Book Review

Allen Buchanan


Allen Buchanan’s *The Heart of Human Rights* is the ground-breaking normative assessment of the international human rights system that his previous *Justice, Legitimacy and Self-Determination*¹ was to the broader international legal system about ten years ago. While the first was simply one of the first evaluations of the international legal and political system from a normative standpoint, the second builds upon the fast-developing literature on the normative foundations of human rights in the predominantly analytic tradition of moral and political theory over the past decade. The ambition is however similar: taking international legal institutions and practices seriously. In this review, I first reconstruct how Buchanan successfully paves a third way in the literature in normative human rights theory before turning to a two-fold critique focused on the role of law in his account.

*The Heart of Human Rights* elegantly starts with the critique of the predominant Mirroring View. In this critique, Buchanan convincingly establishes that proponents of the Mirroring View have been confusingly assuming a correspondence between the justification of *moral* human rights, on the one hand, and the justification of *legal* human rights, on the other. On the correspondence view, championed by James Griffin and his “personhood” account,² “the function of the system of international legal human rights is to realize a set of corresponding preexisting moral rights”.³ There is no reason to think that such co-extension between morality and law is necessary, Buchanan argues, once

we draw our attention to the structure of the human rights legal system that currently exists. As others have also acknowledged, this preliminary argument does not dismiss the traditional, ethical approach to human rights. It simply suggests that adjusting our perspective to the legal practice of human rights comes at a price: “even if the Mirroring View were true, things look quite different if one has a richer view of what the law is and does”.

What consequences does this practice-based approached have for the normative theory of human rights? Most importantly, Buchanan suggests in Chapter 2 that one should rather opt for a pluralistic rather than monistic and substantive conception. This is because legal rights, by contrast to moral rights, should be grounded in a variety of interests and not solely those of the right-holders (not solely “subject-grounded”). Rather, defining those duties implies showing how “their fulfillment would positively impact the interests (autonomy, etc.) of a large number of people”. It is simply not enough to justify the ascription the entire set of duties correlative of human rights just in the name on some morally significant feature of the right-holder. It must be noted that this pluralistic grounding echoes another voice in the recent literature, namely John Tasioulas’, in that the multifaceted normativity of human rights should also constrain the enterprise of justification. But since Buchanan’s distinctive object is legal and international – in contrast to Tasioulas’ attachment to ordinary moral life – the pluralism underlying the rights implies is applied to that larger context.

Putting this principle into practice, Buchanan argues in Chapter 4 that legal human rights should first be understood to “foster the public recognition of equal basic status for all in all society”. This deontological status of rights-holders remains crucial not only to accommodate the various due process and non-discrimination rights that pervade international covenants and conventions. It also avoids the challenge that many welfare-centered accounts of human rights face, that is, that individuals could lead a “minimally good life” and still suffer from crude forms of discrimination. As far as the interests of other actors are concerned, implementing human rights can, first, guarantee that domestic constitutional bills “are not distorted by parochialism” and thereby

4 Ibid., 51.
5 Ibid., 59.
6 Buchanan, supra note 3, 62.
8 Buchanan, supra note 3, 88.
9 Ibid., 114.