

Hart on Rawls on Liberty

1 Rawls's principles and priorities¹

First principle. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second principle. Social and economic inequalities are to be arranged so that they are both:

- a. to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- b. attached to offices and positions open to all under conditions of fair equality of opportunity

First Priority Rule (The Priority of Liberty): The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases:

- a. a less extensive liberty must strengthen the total system of liberty shared by all;
- b. a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice over Efficiency and Welfare): The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

- a. an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- b. an excessive rate of saving must on balance mitigate the burden of those bearing this hardship.

2 What are "basic liberties"?

"The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law."²

¹ Rawls, *A Theory of Justice*, §46, p. 302

² *A Theory of Justice*, p. 61.

3 Hart: which is the best worst outcome?³

A. If there is no priority rule and political liberties have been surrendered in order to gain an increase in wealth, the worst position is that of a man anxious to exercise the lost liberties and who cares nothing for the extra wealth brought him by surrender.

B. If there is a priority rule, the worst position will be that of a person living at the bottom economic level of society, just prosperous enough to bring the priority rule into operation, and who would gladly surrender the political liberties for a greater advance in material prosperity.

4 Rawls on the priority of liberty over wealth

“Now the basis for the priority of liberty is roughly as follows: as the conditions of civilization improve, the marginal significance for our good of further economic and social advantages diminishes relative to the interests of liberty, which become stronger as the conditions for the exercise of the equal freedoms are more fully realized. Beyond some point it becomes and then remains irrational from the standpoint of the original position to acknowledge a lesser liberty for the sake of greater material means and amenities of office.”

1. “as the general level of well-being rises ... only the less urgent wants remain to be met by further advances ...”
2. “At the same time the obstacles to the exercise of the equal liberties decline and a growing insistence upon the right to pursue our spiritual and cultural interests asserts itself.”
3. “In addition men come to aspire to some control over the laws and rules that regulate their association ...”⁴

³ Hart, “Rawls on Liberty and its Priority,” *University of Chicago Law Review*, 1973, p. 554.

⁴ *A Theory of Justice*, pp. 542–3.