

Must Rawlsians be Hamiltonians? Small Government and *Political Illiberalism*

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Abstract: Is liberal egalitarianism committed to big government? This response argues that the relationship may be one of convenience. It starts with Peter Simpson's recent argument for a decentralized authority far weaker than the recognizable state. From the minimalist baseline set by *Political Illiberalism*, the paper then considers what elements of the state are necessary for liberal egalitarianism. What follows is an underpopulated institutional position, "small government egalitarianism," which pairs a highly redistributive state with a small public sector.

Keywords: small government, political liberalism, anti-liberalism, egalitarianism

What is the relationship between big government and liberalism? It is often assumed that contemporary liberals are committed to a government whose footprint is super-sized in two ways. Power is centralized, and the public sector is substantial. In this spirit, the modern state has been called a massive insurance company with an army. And debates about liberalism tend to occupy a narrow bandwidth, with centralized power as an embedded assumption of both sides. Today we have no political analogue to the back-and-forth of the Federalist and Anti-Federalist over the centralization of power.

Perhaps for this reason, the question of the size of government hasn't been taken up directly and in a systematic matter by analytic political philosophy. The problem is sidestepped, as when Ronald Dworkin writes—I think misleadingly—that he “favors neither big nor small government but just government.”¹ I don't think that we can or should avoid this question of size. And one of the many arresting claims in Peter Simpson's *Political Illiberalism* is that nothing larger than a loose confederation is consistent with our mutual freedom. One of his counter-models to the state is the Articles of Confederation. It supplies us a vision of government that is, without doubt, *small*. For Simpson, Hamilton's foe had its bugs but was a livable arrangement.

I want to inspect the view that liberalism, in its egalitarian form, can only instantiate itself in its familiar big government clothing. After all, there isn't a necessary connection between the size or centralization of government and the material inequality that it sustains. Just imagine a state with a tiny public sector,

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¹ Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), 423.

but which aggressively redistributes resources to raise the position of the least well off representative individual. Neither libertarians nor egalitarians are attracted to what we might call “small government egalitarianism.” But why? I suspect that Dworkin’s line helps explain this inattention to a problem that is front-and-center in ordinary political discourse. Or political philosophers insist that comparative institutions design is outside their scope: “it is beyond the scope of a philosophical doctrine to consider in any detail the kinds of arrangements required to insure the fair value of the equal political liberties.”² This kind of institutional agnosticism can go too far. Of course political philosophers won’t be able to go it alone. Here, more than any problem of distributive justice, our conclusions will turn upon empirical premises.

The space occupied by a government’s footprint goes to the heart of our political values. To explore this problem, I will use *Political Illiberalism* as a complex foil. Its official story is not only that liberalism is incompatible with freedom, but any recognizable version of the state, however much its wings are clipped. So I will largely put aside its distinctive strand of philosophical anarchism. What I want to explore is the unofficial story of Simpson’s work, that liberalism and localism are inevitable rivals. Thanks in part to his own Aristotelianism, Simpson is sensitive to the wide range of ways a government might constitute itself. His own charting of the march to centralize power, from Hamilton to Lincoln, reveals his focus on the space that national government has come to occupy. As hostile as he is to the state as such, Simpson is more concerned with a lumbering state, whose centralization creates a single point of moral failure.

My analysis has four parts. I begin with a highly decentralized model of government, and then increase the scope and concentration of the public sector in iterative steps. This method of building up the state, brick-by-brick, illuminates the diversity of *Political Illiberalism’s* objections to the Hamiltonian model of the state, and uncover his assumption that Rawlsians must be, by their own lights, Hamiltonians. First, I will consider the limited vision of government embodied in the Articles of Confederation. From the point of view of freedom alone, what was impoverished about a devolved governance structure? Second, the transition from the Articles to the Federal Constitution brought one feature of big government—centralization—without a large public footprint. Was the jettisoning of the Articles a “reprehensible” act of “propagandists,” as Simpson charges (167)? And can a centralized government remain small in its public footprint, or does centralization put it on a voracious path—inevitably expanding up its control over the economy?³

Third, I will consider the “bigness” of government, not in its centralization, but in the amount of society’s resources that come under the control of government. I will suggest that Rawlsians needn’t be committed to either senses of big government. How strictly compatible is Justice as Fairness with a decentralized power

² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 327.

³ See, for instance, Sheldon Richman, *America’s Counter-Revolution: The Constitution Revisited* (Ann Arbor, MI: Griffin and Lash, 2016).

structure? Are there decisive reasons for Rawlsians to endorse Hamilton's picture of centralized governance?

Section Four then considers how Rawlsians might support a government that is *small*—in the size of its public sector and the devolution of governance—yet significantly redistributive. Here I am considering the implications of a null set of theories, as far as I know. What makes small government egalitarians a non-existent species? The answer, I suggest, may turn on background empirical assumptions more than the domestic resources inherent to egalitarianism.

I. Devolved Governance

George Washington thought the Articles of Confederation made for a ruling structure that was “little more than the shadow without the substance.” For Simpson, this is a virtue, not a vice, of a loose confederation without explicit executive power. The organizing principles of the Articles were, in his judgment, “sound” (172).⁴ With few exceptions, historians have followed Hamilton in supposing that the Articles were catastrophic. In 1780, Hamilton pointed to the principal “defect of our system” as a complete lack of administrative powers. The mix of lacking federal power “tout court,” combined with the absence of a “proper executive,” made for a universal acid:

Congress have kept the power too much into their own hands and have meddled too much with details of every sort. Congress is properly a deliberative corps and it forgets itself when it attempts to play the executive. It is impossible such a body, numerous as it is, constantly fluctuating, can ever act with sufficient decision.⁵

The question of whether the Articles of Confederation *worked* is question-begging. What is in dispute is the success conditions of a governance system. For the failures that Hamilton catalogues—the crippling inability of the United States to act together—is a feature for Simpson.

I want to consider an argument from disagreement implicit in the defense of decentralization. We radically disagree about comprehensive ends, and there is no reason for us to bracket them in ordinary politics. So we don't want to empower an organization with the profane, centralized power—the touchstone feature of the modern state. State-like structures should refrain from taking actions whose justification turns on principles on which we disagree. This principle sets an important condition on our freedom. Joseph Raz sketches this kind of argument:

If we expect the state to provide us with education, health care, including the banning of life styles and of conditions of work which involve health risks; if we expect the state to guarantee the welfare of the poor, the unemployed or unemployable, the ill, and the elderly, to protect people's privacy and their reputation; if we expect it to regulate

⁴ Peter L.P. Simpson, *Political Illiberalism: A Defense of Freedom* (New Brunswick, NJ: Transaction Publishers, 2015), 172: “[T]he overall structure of government contained in the Articles [of Confederation] is sound and needs no change.”

⁵ Alexander Hamilton, *Collected Works of Alexander Hamilton*, cited by Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA: Harvard University Press), 169.

construction and traffic, the environment, and the civility of its people, then we multiply the political issues on which people disagree, and we aggravate the problems of the proper response to disagreement. *The solution is to roll back the frontiers of the state.*⁶

Some libertarians have embraced this argument from disagreement, but Simpson thinks they haven't gone far enough. They are right to think that this principle sponsors a more minimal state, but they have continued to assume that the state itself is permitted—even required—by this principle. That conclusion, as I read Simpson, is mistaken. If we take the principle seriously, the most extensive government we can endorse will have a more limited frontier. It will look quite a bit like the Articles of Confederation. Hamilton's *modus ponens* is Simpson's *modus tollens*. The Articles of Confederation didn't perfectly embody this argument. But it came much closer than the Federal Constitution.

The problem with the argument from disagreement is that it is self-destructive. For as long as *anyone* disagrees with the principle itself, it urges its own rejection. It doesn't follow that there may be reason for our political systems to avoid some moral disagreements. But the principle is overbroad in formulation. I wonder whether Simpson is guided by an account of freedom—his all-trumping ideal—that helps itself to a principle like this: We are unfree if we find ourselves imposed upon by an authority structure that stands above us. The more the state does for and to us, the more it runs into cherished values of its members. So it must do less, much less. That's precisely the argument that Raz thinks proves too much. I'm suggesting that Simpson is taking the argument to imply a much more minimal governance structure than ordinarily supposed.

The libertarian conclusion, then, is too faint-hearted. It urges the state to get out of the business of redistributing wealth or enforcing drug laws, but it holds the centralized, authoritative body as a constant in its analysis. The problem isn't the *kind* of businesses that the state gets itself into, but the structure of the entity itself. If we follow Simpson down the garden path to a crypto-anarchic system of localism, can we avoid the *reductio* that the argument from disagreement faces? Is there a way to make the self-defeating argument go away when we follow the argument to its natural conclusion? I don't yet see how the argument from disagreement can guard against its self-defeat. Simpson follows the argument to its conclusion, and ascribes to a more purely minimal form of government than we are used to seeing. But he hasn't said enough about how scaling back the centers of power of the state will help stabilize the argument from disagreement.

II. Centralizing Governance

There are two ways to run an argument against a centralized government. You can challenge the means and the ends. Simpson does both, though I will dwell on his former challenge. For him, the transition from the Articles to the Federal Constitution was illicit. And, with that criticism in place, he challenges the

⁶ Joseph Raz, "Disagreement in Politics," *American Journal of Jurisprudence* 43 (1998): 29 (emphasis added).

centralized structure itself. This raises a version of what Henry Sidgwick called the “paradox of conservative justice,” the idea that there may not be a just means to take us to what we accept as a more just end. Now Simpson thinks that the move to the Federal Constitution was an unjust and impious—since God was invoked—means to an unjust end, but the structure of the problem is still relevant.

The difficulty is the assumption that the Articles of Confederation are taken as setting the moral baseline. Did Congress in the 1770s have a legal mandate to institute a new government? Did it have license to form a Convention Parliament in 1688/9? It’s not clear how Simpson’s underlying account of authority and freedom underwrites the Articles’ presumed legitimacy. But surely that presumption of legitimacy is needed for us to worry about the parliamentary moves that Simpson finds unconscionable, and for his charge of “high crimes.”⁷

To be sure, the Constitutional Convention was called to amend, not replace, the Articles of Confederation.⁸ But the distinction between amending and replacing isn’t quite as neat as Simpson thinks. Puzzles in personal identity like the Ship of Theseus illustrate the underlying ambiguity: at what point, precisely, does any given amendment amount to an all-out repeal? And if the Convention effectively replaced every plank of the ship, there is a story to tell about consent that Simpson neglects. It’s not implausible to think that the state legislatures, in agreeing to call ratifying conventions, agreed to the amend and replace procedure. A fuller analysis would need to contrast the moral baseline of the Articles themselves, with their own difficult pedigree. But it seems hasty for Simpson to call the founders out for their “oath-breaking” and “impiety” in ratification (167).

III. Redistributive Governance

Patrick Henry worried that the Federal Constitution would relegate states to doing nothing more than “take care of the poor—repair and make highways—erect bridges, and so on, and so on.”⁹ This is a striking admission that elements of big government—notably the redistribution of wealth to those badly off—predates the Federal Constitution. It was something that some states (at least modestly) performed under the Articles of Confederation. I want to use this as a starting point to challenging two assumptions about big government that are made about Rawlsians. While instrumental calculations may tempt us to think of them as favoring a highly-centralized state, the idea of the property-owning democracy can be understood in a way that is radically local. If municipalities found a way to solve the inevitable coordination, nothing in the two principles of Justice as Fairness insists upon tightly centralized power. Indeed, the most

⁷ In this argument Simpson follows the libertarian Albert Jay Nock, *Our Enemy, The State* (New York: William Morrow and Company, 1934).

⁸ Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York: Simon and Schuster, 2010).

⁹ *The Complete Anti-Federalist*, ed. Herbert J. Storing (Chicago: University of Chicago Press, 1981), 1: 238.

powerful internal criticisms of Rawls have pushed in the opposite direction. Susan Moller Okin and G.A. Cohen stressed that our informal politics can have momentous effects on material equality.

The same kind of institutional open-endedness, I think, can be applied to the means of redistribution as well. It is not just open for a Rawlsian to be agnostic about *who* redistributes, including the city-states that Simpson imagines. *How* redistribution works is open as well. Instead of having a large public sector, there is no principled reason to reject a system in which the local transfer branches redistribute wealth while co-existing with a small public sector.

To see how a Rawlsian may well reject the Hamiltonian model, consider this thought experiment. Suppose we have to choose between a small and large government scheme that both promise to deliver roughly equal distributive patterns. Does a Rawlsian have any philosophical reason to favor a system where *we*—as co-citizens—run programs that distribute goods to those who have a claim to them? Or do we have any reason, even a very weak one, to favor a system that got out of the business of direct provision and redistributed the most fungible good available? I think our empirical assumptions have obscured the moral reasons for preferring the smaller or the larger government solution, so we'll need to purify the case in two ways.

Imagine a government whose footprint is small. There are no government-run programs that serve egalitarian aims. Regular redistribution transfers wealth to satisfy your theory of equality. Consider two objections:

1. *Supply-side response*: The small government egalitarian state will be less efficient than government-run programs. Certain public goods require coordination, and simply giving people money will over-provide them.

Answer: Suppose the results are no less efficient, through private sector solutions.

2. *Demand-side response*: The small government egalitarian state, with its redistribution of fungible goods, will result in citizens acting against their own interest.

Answer: Suppose individuals spent the money in a way that wasn't appreciably different than in-kind programs.

Once we wish away these two concerns, are there reasons internal to egalitarianism to object to a smaller government? Is anything lost by the state getting out of the business of directly providing goods, rather than offering fungible means? We've attempted to control for the usual obstacles in imagining a small government coexisting with an egalitarian distribution. Perhaps the egalitarian will insist that, by decentralizing the transfer branch, we have changed the moral relationship among citizens, who must justify their holdings to the least-advantaged member of their state—writ large—and not merely their particular community. If the central relationship is among co-citizens, and not co-membership in a community, it may not be enough to silo redistribution to the municipality. This argument from co-citizenship may favor the direct provision of certain goods. Once we control for the expected consequences of using more or less direct means, we can get to the moral core of the case for government provision—whether performed locally or nationally.

Consider, then, a modified version of Rawls's favored economic arrangement, the property-owning democracy. The Anti-Federalist inspired version that I have

in mind attempts to honor our equal standing, and attend to material inequality, without endorsing a national-level transfer branch, as Rawls envisages. Steady redistribution is perfectly imaginable, if unrealistic, under a devolved system. In light of our chronic moral disagreements the later Rawls limits the amount of redistribution earmarked as constitutional essentials. Simpson's resistance to public reason turns on an Aristotelian conception of community. We shouldn't bracket our comprehensive moral visions. Instead, our full moral and political doctrines should roam free, as long as the scale of their ambition remains local. If small government egalitarianism is possible, liberals may find Simpson's decentralization less objectionable than conservative critics.

IV. Towards a Small Government Egalitarianism

We've carved out theoretical space for a more localized model of governance, one that needn't be at odds with egalitarian principles. What would an institutional prospectus look like for this form of localism? Rawls's resistance to welfare state capitalism offers us a thumbnail sketch. We can read his three objections to the stock welfare state as desiderata. First, small government egalitarianism would need to honor the fair value of political liberties. So a federation of city-states would guard against the capture by capitalist interests from within the polity and from its neighbors. Second, the tools of a more localized government would have to be robust enough to ensure that market-generated inequalities serve the least-advantaged representative individual. This would need to be an intergenerational project, so that stable political institutions can buffer against capitalist's tendency toward inequality. Finally, a small-footprint Rawlsianism would have to honor a principle of social equality among citizens. Rawls worries that welfare state capitalism threatens relational equality by making some citizens objectionably dependent on others. The official way to avoid these institutional realities, of course, are the institutions that make up a property-owning democracy. But this model, seriously underdescribed, takes as its default a centralized approach to redistribution.¹⁰

Why, then, have egalitarians tended to assume a "big government" model? Why have they supposed a public sector that is (1) large and (2) centralized? As far as I can see, the answer turns on two premises, one moral and the other empirical. First, they might insist that egalitarian obligations are non-fungible. Citizens have moral claims to certain kinds of goods—whether health care or education—without concluding that they are entitled to the cash value of these particular goods.¹¹ It isn't obvious that this argument turns a paternalistic argument. If paternalism involves the substitution of one's judgment with another agent's, egalitarians may need to acknowledge the role of paternalism in support of a large public sector.¹²

¹⁰ For further discussion of James Meade's influence on Rawls, see Martin O'Neil and Thad Williamson's *Property-Owning Democracy: Rawls and Beyond*, (New York: Wiley, 2012).

¹¹ See, for example, Debra Satz's *Why Some Things Should Not Be for Sale: The Moral Limits of Markets* (Oxford: Oxford University Press, 2010), 79.

¹² See Seana Shiffrin's "Paternalism, Unconscionability Doctrine, and Accommodation," *Philosophy & Public Affairs* 29 (2000): 205-250.

This line of argument does seem to license a greater amount of society's resources under the control of government. Consider the choice between social programs that are cash or in-kind. Over time, the United States has made the goods it provides less fungible, incurring an efficiency cost, to ensure that goods will be used to satisfy particular needs. If egalitarians view specific goods as non-fungible, that is, owed as goods but not in their cash equivalent, they may conclude that a large public sector is an essential vehicle to provide the in-kinds goods to which citizens are entitled.

The second reason to resist small government egalitarianism turns on a problem of institutional design—and, crucially, *redesign*. It's one thing to ask whether to entertain a city-state as an ideal type. But Rawlsians share a commitment to seeing distributive justice in structural terms. They aren't constructing a pure theoretical model that can float free from empirical reality. Indeed, their constructivist method commits them to answer to feasibility constraints. No such restrictions apply to Rousseau's ideal polity, whose scale is radically limited. Nor do Simpson's conclusions take the possibility of institutional realization seriously. Rawlsians don't view theory design as a toy-making exercise. In a world of nation-states, it is implausible to think that a confederation governed by a document like the Articles of Confederation could be a sustainable model of governance. Egalitarian policies, in particular, raise distinctive collective action problems that are endemic to federalist models. Pressures to "race to bottom" are well-known. So we close with a practical reason that gives small government approaches a surface implausibility.

V. Conclusion

Political Illiberalism is hardly alone in its assumption that the Rawlsian is committed to a centralized and extensive public sector. But this ignores the range of institutional possibilities. My claim isn't that we can make peace between Simpson's elimination of the administrative state and the Rawlsian. Among the communities that Simpson is willing to sponsor, small, city-states only loosely related to a larger political structure and with considerable immigration, we can imagine comprehensive visions of freedom that require redistribution, and this can be performed without the so-called "transfer branch" that is featured in Justice as Fairness. Simpson's reasons to reject the comprehensive and political liberal are sprawling, so I'm not claiming there aren't moral remainders—concerns about freedom that persist under a more localized Rawlsian scheme. But that genus of objections will be different than ones that assume the Rawlsian is, necessarily, a Hamiltonian.