# Human Rights and Status Egalitarianism

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In this essay I will focus on one specific claim that Allen Buchanan makes in the course of his powerfully argued account of human rights, namely, that to understand the system of international legal human rights, we must acknowledge not only their "well-being function" but also a second function that he calls their "status egalitarian function." Thus, on the one hand, the human rights system "protects people from harms and abuses inflicted by their own states and it requires all states to provide the goods and services characteristic of the modern welfare state,"[1] thereby securing at least a minimum level of wellbeing for all. But according to Buchanan it does more than this. It further "*exhibits a robust commitment to affirming and protecting the equal basic moral status of all individuals*,"[2] or, as he also puts it, it serves "to foster the public recognition of equal basic status for all people, in all societies."[3] Buchanan believes that it is a common fault of existing theories of human rights, such as James Griffin's, that they fail to recognize this status egalitarian function, and are therefore unable to make proper sense of international human rights practice.[4] In contrast, the status egalitarian function occupies center stage in the theory of human rights that Buchanan presents in *The Heart of Human Rights*. My aim here is to throw doubt on the claim that promoting status equality is a key purpose of international human rights.

Leaving aside other features of Buchanan's theory, I shall assume that the object we are investigating is the international legal human rights system, and I shall say nothing either for or against the "Mirroring View" that he spends a good portion of the book attacking. However, before examining what "status egalitarianism" means in this context, and how it relates to human rights, I first need to address the kind of claim being made when Buchanan says that the human rights system has a status egalitarian function.

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Speaking here in terms of "function" might strike readers as odd. Functional claims are often straightforwardly empirical. If I say that the function of the spleen is to filter blood and remove antigens, or that the function of a carburetor is to blend air and fuel prior to combustion, these statements can be verified by observation. But can we identify the function of the human rights system just by looking at it? In some places Buchanan seems to be claiming this. He says "it is important to distinguish clearly between a description of the existing system and a proposal for how it might best be rationally reconstructed or a hypothesis about what the system is like on the best interpretation of it . . . . At this point I am simply trying to describe the system."[5] But what is then involved in describing the human rights system as having a certain function? Is this a claim about the purposes of the many different people who over time have first initiated and then developed the system? Or is it a claim about the effects that the system has in the societies to which it is applied?

The answer, I believe, is neither of the above. Buchanan's account of the human rights system is more normative than he lets on when he says that his aim is simple description. Indeed, it is much closer to being "a proposal for how it might best be rationally reconstructed," where "rational reconstruction" makes reference to the values that Buchanan believes the system should serve. For evidence that the theory has this normative component, we might refer to the book's concluding chapter, which contains an impressive discussion of rights inflation and the measures that might be taken to combat it. But if we were simply describing the system as it exists, then rights inflation over time would just be one of the features that we would observe along with several others. That Buchanan is *bothered* by the phenomenon of rights inflation tells us that he has in the background a normative theory of what things should be recognized as genuine human rights and what things should not. No doubt that theory is deeply informed by human rights practice as evidenced by covenants, treaties, legal rulings, and so forth. Nonetheless, it is a normative theory: it does indeed aim to give the "best interpretation" of the practice by showing that it has two main ethical purposes, both of them coherent and valuable, namely, "helping to ensure that all individuals have the opportunity to lead a minimally good or decent life" (the wellbeing function) and "constraining sovereignty in order to affirm and protect equal basic status" (the status egalitarian function).[6]

Having clarified the kind of claim that Buchanan is making when he speaks of the international human rights system as serving status egalitarianism, we need



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next to investigate what it means to promote the "equal basic status" of all individuals. This is perhaps easiest to do by seeing what would undermine equality of this kind. According to Buchanan,

> the public recognition of one's equal basic moral status is threatened when one is treated in ways that, given the historical context, put one at risk of being regarded as naturally inferior in certain respects, where being naturally inferior in those respects is thought to disqualify one from participation as an equal in important social practices or roles, and where natural inferiority is understood as the normal condition of individuals of the sort of human being one is.[7]

This complex claim needs some unpacking. Buchanan assumes that equal status is threatened in cases where people belong to identifiable groups—racial minorities and homosexuals are among the examples he cites. People in these groups are then treated in ways—presumably ways that are less favorable than those experienced by people outside of the group—that may encourage a widespread belief in their natural inferiority (for example, that they are less intelligent or less rational). This then means that they are thought not to be qualified to take part on equal terms in important social practices (such as, presumably, voting in elections). In other words, people in these groups are ascribed a lower social and political status simply by virtue of the characteristics that are used to identify them as members. Equal basic status is realized when none of this happens, and Buchanan's claim is that one of the two main functions of international legal human rights is to ensure that it does not.

So "inequality of basic status" is not simply a matter of a group's members being treated unfavorably, but also of the mindset this produces—either in members of the group or in the wider society (Buchanan is not explicit about this)—which involves labelling people as inferior in certain respects by virtue of some characteristic that they share with other members of that group. There is no dispute here about whether this is undesirable. Buchanan's notion of status equality is an important political value in contemporary Western societies (I will come back to the significance of these modifiers later on). Many of the social practices in these societies have been redesigned to ensure that no person or group is placed in a position of inferiority vis-à-vis another (for a recent example, think of the introduction of same-sex marriage).

Where I disagree with Buchanan is not over whether status equality is valuable, but over whether its promotion should be understood as part of the raison d'être



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of international human rights. We both agree that human rights cannot be regarded as a universal cornucopia. As we have seen, Buchanan criticizes rights inflation and says explicitly that "there is a large gap between saying that something is a morally important or urgent interest and showing that there ought to be an international legal human right to protect it."[8] So why assume that basic status equality is an international human rights matter rather than an important domestic policy goal that some societies, but perhaps not others, may choose to pursue?

As evidence that international human rights have a "status egalitarian function," Buchanan cites five features of that system that I will paraphrase for the sake of simplicity:

1. Everyone has human rights.
2. Everyone has the same human rights, with the same weight.
3. Everyone's human rights must be made effective by the state.
4. There must be equality before the law, with effective legal remedies for everyone.
5. There must be strong antidiscrimination rights, including rights against informal practices of discrimination.[9]

The first three features can be summed up by saying that the state must protect every citizen's human rights equally. If this is achieved, it certainly creates equality in one dimension: everyone is equal with respect to (effective) human rights protection. But although this might be a precondition for status equality of the kind outlined above, by itself it creates no wider form of equality. Henry IV is said to have promised the common people of France a chicken in every pot each Sunday. If he had kept his promise the people of France would have been equal in that respect. But no one would suppose that Henry's aim was to create status equality in a wider sense. Just as providing one chicken per household does not mean that some households will not dine far better than others or enjoy higher social status, so having human rights uniformly protected does not mean that some individuals will not have far greater resources, opportunities, and social prestige than others.

Consider next the fourth feature—equality before the law—which, as Buchanan reminds us, includes the provision that the legal system should provide legal remedies on a nondiscriminatory basis when rights are violated. As many have observed, this principle does not tell us anything about the content of the law, other than that it should be formulated as general rules potentially applicable to all persons. The remedies requirement entails that people must have sufficient



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resources to make effective use of legal procedures when they need to, and this might seem to place limits on overall inequality. However, the requirement could also be satisfied by specific provisions, such as supplying legal aid to those who cannot otherwise afford a defense lawyer. Here again, as with the first three elements, we have no reason to think that a human rights system that includes equality before the law as one of its provisions must have status equality as one of its wider aims.

So for Buchanan's claim that international human rights have a status egalitarian function to hold water, a great deal rests on the fifth element—the presence of a human right against discrimination embedded in international covenants. The question is, how should we construe this right? What does it require? On one reading, it prohibits the state from making discriminatory laws, that is, laws that would place a burden on some but not others in the exercise of their human rights. Thus, a law that prevented women from working or a law that denied health care to a racial minority would violate the right against discrimination. But understood in this way, it merely reiterates (perhaps with greater emphasis) the previous four elements—the provision that everyone should possess and enjoy the same human rights, for example. To move beyond that, the right against discrimination must require not only that the laws themselves should not be discriminatory but also that there should be laws to prevent all forms of discrimination, whether it occurs in the public or private sphere. This seems to be what Buchanan has in mind when he refers to statements such as Article 26 of the International Covenant on Civil and Political Rights, which reads that the law must "guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion . . . [etc.]."

The problem with interpreting the Article as calling for a blanket ban on all forms of discrimination, however, is that there are going to be many cases in which it is quite acceptable to discriminate between people on one of the grounds it mentions. This is because the grounding feature is relevant to the specific benefit being provided. It was presumably not the intention of Article 26 to prohibit affirmative action programs for disadvantaged racial groups, to prevent media positions in multilingual societies from being offered to those fluent in the relevant language, to ban separate sporting competitions for men and women, and so forth. So the Article has to be read as prohibiting discrimination on *irrelevant* grounds only. But then its aim is not to achieve status equality between groups, but to prevent individual people from being treated unjustly by wrongful



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exclusion from important social goods. Of course it is possible that someone who is unfairly discriminated against—on grounds of race, say—will feel not only that he has been unjustly treated but also that he has been consigned to an inferior social status (this is more likely to happen if the discriminatory treatment becomes routine). I am not trying to underplay the badness of wrongful discrimination. The question, though, is whether the presence of a human right against discrimination is sufficient evidence that one of the functions of human rights is to bring about status equality in the quite ambitious sense outlined earlier, where what matters is not just how people are treated materially but how they understand their social position as members of a particular group. I am arguing that this has not been shown, and that the antidiscrimination clause is most plausibly read as having a narrower aim, that is, preventing a particular form of distributive injustice.

But even if the existence of a human right against discrimination fails to show that human rights have a status egalitarian function, we can still ask whether the practice ought to embrace the ambitious goal of status equality as part of its rationale. The answer will depend on whether we think it an important feature of human rights that they be justifiable in terms that can be accepted by people from a wide range of social, political, and religious backgrounds—or, in other words, that they should not be "sectarian" in the sense of being acceptable only to people who already subscribe to liberal-egalitarian principles. Given the political role that Buchanan assigns to the human rights system ("*to provide a set of universal standards, in the form of international law, whose primary purpose is to regulate the behavior of states toward individuals under their jurisdiction, considered as social individuals, and for their own sakes*"[10]), it seems that he should accept this condition. And indeed he shows that he is sensitive to the danger of sectarianism by including, in chapter 7, a discussion of the challenge that "ethical pluralism" might pose to the human rights system. He regards it as important to show that the international legal human rights regime can be justified from the perspective of non-Western moralities. However, he then goes on to characterize those moralities in a way that sidesteps the particular question under discussion here: he contrasts "individualistic" with "collectivistic" moralities on the basis of how much they value individual autonomy on the one hand, versus the flourishing of relationships within groups on the other. He proceeds to argue, as others have, that moral collectivists too should, on balance, value the protective role (for both individuals and groups) that human rights can play.



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But the key issue for the present discussion is not collectivism in general, but whether "basic status equality" is a principle that all reasonable social moralities can accept. Here it is important not to conflate status equality as Buchanan understands it with moral equality—the idea that all human beings are of equal moral worth. Moral equality in that sense may indeed be an axiom that all reasonable moralities must include. But status equality is a different matter: it makes a claim about how societies should be constituted, namely, in such a way that no group of individuals is regarded as having lower standing than any other group. The contrast here is with ideas of social order in which people occupy higher or lower ranks depending on features such as gender, inherited status, occupation, seniority, religious affiliation, and so forth. Such orders are sustained by the claim that people belonging to every rank benefit when the hierarchy is maintained, because each person performs a function that suits their nature.[11] Although alien to contemporary liberals, such ideas have prevailed in most places throughout human history, and still prevail in many places today—especially in societies in which a religious establishment provides the backbone of authority. Where this is so, there will inevitably be a clash between local morality and human rights if it is indeed the case that international human rights entail status egalitarianism. Fortunately for human rights, this entailment does not hold, for reasons I have already suggested.

The alternative is to justify human rights by appeal to human needs and human interests that are recognized as such in all societies, and indeed this is the kind of justification that Buchanan favors when he presents the "well-being function" as that of securing the conditions for leading a minimally decent human life.[12] So why would it not be sufficient to ground human rights in that way?[13] Buchanan seems to think that doing so would severely reduce their content. At one point he says that removing the status egalitarian features of human rights would entail "a truly radical revision of international human rights law that amounts to eviscerating it."[14] But this of course depends on whether we really need to appeal to the idea of basic status equality in order to derive a list of rights that comes close to those recognized in existing practice. Buchanan argues that a set of rights justified exclusively by appeal to the wellbeing function might grant some people more extensive or weightier rights than others. But this overlooks the fact that what human rights do in all cases is provide a *sufficient* level of protection for whatever basic need or interest is at stake—enough bodily protection, sufficient freedom of movement and expression, an adequate level of health care, and so



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forth. There will always be debate as to where the relevant threshold should be set, but whatever the answer turns out to be, respect for human rights demands that it be adhered to universally: the state is obliged to provide everyone it is responsible for with the full roster of rights. Of course, some states may choose to go further along one or more of these dimensions, supplying their citizens with additional levels of education or health care, perhaps on an unequal basis, but this will not be a human rights concern; it will be a matter of social justice.

So to conclude, why is it a mistake to present human rights as serving to promote status equality? I believe it ties them too closely to an ethical ideal that is powerful in the modern West, but is rejected elsewhere, especially in societies in which traditional religion plays a central role. The aim of human rights is not to revolutionize the social structure of these societies. It is to prevent their governments from persecuting minorities, locking up political dissidents, and so forth. Both the practice of international human rights and the justifying theories that we offer should reflect this modest aim, so that human rights cannot be written off as Western liberal dogma. We have other language with which to defend full equality for women, gays, ethnic minorities, and other disadvantaged groups.

NOTES

[1] Allen Buchanan, *The Heart of Human Rights* (New York: Oxford University Press, 2013), p. 32.
[2] Ibid., p. 28. Italics in the original.
[3] Ibid., p. 88.
[4] For his more extended critique of Griffin, see Allen Buchanan, "The Egalitarianism of Human Rights," *Ethics* 120, no. 4 (2010), pp. 679–710. This is in response to James Griffin, *On Human Rights* (New York: Oxford University Press, 2008).
[5] Buchanan, *The Heart of Human Rights*, pp. 91–92.
[6] Ibid., p. 37.
[7] Ibid., pp. 90–91.
[8] Ibid., p. 82.
[9] For the full statement, see Buchanan, *The Heart of Human Rights*, pp. 28–30.
[10] Buchanan, *The Heart of Human Rights*, p. 86. Italics in the original.
[11] This idea is famously expressed in one of Ulysses's speeches in *Troilus and Cressida*:

> "O, when degree is shaked,
> Which is the ladder of all high designs,
> The enterprise is sick! How could communities,
> Degrees in schools, and brotherhoods in cities,
> Peaceful commerce from dividable shores,
> The primogeniture and due of birth,
> Prerogative of age, crowns, sceptres, laurels,
> But by degree stand in authentic place?
> Take but degree away, untune that string,
> And hark what discord follows."

K. Muir, ed., *The Oxford Shakespeare: Troilus and Cressida* (Oxford: Clarendon Press, 1982), pp. 72–73.
[12] It is also the route followed by many other philosophers writing on human rights, including James Nickel, *Making Sense of Human Rights*, 2nd ed. (Malden, Mass.: Blackwell, 2007), Charles Beitz, *The Idea of Human Rights* (New York: Oxford University Press, 2009), John Tasioulas, "On the Foundations of Human Rights," in Rowan Cruft, S. Matthew Liao and Massimo Renzo, eds.,



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*Philosophical Foundations of Human Rights* (New York: Oxford University Press, 2015), and David Miller, "Grounding Human Rights," *Critical Review of International Social and Political Philosophy* 15, no. 4 (2012), pp. 407–27, significant differences between these accounts notwithstanding.

[13] In an earlier discussion, Buchanan seemed more willing to concede this possibility: "The first five egalitarian items could perhaps be adequately grounded in instrumental considerations alone as providing valuable protections for individual well-being. Recognizing their role in safeguarding equal status augments the instrumental case for them, but it may not be essential." Buchanan, "The Egalitarianism of Human Rights," p. 688.

[14] Buchanan, *The Heart of Human Rights*, p. 143.



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