

Allan Buchanan

The Heart of Human Rights, (Oxford: Oxford University Press, 2013), 336 pages.

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In *The Heart of Human Rights*, Buchanan critically evaluates and elucidates the practice of international human rights as grounded in the international legal human rights system. This book elaborates the view of human rights alluded to and relied upon in earlier works, especially Buchanan's *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004). The book is written in Buchanan's dense but precise writing style, and rewards careful reading with a significant contribution to the emerging literature on practice-based accounts of human rights.

A practice-based account is contrasted with a purely moral or natural law theory of human rights according to which human rights are pre-legal moral entities. In the practice-based account developed here, human rights remain "a global moral lingua franca" (p. 7), but Buchanan strongly denies that human rights in international practice are primarily rhetorical. Buchanan's account denies that the normative dimensions of human rights practice is necessarily or exclusively moral, and spends much of the critical energy of the book combatting this premise in many of his rival theories of human rights.

In contrast with many primarily moral theories of human rights and some practice-based theories of human rights, Buchanan argues that international human rights law is an essential part of modern human rights practice. This claim distinguishes Buchanan from Beitz in particular, who advocates a practice-based account not based in the international legal human rights system (See Charles Beitz, *The Idea of Human Rights*, (New York, NY: Oxford University Press, 2009)). However, it aligns him with Tesón and Donnelly (See especially Fernando R. Tesón, *A Philosophy of International Law*, (Boulder, CO: Westview Press, 1998), p. 116; and Jack Donnelly *Universal Human Rights in Theory & Practice*, Second Edition, (Ithaca, NY: Cornell University Press, 2003), pp. 7–53). I would have liked to have seen more engagement with these theories in particular, in addition to the "mainstream Anglo-American philosophical theorists of human rights" whom Buchanan takes to be his interlocutors (note 8, p. 10).

The international practice of human rights examined by Buchanan includes, amongst other international functions: a variety of international human rights treaties, a variety of constitutional legislation for multilateral organizations such as the UN and the EU, systems of human rights monitoring by NGOs, multilateral institutions, and treaty organizations, and appeals to human rights in the justification of humanitarian military interventions by multilateral organizations. These and other 'functions' of international human

rights law constitute a sophisticated practice that effectively enforces human rights compliance and monitoring, and employs diplomatic channels, NGOs, international treaties, and foreign policy to do so (pp. 5–6).

International human rights law and practice serves three central purposes, according to Buchanan. First, human rights practice constrains state sovereignty, including internal sovereignty, and it does so for the protection of individuals (p. 23). Secondly, human rights practice serves what Buchanan calls the “status egalitarian function” of human rights when it affirms and protects the equal basic status of all human beings (p. 28). Third and finally, human rights practice serves a familiar well-being function (p. 32). The well-being function is often emphasized in other theories of human rights. However, Buchanan argues that in virtue of its status egalitarian function, the existing international human rights practice is far more robust than one that merely protects the well-being of individuals. The result of Buchanan’s investigation is a clear and comprehensive argument for a practical conception of human rights, and a conception of human rights that avoids several familiar but devastating objections.

One familiar objection to human rights has been the lack of enforcement for human rights in the absence of a global state. The practice-based account that Buchanan advocates avoids this objection from the outset, given that the international human rights practice includes multiple levels of coercion: unilateral and multilateral sanctions such as social, economic and diplomatic sanctions for low-level offenders, and an escalating scale of economic and military interventions for egregious offenders. In this sense, there is a coercive backbone to international human rights practice, and the lack of enforcement objection does not connect with modern international human rights practice.

Buchanan makes a significant contribution to the dispute between natural law accounts of human rights and practice-based accounts of human rights when he responds to the ‘Mirroring View’. The ‘Mirroring View’ is the assumption that for every valid international human right, “there must be a corresponding, antecedently existing moral human right” (p. 14). Buchanan argues that corresponding moral rights are not necessary to the practice of international human rights, because independent non-moral justification is possible for many rights. For significant portions of the human rights content embodied in international law, prudential, social cohesion, or instrumental justifications are available. Hence, to the extent that human rights content corresponds to antecedent values, the content is not necessarily moral. Further, Buchanan argues that corresponding moral rights are not possible in many cases, but that the relevant human rights content is nonetheless justified. Legal rights to education, democratic governance, or due process realize prudential and social

values that are wider in scope than any plausible corresponding moral rights. Such rights require institutional infrastructure for their realization, and therefore cannot be realized without the level of social coordination that legal rights make possible. Accordingly, the contributions made by such human rights to status equality and well-being justify their inclusion amongst the appropriate range of international human rights, but their correspondence to prior moral rights is neither possible in all cases nor necessary to their justification.

Two familiar theoretical objections to the idea of human rights have been that human rights are either an imperialist and parochial liberal project, or a minimal and toothless one, depending on how the content of human rights is elaborated. Both worries arise as responses to what Buchanan calls the “Challenge of Ethical Pluralism”: “the view that there is a plurality of valid moralities, none of which is uniquely rational” (p. 249). As an objection to human rights, the challenge of ethical pluralism amounts to an objection to human rights conceived of as a universal moral code. Buchanan’s response is to point to ways in which the international human rights code endorses rights that are useful to both individualist and collectivist moral and political projects, and moreover to emphasize the ways in which human rights protect individuals from “threats posed by the modern state” (p. 267). While moral codes and content may vary globally, the “modern state” is effectively a universal fact in our world. And while moral codes may vary along a variety of vectors, demonstrating that human rights are useful for both individualist and collectivist moralities goes a long way towards demonstrating their compatibility with a wide range of moral codes.

In response to the fact of ethical pluralism, many Anglo-American philosophers’ have worried about endorsing a broad scope for human rights content, and have worried in particular about possible conflicts between values expressed in human rights term and important values expressed by socially or culturally identifiable groups. For this reason many theorists have therefore retreated from any controversial content for human rights, and endorsed only minimalist content for human rights. In this way, they retreat to an endorsement of universal content but are left with a practically ineffective doctrine of human rights. Buchanan’s response to the Mirroring View alongside his pluralist justification for human rights allows him to avoid narrowing the scope of human rights in this way. His pluralist justificatory methodology entails that even if a particular human right is not endorsed by one’s own moral code, one can nonetheless recognize the important values that are realized by the international bill of rights (p. 77). On Buchanan’s account, the issue requiring justification shifts from the normative content of each particular right, to the normative project of what it is appropriate to do with human rights.

To that end, Buchanan's ecological view of institutional legitimacy serves as Buchanan's justification for the institutions and practice of international human rights as a whole, and moreover to the modern form of states. Buchanan views institutional legitimacy as "ecological" because an institution's legitimacy cannot be determined "in isolation; instead, its legitimacy may be a function of how it fits into a network of institutions" (p. 198). The ecological view can be used to test the legitimacy of individual states, but also of multilateral organizations, specific treaties, and specific institutions such as the International Criminal Court. Moreover, ecological legitimacy is bidirectional such that human rights institutions can contribute to the legitimacy of states at the same time as state practices contribute to the legitimacy of the international human rights practice. As such, the legitimacy of the network of human rights institutions should be assessed in context, rather than in isolation.

Jennifer Szende

Trent University

jenniferszende@trentu.ca