

The dark side of human rights¹

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In his *Reflections on the revolution in France* Edmund Burke asks

What is the use of discussing a man's abstract right to food or medicine? The question is upon the method of procuring and administering them. In that deliberation I shall always advise to call in the aid of the farmer and the physician rather than the professor of metaphysics.²

Burke's question is sharp. What is the point of having a right? More specifically what is the point of having an abstract right, unless you also have a way of securing whatever it is that you have a right to? Why should we prize natural or abstract rights if there is no way of ensuring their delivery? And if we need to secure their delivery, are not 'the farmer and the physician' not merely of greater use than abstract or natural rights, but also of greater use than positive rights to claim food or medicine? For a hungry person, positive and justiciable rights to food are to be sure better than abstract rights that are not justiciable: but those who know how to grow, harvest, store and cook food are more useful, and having the food is better still. When we are ill, positive and justiciable rights to health care are to be sure better than abstract rights that are not justiciable: but skilled doctors and nurses are more useful, and receiving their is care better still.

In a way it is surprising to find Burke discussing abstract rights to food or health care, for these presumed rights came to full prominence only in the late twentieth century. They are commonly called welfare rights, and contrasted with liberty rights. This, I think, is a misnomer. The salient feature of these rights is not that they contribute to the welfare of the recipient (although they are likely to do so), but that they are rights to goods or services. If there are to be rights to goods or services, those goods and services must be provided, and

¹ This is a revised version of the *Martin Wight Lecture* given at the London School of Economics on 14 October 2004. I am grateful for a number of helpful comments at and following the lecture, especially from Conor Gearty, Nick Rengger and Chris Brown.

² Edmund Burke, *Reflections on the revolution in France*, Conor Cruise O'Brien, ed. (London: Penguin Books, 1984), pp. 151–2.

more specifically provided by *someone*—for example, by the farmer and the physician.

Most of the abstract rights against which Burke campaigned were the rights proclaimed in the *Declaration of the Rights of Man and of the Citizen* of 1789 (*Declaration of 1789*). They are what we now call liberty rights. The short list in Article 2 of the *Declaration* states succinctly 'the natural rights of man, which must not be prevented ... are freedom, property, security and resistance to oppression'.³ Needless to say, the right to property is not to be understood as a right to some amount of property, but as a right to security of tenure of property: it too is a liberty right, not a right to any goods or services.⁴ Much of the *Declaration of 1789* is concerned with the rights to process needed to make liberty rights justiciable: rights to the rule of law, to habeas corpus, to what we would now call accountable public administration. The rights of the *Declaration of 1789* are rights against *all* others and *all* institutions. Liberty rights are universal—and so are the corresponding obligations. They are compromised if *any* others are exempt from those counterpart obligations. If anyone may infringe my rights to freedom, property and security, or to resist oppression, I have only incomplete and blemished rights of these sorts.

On closer consideration, matters have turned out to be rather more complicated. The institutions for securing and enforcing liberty rights require an allocation of certain obligations to specified others rather than to all others. First-order obligations to respect liberty rights must be universal, but second-order obligations to ensure that everyone respects liberty rights must be allocated. There is no effective rule of law without law enforcement, and law enforcement needs law enforcers who are assigned specific tasks; there is no effective accountability of public administration without institutions that allocate the tasks and responsibilities and hold specified office-holders to account. Nevertheless, the asymmetry between abstract liberty rights and abstract rights to goods and services is convincing: we can know who violates a liberty right without any allocation of obligations, but we cannot tell who violates a right to goods or services unless obligations have been allocated.

This well-known point has not impeded the rise and rise of an international human rights culture that is replete with claims about abstract rights to goods and services, now seen as universal human rights, but often muddled or vague, or both, about the allocation of the obligations without which these rights not merely cannot be met, but remain undefined. The cornucopia of universal human rights includes both liberty rights⁵ and rights to goods and services, and

³ *Declaration of the Rights of Man and of the Citizen*, 1789, <http://www.magnacartaplus.org/french-rights/1789.htm>

⁴ Note also Article 17 of the *Declaration of 1789*: 'Property, being an inviolable and sacred right, no one may be deprived of it; unless public necessity, legally investigated, clearly requires it, and just and prior compensation has been paid'

⁵ Set out in the *UN International Covenant on Civil and Political Rights*, 1966 (CCPR). This Covenant also 'recognizes' various rights that are not liberty rights. See <http://www.magnacartaplus.org/uno-docs/covenant.htm>.

specifically rights to food and rights to health care. The right to food is proclaimed in Article 11 of the 1966 *International Covenant on Economic, Social and Cultural Rights* (CESCR), which asserts ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’⁶ (the *continuous improvement* is a nice touch!). Article 11 of CESCR has been adopted as a guiding principle of the Food and Agriculture Organisation (FAO), which has made its mission ‘food security for all’.⁷ The right to health (to *health*, not just to *health care*: another nice touch!) is proclaimed in Article 12 of the CESCR, which recognizes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.⁸ Article 12 has been adopted as the guiding principle of the World Health Organisation (WHO).⁹

There is an interesting difference between Articles 11 and 12 of CESCR. The right to food is viewed as a right to *adequate food*, not to the *best attainable food*; the right to health is viewed as a right to the *highest attainable standard ... of health*, and not as a *right to adequate health*. One can see why the drafters of the *Covenant* may have shrunk from proclaiming a *right to adequate health*, but in qualifying this right as a *right to the highest attainable standard of health* many questions were begged. Is this right only a right to the standard of health that a person can attain with locally available and affordable treatment—however meagre that may be? Or is it a right to the highest standard available globally—however expensive that may be? The first is disappointingly minimal, and the latter barely coherent (how can everyone have a right to the best?). And what is required of the farmer, the physician and others who actually have to provide food and health care? Uncertainties of this sort are unavoidable unless the obligations that correspond to rights to goods and services are well specified.

Norms, aspirations and cynicism

Does any of this matter? Perhaps we should view the Declarations and Covenants that promulgate human rights as setting out noble aspirations, which are helpful to articulate and bear in mind when establishing institutions, programmes, policies and activities that allocate obligations. In effect, we would concede that the rhetoric of universal human rights to goods or services was deceptive, but defend it as a noble lie that helps to mobilize support for establishing

⁶ CESCR, Art 11. See http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

⁷ See the FAO website at http://www.fao.org/UNFAO/about/index_en.html.

⁸ CESCR, Art 12. The two Articles expand on rights proclaimed in Article 25 of the *Universal Declaration of Human Rights* of 1948 (UDHR), which runs ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’. For the text of the UDHR see <http://www.bee-leaf.com/universaldeclarationhumanrights.html>.

⁹ The WHO’s objective, as set out in its Constitution, is ‘the attainment by all peoples of the highest possible level of health’, defined expansively as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’. <http://www.who.int/about/en/>.

justiciable rights of great importance. There is something to be said for this view of human rights Declarations and Covenants as ideological documents that can help mobilize energy for action that makes a difference, but many would see this as cynical.

In any case, this interpretation of human rights claims would be wholly at odds with ordinary understandings of rights. Both liberty rights and rights to goods and services are standardly seen as *claim rights* or *entitlements* that are valid against those with the counterpart obligations. Rights are seen as one side of a normative relationship between right-holders and obligation-bearers. We normally regard supposed claims or entitlements that nobody is obliged to respect or honour as null and void, indeed undefined. An understanding of the normative arguments that link rights to obligations underlies daily and professional discussion both of supposedly *universal* human rights, and of the *special* rights created by specific voluntary actions and transactions (treaty, contract, promise, marriage etc.). There cannot be a claim to rights that are rights against nobody, or nobody in particular: universal rights will be rights against all comers; special rights will be rights against specifiable others.

Only if we jettison the entire normative understanding of rights in favour of a merely aspirational view, can we break the normative link between rights and their counterpart obligations. If we take rights seriously and see them as normative rather than aspirational, we must take obligations seriously. If on the other hand we opt for a merely aspirational view, the costs are high. For then we would also have to accept that where human rights are unmet there is no breach of obligation, nobody at fault, nobody who can be held to account, nobody to blame and nobody who owes redress. We would in effect have to accept that human rights claims are not real claims.

Most advocates of human rights would be reluctant to jettison the thought that they are *prescriptive* or *normative* in favour of seeing them as merely *aspirational*.¹⁰ We generally view human rights claims as setting out requirements from the standpoint of recipients, who are *entitled to* or *have a claim to* action or forbearance by others with corresponding obligations. From a normative or prescriptive view, the point of human rights claims would be eroded if nobody were required to act or forbear to meet these claims. A normative view of rights claims has to take obligations seriously, since they are the counterparts to rights; it must view them as articulating the normative requirements that fall either on all or on specified obligation-bearers. Few proponents of human rights would countenance the thought that there are human rights that nobody is obliged to respect. (The converse thought is unproblematic: there can be obligations even where no claimants are defined; such 'imperfect' obligations are generally seen as moral obligations, but not as obligations of justice with counterpart rights.)

¹⁰ See recently James Griffin, 'Discrepancies between the best philosophical account of Human Rights and the International Law of Human Rights', *Proceedings of the Aristotelian Society*, CI, 2001, pp. 1–28.

The claim that rights must have well-specified counterpart obligations is not equivalent to the commonplace piety that rights and responsibilities go together, which asserts only that right-holders are also obligation-bearers. This is often, but not always, true. Many agents—citizens, workers, students, teachers, employees—are both right-holders and obligation-bearers. But some right-holders—infants, the severely disabled, the senile—cannot carry obligations, so have no responsibilities. By contrast, the claim that rights must have counterpart obligations asserts the exceptionless logical point that where anyone is to have a right there must be identifiable others (either all others or specified others) with accurately corresponding obligations. From a normative view of rights, obligations and claimable rights are two perspectives on a single normative pattern: without the obligations there are no rights. So while obligations will drop out of sight if we read human rights ‘claims’ merely as aspirations rather than requirements, so too will rights, as they are usually understood. Unsurprisingly aspirational readings of human rights documents are not popular. However, such readings at least offer an exit strategy if we conclude that claiming rights without specifying counterpart obligations is an unacceptable deception, and find that we can’t develop an adequate normative account of obligations and rights.

Clearly it would be preferable to offer a serious account of the allocation of obligations that correspond to all human rights. But do Declarations and Covenants provide an account—or even a clue—to the allocation of the obligations that are the counterparts to rights to goods and services? This point was complicated at the birth of human rights by the unfortunately obscure drafting of the 1948 *UDHR*,¹¹ which gestures to the thought that certain obligations lie with states, then confusingly assigns them indifferently to nations, countries and peoples as well as states. Not all of these have the integrated capacities for action and decision-making needed for agency, and so for carrying obligations.¹¹ For present purposes I shall leave problems arising from this unfortunate drafting aside, and rely on the fact that in later documents, including *CESCR*, these ambiguities are apparently resolved in favour of assigning obligations to states party, that is to the signatory states.

This approach has apparent advantages—and stings in its tail. The first sting is that states that do not ratify a Covenant will not incur the obligations it specifies: not a welcome conclusion to advocates of universal human rights, since these states thereby escape obligations to respect, let alone enforce, the rights promulgated. The second sting is sharper. The obligations created by signing and ratifying Covenants are *special*, not *universal* obligations. So the rights which are their corollaries will also be *special* or *institutional rights*, not *universal human rights*. Once we take a normative view of rights and obligations, they must be properly matched. If human rights are independent of institutional structures, if they are not created by special transactions, so too are the corresponding

¹¹ The text can be found at <http://www.imcl/biz/docs/humanrights.pdf>. For further comments on some confusions about obligations and agency in *UDHR*, see Onora O’Neill, ‘Agents of Justice’, in Thomas W. Pogge, *Global justice* (Oxford: Blackwell, 2001), pp. 188–203.

obligations; conversely if obligations are the creatures of convention, so too are the rights.

These unwelcome implications of taking the human rights documents at face value might be avoided in several ways. One well-known thought is that so long as we confine ourselves to liberty rights there is no allocation problem, since these rights are only complete if *all* others are obliged to respect them. We can coherently see universal liberty rights as independent of institutions or transactions, and read the parts of instruments that deal with liberty rights as affirming rather than creating those rights (justifying such claims would be a further task). But the fact that liberty rights do not face an allocation problem (although enforcing them raises just that problem) offers small comfort to those who hope to show that rights to goods or services, for example to food or medicine, are universal human rights rather than the creatures of convention. A normative view of human rights cannot view rights to food and medicine as pre-institutional while denying that there are any pre-institutional counterpart obligations or obligation holders; it must take a congruent view of the counterpart obligations. But this suggests that such rights must be special, institutional rights rather than universal human rights. There is, of course, nothing wrong or problematic about conventional or institutional rights, but if Declarations and Covenants create rights to goods and services, claims that they are universal or human rights lack justification. Declarations and Covenants cannot show that some particular configuration of institutional rights and obligations is universally optimal or desirable, or even justifiable.

This dilemma might be fudged by allowing the idea of human rights to goods and services to drift between two interpretations. A view of rights to goods and services as independent of institutions and transactions could be cited as offering a basis for justifying some rather than other institutional arrangements. A view of rights to goods and services as the creatures of convention could fit with well-defined counterpart institutional obligations, but offers no claims about their justification other than the fact that (some) states have signed up to them. Equivocation is a desperate justificatory strategy. Yet this equivocation is disconcertingly common in discussions of human rights claims.

This dilemma within normative views of rights and obligations can be resolved in more than one way. We could conclude that liberty rights are fundamental and universal, and claim that they can be justified without reference to Covenants or institutions, but concede that rights to goods and services are special (institutional, positive) rights that can be justified only by appeal to specific transactions, such as signing and ratifying Covenants. We could try to justify a configuration of special rights and the institutional structures that secure them and their counterpart obligations. For example, we might argue that certain rights to goods and services and their counterpart obligations protect basic human needs or interests, or that they have utilitarian or economic justification. Or we could justify institutional structures that define and secure special rights and obligations more deeply by appealing to a theory of the good

(moral realists) or a theory of duty (Kantians). The option that is closed is to claim that human rights and obligations are corollary normative claims, but that there are some universal rights without counterpart obligations. So there are plenty of possibilities—although each may raise its own difficulties. If none of these possibilities can be made to work, the default position would be to reject normative views of human rights and to see human rights claims as aspirational (noting that aspirations need justification too) and to treat the task of establishing institutions that allow for justiciable claims as a task to be guided in part by appealing to those aspirations. And then, it may seem, we in effect endorse a cynical reading of the human rights Declarations and Covenants.

State obligations

These are awkward problems, but I think that others may lie deeper. The deepest problem may be that the obligations assigned to states by some of the most significant Declarations and Covenants are *not* the corollaries of the human rights that the documents proclaim. The Covenants do not assign states straightforward obligations to respect liberty rights (after all, liberty rights have to be respected by all, not only by states), but rather second-order obligations to *secure* respect for them. Equally, they do not assign states obligations to meet rights to goods and services, but rather second-order obligations to *ensure* that they are met. For example, Article 2 of the *CESCR* proclaims that

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.¹²

‘Achieving progressively the full realisation of ... rights ... by all appropriate means’ is evidently not merely a matter of respecting the rights recognized in *CESCR*. It is a matter of ensuring that others—both individuals and institutions—carry out the obligations that correspond to those rights. Later comments by the Office of the High Commissioner for Human Rights spell out some of the obligations that states are taken to assume if they ratify the two Covenants.¹³

An immediate and encouraging thought might be that if the obligations assigned to states by the international Declarations and Covenants are *not* the counterparts of the human rights proclaimed, but second-order obligations to ensure or secure respect for such rights, then this may resolve the allocation problem for rights to goods and services. States party to a Covenant are seen as acquiring special obligations by signing and ratifying the instrument. It would

¹² Article 2 *CESCR* at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm.

¹³ *The nature of States parties obligations*, Art. 2, para. 1 of the Covenant, Fifth session, 1990, Office of the High Commissioner for Human Rights, *CESCR* General comment 3, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument).

then be clear that those special, second-order obligations did not have counterpart rights, let alone counterpart universal human rights. They are second-order obligations to secure some configuration of first-order rights and obligations. This thought may be helpful: since obligations without counterpart rights are normatively coherent (unlike rights without counterpart obligations), we can take a normative view of the obligations assumed by states that sign and ratify the Covenants, and can see them as setting requirements. Human rights enter into the Covenants only indirectly as aspects of the content of second-order state obligations.

But a second thought is far less congenial to those who would like to see human rights as normative. If the obligations that the Declarations and Covenants assign to states are *not* the counterparts of the human rights these instruments declare or recognize, then they also do not define the first-order obligations that are the counterparts of human rights. Rather the problem of giving a coherent normative instantiation of Declarations and Covenants is devolved to the states party, which may (or may not) set out to secure positive rights for their citizens. If the claims of the human rights documents have normative force they must be matched by obligations; if they are not matched by obligations, they are *at best* aspirational.

As I suggested earlier, it may not be wholly a misfortune if the supposed rights declared in the Declarations and Covenants are seen as aspirations. Legal commentators might be willing to say that there is still substance in there, in that the States party take on real obligations to realize these aspirations. Non-lawyers may habitually make the mistake of thinking that Declarations and Covenants claim that there are pre-institutional universal human rights, but their mistake is not necessary—although politically convenient—for progress towards the realisation of the underlying aspirations, once states have signed up. This is a coherent position, but unlikely to be popular with those who seek to base ethical and political claims on appeals to human rights, which they see as normatively fundamental rather than as the creatures of the convention that are anchored in the Covenants that assign obligations to realize aspirations to states.

And there are further difficulties. If we read Declarations and Covenants as instruments by which states assume second-order obligations to define and allocate first-order obligations that correspond to certain human rights (now no longer seen as universal rights), why should all the obligations lie with states? A plausible answer would be that states, and only states, have the powers necessary to carry the relevant second-order obligations to define and allocate first-order obligations and rights to individuals and institutions. The story is told of a journalist who asked the bank robber Willie Sutton why he robbed banks and got the puzzled answer: 'That's where the money is'. Similarly we might reply to anyone who wonders why Declarations and Covenants assign obligations that are to secure human rights to states by pointing out that that's where the power is.

But the thought that it makes sense to assign all second-order obligations to define and allocate obligations to states because they, and only they, have the power to discharge these obligations is often less than comforting. Many states violate rather than respect human rights. Assigning second-order obligations to define and allocate first-order obligations and rights to agents who do not even reliably respect the first-order obligations that correspond to those rights may be rather like putting foxes in charge of hen houses. It is true enough that those who are to achieve progressively the full realization of human rights must have capacities to do so—but it does not follow that those with (a good range of) the necessary capacities can be trusted to do so. Some states—not only those we think of as rogue states—disregard or override many of the Covenant rights. Some sign and ratify the relevant international instruments, but make limited efforts to work towards their full realization.

Other states lack the power to carry the obligations to ‘achieve progressively the full realisation of the rights recognized’ in Declarations and Covenants. Weak states—failed states, quasi states—cannot carry such demanding obligations. Although they may not always violate them, they cannot secure their inhabitants’ liberty rights; still less can they ensure that their inhabitants have effective entitlements to goods and services. It is an empty gesture to assign the obligations needed for human rights to weak states, comparable to the empty gesture made by town councils in Britain in the 1980s that proclaimed their towns nuclear free zones. Indeed, even strong and willing states may find that they cannot ‘achieve progressively the full realisation of the rights recognized’ in Declarations and Covenants. Strong states may have a monopoly of the legitimate use of force within their territories; but they seldom have a monopoly of the effective use of other forms of power. There are plenty of reasons for thinking carefully about the specific character of state power, and for questioning the assumption that powerful—let alone weak—states can carry the range of second-order obligations that they ostensibly take on in signing and ratifying human rights instruments.

Given these realities, it may be worth reconsidering whether all second-order obligations to secure human rights should lie with states. Perhaps some of them should lie with powerful non-state actors, such as transnational corporations, powerful non-governmental organizations, or major religious, cultural, and professional and educational bodies. The assumption that states and states alone should hold all the relevant obligations may reflect the extraordinary dominance of state power in the late twentieth century, rather than a timeless solution to the problem of allocating obligations to provide goods and services effectively. For present purposes, I shall leave these unsettling possibilities unexplored, but say a little more about some of the cultural and political costs that are linked to persistent confusion between normative and aspirational views of human rights.

Control and blame

If human rights are not pre-conventional, universal rights, but are grounded in the special obligations assumed by states, then there is—at the very least—an awkward gap between reality and rhetoric. The second-order obligations of states are discharged by imposing first-order obligations on others and enforcing them. The reality is that state agency and state power, and that of derivative institutions, is used to construct institutions that (partially) secure rights, and that to do this it is necessary to control the action of individuals and institutions systematically and in detail. If states party are to discharge the second-order obligations they assume in signing and ratifying human rights Covenants, they must not only ensure that liberty rights are respected by all, but must assign and enforce first-order obligations whose discharge will deliver rights to goods and services to all. Human beings, it is evident, will not merely be the intended *beneficiaries* of these obligations, but will carry the intended *burdens*.

The system of control that states must impose to ensure that these obligations are discharged is likely to be dauntingly complex. Yet, as Burke pointed out, what we really need if we are to have food and medicine is the active engagement of 'the farmer and the physician'. Can that active engagement be secured or improved by imposing detailed and complex obligations on those who are to carry the relevant first-order obligations? There is much to consider here, and I offer very brief comments under four headings: complexity, compliance, complaint and compensation.

Complexity

Detailed control is needed to 'achieve progressively the full realisation' of very complex sets of potentially conflicting rights, which must be mutually adjusted. It is no wonder that legislation in the age of human rights has become prolix and demanding. Those who frame it have to seek to ensure that individuals and institutions conform to a very large number of constraints in all activities, so have to set and enforce very detailed requirements.¹⁴ It is now common in developed societies to find that legislation imposes highly complex procedures that bristle with duties to register, duties to obtain permission, duties to consult, rights to appeal, as well as proliferating requirements to record, to disclose and to report. Such legislation is typically supplemented by copious regulation, relentless 'guidance', prolix codes of good practice and highly intrusive forms of accountability. These highly detailed forms of social control may be unavoidable in a public culture that aims to 'achieve progressively the full realisation' of an extraordinarily complex set of rights, so has to impose complex demands and burdens on all activities and all areas of life.

¹⁴ Michael Moran, *The British regulatory state: high modernism and hyper-innovation* (Oxford: Oxford University Press, 2003). Moran argues that the new regulatory state is neither liberal nor decentralizing, despite its commitment to human rights. Rather it is both interventionist and centralizing in ways that colonize hitherto relatively independent domains of civil society—including those of the farmer and the physician.

The results are demanding for the state agencies that are supposed to set the requirements and police the system. They can be dementing for the institutions and individuals that are to carry the first-order obligations— not least for the farmer and the physician. Complex controls risk stifling active engagement. Those of whom too much that is extraneous to their basic tasks—growing food, caring for the sick—is required are likely to resent the proliferating and time-consuming requirements to obtain permissions, to consult third parties, to record, to disclose, to report and to comply with the demands of inspectors or regulators. These requirements for control and accountability impose heavy human and financial costs, and are often damaging to the performance of primary tasks. Those who face these burdens on their attempts to perform demanding substantive tasks—the farmer and the physician—may comply and resent (and sometimes engage in defensive practices); they may protest and complain; or they may withdraw from activities that have been made too burdensome. The costs of complex control systems are paid in increasing wariness and weariness, scepticism and resentment, and ultimately in less active engagement by ‘the farmer and the physician’, and by others who come to see themselves primarily as obligation-bearers rather than as right-holders.

Compliance

Individuals who are subject to hyper complex legislation, regulation and control are offered two roles. As obligation-bearers their role is compliance; as right holders they are permitted and encouraged to seek redress and to complain when others fail to comply. The individuals and institutions on whom first-order obligations are imposed in the name of securing human rights are offered limited options: they can soldier loyally on in compliance with the obligations states impose; they can voice their discontent; they can exit from the tasks that have been made too burdensome by the excess complexity of legislation and regulation.¹⁵ Loyal compliance becomes harder and more burdensome when the sheer number and complexity of requirements imposed damages the quality with which substantive tasks can be achieved. Voicing concern and objecting to these controls provides some, but limited relief. Exit from the activities that have been made too burdensome may often be the most reasonable and the preferred option. For ‘the farmer and the physician’, exit means giving up growing food and caring for the sick.

There may be ways of extending human rights that do not carry these costs, that use a ‘lighter touch’, that achieve ‘better regulation’.¹⁶ But the jury is out on this matter. At present, and certainly in the UK, the juggernaut of human

¹⁵ See Albert O. Hirschmann, *Exit, voice and loyalty: responses to decline in firms, organizations and states* (Cambridge, MA: Harvard University Press, 1970), for a classic analysis of these options.

¹⁶ The United Kingdom government established a *Better Regulation Task Force* in 1997. It promotes the ‘five principles of better regulation’ which are said to be Proportionality, Accountability, Consistency, Transparency and Targeting (consistency is a nice touch!). See the task force’s website at <http://www.brtf.gov.uk/>.

rights demands, at every stage of legislation and of the regulatory process, tends to increase complexity even when the costs for 'the farmer and the physician', and the damage to the services they provide, are high and well known.

Complaint

First-order obligation-bearers are also right-holders, and it may be that the burdens their obligations impose are recompensed by the rights they enjoy as a result of others discharging their obligations. However, the experience of right-holders is not symmetric with that of obligation-bearers. Individuals act as right-holders only when something has gone awry. In that situation they may complain, seek redress and compensation. The legislation and regulation of states that take human rights seriously often provide a range of remedies—for those with the time, energy, courage (or foolhardiness) to pursue them. When complaints work, redress may be achieved and, compensation may be secured. But often the experience of complainants is less than happy because the process of achieving redress is complex, exhausting and frustrating, and the remedies less than would satisfy and assuage a sense of injury. Since the role of complainant is too often one that exhausts, demoralizes and undermines active engagement, many who are wronged do not choose this course of action. For 'the farmer and the physician' and for many others the choice is mainly between loyalty and exit: giving voice is not generally a positive experience, since it requires complainants to see themselves as victims rather than as actively engaged.

Compensation and blame

The best outcome of the voice option is that, with luck and persistence, those who take on the role of victim or complainant achieve redress and compensation, or some opportunity for the dubious pleasures of casting blame. Compensation clearly has its positive side—although it may be hard to achieve, limited in amount and is not always worth the struggle through the complexities of process. Blaming by contrast is a readily available and cheap pleasure—even for complainants whose case is not upheld. Those who cast blame can appropriate, enjoy and prolong their role and status as victims, can enjoy indignation and a feeling of superiority, even if they cannot quite identify or demonstrate the failings of others. If it proves impossible to identify a blameworthy culprit, they can at least blame the system, that is to say the institutional framework that is failing to achieve 'progressively the full realisation of the rights recognized ... by all appropriate means, including particularly the adoption of legislative measures'.

There is a dark and tempting undercurrent of pleasure in blaming. Nobody has written about the psychology of blaming, or about its murky appeal and insidious psychological effects, more brilliantly and darkly than Nietzsche.

Some of his comments are particularly apt to the realities of the farmer and the physician:

Suffering people all have a horrible willingness and capacity for inventing pretexts for painful emotional feelings. They already enjoy their suspicions, they're brooding over bad actions and apparent damage. They ransack the entrails of their past and present, looking for dark and dubious stories, in which they are free to feast on an agonizing suspicion and to get intoxicated on their own poisonous anger. They rip open the oldest wounds, they bleed themselves to death from long-healed scars. They turn friends, wives, children, and anyone else who is closest to them into criminals. 'I am suffering. Someone or other must be to blame for that'.¹⁷

I do not wish to suggest that the human rights culture inevitably promotes this rancorous approach to life. But I do not think we should accept at face value the view that it is all about respect for persons and treating others as agents. Much of it is indeed about protecting the weak and vulnerable. But it is also about extending the power of states over non-state actors and human individuals, about establishing systems of control and discipline that extend into the remotest corners of life, about running people's lives for them while leaving them with the consoling pleasures of blame. As Bernard Williams puts it, blame is 'the characteristic reaction of the morality system' in which obligations and rights have become the sole ethical currency.¹⁸

We find it unsurprising that the ruling ideas of past eras have been superseded and modified, and we can hardly doubt that human rights are a central ruling idea of our age. Yet we do not find much current discussion of the likelihood that the idea of human rights may suffer the same fate. Public discourse is for the most part admiring, and often represents human rights as unquestionable truth and progress: we may question anything—except human rights. Indeed, unlike some earlier dominant ideologies, the human rights movement has acquired the beguiling feature of being an ideology not only of and for the ruling classes, but an ideology for—and increasingly of—the oppressed. This seems to me a good reason for thinking particularly carefully and critically about the internal structure of human rights claims, for trying to be less gestural about their basis and their limits, and for being more explicit about their costs as well as their benefits. The farmer and the physician, and others whose work and commitment are indispensable, are the key to securing a decent standard of life for all: their active enthusiasm and efforts are more valuable than their dour compliance with prescribed procedures, their resentful protest, let alone their refusal to contribute.

¹⁷ Friedrich Nietzsche, *The genealogy of morals*, Part III, Section 15. This translation, which draws on earlier received versions, can be found at *The Nietzsche channel's* website at <http://www.geocities.com/thenietzschechannel/onthe3.htm#3e15>.

¹⁸ Bernard Williams, *Ethics and the limits of philosophy* (London: Fontana, 1985), p. 177.