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**Self-rule vs. Shared Rule:
The Design and Evolution of Federal Institutions
in Colombia.**

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Abstract

In 1991, Colombia shifted from a territorial regime that combined shared rule with limited self-rule to the opposite configuration: extensive self-rule without shared rule. The radical shift between these two hybrid configurations generates two distinct but related theoretical puzzles. First, why did the 1991 constitution simultaneously empower Colombia's constituent units with self-rule only to disempower them by eliminating their representation in the Senate? I argue that the same democratizing forces that sought to strengthen territorial units via self-rule also had the effect of undermining shared rule by transforming the Senate into a body that would be elected in a single nationwide district. Second, what explains the instability of self-rule without shared rule in the years after 1991 when the opposite configuration had achieved such stability in the century before 1991? This paper shows how, once they lost their representation in the Senate, regional actors had few institutional levers at the national level they could use to veto recentralization and defend their newfound self-rule.

Key-words

federalism, self-rule, shared rule, decentralization, democratization, Colombia



1. Introduction

Daniel Elazar argued that federalism can be ‘understood in the broadest political sense as a genus involving combinations of self-rule and shared rule’ (1995, 7); while self-rule refers to exclusive prerogatives under the control of substate authorities, shared rule relates to the ability of substate units to participate in the joint governance of the state, typically though not exclusively through their representation in a statewide legislative chamber. More recently, Liesbet Hooghe and Gary Marks along with their collaborators (2016) have argued that the authority of substate regions around the world (in both federal and unitary systems alike) is best conceptualized as the aggregate of ten indicators of either self-rule or shared rule. Systematically measuring countries on both dimensions, and not just in formal federations, has opened up new terrain vis-a-vis the generation and evaluation of theories about the complex relationships that connect self-rule and shared rule.

Because levels of self-rule and shared rule can vary independently of one another, myriad combinations of the two forms of rule are possible and, as Elazar suggested, these different combinations might hold important clues as to how federal systems function in practice.¹ Simplifying matters somewhat, it can be useful for heuristic purposes to compare cases with four different possible combinations. High levels of both kinds of rule (self and shared) together could be said to make a federal system more federal, and one can identify several mechanisms through which self-rule should enhance shared rule. As McEwen and Schakel (2017) argue, ‘the complexities of modern government suggest that higher levels of regional competence may heighten the need for closer cooperation with central government’. Another quite stable pattern is the opposite: countries that limit the authority of substate regions to govern either themselves or the state as a whole in an institutional dynamic that is characteristic of traditional unitary designs.

While there are sound reasons to expect stability from these first two combinations, the third and fourth combinations are intermediate possibilities or hybrid configurations subject to potentially greater volatility and unpredictability. In countries with high levels of shared rule but low levels of self-rule, representatives of territorial units at the center can face intense pressure ‘from below’ to use their national leverage to enact changes that expand self-rule, but may also feel personally threatened by such changes if they challenge



their roles as brokers of national largesse. In the obverse cases with high levels of self-rule but low levels of shared rule, substate officials may experience equally intense insecurity about the sustainability of self-rule without shared rule to protect it, but benefit personally from the absence of potential territorial rivals in upper legislative chambers. Not only do these hybrid configurations hold out special theoretical interest due precisely to their indeterminate nature, but they are also likely to be of greater relevance in the world today given how many formally unitary countries have initiated -- but not completed -- concerted movements toward federalism by altering either self-rule or shared rule (Breen 2018, Erk 2014, Mueller 2017).ⁱⁱ

Toward the goal of better understanding these two hybrid configurations, this paper focuses in depth on one country -- Colombia -- that made the radical decision three decades ago to shift abruptly from one of these hybrid configurations to the other.ⁱⁱⁱ Specifically, between 1886 and 1991, Colombia was governed by a constitution in which all intermediate-level governments (i.e. departments) sent equal numbers of representatives to the Senate (a form of shared rule), but which denied territorial units (both departments and municipalities) any meaningful form of self-rule, including the right to elect their own governors and mayors. While this constitutional arrangement proved to be remarkably resilient (especially in a region where very few constitutions last over a hundred years), pressures eventually emerged to increase the governing authority of territorial units, and extensive measures to expand self-rule were endorsed by the Constituent Assembly that met in 1991 to draft a new constitution. However, while this new constitution introduced significant new institutional designs to enhance self-rule, it at the same time curtailed shared rule through electoral reforms that reconfigured the Senate. Rather than elect senators in departmental districts, the country's 100 senators are now elected in a single nationwide district.^{iv} Why in its 1991 Constitution did Colombia simultaneously move to empower subnational regions by giving them far greater resources and responsibilities (i.e. self-rule) while also disempowering them by eliminating their representation in the Colombian Senate (i.e. shared rule)?

I argue that this puzzling outcome, which is clearly inconsistent vis-a-vis the federal ideal of self-rule combined with shared rule, only makes sense when looked at through the lens of democratization. The very same democratizing impulses that focused on decentralization as a means of strengthening subnational governments also fueled the



transformation of the Senate into a body that would be elected in a single nationwide district rather than in territorial districts. These two reforms were technically distinct and contradictory in terms of the logic of their impact on Colombia's constituent units. Nevertheless, both sets of reforms stemmed from a common diagnosis, namely that the best way to deepen democracy in Colombia was to empower a whole series of previously excluded and marginalized actors, including non-traditional parties, who had struggled to wield political power in the country's stable but elite-dominated democracy. The decidedly mixed results for federalism of the burst of democratizing energy that Colombia experienced in the late 1980s and early 1990s challenges assumptions about the presumed synergies between federalism and democracy; in this case, democratization has undermined federalization.^v

But the Colombian experience poses a second theoretical puzzle in addition to the content of its shift in 1991 from shared rule without self-rule to the exact opposite configuration. This second puzzle stems from the fact that the new dispensation of self-rule without shared rule that was enshrined in the 1991 Constitution has proved to be highly unstable and ultimately unsustainable -- in sharp contrast to the prior dispensation of shared rule without self-rule, which had survived for over a century. A few short years after the ratification of the new Constitution in 1991, and in a process of recentralization that then gained steam over the last two decades, Colombia experienced a disparate set of changes that have directly and indirectly undermined self-rule and hollowed out subnational governments. What explains the remarkable resilience of the first hybrid configuration endorsed in the 1886 Constitution and the instability of the opposite hybrid configuration that replaced it in the 1991 Constitution? In other words, why was shared rule without self-rule so much more stable than self-rule without shared rule?

This paper contends that the previous configuration, which came to an end due to exogenous rather than endogenous factors, benefited from important self-enforcing mechanisms (Filippov, Ordeshook and Shvetsova 2004). These mechanisms kept the institutional game in play despite the major transformations that Colombia experienced over the course of the 20th century, including urbanization and modernization on the one hand, and an intractable internal armed conflict on the other. In contrast, Colombia's more recent configuration was inherently less robust because the decision to dramatically increase self-rule while simultaneously curtailing shared rule made self-rule itself vulnerable



to attack by its opponents. When the intensity of the democratizing impulse that produced the 1991 Constitution abated, powerful actors at the national level in the context of a worsening economy and a growing guerrilla threat proposed to reverse the decentralizing reforms that had only recently sought to strengthen substate governments. Having lost their perch in the Senate, regional opponents of these recentralizing moves had few institutional levers at the national level they could use to veto recentralization and thereby defend self-rule.^{vi} The specific design choices Colombia made in 1991 would have fateful consequences for the institutional evolution of its quasi-federal system in the three decades since their adoption.

Holding the country case constant in order to examine institutional performance over an extensive period of time, this article proceeds as follows. The next section introduces the Colombian case and briefly describes the federal model it adopted in the second half of the 19th century (1863-1886) -- one of the boldest experiments with federalism anywhere in Latin America (Mazzuca and Robinson 2009) and one that has cast a long shadow on all subsequent moments of territorial (re)design in Colombia. The third section briefly describes the stability of the country's lengthy experience in the 20th century with shared rule in the absence of self-rule (1886-1991), followed by a section that examines the exogenous factors that led to the replacement of this hybrid configuration with its opposite in 1991. Section five turns to several key episodes over the last two decades that illustrate the erosion of self-rule without shared rule to help defend it, including fiscal recentralization, control over natural resource rents, and the design of enabling legislation called for in the new constitution. This instability of institutional designs that grant self-rule without shared rule serves as a cautionary tale for the many unitary countries around the world that have adopted decentralizing reforms in recent years to boost self-rule while stopping short of constitutional reforms that would establish shared rule.

2. Colombia and the Conflict over Federalism

Colombia does not appear on the list of established federations in Latin America, which includes Argentina, Brazil, Mexico and Venezuela -- a set that has not changed in over a century despite the major decentralizing reforms introduced across the region. The absence of Colombia on this list is surprising, both in terms of its population size as the



third largest country in Latin America (only Brazil and Mexico are larger) and in terms of its land mass as the fourth most territorially extensive country in the region. Nevertheless, struggles over federalism and the contested design of federal institutions have played a central role in the country's political history.

Proponents of federalism in Colombia can point toward several important reasons why federal solutions would make even greater sense here than in some of the other countries in the region that have formally federalized. Consider Colombia's extreme topography. Running up the western edge of the continent, the Andean mountain range splits when it enters Colombian territory into three separate chains and two separate river valley systems in a geography that significantly raised communication and transport costs across the national territory. According to Sebastian Mazzuca (forthcoming, 248), 'in no other country of the Americas was it so expensive to build passage between the main cities and the main waterways'. Physical separation led to the formation of distinct cultural practices attached to rival regional identities (Fals 1997). Deviating from the high levels of urban primacy that are characteristic of Latin America, Colombia can be described as a 'mosaic of regions' (Palacios 2006, 5), each of which 'had distinct political economies and were economically self-sufficient' (Soiffer 2015, 42). Despite their mobilization into rival political parties (Liberals and Conservatives), economic elites in different regions shared a disinterest in reforms that would strengthen the center and privileged instead the development of regional economies. All of these factors (structural and ideational) would appear to point toward federalism as the country's preferred institutional structure.

For the opponents of federalism, however, these centrifugal dynamics speak to the dangers of federal designs and the need to avoid a repeat of the country's tumultuous experience with a formally federal system between 1863 and 1886. In 1860, governors belonging to the Liberal party successfully rebelled against the Conservative-dominated national government, leading not just to the promulgation of a new federal constitution in 1863 but to a new name for the country: the United States of Colombia. This 1863 constitution identified Colombia's nine regions as 'sovereign states' (*Estados Soberanos*) and sharply curtailed the power of the national government based in Bogotá. The new constitution introduced the popular election of governors and enabled states to write their own laws, design their own judicial systems, structure their own municipal regimes, and even create their own armies (Cruz 2011). In addition to guaranteeing shared rule through



the Senate as a territorial check on the federal government, article 20 protected self-rule by mandating that any federal functionaries sent to the states would ‘operate under the control of state governments’ (Morelli 1997, 116). All powers not expressly delegated to the federal government were reserved for the states.^{VII}

In two key dimensions, the perceived excesses of the 1863 Constitution have tarnished the reputation of federalism up to the present day in Colombia. First, the devolution of authority over infrastructure that was so central to the meaning of self-rule in the 19th century led to sub-optimal economic outcomes. Regional economic booms encouraged regional elites to invest in regionally-specific public works projects that were implemented in a highly disconnected fashion (Safford and Palacios 2002). As Soiffer argues (2015, 45), ‘the starkest evidence of this absence of unification was the failure to coordinate track widths across regions; even where multiple train lines intersected, goods could not easily pass from one region to another’. Second, Colombia’s 1863 constitution is also associated with worsening violence in a country where the state continued to face threats to its monopolization of the use of force all the way into the 21st century. Taking advantage of devolution and the right to import arms to construct their own coercive apparatuses, three states (Antioquia, Cauca, and Cundinamarca) built armies larger than the federal government’s (Mazzuca forthcoming, 251). By the start of the 1880s, Colombia’s radical experiment with federalism had devolved into ‘organized anarchy’ (Park 1985, 207).

3. The Stability of Shared Rule without Self-Rule (1886-1991)

Colombia’s volatile 19th century experience with federalism generated a highly centralizing backlash in the form of the 1886 Constitution, which preserved shared rule but eliminated self-rule in a stable configuration that survived for over a century. Renaming the country the ‘Republic of Colombia’ rather than the ‘United States of Colombia’, the new Constitution converted sovereign states into mere departments, which lost their ability to act independently of the national government. The most obvious assault on self-rule was the cancellation of elections for substate chief executives. Under the new system of upward accountability, the president appointed all governors, and governors in turn appointed all mayors in their departments.^{VIII} While municipal councils and departmental assemblies were still elected, these bodies failed to check the power of substate executives who served



at the pleasure of higher levels of government (Léal and Dávila 2010). Despite the slogan attached to the 1886 Constitution of ‘political centralization with administrative decentralization’, the reality is that capacity deficits in the departments resulted in a dynamic of administrative deconcentration, which became even more pronounced with the onset of developmentalist models in the mid-20th century that expanded the roles of the center (Restrepo 2015). Mirroring political and administrative centralization, the new fiscal system undermined self-rule by denying territorial units any significant tax authority; instead these units came to depend for their revenues on congressional assistance funds negotiated in Bogotá (Archer and Shugart 1997).

Although the 1886 Constitution eviscerated self-rule, it guaranteed shared rule through the election of an equal number of senators (three) to represent each department in the upper chamber. The preservation of the departments’ ability to participate in national-level decisions was critical precisely because the increase in the formal authority of the national government had taken place at the expense of departmental authority. Elected for a period of six years and eligible (unlike the president) for indefinite reelection, senators were selected by departmental assemblies using a majoritarian electoral rule. For the first twenty years of the constitution, this majoritarianism generated significant instability by over-representing the dominant Conservative party and under-representing Liberals, who took up arms against the arrangement in the deadly Thousand Days War (1899-1902). The shift to a form of proportional representation in 1905, which guaranteed that one of the three Senate seats in each department would go to the minority party, finally pacified the country (Mazucca and Robinson 2009). After pacification, Senators as the chief agents of shared rule increased in number when existing departments were subdivided to form new departments.^{IX}

Despite this increase in the size of the Senate over time, what did not change under the 1886 Constitution was the pivotal role played by individual senators as regional party brokers whose behaviors served to re-enforce the equilibrium of shared rule without self-rule. The structure of Colombia’s two traditional political parties (Conservatives and Liberals) holds the clues to understand how the Senate functioned as a self-enforcing mechanism across this long century (1886-1991). Despite the fact that these two parties had previously gone to war in the attempt to impose or resist federal designs, the reality is that *both* parties operated as loose federations of regional economic elites who enjoyed



significant autonomy relative to national party leaders (Léal and Dávila 2010). In the Conservative party no less than in the Liberal party (i.e. the nominal defender of federal principles), senators operated as regional power brokers who sat atop departmentally-specific networks of clientelism and who exerted hegemonic control over the party lists that determined access to political power. Although formally speaking the president appointed governors who in turn appointed mayors, appointments were actually made according to the informal but widespread logic of patronage: presidents let senators decide who would be appointed as governors and mayors in their departments in exchange for supporting the presidential agenda (Restrepo 2015).

Shared rule in the absence of self-rule proved to be a stable arrangement because it exactly suited the political and economic interests of senators as the lynchpins of regional power. Consider the case of land reform. Despite the post-WWII strengthening of progressive forces in favor of agrarian reform, and ambitious land redistribution proposals by Liberal Presidents Alberto Lleras Camargo (1958-62) and Carlos Lleras Restrepo (1966-70), the Senate steadfastly defended landowning elites in the departments by either refusing to endorse or by gutting major land reform legislation (Hirschman 1963). This was a highly reactionary and ‘demos-constraining’ form of shared rule (Stepan 2004), but shared rule nonetheless. Although Senators used shared rule to block existential threats to their class interests, they were willing to support other reforms that insulated macroeconomic policy making in the national bureaucracy in exchange for the institutionalization of access to pork barrel funds (Archer and Shugart 1997, Dargent 2014). The elimination of fiscal self-rule in the 1886 Constitution meant that departments were dependent for their revenues on the discretionary transfers individually brokered by senators, who simultaneously controlled the careers of the governors presiding over those departments. According to the relevant counterfactual here, higher levels of self-rule would have threatened both the brokerage roles played by senators and their ability to block the kinds of equity-enhancing reforms (like land reform) that would have been championed by at least some directly elected mayors and governors.



4. Democratization and the 1991 Constitution: Self-rule without Shared Rule

While senators were able to defend shared rule without self-rule by vetoing efforts to reform the 1886 Constitution for much of the 20th century, eventually a series of forces exogenous to the established institutional game converged to challenge its logic. For different reasons and toward different goals, these disparate forces converged around demands for institutional reforms that would open up the country's closed and centralized political system and thereby deepen democracy. The result was a radical shift from shared rule without self-rule to its mirror image.

Democratizing forces in Colombia were galvanized by growing frustration with the country's National Front experience, a power-sharing arrangement between the two main parties designed to end the partisan violence that had killed upwards of 250,000 Colombians in the decade after 1948. During the National Front (1958-74), the two parties agreed to rotate in and out of the presidency, hold equal numbers of seats in the two legislative chambers, appoint similar numbers of mayors and governors, and enjoy parity vis-à-vis bureaucratic spoils (Hartlyn 1988). Although the National Front 'worked' in the sense that it ended inter-party violence, it also provoked new types of violence with the emergence of guerrilla insurgencies against the establishment in the 1960s. By monopolizing all national institutions along with the power to appoint all substate executives, Liberals and Conservatives monopolized a political system that offered no meaningful avenues of participation or representation for actors not affiliated with the two main parties (Bejarano and Pizarro 2005). Combined with high levels of inequality in land ownership, the National Front proved to be the perfect institutional recipe for the strengthening of Marxist-Leninist insurgencies whose war against the state produced the deadliest and lengthiest internal armed conflict in Latin America.

The highly centralized and closed political system that Colombia inherited as the joint institutional legacy of the 1886 Constitution and the National Front ultimately came under greater stress as a range of subaltern actors began to demand greater forms of self-rule. The most significant development was the emergence of over 200 'civic strikes' (*paros cívicos*) between 1970 and 1986, which were 'organized by local citizens' groups protesting poor service provision and the concentration of government expenditure in the largest cities'



(Nickson 1995, 146). According to Falletti, poor quality and unevenness in service delivery by parastatal institutions that were ‘attached to central agencies and ministries’ generated a widespread demand for the direct election of mayors rather than their appointment by higher-level patrons, a system that had created high turnover, pervasive corruption, and so-called ‘professional mayors’ who would travel around all the municipalities of one department until they were discredited in all of them’ (2010, 131, 132). A parallel demand for self-rule came in the form of pressures from insurgent organizations for the direct election of mayors, the introduction of which would enable guerrilla leaders to come to power not just through armed struggle but also ‘through the ballot box’ (Eaton 2006).

While exogenous demands from below for greater self-rule became harder to ignore for politicians at the top by the 1980s, these legislators still controlled any decision to grant self-rule, either in the form of ordinary decentralizing legislation or in the form of a new constitution. Legislators’ veto power only began to unravel in 1982 with the unexpected election as president of Conservative party candidate Belisario Betancur after a split in the Liberal party divided the Liberal vote between two Liberal candidates (O’Neill 2005). The Liberal party had dominated the Colombian presidency since the end of the National Front with presidential victories in 1974 and 1978 (and it subsequently reclaimed its dominant position with victories in the three subsequent elections of 1986, 1990, and 1994). O’Neill argues that the organizational strength of the Conservative party in the countryside and at the subnational level, combined with its weakening position in presidential campaigns, encouraged it to use its likely temporary control of the presidency (1982-86) to push through decentralizing measures, including direct elections for mayors. Beyond electoral calculations, another key development at the top of Colombia’s political system was growing support among reformers for a ‘pacification through decentralization’ strategy most associated with Liberal party politician Jaime Castro, who served as Betancur’s Minister of Government. As the country’s multiple insurgent groups ballooned in size and extended their territorial reach in the 1980s -- fueled in part by access to growing revenues from drug trafficking -- politicians in both parties came to accept the idea that self-rule could help end the war by creating space for the non-violent local expression of political preferences (Castro 1998).

In the face of intensifying pressures for self-rule, thorough-going reform would require re-writing the Constitution itself and not just passing decentralization bills. The obstacle



here was that, unique among presidential systems, the 1886 Constitution endowed Congress with the exclusive authority to alter the constitution, with no role for referenda or ratification mechanisms (Nielson and Shugart 1999, 321). In exceptional circumstances, members of Congress from the two traditional parties were willing to support one-off decentralizing measures, but not re-writing the Constitution itself. Confronted with steadfast congressional opposition and allied with a student movement that saw constitutional reform as the key to democratizing Colombia, President Virgilio Barco ultimately succeeded in circumventing the legislature by encouraging voters to deposit unofficial slips of paper (the so-called '*séptima papeleta*') calling for a constituent assembly into their ballot envelopes in the 1990 election (Nielson and Shugart 1999). Though technically unconstitutional, the Supreme Court then upheld the decree (927) Barco issued to formalize the convening of a Constituent Assembly to re-write the constitution. Just as critical as this unconstitutional decree was a subsequent decree (1926) stipulating that this Assembly would not be elected in the normal electoral districts used to elect legislators (Hernández 2013). Instead, members of the Assembly were elected in a single nationwide district, which led to the sizable representation of non-traditional parties, including demobilized guerrilla leaders, whose primary goal was to open up the political system.

The new Constitution introduced many novel changes designed to deepen democracy, but no change was as dramatic as the radical shift that took place with respect to self-rule and shared rule. Perhaps the most symbolically significant change with respect to the former was the reintroduction of direct elections for governors, which were held in 1994 for the first time since before 1886. In addition to political decentralization, the Constitution also advanced self-rule through generous fiscal and administrative measures. Specifically, the 1991 Constitution increased automatic revenue transfers to departments (in the *situación fiscal*) and municipalities (via *participaciones*); while the former were tied to expenditures in health and education, the latter were un earmarked (Restrepo 2015). Just as important was an expansion in the size of the pool of resources subject to revenue sharing, which shifted from tax revenues alone to include all tax and nontax revenue income (Falleti 2010, 141). While fiscal changes were in some ways more generous to municipalities than departments, administrative measures mandated departmental supervision over municipal governments with fewer than 100,000 residents (which represent over 90% of the total). Altogether, greater self-rule worked as a democratizing measure in the sense that it boosted



political pluralism by empowering new political actors from outside the established parties, including the innovative mayors elected to govern large cities like Bogotá, Cali, and Medellín in recent years (Pasotti 2009).

The same democratizing impulse that led to support for self-rule, however, had sharply negative consequences for shared rule in the 1991 Constitution. On the one hand, the new Constitution elevated and strengthened the Senate relative to the 1886 Constitution and increased its size to 100 senators. For example, although the Senate was endowed with significant legislative authority in the earlier Constitution, only the lower chamber could introduce taxes, unlike the 1991 Constitution which gives the Senate co-authority over taxes and budgets (Hooghe et al 2016, 243). The new Constitution also requires Senate approval for the president to extend a state of internal disturbance, an important attribute in a country with an internal armed conflict (Nielson and Shugart 1999, 333).^x More importantly, however, even as the powers of the Senate were increased, its regional composition was discarded. This is because the members of the Constituent Assembly decided to use the same one-off electoral rule that had been applied to their own election in a single nationwide district to select the new Senate. Senators henceforth would have a national rather than regional constituency. In losing their own senators, departments lost one of the most important channels through which they could influence national legislation affecting their territory (Hooghe et al 2016, 243).

Given their full-throated support for self-rule, the opposition to shared rule by members of the Constituent Assembly would appear to be contradictory, but was in fact driven by the same democratizing preferences. The overarching objective animating constitutional reformers was to diversify the internal composition of the Senate beyond traditional politicians. For reformers seeking to reverse the rural bias that had prevented progressive policy changes for many decades (like land reform), the hope was that a nationwide constituency would create ‘opportunities for candidates appealing across the boundaries of the traditional departmental district, making the upper chamber much more responsive to urban policy demands’ (Nielson and Shugart 1999, 329). Whereas successful Senate candidates in the past by definition had to pursue concentrated strategies focused only on their home departments, to win a seat in the new Senate candidates can adopt a dispersal strategy, ‘garnering small shares of the votes in multiple departments that aggregate across departmental boundaries to reach the number of votes needed to win the



election' (Nielson and Shugart 1999, 330). A nationwide district made it possible for smaller parties to win a seat that never would have succeeded in the traditional regional districts. In the first elections held under the new rule in 1994, while the Liberals and Conservatives still won 75% of the seats, a number of small parties ranging from Christians to Communists were able to elect one or two senators. Indigenous parties also won seats in addition to the two guaranteed seats granted by the Constitution. In contrast to this increase in political pluralism, many departments lost representation in the Senate. As of 2016, nearly half of all departments (15 of 32) do not have senators who hail from those departments (Restrepo 2016, 152). Over the thirty-year life of the new Constitution many senators have continued to deploy territorially-concentrated and highly clientelistic strategies (Flórez 2008), but it is also clear that diffuse national interests are now better represented in the Senate.^{XI}

If the loss of a territorially-structured Senate represented the most important blow to shared rule in the 1991 Constitution, it is important to also note the absence of other institutional mechanisms that could have enacted shared rule in its place, starting with Colombia's lower legislative chamber. Given that representatives to the House of Representatives continue to be elected in departmental districts, why haven't these representatives been able to defend self-rule since 1991? After all, while Senators now face some incentives to respond to latent or diffuse national constituencies, Representatives still have home departments. A number of factors, however, have kept them from playing this role, including the lack of any constitutionally-embedded mandate to do so. Although each department is guaranteed at least two Representatives, article 176 of the Constitution clarifies that they represent the people rather than any territorial unit, and that population determines the number of representatives elected in each district (which ranges from 2 to 18). Furthermore, in the critical area of taxation, the 1991 Constitution reduced the prerogatives of the lower chamber by elevating those of the upper chamber; prior to 1991 the Representatives would have had greater power to resist the kinds of fiscal changes that have weakened subnational governments in recent decades. A final factor was an electoral reform in 2002 that strengthened political parties by requiring them to put forward a single list in legislative elections in each district (Moreno and Escobar-Lemmon 2008). Whereas multiple lists within the same party previously incentivized intra-party competition, the



2002 reform strengthened party leaders and reinforced partisan (as opposed to territorial) identities as the main axis of competition in the lower chamber.

In addition to the inability of Colombia's lower house to defend shared rule, regional participation in national-level decision making was also undermined by the weakness of other mechanisms created in the 1991 Constitution. Consider, for example, the participatory planning institutions that democratic reformers also inserted into the new Constitution, including the National Planning Council, which includes reserved seats for departmental and municipal governments in addition to civil society actors. Because the stated purpose of the NPC is to influence planning by the national government across the national territory, it could technically be considered a form of shared rule. However, as Mayka argues, planning councils in Colombia 'are characterized by a weak institutional design, with only a consultative role in policymaking, considerable ambiguity about how they are to contribute to the planning process, and no clear enforcement mechanism' (2019, 185). In the three decades since its creation, the NPC has not functioned as anything like a functional substitute for the Senate in terms of shared rule. Nor have any reliable informal mechanisms emerged to sustain shared rule.^{XII}

5. The Unsustainability of Self-Rule in the Absence of Shared Rule

Despite the intellectual coherence of the democratizing changes inserted into Colombia's new Constitution – including the dual decisions to decentralize and to elect senators in a single national district – the combination of self-rule in the absence of shared rule would prove to be unsustainable. Specifically, the significant extension of self-rule that took place in the 1980s and 1990s became highly vulnerable in the decades that followed the Constituent Assembly once this unusual reform window shut (Hernández 2013) and numerous pressures for recentralization emerged in the aftermath of the new Constitution. Already by 1998, fears crystalized among technocrats that the expansion of fiscal transfers was threatening Colombia's famed macroeconomic stability as one of the few countries in the region that had escaped the plague of hyperinflation (López 2017). Also by the late 1990s, the rapid expansion in the territorial reach of the country's main guerrilla organization (*Fuerzas Armadas Revolucionarias de Colombia* or FARC) led many to conclude that decentralization as a pacification strategy had failed. The FARC had indeed won



municipal elections, as hoped, but this also unleashed paramilitary violence against the party it created to contest these elections in a spiral of violence that worsened the conflict (Eaton 2006). In a more prosaic fashion, numerous local and departmental governments struggled to perform the new roles assigned to them by self-rule, capacity deficits that became more glaring once the central state experienced important episodes of capacity building under the administration of President Alvaro Uribe (Flores-Macias 2013).

Against the onslaught of these pressures, and once national leaders decided that it was time to claw back resources and authority, substate governments were relatively powerless to coordinate in defense of self-rule. While a territorial Senate would not have guaranteed the survival of the decentralizing vision endorsed in the 1991 Constitution, the attempt to defend self-rule suffered from the absence of a powerful national institution that could have served as a veto player vis-à-vis recentralization. The associations of mayors and governors that had been created in the throes of decentralization (e.g. Colombian Federation of Municipalities in 1988, National Federation of Departments in 1994) were simply eclipsed by the push to recentralize power, which instead was mediated and shaped exclusively by national actors in an institutional landscape that overwhelmingly favored opponents of decentralization.

More specifically, in the aftermath of the disappearance of the territorial Senate in 1991, those who would seek to defend self-rule had to confront the juggernaut of Colombia's powerful economic technocracy, situated in three key institutions: the Ministry of Finance, the National Planning Department, and the Central Bank (*Banco de la República*). According to Dargent, one of the key consequences of the bipartisan National Front period discussed above was the delegation of macroeconomic policymaking to politically insulated and technically astute bureaucrats (2014). Political parity reduced the need to use financial and economic agencies for patronage purposes, creating technocratic 'islands of competence' (Geddes 1994). As Dargent argues, many technocrats began their careers in the private sector think tank FEDESARROLLO, whose focus in the 1990s 'turned to the new institutions adopted in the 1991 Constitution and their problematic effects on long-term economic stability' (2014, 258). Chief among these institutions were those of fiscal self-rule, which technocrats saw as incompatible with economic stability. Although the Constitution Court, which was also created by the 1991 Constitution, has emerged as a surprisingly powerful defender of the democratizing ethos of the new constitution, it did



not do much to forestall recentralization or defend self-rule, though on occasion it has defended the prerogatives of substate governments in conflicts over extraction.^{XIII}

If the institutional balance of power among national stakeholders was stacked against self-rule, the autonomy of territorial units emphasized in Article 1 of the new Constitution also eroded due to specific governing strategies adopted by the most powerful president of recent times: Alvaro Uribe (2002-2010). Elected at a time when the FARC was at its zenith, Uribe's aggressive attempts to defeat the guerrillas militarily rather than negotiate with them succeeded in restoring a modicum of stability to the country and garnered the president enough popularity to change the constitution to allow his reelection in 2006. Uribe's highly personalistic style of rule included the formation of what he called 'communal councils' (*consejos comunales*). Every weekend during his presidency, Uribe would travel to local governments along with select ministers to directly receive, debate, and act on their requests for nationally-mediated support.^{XIV} Ostensibly occasions where local actors could give national officials feedback and input vis-à-vis national policies and programs (e.g. shared rule), the mobile cabinets more frequently represented the encroachment of national officials into decisions that had been formally decentralized by the 1991 Constitution.^{XV} The norms of self-rule clashed directly with this novel decision to territorially displace meetings of the national executive cabinet by holding them across the country.

The fundamental vulnerability of self-rule without shared rule can be clearly observed in the following three key episodes, beginning most obviously with the case of fiscal recentralization. The process began under the administration of Ernesto Samper (1994-98), which introduced new restrictions on borrowing by substate governments. In response to the worst economic crisis since the 1930s, his successor Andrés Pastrana (1998-2002) subsequently proposed addressing the country's fiscal deficit through temporary changes in the system of fiscal transfers, which then became permanent under Uribe. In interviews with Uribe's Ministers of Finance and Interior, Julian López (2017) documents the marginal role played by the Senate in the debate over these measures. In the absence of a Senate that would prioritize regional over national objectives, individual governors were left to resist recentralization on their own and in an isolated fashion, including the Governor of Atlántico (Carlos Rodado) who complained that when he went to the Senate in 2007 to debate the reform not even senators from his own department supported his



efforts (López 2017, 151). With a Senate that would no longer prioritize regional interests, Colombia shifted from percentage-based revenue sharing to fixed-sum transfers that had the effect of cutting subnational revenues as a share of total revenues from 46.5% to 37.2% by 2005 (Dickovick and Eaton 2013). As noted by Hooghe et. al. (2016), Colombia's national parliament approved the fiscal responsibility laws 'without subnational input' (2016, 243).

Self-rule also took a major hit in the 2011 reform of the system through which rents from Colombia's natural resources are shared with territorial governments. In a major boon to these governments, the 1991 Constitution established that 80% of royalties from oil and mining would be shared with producer regions in an unearmarked fashion. Four of Colombia's least development departments – Arauca, Casanare, Guajira and Meta – received the bulk of these royalties, which amounted to \$32.7 billion by 2009 according to the Ministry of Hacienda (Benítez 2013). When these departments continued to experience poor outcomes in terms of social services despite the transfers, technocrats in the national government proposed changes that culminated in a new General System of Royalties (*Sistema General de Regalías* or SGR). What's important is that the new system dramatically increased the oversight of the national government by reassigning 50% of royalties to nationally-controlled development funds and by requiring that all substate governments enter favored projects into a 'project bank' controlled by the National Planning Department before they could be funded by royalties.^{XVI} Although the Senate signed off on this recentralizing change, one senator (Juan Lozano) argued that the veto power given to the national government in the SGR was unconstitutional, and the Constitutional Court agreed by suspending one particular article (31 of law 1606) of the enabling legislation (Benítez 2013). Here the Court played a role that the Senate might have taken up more vigorously if it had maintained its territorial identity, but the key point is that neither actor could prevent this massive setback for self-rule.^{XVII}

Whereas the two examples discussed in the paragraphs above illustrate how the absence of shared rule rendered territorial units powerless to oppose recentralizing changes, this same powerlessness can also be seen in their inability to force the national government to act in ways actively desired by these units. It is difficult to observe a non-event (as opposed to the visible acts of recentralization that substate governments could not stop), but the weakness of the advocates of self-rule can nevertheless be seen in the



two decades they had to wait for the adoption of enabling legislation vis-à-vis decentralization that had been called for in the 1991 Constitution (but that was only passed by Congress in 2011 with the *Ley Orgánica de Ordenamiento Territorial* or LOOT).^{xviii} When the LOOT was finally passed, rather than provide juridical clarity about self-rule in the form of departmental prerogatives, the law focused on the formation of regional planning bodies that would incorporate two or more departments and that would operate under the direction of the national government (Duque 2012). No longer tasked with the job of representing departments, the Senate also signed off on further legislation in 2019 (the so-called ‘Law of the Regions’) which likewise reflects a preference for the strengthening of supra-departmental Administrative and Planning Regions (RAPs) rather than actual departmental governments.^{xix} Importantly, the 2019 law stipulates that funding for the RAPs will come out of existing departmental resources.^{xx}

6. Conclusion: Lessons from Colombia

The Colombian case holds out important lessons for other formally unitary countries that are likewise debating the relationship between shared rule and self-rule but that, unlike Colombia, do not have a lengthy history of experimenting with different combinations of these two distinct forms of rule. Since becoming an independent country over two hundred years ago, Colombia has shifted from high levels of shared and self-rule during its radical 19th century experiment with federalism to a long period of shared rule without self-rule that lasted for most of the 20th century, and finally to an ill-fated attempt to enhance self-rule while curtailing shared rule over the last three decades. Most unitary countries in the world today do not have prior experiences with federalism to draw upon as they consider how federal solutions might help address the various problems they face, from ethno-territorial divisions to sluggish economic growth. Never having allowed much in the way of either self-rule or shared rule, most unitary countries begin their experimentation with federal principles by focusing their attention on the former rather than the latter. As a result, while scores of countries have participated in the global wave of decentralization that has swept the world in recent decades, far fewer have actually re-written their constitutions to allow shared rule. Politicians at the center who monopolize the design of federal institutions appear to be far more likely to countenance changes that let regions



govern themselves than changes that actually give regions the power to govern the country as a whole (Liesbet and Hooghe 2016, Mueller 2017).

Against this backdrop, the Colombian experience suggests that the decision to grant self-rule but not shared rule may actually end up preventing a country from getting very far down the road toward federalism. In Colombia, this particular decision generated a distinct ‘one step forward, one step back’ kind of dynamic. Colombia’s failure to stably combine high levels of self-rule with low levels of shared rule is especially noteworthy because of the powerful confluence of actors who, for their own reasons, came together to advocate for self-rule three decades ago, including civic leaders and guerrilla organizations but also reformist politicians, government ministers, and members of the constituent assembly who were given free rein to re-write the Constitution. Circa 1991 this shift toward self-rule appeared to be inexorable and irreversible, a part of the global zeitgeist of decentralization, and a change that was here to stay. However, when recentralizing pressures emerged just a few years after the ratification of the new constitution, Colombia’s constituent units were almost entirely powerless to defend their newfound prerogatives. As a check on recentralization, the constitution’s other new innovation -- the Constitutional Court -- proved to be a poor substitute for the disappearance of the territorial senate. The Colombian case suggests that extreme movement on the continuum toward self-rule in the absence of any concessions vis-a-vis the granting of shared rule may constitute a less reliable pathway toward federalism than modest but simultaneous movements toward both forms of rule.

The lesson to be derived from the Colombian case is not that senators elected in territorial districts (i.e. shared rule) prefer self-rule. Indeed, left to their own devices, Colombian senators would never have endorsed the shift to self-rule. The absence of self-rule in the 1886 Constitution enabled senators to monopolize the distribution of resources to their home departments on a discretionary and clientelistic basis which redounded to their direct electoral benefit. The shift to self-rule in Colombia only came about exogenously due to extra-constitutional maneuvering that circumvented the legislature as a veto player vis-a-vis constitutional reform. However, if the new Constitution in 1991 had endorsed self-rule while preserving shared rule in the form of the territorial Senate, senators subsequently would have had to think twice before agreeing to pass the myriad recentralizing measures that presidents have proposed since the late 1990s. Armed with the



democratic legitimacy they now enjoy thanks to their direct election, governors (and mayors) could have compelled senators in their departments to defend territorial prerogatives if the defense of territorial prerogatives had remained the Senate's core constitutional function. At a minimum, signing off on the reversal of self-rule would have generated political costs and electoral exposure for senators if they had still needed to seek their (re)election in departmental districts.

Finally, the Colombian case also offers up a sobering lesson vis-a-vis the relationship between federalism as a territorial regime and democracy as a political regime. From the *Federalist Papers* to the present, the literature on this relationship has documented important synergies between federalism on the one hand and democracy on the other. More recently, however, scholars have come to less sanguine conclusions. Alfred Stepan (2004), for example, has argued that 'demos-constraining' forms of federalism can have highly negative consequences for majority rule as the centerpiece of democratic action. Likewise, the literature on subnational authoritarianism has demonstrated how federalism in cases like Argentina, Brazil and Mexico can undermine the democratic quality of national political regimes (Giraudy 2015). If federalism can undermine democracy, as this emerging literature suggests, this paper has shown that the reverse is also true: democratization can threaten federalization. In Colombia, reformers seeking to open up and democratize the political system saw shared rule as an obstacle to democracy because it had reinforced the power of entrenched regional elites. In response, and as a way to promote political pluralism, they advocated the replacement of the country's territorial upper chamber with one elected in a single nationwide district. Opposing shared rule while supporting self-rule made good sense to democratic reformers thirty years ago, but the past three decades have demonstrated that this configuration is not a promising one for those reformers who had simultaneously hoped to put the country on a federal trajectory.

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^I Different combinations of shared and self-rule affect a variety of outcomes, including corruption (Neudorfer and Neudorfer 2015), efficiency (Braun 2009), and peace (Steytler and Mettler 2001).

^{II} According to a pattern observed by Sean Mueller (2017), 'shared rule is more often withheld and self-rule more readily granted'.

^{III} The current Constitution does not identify Colombia as federal and federalism as a label was explicitly discussed and rejected in the 1991 Constituent Assembly. Instead, article 1 of the Constitution identifies Colombia as a 'decentralized unitary republic with autonomy of its territorial units'. Nevertheless, Colombia would indeed be considered federal according to definitions that simply require the constitutional recognition of autonomous powers for constituent units (Watts 1999, Riker 1964) -- in contrast to definitions that require



the representation of these units in the center (Morelli 1997, Wibbels 2005 Ziblatt 2006). Colombia could also be considered federal using definitions that simply emphasize direct elections for each level of government (Filippov, Ordeshook and Shvetsova 2004, Diaz-Cayeros 2006).

^{IV} Two additional seats are reserved for indigenous communities.

^V For a review of sanguine perspectives about the relationship between democracy and federalism, see Burgess and Gagnon 2010. For work that has exposed tensions in this relationship, see Benz and Sonnicksen 2017, Gibson 2012, Giraudy 2015, and Stepan 2004.

^{VI} When bicameralism features a territorial second chamber, as it did in Colombia before 1991, scholars have maintained that this institutional design does not necessarily guarantee the defense of regional interests. As Gamper (2018, 126) notes, majoritarian decision-making in these second chambers means that ‘a single component unit will not be able to enforce its will even in federal second chambers where the component units are represented symmetrically’. Palermo (2018, 64) likewise questions the ability of second chambers to defend territorial interests ‘due to the prevalence of the political-parliamentary logic over the territorial one’. Nevertheless, when the legislation in question is a set of recentralizing measures that disadvantage all territorial units relative to the national government, a chamber mandated to defend those interests should serve as more of a check than would a non-territorial chamber. For more on bicameralism as a safeguard for self-rule see Benz (2018).

^{VII} As the product of a radically liberal vision, the new constitution also included anti-clerical and pro-free trade positions (Hernández 1997).

^{VIII} The one exception was the mayor of Bogotá who was hand-selected by the president himself.

^{IX} The number of departments tripled between 1905 and 1909, followed by a further round of proliferation in the 1940s and 1960s. A constitutional reform in 1968 was introduced to prevent further fragmentation (Vidal 1997).

^X The Constitution also transformed territorial units governed by the national government as ‘dependencies’ (*dependencias*) into their own departments, which was a significant move toward federalism given the mechanisms of self-rule discussed above (Hooghe et al 2016, 237).

^{XI} According to Crisp and Ingall, ‘bills targeted at the national level increased dramatically after reform’ (2002, 742), even if many senators continued to emphasize pork barrel politics.

^{XII} As Mueller (2014) argues, robust informal mechanisms can often substitute for the lack of formal mechanisms of shared rule.

^{XIII} See, for example, ‘Claves del fallo sobre consultas para frenar actividades extractivas’, *El Tiempo*, October 12, 2018.

^{XIV} ‘Los consejos comunales, la major vitrine que tuvo Uribe’, *El País*, July 4, 2010.

^{XV} For an example of this dynamic, see Secretaría de Prensa de la República de Colombia, ‘Consejos comunales le han asignado 3,660 tareas al Gobierno Nacional’, <http://web.presidencia.gov.co/sp/2008/mayo/31/02312008.html>.

^{XVI} ‘Duro llamado de los gobernadores a Santos’, *El Tiempo*, May 12, 2017.

^{XVII} Ariel Avila, ‘La recentralización que pretende el gobierno de Iván Duque’, *Semana*, February 27, 2019.

^{XVIII} 18 bills died in the Senate between 1991 and 2010. ‘Las reformas del gobierno son un juego a tres bandas’, *El Tiempo*, October 13, 2010.

^{XIX} ‘Los 5 cambios que trae la nueva Ley de Regiones’, *Dinero*, April 14, 2019.

^{XX} See Jairo Parada, ‘La descentralización en vilo’, *La Silla Vacilla*, May 26, 2019.

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