
Sonu Bedi’s book, *Rejecting Rights*, is an attempt to answer the question: “How do we limit government so as to ensure liberty but simultaneously allow for and permit a good deal of democratic discretion?” (p. 13). Bedi’s provocative answer is that we need to jettison our reliance on rights in political theory and jurisprudence, and develop a “re-conceptualized rubric of limited government” that focuses instead on the reasons that a legitimate state may offer as justification for its actions (p. 93).

In Bedi’s view, the primary function of rights in political theory and in constitutional jurisprudence is to demarcate a private sphere of individual liberty as off-limits to state interference. Bedi’s main criticism of rights is that, as articulated by philosophers such as Locke, Nozick, Rawls, and Dworkin, they suffer from a “democratic deficit”: “These accounts … merely explicate what behaviors, activities, or interests of a person or group are beyond the scope of state regulation. In so doing, they do not contemplate a necessary role for democracy” (p. 15). Bedi locates his own view within a more recent trend in political theory that he labels the “turn to justification,” in which he includes Ackerman, Habermas, the later Rawls (in his reliance on public reason), and Oakeshott. In Bedi’s view, each of these theorists emphasizes the reasons that can be offered in support of various kinds of political decisions or powers as a way of demarcating the appropriate scope of democratic decision making. Bedi follows suit, and argues further that a focus on justification renders doctrines of rights obsolete.

Bedi’s positive view, which self-consciously emulates Mill’s harm principle, is summarized in the following principle:

> The democratic state may only seek to minimize (mitigate, prevent, regulate, etc.) demonstrable, non-consensual harm (p. 60).

As Bedi emphasizes, there are four important elements of this principle: (i) that state action is what requires justification; that the state may act only to minimize (ii) demonstrable and (iii) nonconsensual harms (which contrast, respectively, with non-demonstrable harms such as suffering in the afterlife and with harms that are consented to, including, at least in theory, consensual killings); and (iv) that the government should be democratic.

At first glance, this principle looks quite restrictive, in the sense that it only allows state action that minimizes harm. However, Bedi endorses a “wide understanding of harm,” according to which not only personal injuries but also being dominated by others, or unequal in genetic endowments or material resources compared to others, all count as harms. Bedi also thinks that environmental protection and the provision of parks and museums can be justified as state actions that minimize the harms of living in a degraded environment or lacking access to nature or art. Bedi counts it as a virtue of his view that the range of harms is quite broad, because this “affords the polity substantive discretion in passing various laws” (pp. 65-6).
On Bedi’s view, as long as a state action addresses a demonstrable and non-consensual harm, there is no type of activity that the state may not regulate, and no state action that is presumptively illegitimate because of the kind of activity it interferes with. For example, Bedi argues that a law banning gay sex with the intent to prevent the spread of STDs would fail his justification test because it is too broad (because it does not distinguish between protected and unprotected gay sex) but also because the polity should ban unprotected heterosexual sex as well, if the minimization of harm is its true goal. But on Bedi’s account, as long as such a law is designed to be neither suspiciously over or under inclusive, such that it credibly minimizes some demonstrable and non-consensual harm, there is no competing right to privacy or sexual liberty that needs to be weighed against the goal of harm prevention (much less one that “trumps” this goal).

Bedi finds this simplicity a virtue of his view, citing Occam’s razor as slicing in his favor. As he sums up his view at the end of the book: “All along my goal was to propose a sounder account of limited government, an account that better balances and realizes the values of liberty and democracy. Constraining the rationale on which the polity may act frees us from the problematic baggage of rights, channeling democratic debate in a more fruitful direction” (p. 189). Of course, the question is whether Bedi’s account really does succeed at realizing and balancing the values of liberty and democracy better than traditional accounts that leave room for rights. I am skeptical, for several reasons.

First, Bedi’s arguments did not convince me to view rights as “problematic baggage.” Bedi correctly describes rights as being undemocratic in several ways: the content and scope of rights are themselves determined outside a democratic process; rights restrict the choices that may be permissibly made by the democratic process; and, as a matter of foundational political values, theories of rights as such do not generally also offer an account of why democracy itself is desirable. But Bedi does not convincingly argue that these features should count as defects, rather than as evidence that rights constitute a distinct political value, irreducible to that of democracy. Another possibility, which Bedi does not seem to notice, is that rights and democracy might both be distinct manifestations of the same foundational values, such as Rawls’s commitment to treating all citizens as free and equal.

In the end, it is Bedi’s refusal to engage with any question of foundational values that renders his view unconvincing. His view carves out a wide scope for democratic decision making, but without any account of why this is a good thing. Moreover, to the extent that his harm principle does constrain the majority, it does not do so in a way that is obviously or coherently related to any familiar accounts of the value of individual liberty. For instance, having jettisoned rights altogether, Bedi appeals to majority rule, constrained by his harm principle, to provide the kind of protection of basic interests that rights are usually understood to provide:

Since democracy already assumes that individuals will have the same basic freedom to vote, run for office, speak and associate, these are guaranteed by democracy’s very existence. More significantly, ... bodily integrity and some