

point of view (consider the phenomenal seemings that attend walking over a glass bridge at a significant height, even when one knows the bridge to be safe).

PUTTING IT TOGETHER

With these materials, Broome is in a position to offer an answer to the “motivation question.” Consider a case in which one believes one ought (in the central sense) to F but does not intend to F. Related to the requirement of Enkrasia, there is a general rational permission for a belief that one ought to F to serve as the basis for an intention to F. In accord with this permission, one may apply a corresponding rule to one’s belief that one ought to F and thereby derive an intention to F. In doing so, one reasons; indeed, one reasons correctly. Because reasoning is something we do, in reasoning to this intention, “we motivate ourselves” (294). And by bringing ourselves into conformity with the rational requirement of Enkrasia, we achieve rationality through reasoning.

It is useful to have an account of how we might achieve rationality through reasoning. And it may be that Broome’s materials can help us go further. As Broome notes, in a case of enkratic reasoning, we may end up with an intention that we have no reason to have, apart from whatever reason there was to be rational (198). So we might raise the more general question of how reasoning enables us to respond to reasons. In answering this question, we might use the idea of evidence (which Broome appeals to in various places) and basing permissions that govern correct reasoning from evidence to beliefs and intentions. This might help explain how we achieve, not just rationality but also reason responsiveness, through reasoning.

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Buchanan, Allen. *The Heart of Human Rights*.

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In *The Heart of Human Rights*, Allen Buchanan offers a comprehensive theory and justification of international human rights. Although he contends that a justifiable theory of human rights must be morally grounded, he endeavors to provide such grounding without linking human rights to corresponding moral rights, as other more philosophical accounts of human rights have attempted (see, e.g., Joseph Raz, “Human Rights without Foundations,” in *The Philosophy of International Law*, ed. Samatha Besson and John Tasioulas [New York: Oxford University Press, 2010], 321–37; James Griffin, *On Human Rights* [New York: Oxford University Press, 2009]).

The book is composed of multiple projects, including a thorough defense of international human rights policy. Buchanan characterizes and defends the aim of human rights as follows: “To provide universal standards, in the form of international law, for regulating the behavior of states toward individuals under their jurisdiction, considered as social beings, for the sake of those individuals themselves” (249). Buchanan carefully lays out the sort of strategy needed to jus-

tify a system of international legal human rights. He goes on to explain how a particular system of human rights is so justified and is, in fact, morally obligatory for states and their governments to enforce. He does not spell out all of the particular rights that may or must be included in this system.

A central idea, addressed throughout the monograph, is that human rights ought and, to some extent, already do protect and promote both the basic needs of individuals and also the equal status of those individuals (135–37). Endorsing this equal status objective of human rights allows Buchanan to steer away from views like that of Charles Beitz, who, for instance, thinks that international human rights should not go so far as to prescribe against gender discrimination, as long as the basic needs of members of both sexes/genders are met (Charles Beitz, *The Idea of Human Rights* [New York: Oxford University Press, 2011], 187–96). Buchanan does a laudable job of defending his view (particularly the equal status objective) against charges of cultural intolerance and against some anticipated objections from ethical pluralists (141–44, 249–73).

Buchanan argues that a variety of moral reasons can justify the inclusion of particular human rights legislation—including the promotion of social goods that cannot be explained in terms of anyone’s individual rights. In so arguing, he contends that human rights can involve moral duties for state officials that do not correspond to anyone’s particular moral rights. He refers to the alleged correspondence between moral rights and justifiable human rights as the “mirroring view” and argues that it is false (14). According to Buchanan, moral rights are not necessary for grounding human rights or sufficient for grounding human rights, nor is there actually a correspondence between many of the international human rights we believe to be justified and any moral right held by individuals.

Buchanan argues persuasively that moral rights are neither necessary nor sufficient for grounding international legal human rights. For instance, someone might have a moral right against others that promises made to him be kept, but that might not justify a corresponding legal right—especially if enforcement of such a legal right would require privacy infringements and impossible investigations into the private and family lives of individuals. Hence, the moral right to having promises made to us be kept is not sufficient for grounding a legal right, let alone a legal human right (56–57). To show that moral rights are not necessary requires more work. Buchanan makes multiple cases for this conclusion.

I do not object to the conclusion that moral rights are unnecessary for legal human rights, as I believe that some of his arguments for this conclusion are successful. However, one of his primary avenues for arriving at this conclusion involves an intermediate step that itself is a significant aspect of Buchanan’s theory of human rights. In the argument that I examine, Buchanan first makes a case against the correspondence between some justifiable human rights and moral rights held by individuals. Using this premise as a lemma, he goes on to argue for the further conclusion that moral rights are not necessary for legal human rights. However, I want to show that the lemma “there are no moral rights that correspond to (i.e., have the same content as) many important international legal human rights” is not adequately supported by his argument (63). I refer to this lemma as the “correspondence claim.”

My critique is important, as Buchanan does not only care about proving that the necessity condition is false. After all, a proponent of the mirroring view might say, “sure, there are other ways of grounding legal human rights, but they are, in fact, grounded in moral rights—even if the grounding is over-determined.” Buchanan wants to show that those who promote the mirroring view cannot provide justification for many justifiable legal human rights that they already endorse by appealing to moral rights. In order to do this, he has to make a case that some justified legal human rights do not correspond to any moral rights—a project he undertakes between premises 1 and 4 of the following argument.

1. Many important international legal human rights have corresponding duties the fulfillment of which requires large-scale social investment and limitations on the liberty of large numbers of people.
2. Such duties, and hence the corresponding rights, are justifiable only because their fulfillment would positively impact the interests (or autonomy, etc.) of large numbers of people.
3. In the case of moral rights, the corresponding duties must be justifiable by appealing solely to some morally important aspect of the individual to whom the right is ascribed, because the duties are supposed to be owed, morally speaking, to the individual to whom the right is ascribed. (In contrast, in the case of legal rights, the fact that the correlative duties are owed, legally speaking, to the individual right-holder does not imply that they are grounded solely in the moral importance of some aspect of the right holder.)
4. (Therefore), there are no moral rights that correspond to (i.e. have the same content as) many important international legal human rights.
5. If there are no moral rights that correspond to many international legal human rights, then for many international legal human rights, it is not possible to justify them by appealing to corresponding moral human rights.
6. Yet many international legal human rights that cannot be justified by appealing to corresponding moral human rights are justifiable—they are suitable for inclusion in a system of international legal rights, given the functions such a system is supposed to perform and given the moral appropriateness of those functions.
7. (Therefore), in the case of many justifiable international legal human rights, showing that the legal right helps to realize a corresponding moral human right will not fully justify the legal right, not because there would be unacceptable consequences of legally realizing the moral right (as with the case of the right to be treated with respect), but because the moral right has a narrower scope than the legal right. (62–63)

First, let me describe one duty that Buchanan believes is described by premise 2. I will refer to this particular duty to illustrate my objection to his argument. States have a duty to implement policies governing industry to curb the output of pollutants hazardous to the health of all individuals. The sort of policies requiring both coordination and the limitation of a variety of market freedoms would not, according to Buchanan, be justified by any particular person's

moral right to conditions conducive to health. It is only when a population's interests are aggregated that the sum justifies the extensive and intrusive policies required to keep air fresh and rivers clean. Although I am focusing on this particular duty, Buchanan believes that many duties described by international human rights documents take the form of those described by premise 2. For instance, he suggests that, to the extent that states have a duty to prevent propaganda (e.g., wartime propaganda that engenders false beliefs in a population), it is not a duty that corresponds to a moral right (94–95).

What I am going to suggest is this: even if we are sometimes only justified in protecting someone's interests if they are shared by large numbers of people does not mean that those interests are insufficient for grounding moral rights. There are two different theoretical options for explaining how my suggestion might be possible. The first option allows that rights can be justifiably infringed. If I infringe your right, I wrong you, and I fail to discharge a duty owed to you. However, all things considered, the act might be justified. In this way, Judith Thomson distinguishes between a justified infringement of a right and a rights violation (for representative examples of this view, see Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* [Princeton, NJ: Princeton University Press, 1980], 221–25; Judith Jarvis Thomson, "Self-Defense and Rights," in *Rights, Restitution and Risk*, ed. William A. Parent [Cambridge, MA: Harvard University Press, 1986], 33–48, 37). For instance, if I break my promise to you in order to save someone's life, and this is justifiable, then I have infringed your right. However, if I break my promise to you in order that I may have time to snooze and watch TV, and doing so is unjustified, then I have violated your right.

Of course, many deny that moral rights can be justifiably infringed. Moral Specificationism is a theory of moral rights that retains the absolute nature of rights while still explaining why, for instance, it is permissible to break a promise in order to save someone's life. Moral specificationists contend that moral rights are comprised in such a way that justified exceptions are built directly into rights (see, e.g., William Parent and William Prior, "Thomson on the Moral Specification of Rights," *Philosophy and Phenomenological Research* 56 [1996]: 837–45; Russ Shafer-Landau, "Specifying Absolute Rights," *Arizona Law Review* 37 [1995]: 209–26). For instance, you might have a right against my breaking a promise to you, but that right might be such that, if I may justifiably refrain from keeping the promise in order to save someone's life, this means that the right includes a life-saving exception. I would not violate or even infringe your moral right, because you simply do not have a right to my keeping a promise to you instead of saving someone's life.

If rights can be justifiably infringed, then it is not at all clear that premise 2 of Buchanan's argument is true. If rights cannot be justifiably infringed, and moral rights are specified, then Buchanan's premise 3 is false. In what follows, I explain this dilemma.

My significant interest in clean air, free of factory pollutants, might well be weighty enough to ground a moral right. However, my right to clean air might be justifiably infringed given certain circumstances. For instance, if no one else is hurt by the toxins but me, and if there exist massive social/economic advantages to allowing the factories to produce the pollutants, then it might well be justifiable to infringe my right. However, if everyone's lungs are constituted like mine,

then the social and economic benefits to allowing the pollutants in the air are significantly outweighed by the public health costs. In this case, there is not enough justification to infringe my right. Notice that I hold a right against being subject to the air pollution whether or not everyone else holds a significant interest in fresh air. However, the social factors, including the aggregation and weighing of other people's right-grounding interests, play a role in determining whether the infringement of my right was justified.

On this theory of rights, premise 2 is not substantiated. After all, even if premise 1 is true (i.e., "Many important international legal human rights have corresponding duties the fulfillment of which requires large-scale social investment and limitations on the liberty of large numbers of people"), this only speaks to the justifiability of protecting and honoring the rights. Premise 2 does not follow. It says, "Such duties, and hence the corresponding rights, are justifiable only because their fulfillment would positively impact the interests (or autonomy, etc.) of large numbers of people."

Now, as we have seen from my example, the corresponding rights might be justifiable on the basis of the significant interests of the individual alone. It simply might not be justifiable to honor and protect the right of the individual (and instead might be justifiable to infringe it) unless it would positively affect the interests (or autonomy, etc.) of large numbers of people. On this account of rights, the mirroring view comes away unscathed.

As I have stated, Buchanan's second premise fails if he accepts that moral rights can be justifiably infringed. However, if he rejects this theory of rights and embraces Moral Specificationism, then his third premise fails instead. Buchanan would probably agree that if there were no social or economic costs to ridding the environment of pollutants, then one person's significant interest in fresh air would, on its own, be sufficient to ground a moral right. After all, my interest in clean air, free of factory pollutants, is weighty. The absence of such air will be detrimental to my health and will decrease my lifespan. Buchanan thinks that it is because ridding the environment of pollutants requires such extensive and intrusive policy making that no individual, on the basis of just her own health interests, has a right to such state action.

The moral specificationist would explain this as follows: the moral right to be protected from air pollutants is specified in such a way that, if honoring the right would require unreasonable levels of state effort, then an exception is built into the right. That is, if I were the only one whose lungs were such that I had this weighty interest in clean air, then I would not have a right to unreasonably extensive and intrusive action being taken on my singular behalf to protect this significant interest. My right to fresh air is specified in such a way that you do not violate it by justifiably choosing to allow business practices that are convenient, profitable, and freedom enhancing for everyone else. That is, the justifiable exception is built into my moral right.

However, once we see that so many people have this weighty interest, and the social cost to recognizing and respecting so many rights is reasonable, given the numbers, exceptions to the right are not justified. So while I do not have a right to unreasonably extensive and intrusive action being taken on my singular behalf to protect this significant interest, I do have a right to reasonably extensive and intrusive action being taken to protect this significant interest. That ev-

everyone does have an interest in clean air is what makes the extensive and intrusive actions on the part of the state reasonable.

Premises 1 and 2 of Buchanan's argument go untouched by Moral Specificationism. However, on the specificationist picture, whether an individual has a specific moral right is not determined solely by looking at the interests of the individual. We must look at the world and see whether there are any justifiable exceptions to someone's general right to, say, fresh air. This poses a problem for Buchanan's third premise: "In the case of moral rights, the corresponding duties must be justifiable by appealing solely to some morally important aspect of the individual to whom the right is ascribed." A mirroring-view advocate could just say, no, in order to determine whether someone has a specific right to the government protecting her significant interest, we must look at both the interest itself as well as the conditions of society that might justify policies that undermine or frustrate this individual's interest. Moral rights and the corresponding duties are only justifiable by both appealing to the morally important interests of the individual to whom the right is ascribed as well as the absence of moral considerations that would justify undermining those interests.

In this way, advocates of the mirroring view can hold onto their claim that each justifiable, legal human right corresponds to some moral right held by individuals. Of course, Buchanan has shown many other interesting things about the relationship between moral rights and human rights. For instance, the mirroring-view advocate would have to accept that, even if there were no such thing as moral rights, it would be possible to ground legal human rights. Further, the mirroring-view advocate should accept that her own account of rights will fail to provide an ethical pluralist with reasons to embrace international, legal human rights, as Buchanan's account successfully provides. My criticism in this review has been modest. I only have shown that the mirroring-view proponent can defend the plausibility of her correspondence claim, against which Buchanan argues in premises 1–4.

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Lippert-Rasmussen, Kasper. *Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination*.

New York: Oxford University Press, 2014. Pp. xii+317. \$65.00 (cloth).

Kasper Lippert-Rasmussen's book is the most exacting, and in some ways the most ambitious, of a recent wave of theoretical writings on discrimination and its wrongfulness. This is the third wave. The early 1970s saw a burst of scholarly interest in the acceptability of affirmative action and 'positive' discrimination. In the 1980s attention turned to questions about the proper scope of (then burgeoning) antidiscrimination law. With rare exceptions, however, writings in these earlier waves were sketchy on the question of when and why, apart from the law, regular 'negative' discrimination is objectionable. In the third wave, this more basic question is finally the main concern. Why the wait? Perhaps it is only now,