

***The Heart of Human Rights*, by Allen Buchanan. New York: Oxford University Press, 2013. 336 pp. ISBN: 978-0199325382**

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The global human rights movement has grown dramatically over the past seventy years, fueled by governments' stark realization that they had failed dramatically to confront the atrocities witnessed during World War II. When governments created the United Nations in the immediate aftermath of the war, they identified global security, development, and human rights as central to the new organization's mandate. Within three years, in December 1948, the General Assembly adopted the Universal Declaration of Human Rights, the centerpiece of what Archibald MacLeish called "the true revolutionary movement of the 20th century" (Shestack, 1978).

The Universal Declaration and a series of human rights treaties subsequently adopted by the United Nations have provided the foundation for the evolution of the global human rights movement. Allen Buchanan ventures into this world in *The Heart of Human Rights*, a book that seeks to compare the legal and political system that created these treaties with the philosophical assumptions underpinning notions of "moral rights."

When governments drafted and adopted the Universal Declaration of Human Rights, they changed the global landscape in two fundamental ways. First, they universalized the notion of rights, saying explicitly that everyone is entitled to rights by virtue of their humanity. Gone was the notion that individual states bestow core rights on their citizens; in its place, the conviction that rights are ours from birth—regardless of our nationality or status within our own societies—was codified. Second, through the Universal Declaration, states internationalized their collective responsibility to address gross human rights violations—genocide or crimes against humanity, for instance—when these acts are committed by another state. Though it has proved to be extremely challenging to develop and execute specific actions to apply this commitment in practice, a wide majority of states have now abandoned the line that what a government does to its own people is solely an internal affair.

Buchanan examines at some length the legal dimensions of this process. He notes that, since 1948, the world's governments have negotiated a series of international treaties that formalize and amplify the broad principles of the Universal Declaration. These are internationally negotiated, legally binding agreements that a substantial majority of governments have now endorsed. But Buchanan ultimately seems somewhat mystified by this political process. He questions broadly whether there needs to be an underlying moral basis for states entering into such binding legal agreements. He explores whether specific provisions of human rights treaties need to be explicitly linked to particular moral precepts and, if so, how this should happen.

My reactions to Buchanan's book is undoubtedly colored by my own educational and professional background. I was trained as a lawyer, led an organization called

the Lawyers Committee for Human Rights (now Human Rights First) for almost three decades, and during this same period taught human rights at law schools. I am a product of my training and experience and, not surprisingly, quite comfortable with the evolution of the global human rights movement, so deeply rooted in the law.

This does not mean that law and morality are mutually exclusive or that the development of law absent a clear moral compass makes sense. Witness the South African system of apartheid, where a rules-based government codified racial discrimination in national law. Indeed, in many places today, governments operate on the maxim of rule by law rather than embracing a rights-oriented commitment to the rule of law.

In *The Heart of Human Rights*, Buchanan devotes close and exhaustive attention to foundational questions, in particular whether each element in human rights treaties needs to mirror some aspect of moral rights. He calls this the “mirroring view,” which he rightly dismisses as too formal and inattentive to the fact that not every legally recognized human right correlates precisely with a specific moral right. Buchanan also argues separately that the institutions that support and enforce internationally recognized human rights cannot be given a purely moral foundation but, instead, are based on what legitimizes the system of human rights law. Much of his book is devoted to tackling these nuances and exploring the relationship between international law and morality.

But Buchanan also seems perplexed by a series of questions about the international human rights system that seem straightforward. First, he asks whether the international legal human rights system is “justified.” Here, I think he is asking whether the norms contained in the various human rights treaties are reflective of different legal, cultural, and social traditions of the world. Critics of the international human rights system often point to the fact that the Universal Declaration was adopted at a time when there were only sixty-six countries in the world, before the period of decolonization that created many new states in Africa, Asia, and Latin America, and well before the dissolution of the Soviet Union. As a result of these changes, the United Nations now has 193 member states. There is little doubt that many of these relatively new states bring different perspectives to the debate about human rights. Yet, interestingly, the great majority of these states have ratified most of the human rights treaties that are derivative of the Universal Declaration. As of this writing, more than 150 countries had ratified the two principle treaties, called covenants, on civil and political rights and on economic, social, and cultural rights. Even greater majorities had ratified and agreed to be bound by several of the more specialized treaties that address, for example, racial discrimination or the rights of the child. One can question the commitment of these governments to uphold all of these obligations in practice, but it is an important starting point that the vast majority of these postcolonial governments have agreed to the treaties themselves. In this sense, the system, based on international legal commitments among states, is indeed justified.

Second, Buchanan asks whether and how these human rights standards apply to nonstate actors. As a starting point, human rights treaties are directed primarily toward states, which have the fundamental duty to protect the rights of their own people. The premise of international treaties is to provide a floor, below which no national system can go. The assumption, however, is that the best protection

for human rights comes at a national level, where rights-respecting governments set clear legal standards and develop government institutions to implement and enforce these rights. These treaties are not and never had intended to regulate the conduct of violent extremist groups; groups like al Qaeda or ISIS, for instance, do not attend diplomatic meetings, and if they chose to do so they would not be welcome. Fundamentally, they are challenging the international political system of which human rights law is a part. But these groups may be covered by the dictates of international humanitarian law, the laws of wars. The Geneva Conventions and other elements of humanitarian law apply to all parties to armed conflicts, and do not contemplate formal ratification. The role of the International Committee of the Red Cross (ICRC) is to make wars and armed conflicts less horrible and especially to protect noncombatants. Where possible, the ICRC will mediate between all parties to such conflicts, including violent extremist groups where they are able to do so.

Buchanan also asks about the applicability of human rights treaties to corporations. Unfortunately, he deals with this increasingly vital aspect of the rights debate only in passing. There is an evolving debate about how human rights standards apply to corporations, a discussion in which I have been involved for a number of years. Since cofounding the Center for Business and Human Rights at New York University's Stern School of Business in March 2013, my colleagues and I have devoted special attention to these questions. As a starting point, we recognize that corporations are not identical to states and, therefore, the treaty system cannot simply be superimposed on them. In 2003, a UN subcommittee on human rights drafted a set of proposed binding legal norms for corporations—a proposal that was roundly rejected by member states. A similar effort to create a new human rights treaty applicable to businesses has recently been championed by the government of Ecuador. It will be debated at the UN's Human Rights Council in 2015.

On a parallel track, Professor John Ruggie, who served as the Secretary General's Special Representative on Business and Human Rights, proposed a set of Guiding Principles pertaining to multinational business enterprises. The UN Human Rights Council adopted the Guiding Principles framework in 2011. Professor Ruggie was clear that these principles are not legally binding standards, but rather a broader philosophical framework to guide companies that wish to address whatever human rights issues they face. The Guiding Principles hold that governments have the principle duty to *protect* human rights, companies have a responsibility to *respect* human rights, and both governments and companies should contribute to developing *remedies* for situations when rights violations occur. In amplifying on what constitutes a company's responsibility to respect human rights, the Guiding Principles simply encourage each company to exercise due diligence in their business operations. They leave it to each company to decide what this means in practice. As Professor Ruggie rightly stated following the adoption of the Guiding Principles, we are now at the end of the beginning of this process.

Universities, industry groups, and NGOs are promoting the development of specific human rights standards, as well as metrics for applying and evaluating compliance with these standards. Each industry has unique human rights challenges, and the assumption is that collaboration with industry leaders and other key stakeholders

is needed to develop human rights standards tailored to each industry. Others and I do not foresee these industry-specific standards having the force of law, as they do for states. Nonetheless, we will benefit from what we have learned from states since the 1950s about how to set clear standards and metrics that will aid in the implementation, evaluation, and accountability of these standards.

Buchanan brings the worlds of moral philosophy and politics and law into conversation. In extending the human rights debate to the world of business, those working at the intersection of business and human rights use a similar prism but face the added challenge of applying these human rights concepts in today's highly competitive commercial environment. The charge going forward is to develop a standards-based approach for each industry. Industry leaders need to help shape these human rights standards with other stakeholders—standards that will allow global companies to thrive commercially while at the same time developing sustainable business practices that respect the human rights of their workers, their customers, and the communities where they operate. In the twenty-first century, the role of business is no longer peripheral. It is, along with government action, at the heart of human rights. Buchanan's emphasis on the moral dimensions of human rights responsibilities complements this larger movement by focusing our attention on the moral justification of human rights and the legitimacy of systems that formalize those rights.

REFERENCE

- Shestack, Jerome J. 1978. Sisyphus Endures: The International Human Rights NGO. *New York Law School Law Review* 24 (1978/79): 89.