

## What “everyone” needs to know? H.L.A. Hart and Scott Soames on reducing liberty

**Subtle differences.** H.L.A. Hart and Scott Soames both object to John Rawls’s argument for a constitution prioritizing the protection of a set of basic liberties – prioritization protects against sacrificing these for economic gains, assuming the society has reached a minimal level of affluence. Soames seems much influenced by Hart, though Hart is not referred to at this point in his text. Despite the similarities, there are subtle differences, which I aim to identify below.

**Hart’s two scenarios.** Hart presents two worst case scenarios, under different systems of principles:

*A. Longing for liberty.* “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 who cares nothing for the extra wealth brought him by surrender.” (1973: 554)

*B. Less economic deprivation please.* “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.” (1973: 554)

**Hart’s argument.** Within Rawls’s informal model, we are to imagine self-interested individuals who lack knowledge of their personal features selecting a system of principles, by contemplating which system would leave them better off in the worst case scenario. This lack of knowledge includes ignorance of character, and Hart argues that which is worse for an individual depends on their character. So there is no reason to think they would regard scenario A as even worse, contrary to Rawls, because they don’t know if A is worse for people with their characters.

**Some notable features.** These are features which are not part of Soames, as I interpret him. (1) It is a comparison of only two. Hart is comparing Rawls’s preferred system of principles with some alternative system, in which the worst off position is A. (2) The principles of the alternative system are not actually presented, only its worst off position. (There is an assumption that there could be a coherent system which results in this.) (3) Hart does not say whether the individuals in Rawls’s model will agree to both systems, regarding them as equal, or to neither, because “We don’t know enough.” He only rejects Rawls’s argument that they will regard situation A as worse. (4) Hart appeals to character variations to reject Rawls’s argument. The individuals in the model know that character determines which is worse for an individual, thinks Hart, but no individual knows what their character is.

**Soames’s variation.** Soames writes: “But it’s also not unreasonable to sacrifice principle (i), ensuring maximum individual liberty for all, if doing so would mitigate the misery one would suffer if one were badly enough off. Thus, it’s hard to make the case that those in the original position would choose both (i) and (ii). Perhaps they would choose (ii) while swapping (i) for a principle that merely outlawed slavery.” (2019: 270)

**Some notable features.** (1) It sounds as if Soames is interested in a comparison of three. He thinks that individuals in Rawls’s model would prefer two alternative systems to Rawls’s

recommended one: a system that prioritizes basic liberties and does not guarantee economic gains for the worst off when possible; or a system which prioritizes such gains and does not protect the entire set of basic liberties. That is what is suggested by his claim they will probably not choose a system composed of *both* Rawls's principles, the material quoted and material just before.

(2) Soames makes a step towards formulating the second of the alternatives above properly, though it is unclear whether what he says is coherent (see Edward 2022). Rawls's principle protecting basic liberties is replaced with merely outlawing slavery, and economic gains are prioritized. (Perhaps the first alternative involves some even less redistributive principle in place of Rawls's second-ranking principle.)

(3) Soames implies that the individuals in Rawls's model would make choices. They would regard the alternatives as equal, and prefer both to Rawls's preferred system.

(4) In Soames, there is no explicit appeal to character variations and lack of knowledge of them. What does the work in Soames's objection seem to be "I can form a system of principles which prioritizes the economic *but also* accommodates Rawls's consideration in favour of protecting basic liberties, by means of a slightly less liberal principle. There is nothing irrational about preferring such a system." This tactic of "accommodation" is not in Hart. But I think Hart would have argued that preference for such an alternative still depends on character, which is not known.

### References

- Edward, T.R. 2022. H.L.A. Hart, Scott Soames, and the priority of liberty rights over economic gains. Available at: <https://philpapers.org/rec/EDWHHS>
- Hart, H.L.A. 1973. Rawls on Liberty and its Priority. *The University of Chicago Law Review* 40 (3): 534-555.
- Soames, S. 2019. *The World Philosophy Made: From Plato to the Digital Age*. Princeton: Princeton University Press.