

What “everyone” needs to know? Sidgwick and Hart against the priority of liberty

H.L.A. Hart presents himself as repeating objections from Victorian philosopher Henry Sidgwick when responding to John Rawls, but Hart adapts and adds to Sidgwick in ways which he does not identify. These ways undermine the charge that Rawls, who seems competent in his historical knowledge, should have known better.

Sidgwick. *What Sidgwick criticizes.* In *The Methods of Ethics*, Sidgwick discusses the principle that each society member has a right to as much freedom from interference as possible (p.274). Sidgwick does not say who recommends this principle, but Hart thinks he is targeting Herbert Spencer (p.538).

Sidgwick's objections. Sidgwick makes a number of objections, two of which are relevant below. (i) One is that this principle does not allow for private property, because private property deprives others of the freedom to use something (p.276).

(ii) Another is that it does not protect against annoyances but no one wants this kind of freedom (p.275). Note that Sidgwick does not give any examples and also introduces the claim that just about any gratification of a man's natural impulses annoys some others.

Hart. *What Hart criticizes.* Hart offers two interpretations of Rawls's liberty principle. One of these attributes the view which is Sidgwick's target. Hart says that the objections from Sidgwick identified above apply (p.538). The other is that Rawls's liberty principle is about giving each adult citizen a set of “basic liberties,” a notion Hart looks into. A basic liberty may only be restricted for greater equal basic liberty, on this interpretation. Hart thinks the second interpretation avoids objection (i) above but not (ii).

Hart's alteration. Regarding (ii), Sidgwick once mentions pain but mostly writes of annoyance. Hart replaces Sidgwick's use of “annoyance.” Sometimes, argues Hart, we restrict liberty to protect against “harms other than constraint or deprivation of liberty.” (p.538) Harms sound much worse than annoyance.

Hart's addition. When discussing Rawls on the basic liberty interpretation, Hart gives examples of restricting liberty for other reasons than the sake of liberty, unlike Sidgwick: to protect against libel, slander, publications which grossly infringe privacy, and harms from pollution (p.548). These examples go well beyond the annoying.

Side-note: hidden influence? Hart makes much of differences in character when arguing against Rawls in other ways (p.549, 554), which is perhaps influenced by Sidgwick's remark that just about anyone's gratification of natural impulses annoys someone else. The annoyance could be “I too gratify that impulse but it's annoying when you gratify it,” but is more likely, “Why does he/she even have an impulse to do that?”

References

Hart, H.L.A. 1973. Rawls on Liberty and its Priority. *The University of Chicago Law Review* 40 (3): 534-555.

Sidgwick, H. 1907 (seventh edition). *The Methods of Ethics*. London: Macmillan and Company.