1
The Nature of Human Rights

HUMAN RIGHTS AS MORAL RIGHTS

Human rights are those moral rights which are owed to each man or woman by every man or woman solely by reason of being human. Human rights are distinguished from other moral rights in possessing the following inherent characteristics:

(i) universality
(ii) individuality
(iii) paramountcy
(iv) practicability
(v) enforceability

(i) Universality

Maurice Cranston in *What are Human Rights?* has asserted that human rights differ from other moral rights 'in being the rights of all people at all times and in all situations'.[1] But it is only in terms of our present conceptions and values that we can ascribe moral rights to past persons and peoples who lack any notion of rights. What has to be recognized is that the concept of universal human rights embodies values which not only conflict with other strongly held values and conceptions, but which are incompatible with, and subversive of, certain forms of society and social institutions. Professor Milne has seen the paradoxical implications of this in the United Nations Universal Declaration of Human Rights which 'professes to be a statement of human rights, irrespective of the particular social and political order under which they happen to live', but which 'goes on to enumerate a detailed list of rights which presupposes the values and institutions of a certain kind of social and political order, namely liberal democratic,

industrial society.'[2] Professor Milne's solution to the paradox is to scrap the Universal Declaration and to substitute his own list of six basic human rights which all men owe to their fellows – to life, to respect for one's dignity as a person, to be dealt with honestly, to have one's interests fairly considered, to be free from arbitrary coercion and interference, to have one's distress relieved. These basic rights are to be understood and implemented in ways appropriate to the values and institutions of the particular community concerned; though he notes that certain values and institutions are incompatible with any conception of universal moral rights. Only on this basis, Professor Milne argues, can the idea of human rights be given significance for Third World and Communist states – a significance to which these states are entitled, since it *is* possible for the members of such societies to live together as fellow human beings. Nevertheless he accepts that there is a case for requiring all nations to be constitutional states, subject to the rule of law and with legal safeguards against racial discrimination.[3]

The qualifications which Professor Milne introduces are highly significant, since they mean that Governments are not entitled to apply human rights principles as they think fit, according to the needs and requirements of their own system, where this involves discrimination or disregard for constitutional legality and the rule of law. For it is precisely these charges which figure most prominently in the indictment of the sorely pressed Human Rights organizations of the Communist states against their own governments. It is misleading to present the Universal Declaration of Human Rights as though it imposed alien Western liberal democratic values on the rest of the international community. On the contrary these other countries by their voluntary ratification of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights helped bring these Covenants into force. The Soviet Union by its adoption at the Helsinki Conference in 1975 of a Declaration proclaiming 'the right of the individual to know and act upon his rights and duties in this field' (of human rights and fundamental freedoms), helped promote the creation of Helsinki Monitor groups in the USSR. What is striking is that it is precisely the civil and political rights, characterized by Professor Milne as narrowly liberal democratic, which arouse the greatest enthusiasm among the peoples of the Communist states when given the opportunity to express themselves, as in Czechoslovakia in 1968 and Poland in 1980-81. The civil and political rights set out in the

Universal Declaration and the International Covenant are rights which have secured such universal support and approval that the Governments of virtually all states feel compelled to give at least nominal adherence. Far from being rights relevant only to the minority of the world's peoples who live in liberal democratic states, they are seen as of universal concern. Rights, such as the right to freedom of expression and association, are not only vital to the concept of living as full human beings one with another, but are necessary means for securing and protecting all other human rights. The universal character of a human right is to be determined by whether all men require it if they are to live as full human beings, not by whether its realization and enjoyment is compatible with the continued existence of particular forms of society, whether past or present.

The concept of human rights emerged out of the much earlier conception of natural right, which initially was no more than a derivative element in the medieval Christian doctrine of Natural Law. Natural rights were the moral expectations men had that others should behave towards them in accordance with the requirements of Natural Law. At the beginning of the seventeenth century Hugo Grotius gave a new force and direction to the concept by producing a strong theory of natural right as a foundation for political discourse and political understanding, instead of as a mere derivative of Natural Law. This found expression, as Richard Tuck has shown, in both a conservative and a radical theory of natural rights: the former emphasizing the alienation of rights inherent in the formation of civil society (as in Hobbes), the latter the right of resistance to tyranny (as in Locke).[4] More importantly, for our purpose, the radical theory of natural rights was taken up in the seventeenth century by a political movement, the Levellers, and used as the basis for a populist political programme. Natural rights as the rights which all men were entitled to have vouchsafed to them became, in the political market place of the Army Debates, claims against established authority, established institutions and established government. Rainborough's bold assertion 'that the poorest he that is in England hath a life to live, as the greatest he',[5] was seen by the Puritan Army leaders as a challenge to their political authority and to their social position as property holders. Whatever one may think of the force of the particular rights claims of the Levellers, (which embraced economic and social, as well as political and civil, rights), one has to recognize that universal claims made in the name of all are often in practice claims on behalf of the existing

deprived against more fortunate minorities to surrender their privileges. Claims to universal rights must be seen as claims to which one can establish a universal entitlement, rather than claims which have universal support. Universal rights necessarily preclude any discrimination or exclusion, whether on grounds of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.[6]

The criterion of universality is questioned by Raymond Plant on the grounds that a strict application would rule out all claimants other than the right to life, since all other rights are rights necessarily limited to some people only, while if loosely applied to all those rights which men are capable of exercising, or are liable to find themselves needing to exercise, the bounds are limitless. But it is misleading to argue, as Plant does, that the rights to a fair trial, to leave one's country, to freedom of religion and assembly, are rights 'restricted to those who belong to the particular group in question'.[7] The right to a fair trial is not a right 'necessarily' limited to those persons who are on trial at any particular point in time, but is a positive expression of the liberty right of all men not to be subject at any time to arbitrary arrest, imprisonment or punishment. The right to leave and return to one's country is not a right vested in those who wish to do so, but a particular aspect of the right of all members of a political community to freedom of movement, i.e. a right not to be hindered or prevented by others from moving freely. The right to freedom of worship is a right of all men not to be interfered with in the practice of their Faith or their non-Faith,[8] not a right appertaining only to existing members of particular religious groups. Rights to act, like the right to peaceful assembly, are by their very nature entitlements individuals may or may not wish or choose to exercise. Plant appears to confuse those having a right with those wishing or choosing to exercise it.

(ii) Individuality

The concept of rights is grounded in and derives much of its support and colouring from the acceptance of man as a free individual, a being of dignity and worth, endowed with reason and conscience, and capable of moral choice and free activity. Where that value is not accepted there is no place for rights as of right, but only for rights as of concession or of custom.[9] Human rights are the rights of individuals, to meet the needs and purposes of individuals. But, since some needs and purposes can only be met by individuals acting in concert, it is

necessary to recognize the right of individuals to associate together and the right of the associations so formed to operate freely under the law. Association, however, always involves some restriction of members' freedom of action in relation to each other, restriction which commonly finds expression in rules and through organizational structure. There is thus a potential built-in tension both between individual members of the association and between members and the association as constituted. The problems which arise in this connection are discussed in Chapter 5.

While human rights are the rights of individuals they are first and foremost rights against society rather than against other individuals, since it is society's responsibility to ensure that the rights concerned are given legal force and upheld against all persons and bodies within the community. In modern states this responsibility devolves directly on the Government, imposing in its stead a strict and special obligation not itself to infringe or neglect the rights it has a responsibility to secure. How far other persons and bodies have obligations in respect to rights implementation will depend on the nature of the right concerned. Rights to non-interference are rights against all persons and bodies, whereas rights to economic and social benefits are likely to be, primarily at least, rights against the state. One of the major concerns in the following chapters is to substantiate precisely what obligations are imposed on which particular persons and bodies with respect to specific human rights.

(iii) Paramountcy

Maurice Cranston writes of a human right being 'something of which no one can be deprived without a grave affront to justice. There are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are supremely sacred.' He admits, however, the difficulty of providing a definitive criterion of paramountcy.[10] One answer has been provided by Professor Dworkin in the distinction he draws between weak and strong moral rights; where the latter are those rights which it would be wrong for a Government to override simply on the grounds that the exercise of the right is not in the public interest, or is contrary to the majority will. Such strong moral rights are paramount in that individuals are, where necessary, entitled to exercise them in spite of law to the contrary. That is not to say that strong rights may never be legally overriden, or the law enforced against those asserting strong rights; but that such

overriding action can be justified only if one of the following conditions is met:

(i) the strong right asserted conflicts with laws which the citizen would have a right to have enacted if they were not already law, (e.g. right to protection against personal physical assault);
(ii) the strong right is legally overriden by the government in time of emergency, where a 'clear and present danger' of great magnitude can be objectively established: a danger which can be overcome only if that right is put in cold storage for the duration of the emergency, (with guarantees of its resuscitation);
(iii) a particular claimed instance can be shown to lie outside the limits of the established strong rights area, because:
  (a) the values protected by the established strong right are not really at stake in the marginal case, or at stake only in an attenuated form; or
  (b) if the right is defined to include the marginal case then some competing strong right would be abridged in some serious respect; or
  (c) if the right is defined to include the marginal case the extra cost to society would not be simply incremental but of such a magnitude as to justify whatever restrictions are involved.[11]

Within the context of a country such as the United States the concept of strong rights may be used, as Dworkin does, to extend the present area of individual freedom to the maximum consistent with avoiding collapse of society. Such a maximum, however, could never be an international minimum. On the contrary paramount universal human rights are those minimum strong moral rights of which no man or woman may be deprived by Government or society whether by arbitrary fiat or by law. In these terms it will be possible to provide for local variations in the form in which particular minimum area rights are established in societies differing widely in culture and in structure, and to allow for local action designed to secure domestic rights space beyond the minimum encapsulated in the universal human right.

But can the concept of paramountcy be applied to economic and social rights or are they, as Cranston suggests, excluded as rights of a different degree of moral urgency?[12] Cranston himself, unwittingly, provides strong grounds for rejecting this conclusion in his acceptance 'of a paramount duty to relieve great distress'.[13] There can be no doubt

that amongst the poor, especially the poor majority in the Third World, great distress derives primarily from economic and social, rather than from civil and political, causes.

This approach finds clear expression in Raymond Plant's assertion that one can derive a paramountcy criterion from the concept of basic human needs which must be met if men are to pursue any of the possible variety of goals embodied in any universalizable moral code. Plant identifies two basic human needs which all societies ought to acknowledge a moral responsibility to provide: the need for survival and the need for moral autonomy. From these he deduces fundamental social needs in the areas of health, education and welfare, giving rise to minimum rights to services and benefits which societies are under a strict obligation to fulfil. Plant recognizes that the relevant minimum will vary from society to society and from one period to another. He charts the more crucial difficulties inherent in establishing valid criteria of need, having regard both to the different perceptions of welfare recipients and welfare workers, the different conceptions of social needs to be found in different moral and social theories, and conflicting ideas as to how far such needs should be met by society or by individuals themselves.[14] Though Plant succeeds, in my view, in establishing a substantial case for the principle of basic human welfare rights grounded in needs, the crucial question remains of whether it is possible to establish specific economic and social rights claims capable of being given effect to in legislation. More particularly this approach fails to come to grips with the question of the rights of those in poor countries which lack the resources for minimum rights provision, a problem discussed in Chapter 8.

(iv) Practicability

The assertion that one cannot have a right to the impossible has been all too readily used as an argument against the whole area of social and economic rights. Human rights claims are, of course, never made to what is physically impossible (to live forever), or to what must necessarily be restricted to a very small minority (to have one's own personal and exclusive private physician); nor are they made in terms of what is now enjoyable by only a small minority of the world's population. Thus, the poor of the Third World claim the right to an adequate livelihood, not the right to live as well as the average man of the Western world. What cannot be accepted in the name of practicability is that the most that men can have a right to is what their

own civil society, as at present organized, can provide for all its inhabitants; since even to meet the minimum basic needs of the population may require substantial changes in its established institutions and practices, involving restrictions on the privileges and powers of existing elites. Practicability has rather to be established in terms of the probability that proposed changes will help meet the basic economic and social needs of the poor with the minimum disturbance of existing rights and customary ways.

Practicability is an issue with all human rights, not just economic and social rights, since resources are always required either for their realization or their protection. But whereas with economic and social rights the resources devoted to buildings, equipment and personnel are required to provide a direct service, in the case of traditional liberty rights they are required to protect persons against interference with their rights. Once adequate resources have been provided economic and social rights can be secured, but this is not true of liberty rights, since no matter what the level of resources devoted to protection there will always be transgressions of rights to non-interference. Indeed in the modern world of urban sprawl and growth, the forces of law and order are less and less able to provide an adequate measure of protection of the public from violence and crime.

The right to free primary education for all is a clearly defined right which each parent has for his or her own children – a right which can be 'cashed in' at the local school. The right to protection from physical violence, on the other hand, is much less specific both in the sense of being much less clearly defined, and in the sense of not being afforded to each person as an individual ration. In consequence while it might be argued that nobody in New York City or Chicago is effectively protected against muggers and hoodlums on the streets, this would not in itself appear to justify an assertion that the authorities were denying citizens their rights of protection. Indeed it is not readily apparent what general level of protection can reasonably be expected or required of such authorities. Even if one could establish the level and form of protection which authorities were required to provide, based on the minimum protection entitlements of a citizen, it would still not be possible for each and every individual citizen to require that he be secured that specified degree of protection. Still less would it be possible actually to secure him from any invasion of his protection rights. The notion of a right to a minimum level of protection for each citizen, unlike the right to a minimum level of education for each child,

does not lend itself to expression in terms of individual entitlements, but only in terms of social obligations to provide a level of service to the community based on average requirements. It must, therefore, be accepted that the right to protection underpinning all liberty rights is neither a right which can be fully secured nor a right vested in individuals.

(v) Enforceability

The issue of international enforceability of human rights is a much more complex one than it appears to Maurice Cranston, who writes 'There is nothing essentially difficult about transforming political and civil rights into positive rights. All that is needed is an international court with real powers of enforcement.'[15] International Courts are not capable of carrying out the role which Cranston would assign to them. Even the European Court of Justice of the European Economic Community (EEC) relies on member states complying with its rulings in cases involving alleged breaches of obligations under the EEC Treaty. If a member state defies a Court ruling there is no provision under the EEC Treaty, as there is under the European Coal and Steel Community Treaty,[16] for the use of sanctions against the delinquent. When an EEC Member State fails to comply, the matter 'passes outside the realm of the law and becomes political,' resolvable only by concerted political action on the part of the other Governments to secure a political compromise.[17] While there is no provision under the Community Treaties for the expulsion of a defaulting member state it would be politically possible for all the other members to do so. This would, however, require such a major revision of the whole Community structure and cause such major dislocations, that it is difficult to envisage it being even contemplated. The ultimate safeguard against it being necessary is the liberal democratic nature of the states concerned and their adherence to the principle of the Rule of Law.

The European Court, however, deals only marginally with human rights within Community States, since such states as Members of the Council of Europe are bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms.[18] The Convention provides for a European Commission and a European Court of Human Rights to ensure the implementation of the rights specified. Since the provisions of the European Convention constitute the only effective working system for the legal enforcement of human

rights, an examination of its workings will help us to gain an understanding of the problems of human rights enforcement by international bodies.

The first point to note is that the European Convention, which came into force in 1953, has legal force only for those members of the Council of Europe who ratify it.[19] Thus France, though one of the original signatories in 1950, did not ratify the Convention until 1974 and was therefore not subject to its implementation and enforcement provisions for twenty years. Secondly it is open to any contracting Party to denounce the Convention, as Greece did in 1969 (returning again in 1974 after the fall of the military regime). Thirdly it is left to each Party to decide whether to permit individual complaints by another Party (Article 25) and whether to accept the decisions of the European Court of Human Rights as binding (Article 46). Five states (Cyprus, Greece, Liechtenstein, Malta and Turkey) have not agreed to the former and three (Liechtenstein, Malta and Turkey) to the latter. The Committee of Ministers of the Council of Europe is finally responsible for ensuring that judgements of the Court are given effect to, but its only sanction is that of expulsion from the Council of Europe. The Committee was in the process of considering a proposal to expel Greece in 1969, when Greece got in first by withdrawing from the Council and denouncing the Convention. What this example reveals is the emptiness of this ultimate sanction against an intransigent violating Party, since gross violations of human rights by the military regime continued unabated.

The conclusion which must be drawn is that there is no way in which human rights violations can be redressed by an international court against a State Party determined to brook no interference. Even in a tightly-knit and integrated body like the European Economic Community it may take years to get a European Court decision applied by a resistant member state.[20] It is of the very nature of international legal instruments, as distinct from domestic ones, that the obligations they impose have to be voluntarily assumed by the parties concerned; in particular provisions relating to complaints by individuals against their own government and to the determination and enforcement of breaches of the substantive obligations assumed. As we have seen, even if the provisions of the International Covenant on Civil and Political Rights (ICPR) were brought in line with those of the European Convention on Human Rights, it would still be open to any United Nations member state not to permit individual applications and

not to be bound by judicial decisions. That is not to say that a strengthening of the enforcement provisions of United Nations International Covenants is not to be desired, but only to stress that such a strengthening would not, in itself, bring about substantial reductions in human rights violations in violating states. Human rights enforcement is essentially a matter of domestic politics rather than of international law.

HUMAN RIGHTS AS LEGAL RIGHTS

Human rights as enforceable domestic legal rights require a domestic legal system based on the rule of law, affording protection to individuals in the enjoyment of rights under the law with no punishment except for established breaches of the law. What has to be stressed, however, is that the concept of human rights as the legal rights to which all men are entitled under domestic law has a crucial bearing on what constitutes a legal system based on the rule of law.[21] Thus the requirement that 'Everyone shall have the right to recognition everywhere as a person before the law' (ICPR Article 16 – not subject to derogation), has to be understood in terms of Article 21 which requires that all the rights under that Covenant be recognized without distinction or discrimination with regard to 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. The enforcement of publicly promulgated law by properly constituted and impartial courts is unacceptable if the laws being given effect to are themselves in conflict with human rights requirements.

The rule of law is the antithesis of arbitrary government and is embodied in ICPR (Article 15 – not subject to derogation) as the right not to be held guilty of any criminal offence on account of any act not embodied in law. It is incompatible with this requirement that a statute should be so loosely or ambiguously phrased as to give the political authorities unrestricted discretionary powers. The members of every state have an unqualified right to know what they are not permitted to do and : ght not to be left to the doubtful mercies and whims of officials entrusted with the determination of criminality under the rule of licence masquerading as law.

A second requirement of the rule of law is that no one should be subject to detention except under procedures which provide for a fair

trial before a public court. Although this right may be derogated 'in time of public emergency which threatens the life of the nation' (ICCPR Article 4.1),[22] the very notion of derogation is incompatible with the permanent retention by the state of an arbitrary power to imprison without trial those persons whom the authorities wish to put quietly out of the way. The security of every citizen is at risk if any citizen is subjected to arbitrary confinement without due process of law.

The characteristics of a fair trial are readily established. Each accused person is entitled to:

presumption of innocence
information as to the alleged offence under known and established law
public trial without undue delay
right to legal assistance and time to prepare defence
right to examine witnesses
right not to be compelled to testify against oneself
right not to be compelled to confess guilt.

These requirements can be justified in two ways. In the first place it can be argued that the denial of any one of them would seriously weaken the chances of establishing beyond all reasonable doubt whether an accused was guilty or not guilty, and in particular, markedly increase the possibility of an innocent person being wrongfully convicted. Secondly the existence of these fair trial entitlements is something each one of us would wish for ourselves if we were accused of a criminal offence, whether rightfully or wrongfully, but particularly if wrongfully. The requirements which bear most directly and substantially on the liberty and security of the person are the right to a presumption of innocence, the right to be brought to trial without undue delay, the right not to be compelled to testify against oneself and the right not to be forced to confess one's guilt.

With regard to a presumption of innocence the crucial requirement is that the Court should not be predisposed to assume that accused persons are guilty persons. A presumption of guilt undermines the whole concept of a fair trial. Any one of us would be appalled and horrified at the nightmare prospect of being 'tried' as an 'already-guilty' person. Though 'undue delay' is subject to a variety of interpretations and practical applications the principle itself is readily

understood, since in the hands of an unscrupulous government detention before trial may readily become detention without trial. Detention before trial is justified only to the extent that time is required to prepare the prosecution case and arrange for a trial to be held. It must not become a substitute for, or preliminary form of, punishment. Unduly long detention before trial is at its most objectionable where it is used by detention authorities to put physical or psychological pressure on a prisoner to extract a confession from him. This procedure was the central feature underlying the Soviet show trials of the nineteen-thirties – a feature which the Soviet prosecutors were understandably concerned to conceal.[23]

The right of the accused not to be compelled to testify against himself is perhaps less obviously an essential requirement of a fair trial; since it might be thought that no innocent man would have reason to fear testifying. Historically the right not to testify against oneself has been strongly associated with the right not to be subject to torture or other pressure in order to secure confession of guilt. Such practices are indefensible and undefended – no political society admits to the use of torture. Universal condemnation of the practice and universal denial of its use by practitioner states serves to substantiate the fundamental nature of the right of the accused not to be physically or psychologically forced to confess. What is less clear is whether one may claim a fundamental right of the accused to refuse to answer incriminating questions or to go into the dock. The former right may be claimable by all witnesses and not just the accused, but the latter by the accused only. In its weaker but more extensive form the claimed right provides protection for witnesses against having to make a forced choice between answering an incriminating question which may lead to prosecution, or to prosecution for refusing to answer the question. Since experience shows that only in an ideal, and therefore unrealizable, legal world would an innocent witness run no risk of prosecution and conviction, the right not to answer incriminating questions serves as an additional protection for innocent witnesses including the defendant; though at the expense of also affording protection to guilty defendants and witnesses guilty of other indictable offences.

A fair trial will only be secured if those who work the system are committed to such a conception and permitted to give effect to it. Its most fundamental requirement is the existence of an independent judiciary and an independent legal profession. If judges and counsel

are cyphers of the state, or of some ruling party or *junta*, trials, especially political trials, will be farces moving along rehearsed lines to predetermined finales. Even where judges and counsel are not cyphers they may be subject to pressure or intimidation of such an order or character as to pervert the course of justice. While all states claim to have an independent judiciary, the validity of a claim in any particular state may readily be tested by checking to see how many judgements in cases involving fundamental human rights have been made contrary to the wishes of the prosecution, and what has happened to judges handing down adverse judgements. Both the innocent accused and the guilty unable to subvert the cause of justice would wish to be tried before independent judges not in the hands or pockets of the state; while the present rulers who fix trials and the present judges who oblige them would themselves stand in special need of a fair trial and fair judges if they were ousted from power and tried for their former alleged offences. What is seriously open to question, however, is whether not only the Communist states but other one-party regimes could permit fair trials before independent judges of persons accused of political offences, without putting the future of the political system concerned at serious risk.

Those found guilty of a criminal offence after trial are sentenced to punishment, which in the more serious cases commonly takes the form of imprisonment. While imprisonment necessarily involves a serious loss of personal liberty it does not permit the prisoner to be treated as a rightless person. Though standards and forms of treatment are bound to vary markedly from state to state, there are certain minimum standards which states are morally required to uphold. In the first instance they must never as a matter of deliberate policy seek to subject prisoners, or some categories of prisoner, to cruel, inhuman, or degrading treatment or punishment,[24] or to living conditions or forms of forced labour which undermine their health, their sanity or their personality. The most cruel and sadistic killer, if not executed for committing a capital offence, has the right not to be subjected to punishments as morally depraved as those he had himself inflicted on his victims. To fail to abide by this moral requirement is to reduce society to the level it condemns and seeks to eradicate, to give vent to the most primitive passions for revenge which organized society exists to restrain and replace, and to coarsen and corrupt those state officials whose task it is to inflict such punishment.

Governments have an obligation to take all reasonable steps to

ensure that prison officials do not abuse their position to exploit, humiliate, or inflict pain or injury on prisoners. Given the closed form of prison society and the nature of the power relationship, there is always a substantial risk of serious and extensive violations of human rights of security of the person, resulting from aggressive action either by prison staff themselves or from prison staff failing to prevent aggressive action by one prisoner on another. Prisoners sentenced to punishment by the Courts for an offence have a fundamental right not to be subject to further infliction of pain or injury either by the state authorities or other persons: no body or person can have a legal or moral right to inflict such an additional penalty or suffering. To condone such action is to deny the legal principles which lie at the basis of the modern state.

Where fundamental human rights are not enforced in any state those so denied are entitled to take action to secure these rights for themselves, provided that in so doing they do not violate the rights of others. I am entitled to refuse to comply with legal restrictions or legal obligations in clear conflict with fundamental human rights requirements. The right to seek to enforce my rights against a wilfully defaulting state should be seen both as a crucial ingredient of what constitutes a fundamental human right and as a measure by which to determine whether any claimed moral right should be accorded fundamental human right status. It is in this spirit that the Preamble of the Universal Declaration of Human Rights boldly declaims: 'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.'[25]