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GUEST EDITOR'S INTRODUCTION TO SYMPOSIUM ON
ALLEN BUCHANAN, *THE HEART OF HUMAN RIGHTS*

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For many years now Allen Buchanan has been one of the most important theorists working on the philosophy of human rights, producing a large number of papers and two books significantly devoted to the topic. In the work under consideration in this symposium, Buchanan breaks new ground by examining what he claims to be the 'heart' of international human rights practice – the international legal human rights ('ILHR') system, subjecting it to moral and philosophical analysis and criticism. This system, and not an account of independent moral human rights, provides the core of human rights practice, supplying it with its lingua franca and setting universal standards for the behavior of states. Despite its important place in human rights practice, Buchanan contends, the ILHR system, understood as a system of legal rights, has largely been ignored by philosophers, who have instead focused on providing an account of moral human rights. This traditional approach to human rights holds that legitimate legal human rights must be grounded in, or 'mirror' more fundamental, pre-legal, moral human rights. Rejecting this 'mirroring view', Buchanan argues that ILHR need not be dependent on pre-existing moral rights for their justification. Furthermore, given the complex role that ILHR play in the international legal system, they could not be grounded, at least not fully, in such pre-existing moral rights. The mirroring view therefore fails as an account of ILHR, Buchanan contends.

The primary function of ILHR, according to Buchanan, is twofold: to help ensure that each person is able to lead a minimally decent life (the 'well-being' function), and to affirm and protect the

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equal moral status of all persons (the 'egalitarian status' function.) While dispute over the best way to understand these provisions is possible, Buchanan contends that any acceptable account of the ILHR system must recognize both functions. Because an ILHR system instantiating these functions is potentially coercive, we must also address questions about the system's legitimacy. Buchanan is particularly concerned to establish that the institutions through which human rights operate are normatively legitimate, that is, that they have authority and warrant a public standing involving respect. The legitimacy of these institutions involves a reciprocal relation between publically accepted standards of legitimacy and the coordinating role played by the institutions. Furthermore, the legitimacy of ILHR institutions is ecological in that particular institutions cannot properly be evaluated in isolation, but only in relation to the other institutions within the full system of ILHR and their role in international law.

The strongest potential objection to ILHR, Buchanan argues, arises from the 'ethical pluralism objection'. This objection, based on the idea that because there is a plurality of reasonable moralities, the quest for universal standards is doomed, is especially dangerous for the mirroring account of human right. Buchanan's own pluralist account of justification, however, provides the means for addressing the pluralism objection, including those arising out of so-called 'collectivist' moralities. This account, Buchanan argues, is better suited to answering the challenges posed to the ILHR system by China than are other competing accounts. Buchanan ends his account by noting that, if his arguments are accepted, then human rights are more properly seen as part of an institutionally-focused philosophy of law than as part of moral philosophy proper.

Our symposium is made up of four papers by distinguished theorists of human rights, three of which were originally presented at an author-meets-critics session at the 2015 Pacific Division meeting of the American Philosophical Association sponsored by the APA Committee on Philosophy and Law, and a reply by Buchanan. William Talbot, in the first paper in the symposium, argues that a more consequentialist account of human rights, understood in either utilitarian or (his preferred) prioritarian terms, can provide a better understanding of the social welfare function of human rights than

can the sufficientarian account argued for by Buchanan. Furthermore, Talbot contends, once we see this, we have reason to think that the supposedly separate status equality function of human rights is subsumed under this more robust well-being function.

Buchanan, in response to Talbot, agrees that his own account does not attempt to decide debates between sufficientarian and prioritarian or utilitarian accounts of distributive justice, but sees this as a virtue, given both the depth of the philosophical disagreement as to the correct principles here, and, more fundamentally, the fact that a feasible and effective system of ILHR may have to aim at a lower standard than full justice. When these facts are accepted, Buchanan claims, we can see that a split between what is necessary for living a minimally decent life (protected by the well-being function) and what is needed to be a fully equal member of society (protected by the status egalitarian function) can and often does arise. There is therefore still need for both elements.

Brooke Ackerly, in her contribution to the symposium, welcomes Buchanan's call for a shift in focus to the practice of human rights, but argues that a better understanding of this approach would lead to certain important modifications to Buchanan's account. First, the version of a 'theory-in-practice' approach advocated by Ackerly encourages us to see human rights not merely as entitlements, as Ackerly contends Buchanan typically presents them, but also as items enjoyed in the social, economic, and political life of a community. Such rights are not properly individual rights, Ackerly claims, because they are not 'enjoyed' unless they are shared universally in a community. Next, Ackerly argues that, contra Buchanan's more cautious formulation, the equal status principle of ILHR should be understood as global and not intrasocial in scope. This implies that state actors have obligations to promote equality not only within their own societies but globally. Finally, Ackerly presents reason to doubt that 'rights proliferation' is a significant worry, arguing that supposed cases of rights proliferation are not in fact arguments for 'new' rights, but rather clarifications of and working out of existing rights in terms of shared enjoyment and global equality.

Buchanan, in response to Ackerly, clarifies that his emphasis on individual entitlements is not meant to give short shrift to the shared or group nature of many rights, but only to draw attention to the

fact that ILHR, as rights, are ascribed to individuals who have legal standing and can bring claims against others, including their own states. As to the proper scope of the equal status principle, Buchanan accepts that there are grounds within current ILHR for finding global scope, but doubts that this is the best understanding of the current system. While the same rights are ascribed to all under the current system, to call for more than this would be to push the current system beyond what it can support, running up against many deep differences as to how to properly understand such issues as equality of opportunity, among other problems. This gives reason for favoring a more modest understanding of the equal status principle, at least at the current time. Finally, Buchanan resists the claim that rights proliferation is a mere pseudo-problem, holding that the methods used in the formation of many human rights conventions are often political and undisciplined, leading to over-expansive interpretations, particular when a clear distinction between ILHR proper and administrative directives designed to guide their implementation is not properly distinguished.

Erin Kelly devotes the majority of her sympathetic comment to criticizing and expanding Buchanan's account of institutional legitimacy, arguing that it may be expanded so as to provide an account of the legitimacy not only of ILHR institutions, but also the basic institutional structure of the domestic state. When we see this, Kelly argues, it becomes clear that the same metacoordination view that provides a standard for the legitimacy of ILHR institutions is an important element in evaluating the legitimacy of particular domestic institutions. This fact is both further established by, and lends greater support to, the ecological account of legitimacy developed by Buchanan. Finally, Kelly suggests, Buchanan's account of the distinction between social and moral legitimacy provides grounds for developing a theory of what is wrong with complicity with illegitimate institutions. This indicates that not only legitimacy but also responsibility is an ecological notion in Buchanan's sense.

In response to Kelly, Buchanan agrees that some degree of satisfaction of human rights norms is required for the legitimacy of all institutions, including the institutions that make up the domestic state. He insists, however, that it is not the case that all institutions must actively promote human rights in order to be legitimate. This

further requirement is too much to demand of all institutions, which may have different, perfectly acceptable functions other than promoting human rights. In the case of the main institutions of the state, however, Buchanan does agree that these institutions must not only comply with, but actively promote, human rights norms if they are to be legitimate. Once we make this distinction between the core institutions of the state and other institutions, Buchanan claims, we can see that it is too demanding to require that all institutions promote human rights norms.

Mathias Risse, in perhaps the most thoroughly critical contribution to the symposium, argues that Buchanan's account of human rights cannot gain any support from the defeat of the mirroring view of human rights if there are other possible accounts, and suggests that his own account, which draws on T.M. Scanlon's account of the nature of rights, provides a preferable alternative. This rival account does not make the sort of strict separation between moral and legal rights that Risse finds in Buchanan's account. When we abandon this strict separation, Risse suggests, we will be less likely to think that we should start our inquiry into the nature and function of human rights by focusing primarily on human rights law, and Buchanan suggests. Risse next introduces his own account of the concept of human rights, which he takes to refer to rights with regard to the organization of society that are invariant with respect to local conventions, institutions, culture, or religion. These are moral rights – based on the notion of being a member of the global order – which may sometimes take legal form. Finally, Risse argues that this account of rights is compatible with the Confucian notion of duties owed to 'all beneath heaven', and that this in turn provides better grounds for interaction with the skepticism of human rights discourse presented by Chinese intellectuals and the Chinese state.

In reply, Buchanan agrees that the mere defeat of the mirroring view does not establish that his own view is correct, but argues that to show that another view is preferable it is necessary to develop the account in some detail and show that it is plausibly able to meet the requirements for such an account. Buchanan argues that while he has tried to do this in the book under discussion, Risse has so far only offered a sketch for a plan of such an account. Which approach will prove, eventually, to be preferable will have to wait for a more

developed proposal from Risse. In the meantime, Buchanan claims that the fact that his account of ILHR conforms to a great degree with how international lawyers understand human rights is a significant argument in favor of his account, and he doubts the ability of Risse's alternative to provide a clearer option. Furthermore, he contends that Chinese intellectuals are no more likely to accept Risse's account than his, given that the core of Chinese opposition to the ILHR regime is based on an exceptionally strong understanding of state sovereignty, a notion equally challenged by both accounts.

Allen Buchanan's work on human rights has, over many years, inspired a wide-ranging response among philosophers and beyond. The papers in this symposium show that the debate over this work, and Buchanan's new direction, will continue for some time, even as we make progress on the notion of what an acceptable account of human rights must be.

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