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Refugees and their Human Rights

Guy S. Goodwin-Gill
Senior Research Fellow,
All Souls College, University of Oxford.

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Refugee Studies Centre
Queen Elizabeth House
University of Oxford
21 St. Giles
Oxford OX1 3LA
United Kingdom

Tel +44 (0)1865 270722
Fax +44 (0)1865 270721
E-mail: rsc@qeh.ox.ac.uk
Web: www.rsc.ox.ac.uk

The Barbara Harrell-Bond Lecture

‘Refugees and their human rights’

Guy S. Goodwin-Gill

Senior Research Fellow, All Souls College
Examination Schools, University of Oxford
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1. INTRODUCTION

Sir Stephen Sedley, giving the Annual Legal Action Group Lecture in London last week, noted that judges of the administrative court had made over 800 emergency orders for interim payment of benefit to destitute asylum seekers, and that every week about 60 more such orders had to be made. ‘It is thanks to the safety net of the Human Rights Act,’ he said, ‘and perhaps also to the judiciary’s unwillingness to pass by on the other side, that these people are not starving in the streets.’

In France, *Le Figaro* reported on 8 November that, since the closing of the Sangatte centre, the numbers of unaccompanied children taken into care are rising – from 200 or so in 2001, to 525 in 2002, and again over 500 this year.

On the other side of the globe, the Australian Government has just ‘excised’ another chunk of the lucky country and seen off a boat apparently carrying Turkish Kurd asylum seekers.

On the border with Venezuela border, the BBC reports that thousands of Colombians are stranded, refugees from fighting between the government, leftist guerrilla groups, and right-wing paramilitaries.

Meanwhile in the United Kingdom, 25% of initial decisions on refugee status by the Home Office are upset on appeals, rising to 35% in the case of Zimbabweans and Somalis.

It was certainly easier to protect refugees in the days of assumptions – when everyone leaving Communist Eastern Europe was assumed to be voting with their feet.

It was not so hard, either, when refugees in distant corners of the globe fled proxy wars or the other side’s client regimes, at least so long as they mostly remained in the camps we funded at the basic level.

But the death of ideology has exposed the shakiness of our humanitarian foundations and the structural weakness of the institutions, national and international, which we had constructed with other agendas in mind. Today, the assumptions go the other way.

Perhaps governments and officials deserve some sympathy in their efforts to frame a policy and practice for the 21st Century. Perhaps announcements of a ‘New Vision for Refugees’ should be welcomed, not seen as cynical, self-serving attempts to divert attention from local ineptitude and to circumvent or avoid law and obligation.

Perhaps indeed, but I rather think not. Where refugees and asylum seekers are concerned, human rights and the rule of law do not appear to be the order of the day.

And so what I want to try to do tonight is to show why, at the level of the individual refugee and asylum seeker, we need a more radical, rights- and protection-oriented approach, and to show how this can serve the ends of government, at least if government is genuinely concerned to fulfil its international obligations in good faith. I will do this by looking at two areas which have attracted recent attention in the United Kingdom, and in which human rights can and ought to influence policy and practice. These are, first, the treatment of asylum seekers; and second, the interpretation and application of the refugee definition – the criteria by which we determine whether to grant protection.

Let me start, however, with a number of general propositions familiar to every student of international law, of human rights, and beyond.

2. GENERAL PROPOSITIONS

My first proposition is that every State has the duty to protect the human rights of everyone within its territory and subject to its jurisdiction.

At the treaty level, this basic obligation is nicely illustrated by Article 2(1) of the International Covenant on Civil and Political Rights.¹ As the International Court of Justice

¹ ‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

also pointed out over thirty years ago, the rules concerning the basic rights of the human person are *erga omnes* obligations, as a matter of customary international law.²

My second proposition is that every State is obliged to ensure that its laws and policies, adopted in an area within its sovereign competence, are nevertheless compatible with its general obligations under international law.

It is a variation on the first, but reminds us that, even on matters traditionally considered to fall within domestic jurisdiction, and even in times of national emergency, the State must abide by its international obligations.

My third proposition is that every State is bound to fulfil its international legal obligations in good faith.

It is linked to the first two. The principle *pacta sunt servanda* requires the State to fulfil in good faith the obligations which it has accepted under treaty, or by which it is bound under customary international law, and to refrain from conduct intended to frustrate their object and purpose.

These propositions have concrete implications. As the European Court of Human Rights remarked in the *Soering* case, ‘the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards *practical and effective*...’³

The challenge for governments, international lawyers, and refugee advocates is precisely that: to make the safeguards practical and effective.

² *Barcelona Traction Case*, [1970] ICJ Reports, paras. 33, 34.

³ *Soering v. United Kingdom* [1989] 11 EHRR 439, para. 87.

3. HUMAN RIGHTS, THE 1951 CONVENTION, REFUGEES AND ASYLUM SEEKERS

3.1. *Ad hoc* Committee

The modern chapter of the story of the refugee's human rights begins in the late 1940s, as the United Nations turned its attention to what should replace the International Refugee Organization, set up just after the Second World War. It found part of the answer in a 'new', initially non-operational agency, the Office of the United Nations High Commissioner for Refugees. It found another part in the idea of a new international treaty regime, in what became the 1951 Convention relating to the Status of Refugees.

Drafting this treaty began in 1950 and finished with a conference of plenipotentiaries in Geneva in July the following year. The times were uncertain, but also propitious. *Uncertain*, because of the Cold War and questions of peace and security, and also because of the highly politicised environment in which refugees and migrants found themselves.

Propitious, because a substantial number of States nevertheless thought it right to revise what had been accomplished since the 1920s, and to extend the protection due to refugees; *propitious* also, because the UN had just adopted the Universal Declaration of Human Rights. Not the least of these rights was set out in Article 14(1) – the right of everyone to seek and to enjoy asylum from persecution, while the Declaration also based itself on recognition of the inherent dignity and worth of every human being, and the right of everyone to recognition as a person before the law.

Indeed, as the Convention drafting process began, the French delegate called for a 'fresh start... in connexion with refugees... in the spirit of the Universal Declaration of Human Rights'. Sir Leslie Brass, the UK Representative, saw no need to specify that it applied also to refugees, since 'by its universal character, the Declaration applied to all human groups without exception...'

3.2. 1951 Conference of Plenipotentiaries

When it came to defining a refugee, however, the drafters were in something of a quandary – whether to list the known refugee groups, much as previous treaties had done; or whether to go for a general definition and attempt to set down, at a certain level of abstraction, what was then thought to be the essence of the refugee experience.

Within certain limits of time and space, the latter prevailed, with States agreeing that the refugee in international law was someone outside their own country, who had a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The sense of the refugee as one whose rights were at risk of serious violation was clear. Through the concept of persecution and its linkage to the emerging concept of non-discrimination, the Convention definition locked the refugee firmly into the human rights spectrum.

Yet the Convention refugee definition is also a child of its time, reflecting the displacements of the 1920s, the flight from fascism, the persecution of the Jews and other religious and ethnic minorities under nazism, and the civic re-engineering then in full flow across Eastern Europe.

As Arthur Helton once put it, the Convention refugee definition is about two concepts, group membership and belief; seen another way, it is about protection against the persecution of difference and the persecution of opinion, and against the raising of irrelevant distinctions into justifications for the egregious violation of human rights.

Certainly, the immediate post-war response to the refugee experience combined humanitarianism and politics, but there was equally a gathering understanding of the refugee as someone who was part of an international problem, who was to be protected by the international community; and who was, indeed, an emerging rights-holder.

Rights, as such, are not mentioned very often in the 1951 Convention, but they were very much in the minds of the drafters. They frequently referred to the Universal Declaration and

ensured its mention in the preamble. The formal scheme of the Convention, however, remains one of *obligations between States*. The refugee is a beneficiary, beholden to the State, with a status to which certain standards of treatment and certain guarantees attach.

A number of key obligations nevertheless rapidly made the transition into the doctrine and into the developing and strengthening discourse of individual rights; among them, the right not to be sent back to persecution; the right not to be expelled save for the most serious reasons; and the right, within certain limits, not to be penalized for illegal entry.

Just as the idea of rights readily attached itself to these specific statements of inter-State obligation, so it was not long before it began also to attach to the *status* of a refugee, and to and in the process of claiming to be a refugee. How else, after all, could a State confidently fulfil its obligations, but through adopting a *process*, and thus also *due process*, for the examination of claims?

4. TREATMENT OF REFUGEES AND ASYLUM SEEKERS

But I am getting ahead of myself, and there is a preliminary question to be addressed. What is due, as a matter of international human rights law, not to the recognized refugee as yet, but to the *asylum seeker*?

The asylum seeker has no formal place in the 1951 Convention, but in the practice of States, he or she is indeed recognized as enjoying a measure of presumptive protection. Thus, the benefit of *non-refoulement* is extended also to the claimant for asylum, pending a final decision on the merits of the claim.

But how is the asylum seeker to be *treated* during that interim stage? Faced with the silence of the 1951 Convention, the answer must be found in broader principles.

4.1. Section 55 of the Nationality, Immigration and Asylum Act 2002

Section 55 of the United Kingdom's Nationality, Immigration and Asylum Act 2002 requires the Secretary of State *to refuse support* to an asylum seeker if not satisfied that the claim was made as soon as reasonably practicable after the claimant's arrival in the United Kingdom. The burden is on the applicant to show entitlement, and there is no appeal against refusal: s. 55(10). There are certain 'savings', however, in the case of children, and where the provision of support is 'necessary for the purpose of avoiding a breach of a person's rights under the Human Rights Act': s. 55(5)(a).

In February 2003, Collins J found (in the cases of *Q and others*) that the effect of section 55 was that a considerable number of asylum seekers would be left destitute without means of support.⁴ In addition, the decision-making procedure was flawed, failing in particular to take account of individual circumstances. Although the State has no duty to provide a home, perhaps even no duty to provide any form of social security, asylum seekers in the United Kingdom are also forbidden to work and so cannot provide for themselves. If there was a 'real risk' of inhuman or degrading treatment, he said, then Article 3 ECHR⁵⁰ would be engaged.

The Court of Appeal agreed that the section 55 process was neither fair, nor fairly operated, and rejected the Secretary of State's appeals.⁵ However, it thought that section 55 could be properly implemented.⁶ As a matter of principle, therefore, it accepted that denial of support was permissible. In addition, it held that the 'real risk' test of degradation was *not* the appropriate test in the context of assistance, although it might be in the case of removal to a country in circumstances where the removing State was no longer in a position to influence events.⁷

⁴ *Q and Others v. Secretary of State for the Home Department* [2003] EWHC 195 (Admin)

⁵ *Q and Others v. Secretary of State for the Home Department* [2004] QB 36.

⁶ *Ibid.*, paras. 69-70, 83-96.

⁷ *Ibid.*, paras. 61-3: 'It is not unlawful for the Secretary of State to decline to provide support unless and until it is clear that charitable support has not been provided and the individual is incapable of fending for himself.' Whether this approach is consistent with the substantive position on humiliating treatment adopted by the European Court of Human Rights in *Pretty v. United Kingdom* is debatable; see further below. See also *The*

In the still more recent case of *Anufrijeva*, the Court of Appeal was concerned with an alleged failure to provide benefits or services.⁸ It was claimed that this was due to maladministration, and that the consequences was a breach of Article 8 ECHR50. Article 8 is about the right to live one's personal life without unjustified interference, the right to personal integrity, to personal autonomy. The European Court of Human Rights has found that treatment not falling within Article 3 may yet breach Article 8, where there are sufficiently adverse effects on physical and moral integrity; see the Court's judgment in *Bensaid v. United Kingdom*.⁹

The Court of Appeal recognized that the State's obligation will vary with the circumstances. In cases where Article 8 imposes a positive obligation, it will have two aspects: (1) to require the introduction of a legislative or administrative scheme to protect the right to respect for private and family life; and (2) to require the scheme to be operated competently so as to achieve its aim.¹⁰

'There is a stage at which the dictates of humanity require the State to intervene to prevent any person within its territory suffering dire consequences as a result of deprivation of sustenance. If support is necessary to prevent any person in this country reaching the point of Article 3 degradation, then that support must be provided.'¹¹

However, the Court did not take up the opportunity offered by Article 8:

Queen on the Application of S and Others v. Secretary of State for the Home Department [2003] EWHC 1941 (Admin); [2003] EWCA Civ 1285, para. 10, upholding the higher threshold.

⁸ *Anufrijeva and Another v. Southwark London Borough Council* [2004] 2 WLR 603; that each of the claimants was also an asylum seekers was a shared feature, but not critical in any case.

⁹ *Bensaid v. United Kingdom* [2001] 33 EHRR 205.

¹⁰ *Anufrijeva*, para. 16.

¹¹ *Ibid.*, para. 35.

‘We find it hard to conceive... of a situation in which the predicament of an individual will be such that Article 8 requires him to be provided with welfare support, where his predicament is not sufficiently severe to engage Article 3.’¹²

Here, we see the Court applying the Human Rights Act. It does not step beyond the realm of European Convention rights, to draw either on general principles or on specific obligations accepted in treaties, such as the International Covenant on Civil and Political Rights. So what has happened to the notions of individual dignity and worth? Is it because, not having been ‘transformed’ or incorporated into UK law, they must remain outside the door?

The 800 orders for support made by the Courts show how, when received into national law, human rights can help to control the policies and mitigate the consequences of government action. However, many of us will surely feel that the threshold for positive action – degradation – is set too high. This is particularly so if we recall that the asylum seeker has been intentionally located in an environment in which he or she is denied the opportunity to become even moderately self-sufficient, and in which there is a very good chance that the decision in their case is likely to be wrong.

Work, gainful employment, is central to human dignity.¹³ Asylum seekers are denied this opportunity, even as the State denies support commensurate with human dignity and awaits their degradation before it grudgingly (and doubtless with a fanfare of negative publicity from the tabloids) accepts a responsibility.

As the European Court of Human Rights said in *Pretty v. United Kingdom*:

‘Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity...

¹² Ibid., para. 43.

¹³ See the decision of the Supreme Court of Appeal of South Africa in *Minister of Home Affairs v. Watchenuka* Case No. 10/2003, 28 November 2003: ‘the freedom to engage in productive work... is indeed an important component of human dignity’ (para. 27).

it may be characterised as degrading and also fall within the prohibition of Article 3.’¹⁴

This paragraph has been repeatedly invoked by the Court of Appeal in the judgments to which I have referred, and yet its implications for policy and for the treatment of individual asylum seekers seem to have made little impression. Perhaps one problem is with Article 3 itself. Its non-derogable character, generally high threshold of application and ‘negative obligation’ formulation make it correspondingly difficult material to use as a basis for the construction of positive duties. But unless the difficulty and the challenge are met, destitution and humiliation will too often be the fate of many of those who seek protection among us.

Let me now turn to the second area in which the influence of human rights law and doctrine should be felt, namely, in the interpretation and application of the refugee definition.

5. INTERPRETATION OF REFUGEE CRITERIA

5.1 Sepet & Bulbul

The case of *Sepet & Bulbul*, decided by the House of Lords earlier this year, involved applications for asylum by Turkish citizens, members of the Kurdish minority, who objected to serving in the Turkish military.¹⁵ What I say draws on my own involvement and on the reports I provided on behalf of one of the appellants.

In the event, the claimants lost. Why was that? In leading judgments by Lord Bingham and Lord Hoffmann, the Court relied on three findings in particular. First, the treatment feared by the claimants, even if severe enough to amount to persecution, was not ‘caused’ by their belief, but by their refusal to obey a law of general application. Secondly, there was no ‘core human right’ called conscientious objection to military service which could be shown to be violated. Thirdly, in Lord Hoffmann’s view, freedom of conscience ends where manifestation of conscience begins.

¹⁴ *Pretty v. United Kingdom* [2002] 35 EHRR 1, para. 52.

¹⁵ *Sepet and Bulbul v. Secretary of State for the Home Department* [2003] 1 WLR 856.

5.1.1. *The causation question*

In the judgment of Lord Bingham, when deciding whether a person would be persecuted for a Convention reason, the *real reason* had to be assessed. Such reason was the reason operating in the mind of the persecutor, and treatment was not persecutory if it was meted out to all and was not discriminatory. In his view, the applicants were not being persecuted for their political opinions, since it was clear that anyone refusing to perform military service would be treated in the same way, whatever his personal grounds for doing so.¹⁶

Lord Hoffmann took a similar view:

‘If the applicants refuse to serve, the state is entitled to punish them, not for their political opinions but for failing to enlist. Their political opinions may be the reason why they refuse to serve but they are not the reason why they will be punished... [I]mposing a punishment for failing to comply with a universal obligation of this kind is not persecution.’¹⁷

This approach to causation is simplistic, I suggest, and rather too detached from common sense. It fails to acknowledge the relevance in this context of failing to take account of relevant difference, a point cogently made over forty years ago:

‘Since each religion or belief makes different demands on its followers, a mechanical approach of the principle of equality which does not take into account the various demands will often lead to injustice and in some cases even to discrimination.’¹⁸

¹⁶ Ibid., 871-2, para. 22.

¹⁷ Ibid., p. 873, para. 27. This rather recalls the words of Anatole France: ‘The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread’: *The Red Lily* (1894).

¹⁸ United Nations, ‘Study of Discrimination in the Matter of Religious Rights and Practices’, UN doc. E/CN.4/Sub.2/300/Rev.1 (1960), 15.

In the matter of human rights, matters of conscience (beliefs sincerely held in the exercise of this freedom) are matters of *relevant difference*, otherwise why protect freedom of conscience as a fundamental human right not subject to derogation, even in time of national emergency?

Which brings me to the second ground for decision, that there is no human right, no core entitlement, called ‘conscientious objection to military service’.

5.1.2. No right to conscientious objection

If persecution, by definition, must involve the violation of a ‘core entitlement’, of a fundamental human right, rather than just any old human right, then we had better be absolutely sure about what we are looking for, and how to recognize it when we find it.

Given the amount of academic attention paid to the Convention over the last 20 or so years, it is not surprising that glosses on the meaning of words and the intention of the drafters have often come to exercise a disproportionate influence on interpretation and application. Throwaway lines have a certain attraction, seeming to anchor a difficult and unattributed concept, like persecution, in something more comprehensible and closer to home, like fundamental human rights and non-discrimination.

But the analogies can take over the discourse, and run the danger of anchoring us in intellectual concrete, distancing us from harm and risk of harm experienced at the individual, personal level.

Let us look a little more closely at the idea that persecution is inseparable from the concept of discrimination; and further, that it should be defined, essentially, as a violation of one or more of the core entitlements, the fundamental human rights, recognized in international law.

In *Sepet*, the House of Lords accepted that ‘there could be no persecution for Convention reasons without discriminatory infringement of a recognized human right’.¹⁹ The Court

¹⁹ Ibid., 863-4, para. 9.

consequently fell to examining whether the treatment feared by the applicants would indeed infringe a recognized human right. The answer it gave was, ‘No’, because the right it wanted and failed to find was the human right to conscientious objection to military service. It ignored the ‘relevant difference’ to which the exercise of freedom of conscience may give rise, and to which I have just referred.

A considerable body of material was submitted to the Court to show the evolution of State practice in support of such a right, but the Court was impressed more by the lack of formal recognition and by the fact that key human rights instruments expressly maintained that the prohibition of ‘forced or compulsory labour’ should *not* include either military service or substitute service. What the Court failed to note was that this formulation leaves open the possibility that (permissible) military service may still infringe human rights other than the prohibition on forced labour.

For example, it is by no means inconceivable that the conditions of compulsory military service might violate the prohibition of inhuman or degrading treatment; or indeed, as the European Committee of Social Rights recently found, that the conditions of alternative service, because of their excessive character, amounted to a disproportionate restriction on ‘the right of the worker to earn his living in an occupation freely entered upon’, contrary to the European Social Charter.²⁰

The confusion of the Court arises from the perceived need to establish that the right of conscientious objection to military service exists and is recognized as a fundamental human right or ‘core entitlement’, *before* it can form the basis for a refugee claim and a well-founded fear of persecution within the meaning of the 1951 Convention.

This is incorrect and is not required by the terms of the 1951 Convention or impliedly by reference to its object and purpose. The right to freedom of conscience is the central right at issue, and it is freedom of conscience which is violated in the public political sphere when a person is compelled to do military service contrary to their sincerely held belief. That violation may take many forms, for example, from physical compulsion to penalties for non-

²⁰ Complaint No. 8/2000 (The Quaker Council for European Affairs v. Greece, decision on the merits, 25 April 2001); Council of Europe, European Social Charter, European Committee of Social Rights, *Conclusions XVI-1*, Volume 1, July 2001–June 2002.

compliance of varying severity. Whether the treatment amounts to persecution within the meaning of the Convention will depend on a number of factors, including the availability of alternative service and the frequency and extent of punishment.

5.1.3. The freedom of conscience issue

Just as the right to freedom of expression ensures the protection of opinions from right to left, so the right to freedom of conscience protects beliefs and the manifestation of belief.

However, this simple point got lost again in the hunt for just one specific manifestation, namely, the ‘lesser’ right of objection to military service, and in pragmatic and utilitarian arguments about the relative value of punishment.

For Lord Hoffmann, what counted was the fact that the ‘absolute’ right to freedom of conscience is qualified at the point where it is made ‘manifest’, whereupon it may be limited so far as ‘necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others’. In his view, ‘The framers of the covenants appear to have believed... that public safety was a legitimate reason for not allowing a religion or belief to be manifested by refusal to do military service.’²¹

I regret that the limits of Lord Hoffmann’s freedom of conscience appear to be determined by the internal dimensions of each of our heads. In his sense, freedom of conscience means the freedom merely to believe and to be silent; not to ‘manifest’, not to act, not to react, not to refuse to act when commanded, but passively and quietly to submit.

This is a conception of conscience, I suggest, which has already been rejected by history. The state demands something of us. We examine our conscience and we say, ‘No. So far, but no further.’ We do not put the match to the powder, but we will not be constrained to act against our conscience. Will we, as sincere believers, be refugees? The answer is in the hands of the State, and in how it treats us. If we are persecuted, then we are persecuted for a Convention reason, for we have put our personal limit on the authority of the State, as our freedom of conscience entitles us.

²¹ *Sepet and Bulbul* [2003] 1 WLR 856, 877-8, para. 46.

Moreover, neither Lord Hoffmann's view of conscience nor his and Lord Bingham's view of causation are consistent with the Court's earlier finding that refugee status can indeed be accorded to one who refused military service if such service might require him to commit atrocities or gross human rights abuses, *or* where refusal to serve would earn grossly excessive or disproportionate punishment.

How, as a matter of logic, can grossly excessive or disproportionate punishment turn non-Convention persecution into Convention persecution? It cannot. Even if 'disproportionate punishment' is presumed to be discriminatory, still the question remains, on what Convention ground? The degree of punishment may be evidence of persecution, but the link to the Convention must lie somewhere else. And that can only be through the political opinion reflected in the exercise of freedom of conscience.

6. CONCLUSIONS

I am conscious that there are many questions relating to refugees and their human rights that I have not been able to address. *Why*, if at all, are refugee's human rights different from (not better than) those of other victims of human rights violations, or of other displaced persons? How do we handle our 'dissatisfaction' with the Convention's limited criteria, in the face of egregious human rights violations? Why did the drafters keep rein on the scope of protection? Was it because the Convention was not only about refugees, but also about sovereignty, control and community identity?

It is not that the government cannot deal more efficiently and more effectively with the demands made by asylum seekers. The capacity is there, as is the knowledge of what it takes and what it needs to make a greater number of better decisions at first instance. It is this combination of capacity (resources) and knowledge which is the foundation of responsibility.

The government is 'responsible' for the misrepresentation and misreporting in the tabloid media, not because it is to blame (though it may be...) and not necessarily because of its own conduct. It is 'responsible' because what is happening takes place in the public political sphere in relation to a subject-matter over which it claims authority, that is, the control of immigration, the determination of refugee status, the fulfilment of this country's international

obligations, and the grant of asylum and protection. Given its claim to authority in the field, it becomes responsible for truth in the debate, and therefore for the failure to counter falsehood; just as it is responsible if its scheme for the implementation of international obligations is not competently operated.

Taking on international obligations involves assuming the (continuing) responsibility to ensure that those obligations are fulfilled. That responsibility attaches to the State and hence to each and every succeeding government until either the responsibility is exhausted (the job is done), or otherwise brought to an end. But it is the nature of international law and the human condition that certain obligations are always with us – obligations *erga omnes*, obligations of good faith, obligations in the matter of human rights; and for the present, obligations towards refugees and asylum seekers.

Tonight, I have attempted to show that the House of Lords decision in *Sepet and Bulbul* is logically incoherent, in and of itself. Lord Hoffmann's freedom of conscience, I suggest, is a pale simulacrum of that which was in the minds of those who drafted the Universal Declaration, the European Convention, the International Covenant. It is a poor, empty shadow of a right, which augurs not at all well for either those in search of refuge or, indeed, any among us who would at any moment put a limit on the authority of government.

I have also attempted to show, against the flow of jurisprudence, that the present practice of denying support to asylum seekers while simultaneously denying them all lawful opportunity to maintain themselves offends their dignity and worth as human beings. It violates their human rights, even before it reaches the level of personal degradation which the Court of Appeal has identified as the threshold of responsibility.

Perhaps it is churlish to expect the courts, in these still early days of the Human Rights Act, to take a stronger stand; like refugees and asylum seekers, they too have their bad press days and are all too often targeted by ministers and officials for fulfilling their constitutional duty. Perhaps it is understandable that at this time the courts will proceed carefully, keeping themselves fully within the limitations of the Human Rights Act and leaving aside all that international human rights doctrine that argues a more expansive approach and insists that value be attached to individual dignity and worth.

Nevertheless, I am led to the conclusion that though we have a Human Rights Act, we have not yet succeeded in integrating the notion of human rights into our system of government. Laws are not drafted, policies are not drawn up, which *begin* from a human rights perspective; there is a long way still to go.

Had I had more time, I would have attempted to show that a country such as the United Kingdom, which has accepted specific obligations towards refugees and which is equally bound in the matter of human rights by both the rules of general international law and of treaty, is also required as a matter of good faith to ensure the effective implementation of its obligations within its national system. In refugee and asylum matters, we are still far from that goal. We need to see the refugee issue depoliticised. We need an autonomous agency or board which will decide applications for asylum promptly and efficiently, on the basis of authoritative and up-to-date information that is uncorrupted by media driven policy.

The 1951 Refugee Convention may not provide a seamless regime for the protection of those in need and the provision of solutions, but its essentials are hardly outdated. Persecuting societies are still with us, in the genocide of Rwanda, the ethnic cleansing of Bosnia and Kosovo, the practices of the Taliban, the systemic violence of the Mugabe regime, the targeting of children, the persistent violation of women's rights.

As human beings, we are capable of understanding, and need to understand, the experience of persecution as the story of individual lives. This is what the Convention definition invites us to do, even as bureaucracies seek to curb individual rights and to dispose of those seeking asylum indifferently, without differentiation, by categories and groups – white list, black list, non-suspensive appeals, someone else's responsibility.

But life is not written so simply. It is complex, not linear, not black and white, neither all wood nor all trees. And, because of that, we have learned, and come to place trust in *process* and the *rule of law* and the values we consider intrinsic to the human condition; and which we try to make real and to protect by calling them human rights.

Only when we begin to take seriously the human rights of refugees and asylum seekers, I suggest, will we begin to understand our own, and to see the measure by which they too need protection.