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## **Dispersing Power within the State**

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It is great honor to be even a virtual part of an event to celebrate the work of Leslie Zines, and especially to celebrate it in such august company. Leslie was a colleague that I greatly admired and liked. The disciplinary divide between us was not any bar to affection, though Leslie never let me forget that the constitutional-law terrain was sacred ground on which outsiders ventured at their peril. I particularly enjoyed the way that he, like our mutual, recently departed friend, Paul Finn, gently mocked the pretensions of a philosopher to declaim on topics jurisprudential. I fear I'm going to tread on his ground again in this little paper and I can only beg his, and Paul's, posthumous indulgence.

My topic is the dispersion of power within the state. This ideal has a long history but has ceased to be much celebrated by those who endorse it and has come in for fierce attack among populist opponents. It's not an exaggeration to say, in Yeats's words, that on this subject 'The best lack all conviction, while the worst Are full of passionate intensity'. In this short paper I would like to rehearse reasons why we should warmly endorse the dispersive ideal. And endorse it, regardless of how we dub it: whether, for example, we describe it in a mainly twentieth-century formula, as the separation of powers; in an eighteenth-century antecedent as a regime of checks and balances; in an earlier name that goes back to the Roman Republic as a mixed constitution; or in a term I myself favor as a polycentric arrangement or system.

The paper is in four sections. In the first, I recount very briefly the history of the idea and its implementation in western societies. And then in the following sections I look at three criticisms that have been leveled against it and try to show that they misfire. Section 2 deals with the claim that it undermines the center of sovereignty that any legal system or state needs to establish; section 3 that it undermines the possibility of democratic control by the people over the state; and section 4 that it induces too many veto points, and hence gridlock and inefficiency, in the system of decision-making. I describe these criticisms

respectively as the sovereignty objection, the democracy objection and the efficiency objection.

### **1. A very brief history**

Polybius, writing in the second century BCE, is the figure who first gave prominence and popularity to the ideal of the mixed constitution.<sup>1</sup> He had come as a young Greek hostage to Rome but, released some years later, he embraced the city as his home. Writing an extended history of Rome, he drew the attention of the Romans, perhaps for the first time, to the brilliant sort of constitution that they had evolved, as he saw it, since throwing out their king and making their polity into a matter of public rather than private or family business: a *res publica*. Reworking a phrase that Greek thinkers like Aristotle had used of a constitution that mixed democratic, aristocratic and monarchical elements, he argued that the Romans had established a mixed constitution in their republic. As a byproduct of ad hoc adjustments that they made at different times in response to different pressures and complaints, they had evolved without planning what he saw as the best way of organizing a stable political life.

It is not surprising that Polybius should have described the Roman arrangement as a constitution of a mixed or polycentric kind (North 1981; Flower 2010), given the many institutional checks it put on the exercise of power. On the one side only the relatively wealthy, usually of the patrician class, could enjoy the power of magistrates; but on the other, they had to win election to office by a majority of the citizenry in a popular assembly: for example, the formal assembly of people by tribes or by centuries, or in the election of tribunes their more informal assembly in the council of the plebs. Again, on the one side only a magistrate or member of the executive could propose a new law; but, on the other, they had to persuade the citizens in one of those assemblies to support it in a majoritarian vote. And finally, on the one side only magistrates or ex-magistrates could belong to the Senate, essentially a powerful advisory body to the executive magistracy; but on the other it was the popular assemblies, not this elite organization, that elected the magistrates and

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<sup>1</sup> This is the literal translation of what Polybius, writing in Greek, cast in a then established phrase as the *politeia memeigmene*.

made the laws. In addition, the executive itself was divided into many ranks, each with a different role, and at each level there were a number of competing officials: two consuls at the top of the hierarchy and in the later republic forty quaestors at the bottom.

The wealthy magistrates still had considerable power under these arrangements, as Polybius would have admitted, but that power was popularly circumscribed in other ways too. Ordinary citizens could appeal against an official action to one of the ten tribunes—magistrates who were charged with an ombudsman-like role—and they could appeal to the people as a whole against certain other actions; in particular, they could call for a court hearing to question a sanction that had been proposed by a magistrate (Arena 2012). And those courts also enjoyed independence from other bodies. Recruiting up to one hundred members from the citizenry as a whole, or depending on the case, from a designated subgroup, they acted as judge and jury, voting to determine the guilt or innocence of the party charged

On Polybius's (2010, Bk 6.15) reading of such arrangements, 'the distribution of power between the several parts of the state'—he is particularly thinking of consuls, people and senate—is such that 'each of these several parts can, when they choose, oppose or support each other'. He argues that this constitution has a mixed character, resembling monarchy in giving military and related forms of power to the consuls, democracy in empowering the people, and oligarchy or aristocracy in conferring special rights on the senatorial elite. The consequence, he holds, is that it is relatively proof against the corruption that can occur in an unmixed constitution when such a group 'becomes puffed up and manifests an inclination to be contentious and unduly encroaching'. In a polycentric constitution like Rome's, by contrast, 'the pretensions of any one' of them, will be 'checked and thwarted by the others' (Bk 6.18). He contrasts the Rome he cherishes with a tyranny of fear on the one hand and on the other with the anarchy 'in which a mob manages everything on its own unfettered impulse' (Bk 6.44).

The Romans loved Polybius and his image of a republic in which every citizen has standing or freedom, being protected against others by the law and against the legal authorities by the mix of checks and balances supported by the constitution. His themes became centerpieces in popular ideology, in legal discourse, and in the celebration of their

republic by later Roman thinkers like Cicero and Livy. And while this ideal of a constitutional republic faded in the reality of imperial rule over the following few centuries, it remained present in the panegyrics of the historians and in the pieties of those senators and others who retained a semblance of republican office. It disappeared in great part under the baronial fiefdoms that dominated the so-called dark ages. But it returned in triumph with the rise of the northern Italian city-republics in the high middle ages when commerce and prosperity created a new class of burghers who assumed control of many of the great trading centers like Florence and Venice.

These centers may have acknowledged a Holy Roman emperor, in line with the text of the Roman Law rediscovered in 1095, and they may have paid due obeisance to the Pope in Rome. But like both of those authorities, the citizens of these cities treated that law as holy writ and interpreted it—with the help of scholars in the Universities they began to establish—in a way that gave them effective independence and autonomy. It was accepted in a common formula that where there are many committees, the people enjoy safety or protection: *ubi multa consilia, ibi salus populi*, (Waley 1988). The citizens of these republics came to conceive of their status, by contrast with that of courtiers in Rome or Paris, London or Madrid, as one in which each was *sui juris*, under their own jurisdiction, as Roman law expressed the idea of *libertas* or *civitas*, freedom or citizenship. In our jargon rather than theirs, each was their own man or—for them an inconceivable variant—their own woman; and this, by being enjoying citizenship in a properly constituted republic.

Forcibly retired from politics, and despairing of the influence he had sought in *The Prince*, Nicolo Machiavelli wrote up the most powerful and influential defense of republican ideals, including that of the mixed constitution, in his *Discourses on Livy* (1997), published posthumously in 1531. The divine Machiavel, as he was known to some of his English admirers, shaped a good deal of thinking at and after the English revolutions of the 1640's and 1680's, and the ideal of mixing powers became central to the institutions of the British Constitution that emerged as a consequence of those revolutions in the eighteenth century.

The Baron de Montesquieu (1989, 157), writing in the 1730's, celebrated that constitution with enormous enthusiasm. As he saw it, the British Constitution exemplified the ideal of recruiting different authorities, together or on their own, to the exercise of

‘three powers: that of making the laws, that of executing public resolutions, and that of judging the crimes or the disputes of individuals’. He took that constitution, as the ancients and medievals had taken it, to have ‘political liberty as its direct purpose’, where he understood such liberty, in line with republican tradition, as the constitutionally assured ‘tranquility of spirit which comes from the opinion each one has of his security’. He illustrated the idea of how different authorities might exercise a single function together in the way the two houses of the legislature, and the executive, must be aligned in England if any law is to be established: ‘as they are constrained to move by the necessary motion of things, they will be forced to move in concert’ (Montesquieu 1989, 164). But he required the courts to operate on their own: ‘the power of judging’ must be ‘separate from legislative power and from executive power’ (1989, 157).

The Roman model, the English version of that model, and indeed the writings of Montesquieu, had an enormous impact on the framing of the US Constitution by the Philadelphia Convention (Adams 1776; Sellers 1995). And even more saliently it shaped the arguments that its defenders put forward. The classic example of this is the *Federalist Papers* (1987, 381) penned by John Jay, Alexander Hamilton and James Madison in the course of the campaign for ratification, which argued that ‘the structure of the government must furnish the proper checks and balances between the different Departments’. Another is the work of John Adams in the late 1780’s, which expanded on the history of republics to illustrate the importance of the state being controlled by ‘distinct and independent legislative, executive, and judicial powers, and by two councils in the legislature’ (Adams 2004, 320).

So much for a brief history of the idea and the institutionalization of the polycentric ideal of dispersing power within the state.<sup>2</sup> We should turn now to the defense of the ideal against the three objections listed earlier. The oldest of these objections holds that it makes sovereignty infeasible, a later that it undermines true democracy and a more recent

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<sup>2</sup> With many others I have tried to develop a neo-republican theory of government over the past twenty five years or so. For my own efforts see (Pettit 1997; 2012; 2014). Others who have been part of this development include Quentin Skinner (1998), Frank Lovett (2010; 2022) and Cecile Laborde (2008). For a recent, broadly neo-republican overview of republican thought, see *The Oxford Handbook of Republicanism* (Lovett and Sellers 2024).

complaint, which draws on arguments from such earlier opponents, that it leads inevitably to gridlock and jeopardizes the efficiency of government.

## ***2. The sovereignty objection***

In 1572, France was shaken by the St Bartholomew's Day massacre of Huguenots in Paris and elsewhere and it began to look like the country might be suffused in religious and civil strife, especially in light of a new 'monarchomach' way of thinking, as it was known. This had emerged at the time to justify opposing a monarch if they did not live up the terms of a putative contract that these thinkers, rejecting anything like a divine right view, took to be the only plausible basis on which a king or queen could claim to rule. It was hardly surprising, then, that a prominent legal and political scholar of the time, Jean Bodin, offered an opposing view, defending an absolutist form of government—ideally, an absolutist monarch—in *Les Six Livres de la Republique*, published in 1576. While this was a magisterial work in its own theoretical terms, and had a huge influence over the following century, it was written to counter the idea that the bearer of sovereign power within the state—for Bodin *la republique* just meant the state—could be subject to the opposing power of subjects, or of any other agency, political or non-political, that subjects constituted.

\*Bodin introduced the idea of sovereignty to explicate this idea. He argued that the laws of a state were always commands and could not consist, for example, in the counsels of a long-dead system like the Roman law; that commands presupposed a commander or sovereign at their source; that this sovereign had to be a single, indivisible agent or agency, else the laws might be inconsistent with one another; that being the source of their own commands, the sovereign could not be subject to the laws; and that given the role of law, neither could they be subject to any other power within the state. The upshot was that this indivisible agent or agency had to enjoy an absolute degree of power within any functional state, being beyond the check of other agents and beyond the constraint of the laws.

Bodin thought that while there were good reasons why the sovereign power within the state ought to be an individual agent—in effect, an absolute monarch—it was possible in principle for a group of people to incorporate as an agent, and to assume the role of a sovereign, deciding by majority vote on every legal issue before them. If just an elite among

the citizenry is incorporated in this way, the state will be an aristocracy; if all the citizens incorporated in that manner, it will be what Bodin—and his follower, Hobbes—called a democracy.

In using the Greek term ‘democracy’, he restored it to legal and political discourse after a relative silence of 1500 years and gave it a meaning that remained in place until the early to mid-nineteenth century, when it came to refer to an electoral representative system. Up to that point almost all serious thinkers, taking the term in his sense, rejected democracy as an infeasible arrangement, including those who explicitly defended electoral representation such as Montesquieu and the American founders, or indeed those who might have been attracted to democracy in the Greek sense in which it referred to any system, even ‘lottocratic’ Athens, that gave ordinary people significant powers (Ober 2008).

While Bodin thought assembly government, especially in a democratic form, was not ideal, he regarded it at least as a feasible or functional sort of arrangement, on the grounds that it did preserve a sovereign. He used his theory of sovereignty, however, to mock the idea of a mixed constitution. ‘It is impossible’, he said, ‘that the commonwealth, which is one body, should have many heads’ (Bodin 1967, VI.4). Adding more philosophical sophistication, Thomas Hobbes adopted the Bodinian view in the seventeenth century, but he joined in this corporeal mockery of dispersed government or ‘mixarchy’ (Hobbes 1990, 116). Such a commonwealth would be like ‘a man that had another man growing out of his side’ —to be exact, as he says, each side—‘with an head, arms, breast, and stomach of his own’ (Hobbes 1994, 21.17). Jean Jacques Rousseau adopted similar sovereigntist views and, while allowing only an assembly of the whole to serve in the sovereign role, he too took up this mockery. Mixed-constitution thinkers ‘turn the Sovereign into a being that is fantastical and formed of disparate pieces’, he says, comparing what they do to Japanese conjurors who claim to cut up a baby’s members, throw them in the air and then ‘make the child fall back down alive and all reassembled’ (Rousseau 1997, 2.2.3).

The mockery notwithstanding, these absolutists had a valid argument that they might have cited in their critique. This would run as follows: ‘1. every functional state must embody a sovereign law-making power; 2. a mixed constitution does not acknowledge such

a power; 3. ergo, that constitution does not offer a possible way of organizing a state'. But while this argument is valid, the second premise is false, and the argument unsound.

I am happy to let the first premise stand because I think that, amended in some details, the theory about the need for sovereignty is fundamentally correct (Pettit 2023, Ch 3). If this seems controversial, it may be because sovereignty is now associated with the crude, 'gunman' theory of John Austin, effectively critiqued by Herbert Hart (2012), or is linked with, as I see it, the confused 'two sovereigns' view of A.V.Dicey. All that the theory of sovereignty holds is that there has to be a single bearer of ultimate authority in a state, and that this has to be accepted by all in some sense: most plausibly, in the sense that the sovereign's claims are more or less willingly granted by citizens, and not just conceded out of fear of retaliation.<sup>3</sup>

The other premise in the argument is false, however, and that is why the sovereignty argument against the dispersion of power within the state is valid but unsound. Suppose that a state is organized in a polycentric way around agencies and groups that play different parts in the generation, selection and implementation of any law or policy. Think of these as encompassing the people as an electoral and contestatory collection of individuals; the domain-general authorities in the houses of the legislature and the higher-reaches of the executive; and the different domain-specific authorities that enjoy at least a relative independence, like the courts, an electoral commission, a central bank or a bureau of statistics.

All of the absolutists assume that none of these groups or agencies can be the sovereign in a polycentric system. And that of course is correct. But why assume that the sovereign has to be a power within the state, as they uniformly do? Why not cast the sovereign power as the corporate agency constituted by the interaction of the different polycentric parts under a discipline that helps to ensure that the eventual output is a coherent body of law and policy, domestic and external? Why not hold that under a polycentric system, the source of sovereign power is the agency that emerges from the

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<sup>3</sup> The absolutists allow that a sovereign may rule despotically and still retain their status, by unjustifiably restricting the need for acceptance to the inauguration of the sovereign. See (Pettit 2023, Ch 3).



organization and operation of its parts, not any one of those parts themselves? Why not equate the sovereign with the polity or state itself: if you like the incorporated people?

The absolutists are guilty in their critique of the mixed constitution of what Gilbert Ryle called a category mistake. They make a mistake like that ascribed by Ryle to a visitor to Oxford who, having been shown around the different Colleges, asks now to see the University. The University is an entity that the Colleges constitute insofar as they operate under rules that license relatively coherent ways of admitting students, authorizing professors, establishing courses, grading performance and granting degrees. And in the same way the state, at least in a polycentric system, is an entity that the different elements in the system constitute insofar as they operate under rules for the generation and maintenance of a relatively coherent package of laws and policies. The University is a superordinate entity, not an entity coordinate with the Colleges, and in the domain of its business it is the ruling authority. And similarly the polycentric state is a superordinate entity, not one coordinate with citizen and government agencies, and in the domain of law and policy it is the final authority: in effect, the sovereign power. Hence the sovereignty objection to the dispersion of power fails.

## ***2. The democracy objection***

While Jean Jacques Rousseau thought that it was only an assembly of the citizenry as a whole that could play the role of sovereign, as we saw, he did not give that arrangement the name of democracy in the Bodinian sense. The reason is that he required the assembly, unlike Bodin and Hobbes, to be restricted to the role of making general laws (Rousseau 1997, 2.6.5), and to delegate the application of law to appointed magistrates, judicial and executive, who would operate under its final authority (1997, 3.4.2). Moreover, and again unlike Bodin and Hobbes, he thought that members of the assembly should appoint someone to keep them well-informed (2.6.10), should try to ensure that they do not divide into warring factions (2.3.3), and should each cast their votes with a view to advancing the common good, not feathering their own nest (4.1.5).

But while Rousseau did not espouse the name of a democracy for his majoritarian, assembly proposal, he introduced an original idea that lives with us still in the common

understanding of electoral or representative democracy, which is of course very different from the participatory ideal envisaged by Rousseau. The idea in its Rousseauvian form is that if the citizens do vote only on general laws, are well-informed, avoid factionalism and vote with a view to promoting the common good, then they will enact what he calls the general will. This is a will, purportedly, that is present in each citizen as a member of the assembly and that 'looks only to the common interest' (2.3.2). His claim is that if the citizens are subjected to the will of the whole, they will retain their freedom insofar they are still guided by their own will: strictly, under its general aspect as a will for the good of their community, not under its particular aspect as a will for their own good. Thus, he claims in the sort of paradox he loves, that 'each, by giving himself to all, gives himself to no one' (1.6.8).

Rousseau borrowed the idea of the general will from theological philosophers like Malebranche who had argued that god rules the world via a general will, establishing only the laws it should satisfy, not via a particular will that stoops to consider the details of how they are to be satisfied (Riley 1986). The political counterpart of the idea gained a grip on the imagination of political thinkers, even those who gave up on the idea of a participatory assembly in favor of an electoral, representative system and who had no illusions that the voters or representatives in such an arrangement might satisfy the conditions that Rousseau (1986, 4.2.9) laid down: conditions, as he thought, that are essential if 'the characteristics of the general will are still' to be found 'in the majority'. In the later version, the general will became the people's will and majority voting for an electoral leader or party was taken to reveal that will of necessity, not just contingently on the people being well-informed, avoiding factionalism, or thinking as they voted only about the public good.

The idea of the will of the people figures prominently in ordinary thinking about politics and democratic leaders frequently invoke that will—rather, for example, than the will of their financial or even electoral backers—to justify their policies (Weale 2018). It is clearly a myth in view of the manifest fact that different districting or electoral rules will give us a different account of the will of the people. And its mythic status is confirmed by the finding in social choice theory that the preferences of people may be structured so as to defy a rational account of what they together would want: under the best of rules, the

people may prove to want A rather than B, B rather than C, yet C rather than A (Ansell 2023, Pt 1).<sup>4</sup> But that has not given any pause to those who rely on the rhetorical use of the idea in popular democratic politics.

The presence of the idea in popular rhetoric need not raise any red flags. But the idea has achieved a new and alarming prominence in the populist theory and practice of democracy (Mueller 2016; Urbinati 2019; Krygier, Czarnota and Sadurksi 2022). In this way of thinking democracy gives the people control over their government by one channel, and one channel only: the election of the leader or party by the people or at least by those who are construed, to the neglect of ethnic or religious or immigrant or intellectual minorities, as the right or real people. And in fidelity to that idea, the democratically elected leader is ceded autocratic authority with the denial of any constraining or inhibiting role to the courts or other domain-specific authorities, or to contestatory agents or organizations that may figure as litigants against government, as invigilators and critics of government performance, or as protestors in the media or the streets. ‘Who elected them?’ is the standard rebuff to anyone who supports such checking agencies.

If we go along with this populist vision of democracy, we are bound to think of the polycentric system as anathema to the democratic ideal. Indeed we may be led to that negative view of polycentrism just by equating democracy with popular, electoral control, as many political scientists have done (Przeworski 1999), and treating other constraints on government as liberal brakes on populist power (Riker 1982). On either picture, the polycentric idea that there should be different centers of power in any state, including an electorally democratic state, is going to seem hostile to the idea that the will of the people, mediated via election, should be in uncontested charge of all that the authorities do.

Does this spell problems for the polycentric idea? It would do so on the participatory model of democracy in Bodin and Hobbes—and, we may say, in Rousseau— or on the

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<sup>4</sup> This problem will also make trouble for the Rousseauvian idea. But in that case there is an even more telling problem raised by the discursive dilemma (Pettit 2001) and its generalization as an impossibility theorem (List and Pettit 2002); for an overview of such theorems, see (List and Pettit 2011). The problem is that if a group of people have to vote yes or no to logically connected issues, as Rousseau’s assembly certainly will, then they are liable under a majoritarian or any similar system to support an inconsistent set of judgments: say, the claim that p, the claim that q and the claim that not-p&q.

electoral, representative image of democracy supported by populist theorists and politicians. After all, it would disperse power among different bodies or groups within the state rather than giving a monopoly of power to the assembled or electoral citizenry. But of course it would not necessarily raise problems on the older, Greek ideal of a system in which ordinary people have considerable power, whatever the means in virtue of which they enjoy that power. Plausibly, as we shall see, a polycentric system will offer the people many modes of influence and control besides that which they enjoy in elections.

The polycentric model of the state suggests a range of ways whereby ordinary people may hope to enjoy a degree of control over the authorities in government. The people will have to enjoy control over the framework for polycentric government but that can be made available under a lobby-protected arrangement for citizen-initiated referendums. But the people will also have to enjoy control, under that framework, over the domain-general and domain-specific authorities who constitute any polycentric government. They will have to have equal access to a system of constitutionally enabled control that licenses them to keep a check on those in the legislature and executive, and on those in the courts and in other domain-specific roles of the kind illustrated earlier: in the electoral commission, the central bank, the bureau of statistics, and so on.

What levers of control might ordinary people enjoy? This is not the place to itemize possibilities but some comments, however brisk and gestural, may be useful. Some levers will be hands-on modes of influence that citizens may apply individually or in groups, others arms-length modes that require reliance on intermediaries: say, the reliance on some authorities to keep a check on others. Such hands-on or arms-length levers will mediate an active form of popular control when citizens or their intermediaries apply them. But they will mediate an even more important sort of virtual or standby control when the relevant agents are manifestly able to apply them but do not do so if they are more or less happy with the performance of those they monitor; this virtual control can deeply inhibit the controlled authorities and lead them to practice a form of self-censorship.

Taking lessons from prevailing, even invariably imperfect, democracies, the sorts of control levers available divide broadly into three categories, disciplinary, contestatory and selectional. Disciplinary controls will include standard rule-of-law constraints as well as

demands on different authorities to provide reasons for what they propose or do; these restrictions will be virtually imposed by the people to the extent that they might challenge them but they don't. Contestatory controls will include the hands-on control available to citizens when they enjoy an entrenched right to speak and act against government in the courts, the media or the streets, as well as a right to organize NGO's that can do this job in a more concentrated or effective manner. And contestatory controls will also include the arms-length mode of influence that people enjoy when they can rely on some authorities to keep others in appropriate check or when they have assured access to ombudsman and related agencies. Finally, selectional controls will be available in a hands-on form with the popular, periodic and competitive election of some authorities: saliently, the domain-general authorities in the legislature and executive; and available in an arms-length form with the indirect control people enjoy over the selection of other authorities when appointments are subject to constrained, transparent procedures and open to challenge by people or by recognized intermediaries.

These brisk remarks are meant to support the negative claim that the dispersion of power within the state is consistent with democracy in its original, appealing sense, silencing the democracy objection to the dispersion of power within the state. But they also provide reason to think that the polycentric model of democracy is more appealing than the populist on a number of counts. It is not subject to the crippling problem of majority tyranny. It explains why familiar, well-accepted indices of democracy—if not the quantitative metrics of political science—associate democracy, not just with elections, but with other requirements like the independence of the judiciary (Kekic 2007). And at the same time it leaves room for giving elections a central role in democratic life. Elections may not reliably select the best representatives to rule but they offer a mobilizing exemplar of the power available to a cohesive, if competitive citizenry (Chapman 2022). And they force adversarial participants to subscribe in practice, not just in theory, to democratically crucial ideals like freedom of speech, association and assembly, as well as freedom of information (Schumpeter 1984, Ch 22).

### ***3. The efficiency objection***

Our arguments up to now are designed primarily to counter two impossibility claims against polycentrism. The first claim turns on the absolutist thesis that the state must embody a sovereign center of power. But that's not a problem, as we saw, since the sovereign source of law in the polycentric state may be, not any agency within the state, but the state itself: the corporate agent constituted by the disciplined, rule-bound interaction of rival centers of power. The second impossibility claim turns on the populist doctrine that democracy requires a voting community, participatory or electoral, in which a single, controlling will, general or popular, is formed and imposed on government. But we saw that also is not a problem, since the polycentric state may be democratic insofar as popular control is exercised along different channels, in different modes, over different centers of governing power; it need not reduce to the formation and imposition of a single will in participatory or electoral voting.

It may be possible for the state to be polycentric, sovereign and democratic, however, without its being desirable for it to assume that character. Perhaps it is necessary for the state to have a sovereign character. And perhaps it is required by assumptions most of us share that it be broadly democratic. But it may yet be, for all we have shown, that it ought not to be polycentric. For all we have seen, there may be a serious objection to giving the state a dispersive, decentralized character. We turn in this final section to the consideration of just such an objection.

The objection is to be found already among absolutists like Bodin, Hobbes and Rousseau. They argue that a regime in which power is dispersed cannot deserve the name of a state, since it will not be able to guarantee the enactment and enforcement of a coherent system of law; it will be 'not a state', as Bodin (1992, 105) puts it, 'but rather the corruption of a state'. But even if we reject that argument, as we have done, we must still take account of the danger at which they gesture in their corporeal mockery of a polycentric regime. As Hobbes (1994, 19.12) puts it, the danger stems from the fact that 'to divide the power of a commonwealth' is 'to dissolve it; for powers divided mutually destroy each other'. It may not be a conceptual error to think, as Hobbes and the others do, that the polycentric regime could not possibly have a sovereign and count as a state, or that it could not possibly count as a democratic state. But it may yet be a problem if, as the absolutist

mockery suggests, it cannot do its job efficiently: if a dispersive system of popular control is liable to make it difficult for the regime to generate a coherent body of law and policy .

Those who press this objection are likely to cite the problems that best the polycentric system of government in the United States. Despite the fact that it is the oldest of our democracies and has survived for nearly two hundred and fifty years, it is subject at the moment to a variety of problems of just the sort that Hobbes might have cited. There is extreme polarization among electors, a distorted pattern of lobbying and campaign finance that favors the wealthy, a sometimes crippling form of gridlock in the legislature and administration, a worrying degree of politicization in the courts, and despair on all sides over the prospect of changing the constitution. If we grant that there is substance in these judgments, as I am unhappily ready to do, then it may seem that Hobbes's worry is well placed and that the dispersion of power exemplified in the United States is liable to undermine the efficiency of the state.

Looking at the problems cited, it should be clear that some at least could in principle be solved without adjusting the existing polycentric system in the U.S.. First, campaign finance legislation would go at least some way towards alleviating the problem of an imbalance of influence between rich and poor, as perhaps would the introduction of compulsory voting. Second, the U.S. constitution, however polycentric, need not have made it so difficult to amend the constitution. And third, introducing a different system of court appointments might help with the politicization of the judiciary. As things stand, the fact that appointments have to win 50% support in the Senate has the counter-productive effect of licensing the President to take account of political affiliation in making them, motivates lawyers to affiliate politically, and undermines the prospect of an impartial, self-regulating judicial culture.

But even if we can discount some of the problems cited on this basis, there are other features of American politics that a neo-Hobbesian might cite as symptoms of a malaise for which the polycentric system is responsible. Prominent among these are polarization among electors, the power of private lobbying, and the gridlock that always threatens and sometimes materializes among legislators and administrators: that is, within and between the House of Representatives, the Senate and the President. The question these issues raise

is whether they are endemic to a polycentric system or whether they can be avoided. I wish to argue that they can be avoided so long as power is moderately rather than radically dispersed within the state.

The main point to make in support of this claim is that a Westminster system like that in Australia is only moderately polycentric and that it can avoid the extreme problems of polarization, private lobbying and gridlock that have historically ebbed and flowed in American politics and that are currently at high tide. Australia does not enforce a division between the legislature and the administration in the manner of the United States but it remains decidedly polycentric. It embodies a divide between the domain-general legislature and administration on the one side and the domain-specific judiciary on the other, appointing independent judges on a basis that does not generally politicize them. And besides it also introduces a dispersion of power within the administration—less contested than in the U.S.—insofar as it gives an important degree of independence from elected, domain-general authorities to domain-specific agencies like the electoral commission, the central bank and the bureau of statistics and, in the regulative domain, the national audit office, inspectors-general, the administrative appeals tribunal, the national anti-corruption commission, and the ombudsman authorities.

The core difference between the Washington system and this version of its Westminster counterpart is that American legislators are elected quite independently of the election of the President—the head of the administration—whereas it is only the legislators who are elected in Australia and it is they who elect the head of the administration: the Prime Minister. Each leader can select their own cabinet though in Australia members of the cabinet have to be themselves elected legislators. But the difference in how the heads of government are chosen gives rise to a range of other contrasts between the two systems, including some that may explain why there is more polarization, more lobbying and more gridlock in the U.S. than in Australia.

The main contrast is that while legislators in Washington are free to vote as they wish on every issue before them, those in Australia who elect the Prime Minister must continue to support them and their cabinet or risk the fall of the government. That difference leads in turn to a range of effects like the following.



- While American legislators are individually responsive to their local districts, and the lobbies on which they rely, Australian legislators have to be responsive to the party or coalition that has majority control; they will have to stick together.
- While no individual or party in America can commit at election time to successfully implementing this or that policy, a party in Australia will be able to commit credibly to the general program of policies it will introduce if it wins election.
- The American political party cannot be a policy-making agency, then, the Australian party can; where the American can offer only a flag or brand for electoral candidates to rally behind, the Australian can offer policies to which candidates are pledged.
- Thus, voters in the American system cannot vote for a candidate on the basis of their commitments at the level of policy, whereas Australian voters can: they can know what broad policies a candidate will support if their party wins power.
- The party affiliation of American voters can only be grounded in loyalty to the brand of the party, or to a particular candidate, whereas it is less likely—though not unlikely—in a country like Australia where a party is usually identified by its policies.
- Voting in America is likely to be shaped by the voter's party loyalty, by their loyalty to a candidate or by their expectation as to what the candidate can do for the district; voting in Australia is going to be more exposed—but not only exposed—to the influence of party policy.

Do these contrasts explain why there should be more polarization among electors, more private lobbying and a higher degree of gridlock in the American polycentric regime than in the Australian? I tentatively suggest that they may; the suggestion is tentative, because it is subject of course to empirical checking.

Taking the highlighted differences in reverse order, I think it is fairly clear that there is more legislative gridlock in the U.S. than in Australia and that that is due to the radical nature of its polycentrism. There is some in Australia in view of the polycentric division of power between the House and the Senate, given that the Senate need not be controlled by the party in power. But the standoffs that that introduces are negotiated successfully in most cases, if only in view of the paramount interest of the ruling party in achieving a

compromise. In the U.S., by contrast, the gridlock can be introduced, not just by differences between House and Senate, but also by differences within either chamber, by differences within a majority party, or by a difference between the two chambers and the President. Gridlock threatens on many sides and it hardly needs deep empirical investigation to see that it often obtains.

As gridlock is readily explained by the radical nature of polycentrism in the U.S., so the same is likely true of the greater volume, and arguably the greater impact, of private lobbying there than in Australia. The most plausible explanation in this case is that lobbying on any policy issue in the U.S. is likely to be effective whenever the lobby group can persuade a sufficient number of legislators—sometimes just one may be enough—to vote against a policy to which the group objects, whereas much more is required for effective lobbying in Australia. The lobby must be able to win over a whole party—ideally, the party in power—or the Prime Minister, or at least the Minister in the relevant department. Moreover, seeking lobby influence at that level is likely to become a matter of general awareness, in which case the lobby will have to operate more like a public-interest group, seeking to win support on a basis that it is allegedly for the common good, not just in the shameless interest of a particular industry or profession or church or whatever.

Finally, to the issue of polarization among the electors. Here the suggestion I make is the most tentative. If a substantial number of people identify with their political party, in relative indifference to its policy profile, out of a sense of party loyalty, then their adherence is liable to resemble that of sports fans to their team. This may be grounded in personal or family history, or in a mantra that rallies members in support, but it is just as likely, as in the sports case, to obtain independently of any connection other than that expressed in the thought: this is my party, my team. Loyalty of that kind is likely to have a tribal character. And it is liable to motivate a high level of hostility for opponents, again as in the case of loyalty to a team, and to have an othering effect, as it is now often said, contrasting their 'them' with our 'us'. To be sure, such blind loyalty is not unknown in Australia, and some leaders may even seek to cultivate it, but it is not as common as in the United States and that, I suggest, is because the system is only moderately polycentric and

forces parties to be policy entrepreneurs in the first place, providers of a resource of identification only in the second.

And now to the denouement. The polycentric model of democracy may be vulnerable to the charge of making government inefficient when it assumes the radical form of the Washington system. But it is not so exposed to that charge in the case of a moderately polycentric system like that in the Westminster version that Australia exemplifies. If that is so, then not only is the idea of a polycentric democratic state proof against the impossibility claims examined earlier; it also represents a plausible picture—imperfect but saliently capable of improvement—of how a state, and in particular a democratic state, can be efficiently and optimally organized.

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