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### *The Heart of Human Rights* by Allen Buchanan

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**Allen Buchanan.** *The Heart of Human Rights*. Oxford University Press 2013. 336 pp. \$45.00 USD (Hardcover ISBN 9780199325382).

In *The Heart of Human Rights*, Allen Buchanan provides a moral assessment of the international legal human rights system, which includes both legal norms and the institutions that create, interpret, and implement these norms. As suggested by the title, Buchanan considers this system to be the heart of the modern human rights enterprise. He argues that other philosophers have mostly focused on accounts of moral human rights and have not given sufficient consideration to the practice of human rights in our international human rights legal system. His book tries to fill this gap, and as such, it makes an indispensable contribution to human rights theory.

In the first part of the book, Buchanan criticizes other philosophers for mistakenly assuming that international legal human rights should be based on preexisting moral human rights in order to be morally justified. He calls this the ‘Mirroring View’. He argues that this view is mistaken because not all the rights in international human rights law can be justified in terms of moral human rights (he considers this to be the case for the right to democracy and the right to health), and conversely, not all the moral human rights we have are protected in international law. Even in the case of legal human rights that seem closely connected to moral human rights, he argues that the justification of a legal human right requires more than merely showing that there is a corresponding moral right because legal rights have more extensive duties and impose greater costs than moral rights. He argues that the justification of these costly, extensive duties will include such things as an appeal to public goods and the interests of large numbers of people, as well as other wider moral considerations, such as the purposes of international human rights law. Against the Mirroring View, Buchanan presents a pluralist justification of international legal human rights.

Although Buchanan adds a much needed account to human rights theory by focusing on the system of international legal human rights, at times he seems to go too far in criticizing theories that focus on moral human rights. It is clearly a mistake to assume that *all* international legal human rights must be justified by a particular theory of moral human rights, and that *all* moral human rights must be protected as international legal human rights. However, it is hard to believe that other human rights theorists would make these strong claims.

He is correct that in justifying the inclusion of a new legal right, more is needed than simply appealing to a moral right since one has to consider the consequences of protecting a right through the international legal human rights system. However, he seems to go too far when he concludes that ‘once we understand that legal rights can serve several distinct kinds of moral purposes, and that the realization of moral rights is only one of these, we should acknowledge that a sound justification for international legal human rights need not refer to moral rights at all’ (312). It seems strange to have a system of international human rights that does not refer to moral human rights at all. This also seems at odds with the language of human rights treaties and bodies, and the intentions behind the development of these treaties.

In fact, the costs and duties that are imposed on states by our current system of international legal human rights are much less than Buchanan suggests in his argument. While the duties articulated in human rights documents and by international human rights bodies sound extensive on paper, they are far weaker in practice. The bodies that are created to evaluate a state’s compliance with these

treaties can determine that a state has violated a duty and can recommend action, but unfortunately, this is too often easily ignored by states. The effectiveness of these legal norms and bodies seems to rest to a great extent on the moral force of human rights. Citizens and the international community often appeal to moral human rights to exert political pressure on states to comply with international legal human rights. In this respect, accounts of moral human rights play an influential role in the practice of international human rights law.

Buchanan's criticism of moral human rights theories is not needed to appreciate his important contribution. I will highlight a few important aspects of his account. Buchanan's pluralistic justificatory account is based on what he takes to be the chief functions of the international legal human rights system. He argues that the basic idea of this system is to 'provide universal standards for regulating the behavior of states toward those under their jurisdiction, for the sake of those individuals themselves, conceived as social beings' (27). Its two chief functions are (1) helping to ensure that each individual has the opportunity to lead a minimally good or decent life (the well-being function), and (2) affirming and protecting the equal basic moral status of each individual (the status egalitarian function) (28-36, 313). Another central idea is that international human rights are rights individuals have 'simply by virtue of their humanity' (73-74). This account nicely captures central features of our current international human rights system. Since his pluralistic justificatory strategy is not based on any particular theory of moral individual rights, it has the virtue of being compatible with reasonable ethical pluralism and collective rights (Chapter 6).

Buchanan argues that in order to justify the system of international legal human rights, we need an account of the legitimacy of its institutions as a whole, the reasons for incorporating certain legal human rights into this system of international law rather than merely including these rights in domestic legal systems, and an account of whether and under what conditions international human rights law should have supremacy over domestic law. His analysis of these in Chapters 5 and 6 is a must read for anyone interested in the legitimacy of international human rights law. He argues that rather than considering the legitimacy of a particular institution in isolation, we need to consider how it functions in relation to others institutions. For example, the role that democratic states play in creating and applying international human rights law enhances its legitimacy, and at the same time, international human rights law enhances the legitimacy of states by constraining state sovereignty and protecting individual rights (316).

Finally, Buchanan provides a crucial analysis of the limitations of our current international legal human rights regime and the challenges that must be overcome if it is to fulfill its central functions (Chapter 8). I will only discuss a few of these. First, international human rights law largely depends on treaties, but states can choose not to ratify these treaties or they can ratify them with substantial reservations. This is a significant weakness. For example, the United States has not ratified the *International Covenant on the Rights of the Child*, the *International Covenant on the Elimination of Discrimination against Women*, or the *International Covenant on Economic, Social and Cultural Rights*. A fundamental question is whether it could be justifiable to make the system less voluntary so that these rights apply to all states, and if so, how?

Second, the current system of international human rights law is primarily concerned with the duty of states to protect the human rights of individuals within their jurisdiction. But what happens when a state refuses to do this or does not have the resources and capacity to do this? While there has been some progress on the issue around the responsibility to protect, it has been very limited,

particularly in cases where individuals are suffering and dying due to insufficient resources or state neglect.

Third, while international human rights law has focused on the duties of states, the power of corporations and international institutions such as the WTO and the IMF has grown. Buchanan argues that states should impose duties on non-state actors to respect and protect human rights. Unfortunately, the will of states to make these important changes is currently lacking.

Buchanan provides a strong argument against limiting international human rights law to moral human rights, and for considering other interests and values that could be served by these legal norms and institutions. He also provides an essential account of the legitimacy of the international legal human rights system. I would like to suggest, however, that the heart of the modern human rights enterprise are moral human rights. It is the ideal of moral human rights that inspired the creation of international human rights law, and it is what continues to motivate the development of this system. This is the normative core and motivating force of the system. That being said, it is crucially important to understand how the body as a whole functions in practice. Buchanan both broadens our understanding of the international human rights regime by considering what other interests and values it serves beyond this core of moral human rights, and provides a promising normative account of the legal norms and institutions of this system.

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