

Developments

Book Review – Charles R. Beitz’s *The Idea of Human Rights* (2009)

*By Angelina Ling**

[CHARLES R. BEITZ, *THE IDEA OF HUMAN RIGHTS* (OXFORD UNIVERSITY PRESS, 2009); ISBN13: 9780199572458; 256 pp.; \$29.95; Hardcover]

A. A Functional Account of Human Rights

The definition of “human rights” in terms of theory and function has been broad and varied. It is an institutional requirement, describing the positive and negative duties owed by political institutions to individuals. It is a theory of morality, expressing socio-cultural norms that are justified by a deity, universally shared beliefs, common humanity, or reason. It is a legal relationship in national and international law. It is a hierarchy of human interests, requiring the prioritization of some interests over others whether due to limited resources or the need to constrain potential transnational intervention. But the very breadth of these roles has resulted in doubts about enforcement and content. What interests ought to be enshrined as human rights, and what kind of protection should status as a human right confer? Without greater clarity as to the nature of human rights, it is difficult to defend the use of “human rights” as a functional description.

Charles R. Beitz is the Edwards S. Sanford Professor of Politics at Princeton University. He is a pioneer of global justice and a specialist in political theory and international relations, and graduated with a PhD from Princeton in political philosophy. In *The Idea of Human Rights*, he defends the use of human rights as a concept by answering the question of what a human right is, and what it ought to contain. His object is to develop a theoretical definition that is congruent with the role of human rights in international affairs as a public political practice. Instead of beginning with a utopian set of human rights premised on an inherent quality of humanity, he proposes a set restricted to what can be realized in light of real world limitations.

This review will proceed in two parts. The first part will summarize *The Idea of Human Rights*. The second part will comment on the limitations of Beitz’s model, particularly with respect to its application and ability to reflect evidentiary circumstances in accordance with its stated purpose.

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B. Summarizing *The Idea of Human Rights*

In eight chapters, Beitz aims to define human rights as a concept within the contemporary world order of states. He begins by describing the problems flowing from a conception of human rights from a philosophical or moral standpoint, before proceeding to an exposition of his model and an application of it to three particular issues. In particular, he believes that a functional definition of human rights, independent of moral considerations, is the key to simplifying the determination of the scope and application of human rights in specific instances.

The first two chapters address the historical background of human rights as a philosophical doctrine and political instrument. In Chapter 1, "Introduction," Beitz describes the doubts surrounding the doctrine of human rights as a basis for action. He argues that these doubts are best resolved by defining human rights with respect to their categorical role within international political discourse as a set of norms linked to various actions. In Chapter 2, "The Practice," Beitz outlines the historical and current role of human rights as a still evolving, non-judicial "emergent" practice.¹ In short, human rights exist for the protection of individuals against the consequences of their governments' actions and omissions.

This historical review of the idea of human rights reveals that the definition of human rights began with the quest for an abstract theory premised on universal ideals that would be generally applicable. For Beitz, this orientation is not ideal. Instead, he believes that human rights ought to be conceived of as political doctrines tailored to the factual circumstances in which they are employed.

Consequently, he begins by describing the weaknesses of naturalistic theories and agreement theories as doctrines that approach the idea of human rights from an abstract perspective divorced from practice. In Chapter 3, "Naturalistic Theories," Beitz discusses how naturalism inherently limits the potential content of human rights by focusing on the individual as a *homo sapiens* and not as a member of society. Since the specific content of a human right in modern life is driven by the relationships between individuals and between individuals and institutions, it cannot be adequately modeled by naturalism's autonomous individual. In Chapter 4, "Agreement Theories," Beitz contends that "common core," "overlapping consensus," and "progressive convergence" theories actually promote paternalism and require a body of human rights less than what is currently found in international law. Common core and overlapping consensus theories tend to enforce the beliefs of a culture's dominant group. Progressive convergence theory inherently implies an external judgment that an individual's understanding of his or her own cultural norm is undeveloped.

¹ CHARLES R. BEITZ, *THE IDEA OF HUMAN RIGHTS* 43 (2009).

Beitz argues human rights should be statist and relational. Like John Rawls, he believes the content of a human right should vary depending on the particular factual circumstances in which it is applied. In contrast to earlier definitions premised on the common humanity of individuals, Beitz prefers Rawls' idea of a human right that varies in scope depending on the state to which the individual claimant belongs. After introducing Rawls' conception of human rights, Beitz details the extent to which a human right ought to be subject to state boundaries. He defines a human right as a state's particular method of protecting an urgent individual interest against predictable threats to that right within the specific societal context. If a state does not guarantee a human right for its citizens, other states may do so, but are not obliged to intervene.

Thus, for Beitz, human rights are determined by the interactions within and between societies. The recognition of a right depends on a cost-benefit analysis of its worth in a particular situation by those affected – it is not a fixed guarantee.

Chapters six and seven continue this theme. In Chapter 6, "Normativity," Beitz argues that human rights are not justified by their content, but by their function as "norms of global political life" since the value of each right to an individual varies.² His model for determining the substance of human rights has three components. First, the interest must be important to a reasonable beneficiary and a reasonable prospective protector. Second, the threat must be one that is predictable and capable of state redress via law or policy. Third, there must be foreign states with the capability to enforce the right in the event of a domestic failure and reasons to act.

Notably, this model considers political and practical feasibility alone. As Beitz argues in subsequent parts, moral minimalism and toleration should not apply to the potential scope of human rights. In particular, Beitz believes that Rawls' concern for international recognition of the right of peoples to collective self-determination is inconclusive because of the risk that the existing institutions of a society do not represent all the individuals within a society. The rationale for domestic tolerance should not be extended to the international level because it merely establishes that tolerant states should be tolerated.

In Chapter 7, "International Concern," Beitz applies his model to anti-poverty rights, political rights, and the human rights of women. Anti-poverty rights are still "rights" even if they do not presumptively bind specific states to claimants' states of origin because the moral and economic costs of forgoing anti-poverty foreign aid are prohibitively high for external states. Beitz lists motivations driving states to alleviate foreign poverty: beneficence and fairness where the economic interaction between states has been more

² *Id.* at 128.

beneficial to the wealthier state than to the poorer one.³ Political rights raise the issue of the correlation between a generic interest and a specific institutional form. Beitz argues that political rights should advance collective self-determination, and only democratic institutions where they are the only way of guaranteeing collective self-determination in a specific situation. The human rights of women highlight the potential for conflict between domestic cultural norms and human rights. Beitz suggests that intervention is not paternalistic if the most proximate actors are local non-governmental organizations (NGOs), and that it is not implausible that a compromise may be found given the variety of ways in which human rights may be advanced.

Finally, Beitz addresses concerns over the effect of imbalances in state power on the actual practice of human rights. He reconfirms his characterization of human rights as a language for discourse between states, and defends the viability of human rights as an international project. He defends human rights against accusations of moral imperialism by suggesting that the problem lies with the protection of interests through unsuitable institutions and not with the interest itself. He suggests that a centralized regime with the ability to regulate transnational human rights interventions would prevent the exercise of human rights from being distorted by foreign interveners' political self-interests.

C. Rooting *The Idea of Human Rights* in Practice

The model described in *The Idea of Human Rights* could be strengthened with the addition of interdisciplinary evidence and greater specificity in certain areas.

1. Interdisciplinary evidence

Beitz's model intersects with the work of scholars in economics, international relations, and law. With respect to areas related to economics, Beitz argues that states can be motivated by moral obligations to support another state where the economic interaction between the two states has resulted in greater economic gain for one state relative to the other.⁴ His model does not suggest self-interest as a motivating factor for transnational intervention and in fact proposes methods to avoid tainting such interventions with political self-interest.⁵

³ *Id.* at 167, 171.

⁴ *Id.* at 171.

⁵ *Id.* at 205.

However, it is difficult to reconcile this depiction of human rights interventions as being primarily motivated by altruism when Beitz's model also characterizes states as rational actors who are *not* presumptively bound by moral obligations to protect human rights internationally. Cheah notes the persistence of neo-mercantilism today, as wealthy Western countries utilize intellectual property treaties and export policies to ensure a captive market for their innovations.⁶ Moreover, accounts of situations where countries have intervened to reduce poverty or advance other human rights often reveal mixed motives by those involved.⁷ A consideration of the extent to which political self-interest is permissible as a motivating factor for international interventions would increase the model's fidelity with respect to actual practice.

Throughout his work, Beitz considers the problem of different cultural and moral perspectives, both in terms of the individuals and groups constituting a society and between states. His schema assumes that actors will be reasonable, or more specifically, that states and human rights claimants will be reasonable when they are assessing the import of a particular interest. However, the idea of an objective standard that is generally accepted as such is problematic. Legal scholars have recognized that the "reasonable" person who can provide an objective standpoint is in fact embedded in a particular societal and historical context. Thus, embedding the standard of a "reasonable" actor within an institutional regime can facilitate systematic bias against a particular group of persons within a society, and the standard itself may not be universally regarded as an objective assessment.⁸

As for the potential contribution of international relations, Beitz suggests that a centralized, international regime with the ability to regulate unilateral state action allegedly in pursuit of human rights as a solution to distortions generated by political self-interest and the inconsistent application of human rights standards. However, scholars in the field of international relations have discussed the unlikelihood and difficulty of such a regime. For instance, Castaneda suggests that greater inclusion of Brazil, China, India or South Africa in global governance would, among other things, discourage the development of an international regime that would support human rights.⁹ Furthermore, a more nuanced discussion of the non-legal solutions that Beitz proposes would be of benefit.

⁶ PHENG CHEAH, *INHUMAN CONDITIONS: ON COSMOPOLITANISM AND HUMAN RIGHTS* 162 (2006).

⁷ E.g. Tom Porteous, *British Government Policy in Sub-Saharan Africa under New Labour*, 18 *INTERNATIONAL AFFAIRS* 281 (2005); Francis Owusu, *Post-9/11 U.S. Foreign Aid, the Millennium Challenge Account, and Africa: How Many Birds Can One Stone Kill?*, 54 *AFRICA TODAY* 3 (2007).

⁸ E.g. MAYO MORAN, *RETHINKING THE REASONABLE PERSON: AN EGALITARIAN RECONSTRUCTION OF THE OBJECTIVE STANDARD* (2003).

⁹ Jorge G. Castaneda, *Not Ready for Prime Time: Why Including Emerging Powers at the Helm Would Hurt Global Governance*, 89 *FOREIGN AFF.* 109, 112 (2010).

Given that many NGOs are funded by local or foreign governments, a more detailed discussion of how and to what extent NGOs can act as a defense to paternalism¹⁰ would be of benefit.

Finally, Beitz notes that human rights are more political than legal. That is, they can be enforced by political mechanisms and entities without specific legal authority.¹¹ As such, the omission of empirical evidence external to the six human rights treaties most prominent in international law is curious. With the exception of subsection 26, "Political Rights," Beitz bases his theory on the text of international law and does not consider empirical evidence regarding the human rights project.

II. Evidentiary Corroboration

Beitz's conception of human rights as a set of political norms evolving in tandem with actual circumstances suggests a degree of uncertainty correlating with the need to tailor his model to suit each particular instance of its application. However, certain aspects of his theory could be more fully detailed without impairing this circumstantial flexibility.

Throughout the book, Beitz introduces and discards a number of issues without providing a comprehensive discussion or resolution. This raises three concerns. First, a fuller discussion of naturalistic and agreement theories of human rights would strengthen Beitz's commentary on their weaknesses. As Etinson details in his review, the consideration of more contemporary philosophers would bolster the theoretical basis of Beitz's attack.¹² Second, Beitz's argument that international human rights standards stem solely from state-level public practices of human rights is weakened by a supporting survey that does not comprehensively identify these public practices. Third, greater specificity would improve the ease with which Beitz's model might be applied to particular evidentiary circumstances. For instance, Beitz proposes that the subject of a human right must be important to both prospective beneficiaries and prospective protectors. He suggests that problems with reaching a consensus can be resolved by generalizing a specific interest, such that its importance can be recognized by those who do not believe it is important.¹³

¹⁰ BEITZ, *supra* note 1, at 196.

¹¹ BEITZ, *supra* note 1, at 40.

¹² This point is covered comprehensively in Etinson's review. I chose to engage with Etinson's review because he is a philosopher focusing on moral theory and human rights. While my comments are targeted towards interdisciplinary and evidentiary issues, Etinson focuses on the theoretical basis for Beitz's perspective and the interaction between Beitz and other philosophers. See Adam D. Etinson, *To be or not to be: Charles Beitz on the Philosophy of Human Rights*, 16 RES PUBLICA 441, 443 (2010).

¹³ BEITZ, *supra* note 1, at 138.

But without more detail, it might be difficult to envision how this proposal could be applied to situations such as the transition from general acceptance of freedom of religion to the recognition of *halakah* and *sharia* principles in family law.

D. Conclusion

The Idea of Human Rights is suitable for academics and students seeking an alternative perspective on the role that human rights formally plays and ought to play in an international statist system. It is not an introductory text for a general audience, or a complete treatise. Beitz assumes his audience has prior knowledge of political science concepts; the brevity and number of his analyses of other theorists might pose a challenge to the uninitiated. Furthermore, the vagueness of Beitz's model limits its usefulness for policymakers attempting to address a particular situation. For instance, there are no principles specifically directed towards the resolution of a conflict between human rights.

Nonetheless, *The Idea of Human Rights* is an admirable bridge between theory and practice, although there are areas that could be more fully explored. As Etinson notes, the strength of *The Idea of Human Rights* lies in its consideration of both the political considerations motivating policymakers and the philosophical theories of academics.¹⁴ It seeks to frame the context surrounding the human rights enterprise without losing sight of feasibility and other more mundane concerns, and embeds the theoretical definition of human rights in its political context.

An extended application of Beitz's model to formal and informal exercises in pursuit of human rights within specific circumstances would be most welcome.

¹⁴ ETINSON, *supra* note 12, at 445.