The first item is self-explanatory. The next four relate to constitutional arrangements and presuppose that some kind of compromise is possible. The next three scenarios presuppose that compromise is not possible. The ninth relates to a possible joint operational role by both the British and Irish armies respectively. The last will be detailed later.

With regard to integrated education in Northern Ireland, the libertarian position would be non-committal; integrated education would, of course, be perfectly acceptable for those who wanted it for their children, provided that there was absolutely no compulsion involved and that it was not publicly funded.^{xix} In practice, fundamental difficulties remain. The scholar in Northern Ireland who has done most to document the divisive effects of segregated education is not himself an advocate of integrated education, precisely because of the depth of division which his study has revealed (Murray, 1985). Murray considers that religion is too deeply enmeshed with political and cultural differences for integration to be practicable.

On the united Ireland by consent proposal, it will be observed that those who advocate this approach do so from traditional nationalist or traditional Marxist premises. The problem with putting forward unity as a proposal lies, not in its theoretical desirability, but in the fact that it manifestly does not exist.

A quite different proposal for Northern Ireland is that for total integration with Great Britain. For most of the past twenty-seven years - excepting the periods in which the Belfast Agreement and the Sunningdale Agreements respectively were in operation - Northern Ireland was governed by direct rule from Westminster. This is *de facto integration* but differs from *de jure integration* in being temporary. The argument of the integrationists is that the current temporary arrangements should become permanent, and that Northern Ireland should be governed like any other part of the United Kingdom. They would also foresee great benefits, were the main British parties to organise in Northern Ireland.

This argument is not convincing. Nowhere else in the United Kingdom are communal tensions so severe as they are in Northern Ireland. Nowhere else does one find the lethal mixture of a large minority with a deeply-felt sense of grievance and a narrow majority with justifiable anxieties about what the future may hold.

Experience in other divided societies where *group rights* have been advocated does not suggest that mere changes in the party system can transform the situation. What has

been more common in Europe is the following: institutional changes are brought about with the purpose of promoting equitable treatment of each of the ethnic groups that compose a given society: two good examples of this kind of arrangement are those of the south Tyrol and Corsica. In the south Tyrol, these changes have amounted to institutionalised power-sharing between the German and Italian communities. Italian parties have organised there, as have French parties in Corsica. In neither case, however, have these changes prevented ethnic conflict from spreading. In addition, Spanish parties organise in the Basque country without preventing ethnic conflict there: in this last, the Spanish government has established special institutions there in order to diffuse ethnic tensions. Swiss parties organised in the Bernese Jura without preventing conflict; the special interests of the French Catholic minority were then recognised in the carving out of a new canton. In Belgium, for many years, the three main parties organised across the linguistic divide, but that did not stop tension between Fleming and Walloon from rising in the 1960s. Many in Belgium would argue that if ethnic tensions have largely been diffused, it is because special institutions to safeguard each identity have been developed. The three traditional parties in Belgium have each split into two on linguistic lines, so that improved relations have been accompanied by less electoral integration, not more.

De Jasay (1997) has written with great insight into the whole question of group rights. He notes that from a methodological individualist standpoint statements about group rights and the common good are metaphysical and do not square with a proper understanding of what society is. These statements blatantly deny or at least conceal intragroup differences and conflicts.

From a libertarian perspective, there are serious defects in all arguments relating to collective liberties. This is because collective liberties entail that analogous individual liberties will be pre-empted and dominated by them. In turn, this is of the fact that in the political realm, where collective decisions are made binding in an institutional context, the individual counterpart is necessarily removed. Once a decision has been chosen for the individual and everybody else, he can no longer choose his course of action.

The next two possibilities -no-hope analysis and joint authority- would be unworthy (because all has not yet been tried) and unworkable respectively.

The fourth proposed solution, a UDI arrangement, does not appear particularly feasible. This is because the Northern Ireland economy has been effectively de-industrialised in the last twenty-five years. Sunset industries have not been replaced by sunrise ones. There is massive welfare dependency, an arrangement which, in turn, is dependent upon a large infusion of funds from the British Exchequer, and the state is, very noticeably, the major employer.

The fifth proposed solution -power-sharing with an Irish dimension- has been attempted in both the Sunningdale and Belfast Agreements respectively (the latter will be examined more fully below). The difficulty with this kind of proposal is that any settlement must be proof against boycott by one or other of the northern communities.

One feature of the last four proposals (various forms of constitutional arrangement) that have been briefly considered is that they allow for the assumption that compromise is possible. The first two -a united Ireland and integration with Britain- are based on the assumption that one side or the other in Northern Ireland is not too serious about its national aspirations and can be induced to abandon them. The next two -an independent Northern Ireland or power-sharing-plus-an Irish-dimension- are based on the assumption that both sides in Northern Ireland can be induced to settle for less than their maximum demands. This may well be true of substantial segments of both communities. But as long as important sections of both remain intransigent, it is possible for the conflict to continue indefinitely. The experience of the troubles up to 1995 suggested that a determined minority existed on both sides in Northern Ireland that was incapable of compromise. Since 1995, however, there has been a general cease-fire by almost all the paramilitary organisations; this gives grounds for optimism, but only for a cautious optimism.

If no lasting compromise were to be found possible, given the existing political structures, repartition could become a possibility. (This is the sixth proposal). Rothbard (1994) considered this: in his case he used the word 'decentralisation':

'Decentralisation provides a workable solution for the seemingly insoluble permanent conflict in Northern Ireland. When the British partitioned Ireland in the early 1920's, they agreed to perform a second, more micro-managed partition, but they never carried through on their promise. If the British would conduct a detailed parish-by-parish partition vote in Northern Ireland, most of the population, which has a Catholic majority would probably hive off and join the Republic, including such counties as Tyrone and Fermanagh, southern Down and southern Armagh, for example. The Protestants would likely be left with Belfast, County Antrim, and other areas north of Belfast (i.e. much of county Derry). The major remaining difficulty would be the Catholic enclave of Belfast, but again, an approach to the anarcho-capitalist model could be attained by permitting the purchase of access rights to the enclave.'^{xx}

This suggestion has some appeal to this writer. As is well known, repartition has been successfully applied in other parts of the world. When a portion of the French-speaking minority in the Swiss canton of Berne proved dissatisfied with Bernese rule, a new canton of Jura was carved out for them in a succession of plebiscites in 1974-75. Belgium was divided into Dutch- and French- language regions in 1962 (though even there, the status of Brussels continues to give trouble). After the First World War several international boundaries (German-Danish, German-Polish, Austrian-Yugoslav) were also determined by plebiscite.

These are all areas, however, where the level of conflict was far below the level of conflict operating in Northern Ireland. Other historical precedents exist which are much less reassuring. In India in 1947, Palestine in 1948, Cyprus in 1974 and Yugoslavia in recent years. The economic and psychological costs in these cases have been enormous. The historical record suggests that the bitterness will last for a very long time.

There are great practical difficulties in applying repartition in Northern Ireland. Catholic and Protestants do not live neatly in different parts of the region. While it is true that Catholics are relatively more numerous in the south and west, there are innumerable exceptions. For instance, as noted by Rothbard, 100,000 Catholics live in west Belfast, far from any majority-Catholic area. On the other hand, there are Protestant-majority pockets even in parts of Fermanagh and Tyrone. To draw a new boundary which takes account of this distribution would result in a long and straggling border, with tongues of Catholic territory extending into Protestant areas and vice versa, and probably with detached enclaves as well. One could, for instance, imagine a Catholic west Belfast as a detached enclave of loyalist Ulster with Protestant parts of Fermanagh also as detached enclaves. It would be possible also in this case to envisage a long tongue of Protestant territory extending down from the eastern part of Derry city through west Tyrone. Such borders would be a nightmare to defend, even if, at the theoretical level, an anarcho-capitalist model would suggest an arrangement by which purchase of access rights to a particular enclave could be made available. Many country areas would be cut off from towns on which they currently depend for, among other things, hospitals and second-level schools. Yet to provide a straighter border would mean leaving large numbers of people stranded on what was for them the wrong side.

It is not surprising, then, that repartition has remained very much a minority proposal. True, if compromise were finally to prove impossible, things could reach the point in Northern Ireland where the only alternatives left were repartition and civil war. In that case, repartition would be the lesser evil and would need to be planned for.

The seventh possibility, a united Ireland by coercion, is one possible doomsday scenario. In the event of a British army withdrawal, the situation could degenerate into violence despite the wishes of many, perhaps most of the people involved. Such a situation would strengthen the paramilitaries on both sides and the stage would be set for an apocalyptic pogrom. Fortunately, at the time of writing, all of this does not seem a likely possibility.

The next two possibilities -no-hope analysis and joint authority- are unworthy and unworkable respectively. The first because all approaches towards a solution have not been tried and the second because the army of the Republic of Ireland government would be unacceptable in the loyalist parts of Ulster, just as the British army is unacceptable in the republican parts of Northern Ireland.

The final proposal in the existing literature, the pursuit of intermediate but achievable objectives, is one that must engage libertarians. A useful approach here has been suggested by O'Malley (1983). He suggested that there should not be a search for a solution as such, 'but rather a framework that will accommodate a range of alternative settlements'. Thus, from this viewpoint, there is a need not for solutions but for processes. Moxton-Browne (1983) has also argued that 'given that the Northern Ireland problem is not one, but a cluster of problems' and 'that a remedy addressed to one of them may exacerbate at least one of the others'. For him:

'There is a strong case for trying to create an atmosphere where the problems themselves will change, or become redefined.... To seek a solution to *the*

Northern Ireland problem is to pursue a mirage in the desert: a better ploy would be to irrigate the desert until the landscape looks more inviting'.^{xxi}

The philosophy of proceeding by small steps was put into action by the Anglo-Irish Agreement of 1985 and more recently by the Belfast Agreement. In the earlier agreement, neither party claimed it was a final settlement. Each recognised that further evolution was inevitable. They also disagreed as to what that evolution might be.

The limitations of the method of progress by small stages has, moreover, been demonstrated by both agreements. The trouble is that the method of proceeding by small stages does not make clear what long-term settlement is anticipated. Yet a government's choice of intermediate stages is presumably influenced by its vision of the long-term future of Northern Ireland. If this is not articulated, then peoples' suspicions are aroused, and they will draw the most adverse conclusions about the actions of other parties.

In addition, the policy of advancing by intermediate stages is not a policy on its own. It is bound to be shaped by the policy-makers' view of where they would like to be heading. If they do not have any such view, then they will find by the particular choice of intermediate steps that they have made, they have constrained their options for the future.

All of the existing ten approaches to the Northern Ireland problem thus face serious difficulties. None is anywhere near approaching majority support with the exception of power-sharing with an Irish dimension and in that case much of Unionist support is luke-warm and almost as much is hostile. Just where consensus is most desirable, it often breaks down most completely. The reason for that is that, though Northern Ireland is small, it contains a great variety of social patterns within it. There are places like south Armagh, which are defiantly nationalist. There are places like north Down, which are happily unionist. There are places like Upper Tullagh, where unionists and nationalists intermingle, but without the bitterness that is to be found in some other areas. If any one of these types of places existed on its own, there would be no problem. If the whole Province had been like south Armagh, Northern Ireland would never have been set up as a separate entity. If it had all been like north Down, the IRA would have found no chink from which to operate, constitutional nationalists would long since have despaired of ever convincing such people, and Northern Ireland would probably have been integrated into the rest of the United Kingdom. If it had all been like Upper Tullagh, some compromise could long since have been worked out. But Northern Ireland contains south Armaghs and north Downs and Upper Tullaghs and every conceivable variety of situation in between. Perhaps it is unrealistic to look for a single solution covering the region as a whole. Perhaps the search for a solution in future should envisage the possibility that different arrangements - especially those of a libertarian stamp - will be required, however unpromising the immediate circumstances.

The Belfast Agreement:

A reference to the Belfast Agreement will be allowed. This Agreement has been the most ambitious attempt at social redesign in the entire history of Northern Ireland. The assumptions and premises of its drafters must be of concern to a libertarian audience.

The Belfast Agreement was once famously described as 'Sunningdale for slow learners.'^{xxii} The Sunningdale Agreement of 1973 was the first, and it lasted only eight months. The Belfast Agreement lasted ten weeks, until the Assembly was suspended, although it just might be re-established. The central thrust of both agreements is the same - nationalist acceptance of the present constitutional position of Northern Ireland within the United Kingdom, in return for power sharing within Northern Ireland and links between Northern Ireland and the Irish Republic. The two agreements differ in important points of constitutional and institutional detail. The Belfast Agreement offers a fuller recognition of the right of the people of Northern Ireland to determine their constitutional future. It is much more inclusive of the range of political opinion and supportive of such concepts as equality and human rights. Crucially, it offers something that Sunningdale could not: a complete end to political violence.

The situation has changed profoundly and irreversibly since Sunningdale. The demographic balance of Protestant and Catholic has altered from 63:37 in 1972 to 58:42 in 1991. The nationalist vote has grown from under 20% of the total in the 1969 Stormont elections to nearly 40% in the 1998 Assembly elections. Catholics are a stronger presence in the institutions of state. Substantial differences still remain in the pattern of economic well-being between the two communities, but less than before and comprehensive fair employment legislation is now in place. As noted above, the economy of Northern Ireland has de-industrialised and is now highly dependent on the British Exchequer. Culturally, Northern Ireland has become more integrated into the UK, and the terms of public discourse that once privileged unionists are now more even-handed. Nationalists have a new sense of political capacity and cultural self-confidence; unionists feel vulnerable and are conscious of decline. The Anglo-Irish Agreement of 1985 gave the Republic a role in the affairs of Northern Ireland as of right; Southern nationalism is now more liberal and more pluralist.^{xxiii} Since the late 1970's, the international influence on the conflict has increased: from 1977, US Presidents have played an increasing role in the search for a settlement; the European Union has also had a role. Crucially, Irish republicans have concluded that they cannot achieve their goals by violence and together with other paramilitary organisations on the loyalist side have sought a negotiated settlement.

In terms of its logic, the drafters of the Belfast Agreement attempted to address the conflict at two distinct, though related levels. On the one hand, it was a political deal, an elaborate mechanism for the sharing of power, designed to allow two communities with conflicting interests, aspirations and allegiances to coexist with justice and without violence. On the other hand, it was a framework within which the underlying conditions of conflict could be addressed by some form of transformative social process. These goals divided the participants: unionists had been concerned to secure a deal; nationalists had an open-ended process in mind. The Agreement tried to offer both.

As a political deal, it addressed three aspects of the conflict. First, it addressed the conflict of communal interests - in particular, the interest of Protestants in the union and the interest of Catholics in equitable treatment. Second, it addressed the problem of legitimacy - the fact that to date no political system has been able to win the allegiance of both nationalists and unionists. Third, it addressed the problem of the future - the danger that changes in the demographic and political balance in Northern Ireland would lead to further crises. As a framework for addressing the deeper roots of division, its goal was to generate and channel wide-ranging social changes in order to secure reconciliation within Northern Ireland and on the island of Ireland.

The Agreement identified three dimensions in dispute: the legitimacy of Northern Ireland as a separate political entity, of its union with Britain and of the mode of government there. Nationalist and unionist opinion has been polarised on all three dimensions, in each case for a range of reasons, with nationalism being of decreasing importance as one moves from the legitimacy of the political entity to the legitimacy of the mode of government. The mode of the proposed solution was as follows: a new institutionalisation of legitimacy would be brought about which both nationalists and unionists could accept and which would be conferred with democratic legitimacy in a subsequent referendum (the referendum did take place).

The drafters of the Agreement did not attempt to justify the original partition of Ireland. Instead they dealt with contemporary Northern Ireland. Whatever its provenance, Northern Ireland was seen to have existed for seventy years and this was held to give its people the right to determine their own future. The constitutional status of Northern Ireland was, therefore, to be determined by a majority of its citizens. If they chose to remain part of the United Kingdom, British rule in Northern Ireland would, as a consequence, be fully legitimate.

The Agreement went a considerable way to contain the conflict. It did, however, leave some conflicts of interest untouched or at least side-stepped them - by assigning them to special commissions, such as the de Chatelaine Commission on the de-commissioning of paramilitary weapons.

Clearly, the Agreement was conceived as a framework for more far-reaching long-term change; this last, it was hoped, would slowly modify for the good the causal agent of ethnic division. The radical changes promised in the Agreement - a shared experience of governing, equitable treatment (the word 'equality' was used here), a rights culture, decommissioning of paramilitary weapons, harmonisation and convergence of both parts of the island, multiple and overlapping contacts between different parts of the two islands - was expected to produce changes in attitudes, identities and aspirations.

The politics thus involved a transition from the politics of incivility to the politics of civility. The worm in the apple, of course, was that so many people, especially unionists but also a few uncompromising republicans, remained unpersuaded of the advantages of the Agreement.^{xxiv}

It will be clear to the reader that the Belfast Agreement exemplifies an approach to Northern Ireland very much in terms of the ideology of group rights and the standing of groups. All students of de Jasay will be aware of the very shaky foundation of such rights. In de Jasay's view, an approach that emphasises liberties is much more promising. One is also reminded of various other themes in de Jasay: the consideration of the institutional interests of bureaucracies, the mismatched motivations of voters and politicians in electoral politics and the perverse tendency for politics to produce grossly sub-optimal solutions. As de Jasay would have it, to the extent that politicians appear as the 'abuse of the Thing', they divert suspicion away from the 'Thing itself, which might be good, if it were not 'Abused''.^{xxv} The latter implication underlies the thrust of the contractarian thinking found in the Belfast Agreement, as it does in all other such cases. The argument goes as follows: if only the basic institutions in Northern Ireland, and in particular the social contract there, could be got right, there would be hope for the rest. It remains the case however, in Ireland as elsewhere, that no basic institution chosen collectively can be and remain intrinsically better than collective choice, 'the Thing itself'.

There are, of course, deep ambiguities surrounding the unit of agency for any group, such as the Northern Irish, that are non-unanimous for any reason. De Jasay writes as follows:

‘Collectivity x may be a minority within group u , whose majority may in turn be a minority within the larger grouping v , and so through indefinite steps (Makinson, 1988). There are ‘groups lying uncomfortably between entire peoples and single persons’ (ibid., p.72). The general problem of group identity is what we might call the Russian doll problem: as we unscrew the doll, we find a smaller one inside it that can in turn be unscrewed to reveal a yet smaller doll inside a smaller one, and so on. As the successive dolls get smaller, they may (or may not) show a tendency to be less heterogeneous, to contain fewer smaller dolls. In assigning group rights or imposing group obligations, we have to choose a stopping point, at which we no longer unscrew the doll, in search of smaller, more unanimous ones inside it. But the sole just, morally unassailable stopping point is the very last doll, the unscrewable individual who (unless he is schizophrenic) unanimously agrees with himself about what he wants and what he would give up to get it... minority rights that enable certain group uniformities to be imposed on all its members have (no greater legitimacy) than do ‘majority rights’.

The contrary argument, of course, is that politics is ineradicable. Croce put it thus:

‘Machiavelli discovered the necessity and autonomy of politics; politics which is beyond moral good and evil, which has its own laws against which it is futile to rebel, which cannot be exorcised and banished from the world by holy water’^{xxvi}.

This is the approach adopted by the drafters of the Belfast Agreement who, in their search for the politics of civility, seem to have been influenced, at least in part, by Chantal Mouffe, Karl Schmitt and Michael Oakeshott (however unlikely the connection).

Mouffe (1993) writes as follows:

‘Once we accept the necessity of the political and the impossibility of a world without antagonism, what needs to be envisaged is how it is possible under these conditions to create or maintain a pluralistic democratic order. Such an order is based on the distinction between ‘enemy’ and ‘adversary’. It requires that, within the context of the political community, the opponent should be considered not as an enemy to be destroyed, but as an adversary whose existence is legitimate and must be tolerated’^{xxvii}.

To rediscover just how shaky that position is, however, and how it circumscribes human liberty, it is wise to return to de Jasay:

‘Which group rights, liberties, or both come to be justified by appeal to the common good depends on which group is entitled to *its* common good; is it all humanity, or the state, the nation, the region, the majority, or the ethnic and cultural minorities within it? Nothing supports the supposition that their respective common goods must be compatible and can fit together without conflict and loss. One is strongly reminded of Rousseau’s distinction between the General Will and the ‘particular general will’ it must supersede. The ‘will’

of any kind of minority is a 'particular general will';but each minority is a majority relative to its own minorities,and its will is the General Will relative to the particular general wills of minorities and so on in a regress that need have no end until we decide that it should stop.(An ethnic minority may have no other ethnic minorities within it;but nevertheless will have subgroups of other kinds,differing in class,wealth,education,and so forth,giving rise to divergences of interest),There is no natural stopping point short of the individual,who is indivisible,hence has no minority.

'We are back to the Russian doll problem.How far do you go in unscrewing one doll after another,discovering smaller ones inside each?The common good can be ascribed to one community,or to another within it,or to yet another that partly overlaps with the first -but in the ordinary course of events we cannot ascribe it to each and every one of them at the same time.Scarcity, and the incompatibility of rival values and tempers,prevents it. Communitarianism badly needs to,but cannot resolve this problem....^{,xxviii}

Property Rights,Anarcho-Capitalism and the case of Northern Ireland:

A preliminary consideration of the role of property rights in society -in its most conventional form- must necessarily encompass the following: property rights,by definition, place limits on the actions of individuals and governments;they effect the distribution and use of resources and they allow for the use of sanction to remedy rights violations.The spectrum of rights (or better liberties) that can be lumped under the rubric of property rights is potentially very broad. Again,in the conventional sense,it includes the entire realm of economic liberties and constitutional protections (irrespective of whether or not the constitution is a written one) that have been designed to ensure respect for those liberties.

In addition,and more particularly from a libertarian perspective, it is necessarily the case that property rights form the basis of all rights. This can be proven easily: it is,for example, impossible to enjoy freedom of speech without property rights i.e. if the government owns all the places of assembly.And freedom of the media has no meaning, if the government censors and controls the media by other means, in so far as that is physically possible.Another important point must be added.Given that man is not an abstract entity and since, as Rothbard said, he 'has the right to self-ownership,to the control of his life; then in the real world,he must have the right to sustain his life by grappling with and transforming resources'.^{xxix} It follows that he must have the right to own material goods,otherwise he could not sustain his life. Rothbard also added that 'a man cannot call himself free,if he cannot use what he produces or earns as he likes and,in the same way,an individual does not really have the right to pursue happiness,if he cannot make use of the product of his work to achieve his own objectives'. (Modugno Crocetta,1999).

Above all, the right to private property is the right to remain unmolested by government.

In the past, this has been rather difficult for people in Northern Ireland. There is no good reason to believe that it is becoming any easier in the context of the Blairite managerial state.

So what is to be done?

It is clear that all statist approaches to the social, economic and political problems of Northern Ireland have been proven to have only limited application. They are all deeply flawed. Enough evidence has been presented to indicate that they are not grounded in liberty. That is to say, they do not sufficiently consider liberty as a moral principle; a principle, as Rothbard says, that is '*grounded in the nature of man*'.^{xxx} In all the discussion in Northern Ireland about possible political solutions, there has not been sufficient awareness of liberty as a principle of justice, which must necessarily involve the striving for the abolition of aggressive violence in the affairs of men. Hence, as Rothbard would have it, to be grounded and pursued adequately, the libertarian goal in Northern Ireland as elsewhere, 'must be sought in an overwhelming devotion to justice.....on what may well be a long and rocky road'^{xxxii}.

Rothbard also noted that, in spite of the manifest failures of statist systems worldwide, 'people are so constituted that they are not *interested* in exploiting the defects of an existing system, so long as it seems to be working tolerably well.'^{xxxiii} This is very much the case in Northern Ireland. (It will be recalled that the region has a vast welfarist culture; in addition, industrial projects and many other initiatives are very heavily subsidised).. Thus, it could be argued that a majority in Northern Ireland have a vested interest, in the short term, in supporting or at least putting up with the present system, however short-sighted and unjust that may be.

Therefore, the libertarian role in Northern Ireland must initially be one of advocacy. It must involve the engagement with non-libertarians around the advancement of ad hoc activity, such as united-front activities with conservatives to repeal such things as income tax and, in certain instances, with civil libertarian groups. This is because the war of ideas must first be won. A critical mass of support must initially be achieved.

Lasting change in Northern Ireland will not result from one legislative initiative or another, however significant in implication that legislation may be. Lasting political change will only come when people in Northern Ireland ask radical questions about and determine just what is the purpose of government.

Besides having an activist agenda, a publishing program of research studies and education from a free-market perspective is also necessary for libertarians in Northern Ireland. Such research work might include Rothbardian and de Jassian perspectives on such topics as the following:

- a theory of original acquisition as applied to the Plantation of Ulster

- freedom of speech and property rights
- a consideration of such fundamental principles as these:
 - avoid doing harm
 - when in doubt, abstain
 - apply the presumption against coercion and
 - keep the stakes low
- in all constitutional and political projects.
- legitimate self-defence
- consequentialism in the managerial state
- 'invited coercion' and social engineering in Northern Ireland.

Of the topics mentioned above, the analysis will be confined largely to the last mentioned.

On the theory of original acquisition and the problem of land theft, it will be necessary to recall Rothbard's principle: where the victims are lost in antiquity, the land properly belongs to the non-criminals who are in current possession. This may seem rather trite until one remembers that such an authority as Professor Anthony Carty, the academic lawyer, would deny that, in international law, the unionists have any right to territory in Ulster because theirs' - in his view - has been a failed colonial project.

On the question of freedom of speech, difficulties surrounding the 'marching season' and the rights of members of the Orange Order to march unimpeded could be resolved by advocacy of anarcho-capitalist solutions: let those who wish to march do so in areas (new micro-entities of Rothbardian theory) where people are of a like mind; but not in areas where that is not the case. On this last, the return of the *tuatha* of the Brehon Law tradition as a political phenomenon would be very welcome.

De Jasay (1997) addresses a difficult question in the section of his book *Before Resorting to Politics* called *Inviting Coercion*, that cannot be neglected in a consideration of the present case. The question may be posed as follows: is it necessary, in certain cases, particularly so in such cases as Northern Ireland, for a political entity such as a state to resolve fundamental social and economic failure? Is it legitimate for 'an antecedent political entity' to do some early-stage project management so that a non-co-operative game can be transformed into a co-operative one? In this line of thinking, the upshot is that the state exercising coercion without the prior consent of its subjects may be necessary for Pareto-optimal resource allocation. This argument is usually presented in the context of alleged 'market failure', but of course it has a wider application.

The condition here is that for such coercion to be legitimate, it must be invited by the prospective coeree. And given that we are not working at an individual level, that invitation must necessarily be hypothetical. But hypothetical invitations have no better

standing in political theory than hypothetical contracts. All of this clearly comes from social contract theory through which de Jasay has already driven a coach and horses.

In order for such coercion to be above moral suspicion, evidence must be available that proves that the prospective coerced do actually invite it. The way to test for this could be as follows: let the agents of the state stand back and not proffer political solutions, by legislation, regulation and taxation. Let the state's tasks be minimal. Jasay concluded the argument as follows:

'It is only when politically imposed and publicly financed solutions are not readily available that those concerned can tell whether voluntary 'grass-roots solutions would or would not work, and the necessary conventions to stabilise them would or would not emerge soon enough; and only if they do not is there an ethically defensible case for calling in the state to help'^{xxxiii}.

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ⁱ Sources:Northern Ireland Social Attitudes Survey,1989,1991,1993-1996;Northern Ireland Election Survey,1998..

ⁱⁱ *Conceived in Liberty*, ch 33.

ⁱⁱⁱ William Drennan, *A Letter to the Rt.Hon.William Pitt* (Dublin,1799) p.22.

^{iv} William Drennan, *A Philosophical Essay on the Moral and Political State of Ireland* (London,1797).

^v William Drennan, *Letter to Orelanna or an Irish Helot* (Dublin,1785),p.8

^{vi} William Drennan, *Letter to the Rt Hon.William Pitt* (Dblin,1799),p.38.

^{vii} William Drennan, *Letter to Orellana or an Irish Helot* (Dublin,1785),p.8.

^{viii} *Ibid*,p.19.

^{ix} Biggar went on to say: ‘It was the Ulster emigrants,many of them with hearts of steel,who supplied Washington with his best troops...The whole truth is that the greater part of the revolutionary army was Irish or of Irish descent,all smarting under the bitter wrongs their people had suffered under English rule in Ireland...the wicked cruelty of one man,Donegall,did more than anything else to drive the English government out of America’.

^x See Rothbard’s *The Ethics of Liberty*,ch.23,p178

^{xi} J.C.Beckett *The Anglo Irish Tradition* pp.17-18.Beckett’s case does not constitute a precedent.Even the great Scottish philosopher David Hume seems to have shared the general prejudice about the relative ‘barbarousness’ of the Irish:they,like some other people in the British Isles (such as Cromwell and the English parliament of Hume’s time) lacked *industry, knowledge and humanity* (important Humean terms).Hume reported as follows: ‘the modern Irish are often thought of as sunk in sloth,ignorance and barbarism’, *The History of England Vol 5*,pp.335,425.Hume did,of course,refer to the oppressive treatment of Ireland by England in contrast to the more liberal treatment extended by France to her colonies. David Hume,*That Politics be Reduced to a Science*,1741.

^{xii} Professor MacNeill was professor of Irish History at the National University of Ireland during the first two decades of the twentieth century.

^{xiii} *Ibid*.,pp26-27.

^{xiv} *Ibid*.,pp226-227.MacNeill,incidentally,does have his critics.He is viewed by them as one who saw Celtic civilisation through a romantic haze,distinct from the main republican tradition of Wolfe Tone.

^{xv} *Ibid*.,p240 MacNeill,unfortunately,was unfamiliar with such as the literature of Provence,the world of the Troubadours.

^{xvi} *Ibidem*.,pp.246-247.

^{xvii} Peden, *Property Rigts in Celtic Irish Law*, p.82.is

^{xviii} In his chapter on the Irish Famine in his book *The Noblest Triumph*,Bethell said it all: ‘(Property) ownership in Ireland was often a trophy of politics,not the result of free exchange’.

^{xix} On the matter of state controlled education,Halcombe has written about this with the most insight: ‘The challenge to the state is to make institutionally approved answers state approved answers,and the best way to accomplish this is to take over educational institutions and make them sate-run enterprises.By nationalising the education industry and making teachers state employees,teachers naturally have an incentive to side in favour of the state whenever there is a question.Teachers become tools of state propaganda,and often explicitly so.’ *RAE v10 n.1*

^{xx} Rothbard *Nations by Consent:Decomposing the Nation State*.

^{xxi} Moxton-Browne *Nation, Class and Creed in Northern Ireland*, p.178.

^{xxii} A reference to the cross-community assembly in Northern Ireland set up by the British in 1974.

^{xxiii} The existence of a booming economy in the Irish Republic also helps: the South is presently the largest exporter of computer software in the world,ahead even of California.

^{xxiv} The decommissioning issue,specifically the decommissioning of IRA weaponry,did in fact bring about the suspension of the Executive and Assembly;both of which were central to the Belfast Agreement.

^{xxv} The reference here is to Burke which de Jasay quotes in the opening of his book *Against Politics*

*'In vain you tel me that Artificial
Government is good,but that I fall
out only with the Abuse.The Thing,
the Thing itself is the Abuse!'*

xxvi Quoted in I.Berlin, The Originality of Machiavelli,in *Against the Current*.

xxvii Mouffe, *The Return of the Political*, p.4.

xxviii De Jasay, *Against Politics*, pp229-230.

xxix Rothbard, *For a New Liberty*.

xxx Rothbard, *The Ethics of Liberty*, p.258.

xxxi Rothbard, *The Ethics of Liberty*, p.258.

xxxii Rothbard, *The Ethics of Liberty*,p267.

xxxiii De Jasay, *Before Resorting to Politics* 5-18,5-19.