

To be or not to be: Charles Beitz on the Philosophy of Human Rights

Charles R. Beitz: *The Idea of Human Rights*. Oxford University Press, Oxford, 2009, 256 pp.

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It has taken some years, but human rights have finally gained the serious attention of moral and political philosophers. *The Idea of Human Rights* is the most recent confirmation of this trend. Between its covers, Charles Beitz, a pioneering theorist of global justice,¹ turns to the question of what a human right is, and what makes it different from other varieties of rights. His hope is that a constructive response to this question will allow us to address various sources of scepticism about the modern practice of human rights, including the profligacy of rights claims, their cultural contestation, inadequate enforcement, and ambiguous practical requirements. The result of Beitz's efforts is a deeply valuable, original, and edifying contribution to a debate that is still just beginning to take shape.

Beitz begins his book by distinguishing between three eligible conceptions of human rights: *naturalistic*, *agreement*, and *practical* theories. Although this simplified taxonomy falls well short of a complete overview of the contemporary philosophical landscape—leaving out, among others, discourse theory as well as consequentialist accounts of human rights—it does succeed in demarcating three prominent theoretical starting points. Naturalistic theories, according to Beitz, ground the distinctiveness of human rights in their protection of features possessed by all human beings 'as such.' These features typically include basic human interests or needs that are important enough to justify holding other persons and/or institutions to be under a reciprocal duty to protect and/or promote.² Agreement theories, by contrast, understand the distinctiveness of human rights to consist in their being objects of universal moral agreement or consensus. Thus, despite the

¹ See: Beitz (1979/1991).

² For prominent examples of naturalistic theories, see: Griffin (2008), Buchanan (2004), Nussbaum (1997).

broader moral disagreements that inevitably prevail amongst individuals and cultures, there is a common (or at least ‘reachable’) core of moral standards upon which we do all agree, and these constitute human rights.³

One of the difficulties faced by both such theories, Beitz suggests, is their tendency to engender rather than allay scepticism about the authenticity of a number of human rights currently enshrined in international law and political practice (74). It is easy to see how this tendency is generated. Naturalistic theories, for instance, provide us with foundational moral criteria—i.e. our basic interest in personhood, agency, or dignity—that serve to constrain the content of genuine human rights regardless of what the current international doctrine includes.⁴ Agreement theories, on the other hand, are likely to be even more constraining, and for at least two reasons: First, it is not at all clear that there presently is (or might one day be) any identifiable set of universally-accepted moral standards, in which case agreement theorists would have to conclude that there are no genuine human rights; and second, even if there is such a set, its content is likely to fall well short of the robust set of norms that have come to define the modern doctrine of human rights. The equal rights of women to education and political participation, for instance, are today very far from being universally accepted moral norms.

Of course, a theory’s tendency to cast doubt on the authenticity of human rights currently enshrined in legal or political documents is not necessarily a vice. It may very well be that there are human rights currently recognized by international institutions that nevertheless should not be or vice versa: there may be human rights that should be internationally recognized that are not. Philosophical theory should tell us what these are. Beitz does not deny this. Rather, what he finds most objectionable in naturalistic and agreement theories is what *underlies* their sceptical bent, that is, their question-begging pretension to authority over the international practice of human rights. By pretending to bring this international practice in line with philosophically conceived criteria, instead of vice versa, Beitz argues that such theories fail to illuminate the conception of human rights already implicit in human rights policy and the political culture it has spawned. He writes, ‘If the focus of critical interest [of a theory of human rights] is the idea of human rights as it arises in public reflection and argument about global political life, then it seems self-evident that we should take instruction from the public practice in conceptualizing its central terms.’ (11) That our philosophical conception of human rights should ultimately conform to, and in so doing make sense of, the current international practice of human rights as we know it, is the defining methodological claim of the practical theory of human rights defended by Beitz, and is what underwrites its philosophically modest and interpretive character.

³ The unequivocal proponent of agreement theory about human rights is Michael Walzer (1994). The other proponents of agreement theories listed by Beitz, such as Joshua Cohen (2008) and Charles Taylor (1999) are less obvious candidates, but I leave that question aside.

⁴ See, for instance: Griffin (2008: 207–208), where the human right to work is dismissed as non-genuine.

For Beitz, this methodological turn requires, first and foremost, that we recognize in philosophical theory the practical role that human rights fulfill in global political affairs—an insight he attributes to Rawls's brief remarks about human rights in *The Law of Peoples*.⁵ This unique and empirically identifiable role, according to Beitz, involves the specification of norms of behaviour that apply primarily to states in their relations towards (1) their own citizens, and (2) each other. By unpacking the components of this function or role, or elaborating on its structural features, that is, 'by asking for what kind of actions, in which kind of circumstances, human rights claims may be understood to give reasons' (9), Beitz argues that we can come to an adequate conception of the *idea* of a human right (i.e. an idea of what a human right is and what its purposes are) and, in light of that conception, draw instructive conclusions about the normative content and justificatory basis of such rights.

Despite the plausibility of the methodological contrast that Beitz uses to distinguish his practical theory from its counterparts, he exaggerates its dialectical relevance. For, it is ultimately wrong to assume that naturalistic and agreement theories cannot also take instruction from the public practice of human rights, and in at least two relevant senses. First, there is no reason why a naturalistic theory cannot glean its account of the foundational values, interests, or needs underlying human rights from direct consultation with the content of human rights currently recognized by international charters (i.e. the Universal Declaration); in fact, there is no doubt that this is the very thing such theorists do. Second, I do not see why naturalistic and agreement theories cannot also go beyond this and recognize, as Beitz suggests, the philosophical importance of the practical role that human rights play in global political life. For instance, it is quite plausible to imagine a naturalistic theory according to which considerations about the practical features of rights *combine* with naturalistic considerations about universal human interests to determine the content of human rights licensed by philosophical theory. In fact, as we shall see in a moment, this comes very close to an accurate statement of Beitz's own theoretical position.

Beitz never really considers the possibility of this sort of naturalistic theory, however, and this is reflective of a more general weakness of the book. Despite having dedicated all of Chapters Three and Four to the discussion of naturalistic and agreement theories, Beitz only manages to attack impoverished (and unpopular) versions of these views, especially those of a naturalistic sort. For instance, two of the four assumptions that Beitz identifies as part of the core 'conceptual space' of naturalistic theorizing about human rights—(1) that the content of human rights does not depend on the nature or existence of actual political institutions, i.e. that human rights are *pre-institutional* (52), and (2) that human rights belong to all persons 'at all times and in all places' (53)—have been rejected by some contemporary naturalistic theorists.⁶ Beitz recognizes this, and as a result he occasionally qualifies the overall force of his rejection of naturalistic thinking about human rights. But why does he not instead strengthen that rejection by arguing against the best and most updated efforts that naturalistic thinkers about human

⁵ See: Rawls (1999: 78–82).

⁶ See: Tasioulas (2007) and Nickel (2001).

rights currently have to offer? Beitz's failure to do so is not only an uncharitable feature of his attack on naturalistic theories; it undermines his argument for adopting a practical conception of human rights. This is because it gives scope to the possibility, imagined above, that naturalistic theories may themselves be able to take the distinctive features of a so-called practical conception on board.

None of this is to say that Beitz's practical theory lacks original insight into the nature of human rights or how we should reflect about them. Beitz's main achievement is his demonstration of the philosophical significance of a host of practical considerations that naturalistic theorists have to date regarded as incidental to the comprehension of human rights. The specifics of Beitz's position are framed by his general view of the purpose of such rights, which he garners from recent world history. Modern human rights, Beitz argues, were designed to correct for certain historically-borne-out pathologies of the pre-Second World War global political order, one in which states were accorded full autonomy over their domestic affairs and enjoyed freedom from any higher-order control. Among its other maladies, that moral-political order managed to provide 'safe haven for governments that mistreated or failed to protect their populations in ways that had devastating consequences for those affected' (129). Human rights attempt to remedy such deficiencies in an institutionally economical way, not by prescribing the wholesale abolition of the pre-War 'Westphalian' moral-political order (and its replacement by, say, an ambitiously cosmopolitan political counterpart), but by *adjusting* its normative principles so that the 'urgent individual interests' (110) of any nation's citizens become a matter of both national *and* international concern. The modern doctrine of human rights, Beitz suggests, establishes a normative division of labour between states as the bearers of primary responsibilities to respect and protect these urgent interests, on the one hand, and the international community (and those acting as its agents) as the guarantors of these responsibilities, on the other.

Beitz's practical conception of human rights is continuous with this historical picture. Essentially, human rights demarcate the urgent individual interests that it is a matter of both national and international responsibility to protect and promote (i.e. human rights *just are* rights that fulfill this role). Thus, in order to determine whether or not right *x* is a genuine human right, we cannot simply ask whether or not that right protects a sufficiently urgent or important individual interest; we must also consider whether (1) in the absence of the protections embodied in the right, there is a significant probability that domestic-level institutions will behave, by omission or commission, in ways that endanger this interest (a condition of its being a matter of *national* responsibility), and whether (2) there are permissible means of international action, aid, and assistance such that, if they were effectively carried out, the interest would be less likely to be endangered and that these means would not be unreasonably burdensome for those who have reason to use them (a condition of its being a matter of *international* responsibility).⁷

⁷ These considerations make up Beitz's recommended 'schema' for justifying claims about the content of human rights (111–112, 137–138). That Beitz understands human rights violations to serve as a pro tanto justification for a *host* of international remedial actions, including aid, assistance, advocacy, and punitive

These are not trivial considerations. To make the authenticity of a human right conditional upon the availability of effective and reasonable international means of guaranteeing it will in many cases serve to *constrain* the list of bona fide human rights in ways we might not at first have expected. For instance, Beitz argues that there is unlikely to be a genuine human right to democracy, on his view. This is not only because there are inferior but nonetheless viable means of satisfying the underlying social and economic interests that the right to democracy is meant to protect but, in addition, because of the historically borne out ineffectiveness of international efforts to guarantee that right by bringing about political reform in developing countries.

Leaving this controversial claim to one side, however, it is clear that Beitz's theory exhibits a pragmatism that is germane to the thought processes of *actual* human rights policymakers. This is a significant achievement in its own right. The current leading examples of naturalistic thought about human rights tend to straitjacket our thinking about human rights by grounding it in moral deliberation about a single underlying interest or value—be it personhood, membership, or human dignity. Moreover, they are often reticent or vague about the set of practical considerations that may bear on such deliberation. James Griffin, for instance, understands the philosophically-relevant 'practicalities' to be limited to the condition that a human right be 'an effective, socially manageable, claim on others.'⁸ But the reasoning of public policymakers is unlikely to be morally well-structured, and apt to be dominated by a wider constellation of practical considerations than mere social manageability. By providing us with a picture of what this wider constellation is (or might well be like), and by centralizing its importance, Beitz narrows the gap between our philosophical theory of human rights and the actual reasoning of human rights policymakers.

The downside of narrowing this gap is the uncomfortable prospect of having to come to terms with the open-endedness and lack of unity inherent in public deliberation about human rights—and perhaps, even more uncomfortably, with the implication that philosophers do not have anything very special to contribute to such deliberation and debate. However, these are prospects that Beitz, somewhat heroically, is fully ready to take on board. The practical considerations that he outlines as relevant to philosophical reflection about what is and is not a human right are deliberately open-ended. They are general and vague enough to leave ample room for the possibility, enthusiastically affirmed by Beitz throughout (and concretely explored in Chapter Seven), that each individual human right is both supported by a unique set of moral and practical considerations and faced with a unique set of objections and difficulties. Beitz's openness to the particularity and homogeneous character of judgments about the content of human rights, in any case, seems to me to be a good thing. It not only bears witness to his willingness to faithfully model, in philosophical theory, reasoning about human rights as it happens on the ground and in

Footnote 7 continued

sanction, differentiates him from other theorists who endorse a solely intervention-based practical conception of human rights, i.e. Raz (2010) and Rawls (1999).

⁸ Griffin (2008: 37–39).

global institutions, but also helps to disarm a common objection regarding the ethnocentrism of human rights. It does not make sense, on Beitz's practical account (and barring a critique of the very *concept* of a right), to put forth any sweeping claims about the ethnocentricity or 'Western' bias of the values protected by human rights. Instead, such a claim would have to be borne out, if at all, by a case-by-case analysis of the unique set of moral and practical considerations that stand behind each individual human right.

Beitz's emphasis on the importance of international practicalities for reflection about human rights at times imposes costs on his philosophical theory that are not obviously justified by faithfulness to the public practice, however. For example, according to Beitz's practical theory, human rights allocate responsibilities to international agents (i.e. states, global institutions, and NGOs), but this ignores the potential *interpersonal* relevance of human rights. The idea that each of us has a duty to respect at least the negative injunction *not* to violate the human rights of others is non-controversial. However, it has become more and more customary for human rights to be invoked as mechanisms for allocating positive duties within the family, among associates, and among individuals across borders, i.e. in the form of demands for financial assistance, welfare, or aid. Even the Universal Declaration asserts that *all* human beings 'should act towards one another in a spirit of brotherhood.'⁹ These developments may be an untidy or undesirable aberration from the central functions that Beitz attributes to the modern doctrine of human rights, but they are nonetheless part of the 'public practice,' if anything is. That Beitz's theory fails to embrace this dimension of the practice thus seems arbitrary and unjustified.

A related worry is that Beitz anchors the existence of human rights too deeply in considerations about what is feasible and enforceable given the means currently available to international agents. Imagine a case in which a small human population has taken root on Mars, for instance, the security of which cannot be effectively monitored or enforced by the international community back on Earth. On Beitz's account, the lack of effective international means of protecting the interests of that population would mean that a crucial condition of their having human rights is not fulfilled. We would have to conclude, therefore, that such individuals on Mars have no human rights. But this conclusion is deeply counterintuitive. A vehemently racist social order violates the human rights of its members whether it is instituted on Mars or on Earth. Moreover, it is part of the common understanding of human rights that they exert a normative pressure on the current international order—that is, that they have normative force in spite of the fact that they may not at present be universally enforceable, and that the international political order ought to be urgently improved in this respect. We might call this the 'aspirational character' of human rights, something that Beitz's practical account appears unable to reflect as a result of its inclusion of enforceability constraints among the very existence conditions of human rights.

Beitz attempts to reverse this unpalatable implication of his theory by suggesting that, in the absence of effective and reasonable international means of guarantee, it

⁹ Article One, *The Universal Declaration of Human Rights* (1948).

is nevertheless possible for a human right to provide grounds for an ‘indirect’ reason to reform the international political order in ways that will make the international protection of that right one day possible, thereby extending the range of genuine human rights beyond the restrictive set of those that currently enjoy universal enforceability (121). This seems like a plausible suggestion. However, it places immense pressure on a poorly developed dimension of Beitz’s theory. Aside from practical considerations (about what urgent interests can be effectively protected at a national level as well as effectively guaranteed at an international level), Beitz’s account appeals to moral considerations about what ‘urgent human interests’ warrant the protection of human rights in the first place. In the case of human rights that are aspirational in the sense of grounding merely indirect reasons for bringing about an international political order in which they *would* ground direct reasons for international action, the most pressing (contemporary) epistemological task seems to be that of identifying the urgent interest in question and determining the empirical conditions of its satisfaction. In keeping with the overall generality, vagueness, and open-endedness of his account, however, Beitz’s theory provides little guidance on the question of what these interests are or might be. He says, for instance, that ‘an “urgent” interest is one that would be recognizable as important in a wide range of typical lives that occur in contemporary societies.’ (110) But this seems intolerably vague and, furthermore, to go beyond the scope of vagueness licensed by Beitz’s overarching desire to deliver an account of human rights that remains faithful to the forms of reasoning implicit in the public practice.

Beitz is keen to distinguish the idea of an *urgent* human interest, which is relevant to his practical theory, from a *universal* human interest, ‘understood as one necessarily shared by all human beings,’ (110) which is not. However, it is not clear what this distinction ultimately amounts to, nor what motivates Beitz in making it. The most obvious answer to the motivational question—that it is urgent as opposed to universal human interests that figure in the reasoning implicit in the public practice of human rights itself—is not available to Beitz, since it is by no means clear why this wishy-washy distinction would be relevant to that practice. Failing the availability of a justification of that sort, however, Beitz’s distinction is left looking groundless and arbitrary. To make matters worse, it appears to be invoked as part of a surreptitious effort to stave off the impression that naturalistic premises about universal human interests (i.e. features of human beings ‘as such’) gain entry into his theory. But this effort is futile. Under the guise of ‘urgent’ human interests, naturalistic premises gain effective entry into Beitz’s practical theory anyways, and it is none the worse for it. Indeed, if Beitz were to have openly acknowledged this, then he could have waded more deeply and less self-consciously into the question of what human interests, needs, or values serve as appropriate grounds for human rights, and what epistemological mechanisms may reliably allow us to discover what these are. This would have improved the explanatory and critical power of his position, as well as opened one of the potential avenues of philosophical contribution to the modern practice of human rights. The fact that this acknowledgment would also involve the abandonment of the idea that there is any deep philosophical contrast between naturalistic and practical theories of human rights, and that as a result Beitz has more in common with his opponents than he thinks, is

not important. What is important is that theorists continue to work towards the best philosophical account of human rights that they can. And to that end, *The Idea of Human Rights* has clearly brought us several strides forward.

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