Democracy and the Accommodation of Diversity: Advancing Pluralism Through Shared Rule, Self-Rule and Limited Rule

Rotimi T. Suberu
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I. INTRODUCTION

Democracy is paradoxically both pivotal and precarious in diverse and divided societies with deep cultural or ethnic (i.e., linguistic, regional, religious, racial and other attributive group identity) fractures. There are examples of relatively non-violent management of ethnic diversity in non-democratic systems, including the Ottoman Empire's millet system for accommodating non-Muslim communities, the British colonial system of indirect rule and the informal ethnic balancing practices of many African dictatorships.[1] However, most scholars of ethnicity agree that non-democratic regimes are often unsuccessful—and ultimately unsustainable—managers of ethnic diversity, and that there "are no viable alternatives to democracy" as a system for the pluralistic, peaceful, just and sustainable governance of such diversity.[2] This is because core democratic practices, including credible multi-party elections and effective protections for civil rights and liberties, are indispensable for the adequate articulation, representation and accommodation of divergent ethnic interests.

Yet, political development researchers also agree that deep ethnic fragmentation poses enormous risks of destructive inter-group mobilization, exclusion and polarization that can undermine democratic stability and peace. Such risks are especially critical in structurally fragile post-colonial states coming into independence or making their first democratic transitions in the post-Second World War era. Consequently, creative constitutional crafting and flexible institutional engineering, beyond a simple majoritarian system of democratic

governance, is required to mediate and moderate conflict in these deeply divided societies. Experts often disagree in areas related to the design of institutional mechanisms that could stabilize these ethnically fragmented and often politically polarized societies. Prescribed or practiced solutions range from concerted attempts at cultural assimilation and integration, to innovative forms of centripetal, multicultural, consociational and ethno-federalist accommodations, to outright ethno-territorial secession or partition.[3]

A growing body of scholarly and policy work, including the change case series of the Pluralism Lens project, suggests that the ends of peace, prosperity and democratic stability in deeply divided societies are better served by pluralistic, rather than mono-national, conceptions of the state. Such pluralism defies a conventional, centrist, homogenizing nation-state model. Instead, the pluralistic approach promotes and protects multiple and complementary national, ethnic or cultural identities within individual sovereign states.[4] Pluralism is a multi-faceted process that transcends any single constitutional model or ideational formula. In terms of formal constitutional design, law and politics, however, pluralism invariably entails the creation of institutions that recognize and mediate group difference through inclusive power-sharing, group autonomy, and effective checks and constraints on state power.

Canada, Germany, India and Spain are relatively successful, if imperfect and contested, experiments in pluralism that exemplify substantial institutional adherence to these principles of inter-group inclusion, decentralized subnational self-governance,

and more or less robust political checks and balances. These countries continue to contend with significant challenges of ethnic diversity management, including the persistence of centrifugal secessionist or autonomist pressures (Canada, India, Spain), the development of exclusionary or discriminatory policies or practices at the subnational level (Germany, India), and the decentralization and diffusion of political corruption and economic dysfunction (Spain, India). Nonetheless, comparatively speaking, Canada, Germany, India and Spain remain exemplars of the pluralistic uses of institutions of shared rule, self-rule and restrained, liberal, rule. These institutional principles have also featured prominently in constitutional strategies and blueprints designed to nudge states such as Nigeria, Bolivia, Brazil, Colombia, Myanmar and Malaysia on to promising paths of post-conflict stabilization or equitable inter-group accommodation. On the other hand, systematic erosion of these pluralistic institutions has been a major driver of violent disintegrative conflicts in states like Sri Lanka and Côte d'Ivoire. This paper is an overview of the opportunities and challenges that are often associated with developing and implementing the triple institutional paradigm of shared rule, self-rule and limited or restrained rule.

II. POWER-SHARING AND INCLUSION IN THE CENTRAL STATE

Inclusion in central state governing institutions is arguably the most pivotal mechanism for stable, pluralistic, democratic accommodation of deep

diversity. This is especially true in post-conflict situations in which grants of regional autonomy without corresponding guarantees of inter-group inclusion in central state institutions may simply aggravate (rather than reduce) political suspicion and confrontation between central regime elites and their ethno-regional opponents. Empirical evidence suggests that both substate autonomy and central power-sharing have a significant conflict-preventing impact before the onset of violent conflict. However, once violence has occurred, regional autonomy, on its own, may be "too little too late" to contain conflict.[5] Consequently, group autonomy may be more effective in dampening conflict if the group is also included in central governing arrangements, thus transforming group leaders from peripheral patrons eager to confront the state into central government stakeholders.

A variety of institutional designs exist for promoting inter-group inclusion, participation or representation in central governance and decision-making. A key mechanism of central power-sharing is the inclusion of coalitions of diverse elite groups in the national political executive. Parliamentary systems with their collegiate, shareable executives (distinct from presidential systems with their personalist presidencies) are particularly amenable to executive power-sharing.[6] Indeed, polarizing zero-sum ethno-political contests for the control of the executive presidency have animated recent deadly inter-group violence in Kenya, Nigeria and Côte d'Ivoire. Nigeria and Kenya have sought to mitigate such destabilizing contests by implementing constitutional provisions for electing presidential candidates on the basis of centripetal distribution rules that provide politicians with electoral

incentives to reach out to groups other than their own.[7] However, such electoral distribution rules have not eased the intensity of ethnic competition and mobilization for control of the African super-presidency.[8] Rather, the enormous personal concentrations of political powers and economic resources in Africa's hyper-presidential regimes and the underdevelopment or subordination of countervailing institutions of restraint, including the judiciary and the legislature, continue to fuel zero-sum ethno-political competition and conflicts.

In legislatures, the use of proportional representation (PR) electoral systems is broadly recommended as a robust mechanism for ensuring effective parliamentary representation for minorities. However, given the territorial concentration of ethno-linguistic communities in many divided societies in Africa and elsewhere, the use of simple majority or first-past-the-post electoral systems is not necessarily inconsistent with adequate parliamentary representation for ethnic communities. A PR system would be indispensable for the representation of such communities if they were territorially dispersed or spread widely but thinly across multiple electoral constituencies, rather than territorially concentrated. However, while in the African context "the single-member-district plurality system produces a highly proportional translation of votes into legislative seats, the very territorial concentration and cohesion of ethnic groups that ensures that proportional outcome also creates regional or ethnic fiefdoms, such that the favored party in a given ethnic group or region gains a monopoly of representation for that group." [9] Nonetheless, a menu of innovative electoral system designs—beyond majoritarian

and PR systems—exists for enhancing inter-group legislative representation. Mauritius's compensatory, best loser system, for example, gives otherwise underrepresented ethnic groups additional seats in the legislature.[10] Such legislative representation for minorities, when combined with inclusive decision rules that require more than a simple majority for enacting major legislation or constitutional amendments, can help to secure a voice in the political process for representatives of vulnerable ethnic communities.

Outside the executive and legislature, inter-group inclusion in central state institutions has been promoted through affirmative action policies designed to ensure equitable representation for all groups in critical spheres such as the party system, judiciary, security agencies, civil bureaucracy, economy and education. Although deeply controversial (as the debates over the use of ethnic quotas in countries like Nigeria, India, Malaysia and Brazil vividly illustrate), affirmative action policies, when creatively planned and implemented, can help address systemic horizontal inequalities in political and socio-economic opportunities, thus cauterizing a key driver of violent inter-group conflict.

The various mechanisms of inter-group representation and inclusion in central state institutions are encapsulated in Arend Lijphart's idea of consociational democracy. Consociation-based democracy is defined by constituting power-sharing executives incorporating all important segments; by promoting inter-group proportionality in political representation, administrative appointments and government subsidies; and by entrenching a minority veto with regard to

the most vital minority rights and interests. A fourth element of Lijphart's consociation is cultural autonomy, which can take various forms, including non-territorial and territorial institutions. Non-territorial autonomy typically involves the protection of the cultural, religious or educational rights of groups, for example, through the provision of equal state financial support for schools owned by religious communities in countries such as India, Belgium and the Netherlands. However, the most elaborate and widely practiced systems of autonomy involve federalism, decentralization and other arrangements that grant varying degrees of political, economic and administrative authority to territorial subunits of the state.

III. TERRITORIAL AUTONOMY AND DECENTRALIZATION

The major forms of territorial autonomy include full-fledged federal systems, involving the constitutional entrenchment of autonomy for subnational units of government and the representation of these units in institutions of the central government (e.g., Canada, India, Spain, Brazil and Nigeria); decentralized unitary states, in which subnational units derive their autonomy from the central government, rather than directly from the constitution (Ghana, Bolivia); and federacy, which is an asymmetrical arrangement in which one or more subunits of a state that is otherwise unitary develops a federal relationship with the central state (e.g., Aceh in Indonesia). Territorial autonomy arrangements are broadly popular as a middling strategy for holding together deeply divided societies, which are

often torn between the extreme options of unitary centralization or integration and outright partition or secession.

Scholarly and policy literatures widely discuss the advantages and risks of territorial autonomy mechanisms. These mechanisms are generally celebrated for their actual or potential successes in promoting ethnic conflict management, democratic development, economic progress, and state strength and capacity. Territorial autonomy can alleviate ethnic discontent and violence by transforming national minorities into subnational majorities, by compartmentalizing ethnic conflict in individual territorial subunits, and by reducing horizontal inequalities through redistributive inter-governmental fiscal transfers. Similarly, territorial autonomy can consolidate democratization by using subnational institutions to leverage and enhance grassroots civic engagement; by enhancing the proximity, accountability and responsiveness of government to citizens; by providing checks and balances on the powers of the central state; and by creating or expanding opportunities for national-level political opposition to exercise power at the subnational level and thus, develop a direct stake in the maintenance of the democratic system. Furthermore, according to theories of market-preserving federalism, territorial autonomy can improve delivery of public goods and stimulate economic efficiency and prosperity through inter-governmental competition.[11] All of these outcomes can build state legitimacy, resilience and capacity, especially by increasing the "state's sensitivity to local complaints and conditions and its options for response via overlapping responsibility and multiple redundancies in the policy realm."[12]

Yet, many of the positive outcomes associated with territorial autonomy arrangements depend on underlying demographic, socio-economic, geopolitical and historical conditions that are non-existent or unlikely in many developing countries.[13] These countries, for example, often lack a deeply rooted and widely shared consensus on liberal democratic values and norms, which can restrain central and regional governing elites from using their respective powers to subvert and destabilize each other, or to abuse individual and group rights. Other factors contributing to the fragility of autonomy arrangements in the developing world include the weak capacity and attendant insecurity of central authorities, the fiscal unfeasibility or underdevelopment of most subnational units, intense ethnic contestations and anxieties over the demarcation of subnational boundaries, and basic flaws (including imbalances in inter-governmental distributions of power and resources) in the formal constitutional design of autonomy institutions. Consequently, a vast literature on territorial autonomy arrangements has systematically documented their negative effects in aggravating ethnic conflict, promoting subnational authoritarianism and complicating macro-economic management.[14] A common criticism of these arrangements is that they provide subnational elites with the institutional weapons (regional political parties, bureaucratic infrastructures and economic patronage or resources) to foment conflict and potentially launch secessionist projects. Another line of criticism focuses on the vulnerability of subnational administrations to corruption by authoritarian-minded local elites and patron-client networks. Similarly, there is substantial evidence, from countries such as Nigeria, Spain, Brazil and

Argentina, of the economically dysfunctional and negative consequences of fiscal decentralization.

These pathologies of territorial autonomy arrangements have been especially evident in Nigeria, Africa's largest and oldest federation. Nigeria's initial tripartite federal structure (1954–66) accommodated the country's three largest ethnicities (Hausa-Fulani, Yoruba and Igbo), while marginalizing the federation's smaller ethnic communities. The structure also institutionalized the northern region's political hegemony, which was larger than the two (later three) southern regional units combined. This lopsided federal system flagrantly exacerbated inter-ethnic conflicts, leading to the military's overthrow of the country's first democratic republic (1960–66) and to civil war (1967–70). The military comprehensively remodeled the federal system, progressively expanding the number of constituent federal units from four regions in 1963 to 36 states by 1996. This multi-state federalism dissolved the three major ethnicities into multiple states while granting smaller ethnic communities constituent federal units of their own. However, while multi-state federalism has helped hold Nigeria together, it is entirely based on the redistribution of centrally collected oil revenues among diverse ethnic elites in control of national and subnational governments. This patronage-based federalism is corrupt, contentious, and increasingly dysfunctional and unsustainable.

Nonetheless, many of the risks associated with autonomy arrangements can be mitigated through creative constitutional design. For example, Nigeria has sought to contain secessionist tendencies by using its internal federal boundaries to split and

crosscut (rather than cement and reinforce) the identities of the country's three largest ethnicities. This has broadened elite consensus in support of Nigerian unity, despite the escalation of mass-based socio-economic deprivation, disparity and conflicts, including violent insurgencies in the Muslim north and oil-rich Niger Delta. Some of decentralization's macro-economic risks can be reduced by making inter-governmental fiscal transfers conditional on subunit fiscal transparency and efficiency, by encouraging subnational governments to raise their own revenues, and by discouraging bailouts or imposing hard budget constraints on governments. Moreover, because many autonomy settlements have failed to dampen conflict due to their corruption or manipulation by central or subregional elites, robust checks and balances can be established to ensure commitment to autonomy settlement terms. Indeed, placing effective checks and constraints on state power, at both national and subnational levels, represents a critical pathway to sustainable peace and pluralistic democracy in deeply divided societies.

IV. RESTRAINING THE MULTI-NATIONAL STATE

According to scholars Alan Kuperman and Philip Roeder, power-dividing institutions constitute a more promising formula for managing deep conflictual diversity (more so than consociational mechanisms of shared rule and self-rule).[15] Unlike consociations that institutionally empower diverse ethnic elites, divided-power arrangements emphasize "civil liberties that limit government, separation of powers that create multiple majorities,

and checks and balances that limit each majority."[16] In essence, divided-power arrangements seek to promote ethnic peace by balancing and checking the powers of governmental and ethnic elites, by dispersing and lowering the stakes of ethnic political conflict, by empowering civil society as an independent agency for restraining the state, and by promoting credible commitments to the preservation of human and minority rights.

Kuperman advises supporters of conflict management in Africa's centralizing regimes to jettison the "general academic preference" for accommodative, consociational designs and, instead, consider promoting "liberal elements–such as term limits, empowered legislatures, media freedom, and independent courts and electoral commissions—to counterbalance and thereby mitigate the pathologies of strong executives."[17] Similarly, Roeder insists that power-dividing arrangements are a more successful alternative to power-sharing constitutions for preventing the escalation of routine inter-group conflict into disintegrative ethno-political violence. Yet, Roeder's major examples of relatively successful or peaceful conflict management through a power-diving approach (United States, Switzerland, Belgium and India) are countries that incorporate "ethnic power-sharing arrangements within a larger array of power-dividing institutions."[18] This suggests that power-dividing institutions are complementary with, rather than antithetical to, central power-sharing and territorial autonomy.

The Global Centre for Pluralism's change cases illustrate the key roles that independent agencies of restraint, especially the courts, can play in promoting the pluralistic accommodation and

mediation of diversity. In Germany, for example, the federal constitutional court has helped to uphold a measure of state neutrality in inter-religious conflicts by revoking exclusionary subnational laws targeting Muslim minorities. Brazil's Supreme Court affirmed the constitutionality of implementing racial quotas in university admissions, thus triggering federal legislative support for education-based affirmative action programs for historically disadvantaged groups. The Colombian constitutional court's independent but "progressive and emancipatory activism" has been a key factor promoting respect for constitutionality, for diversity, and for individual and collective rights. Inclusionary policies and practices in India are underpinned by an "institutional heterogeneity" encompassing independent courts, autonomous electoral administration, a free press, strong non-governmental organizations and social movements, and critically empowered intellectuals. In Côte d'Ivoire, the courts' "legal pragmatism" helped in arbitrating and defusing the country's explosive ethno-political conflicts over access to citizenship rights. Conversely, Sri Lanka's descent into aggressive, hyper-majoritarian ethnocentrism was abetted by an ethno-political campaign of deinstitutionalization involving systematic attacks on independent agencies or mechanisms of restraint such as judicial review of legislation, the judicial service commission and the public service commission.

In essence, independent institutional constraints on state power can complement mechanisms of shared rule and self-rule to create a robust hardware for the democratic, pluralistic accommodation of diversity. The synergy between shared rule, self-rule and limited rule is abundant. The idea of dispersing and

defusing government powers through establishing multiple majorities in diverse decision-making arenas is an energizing principle of federalist and other territorial and non-territorial power-sharing arrangements. An independent judiciary, based on the power-dividing principles of separation of powers and checks and balances, is an indispensable forum for impartially adjudicating and preserving the terms of such arrangements. And, a regime of civil rights and liberties (including individual and minority rights), formally guaranteed by the constitution and courts, and informally protected by the press and civil society, is pivotal in any system of shared rule and self-rule. Such a regime of liberal restraints is critical for constraining abuse of central government powers and for preventing subnational governments from degenerating into illiberal and "authoritarian enclaves."[19]

V. CONCLUSION

The democratic and pluralistic accommodation of deep diversity involves instituting mechanisms of shared rule, self-rule and limited rule. These mechanisms can forge stable multicultural and multi-national democracies by promoting inter-group inclusion in central governance structures, constructing territorial and non-territorial institutions of group autonomy, and placing effective formal and informal checks on governmental and ethnic elites. The three mechanisms are more or less compatible with an unlimited variety of institutional designs, including federal and decentralized unitary states, presidential and parliamentary governments, and diverse electoral systems. The mechanisms are also consistent not only with high

levels of democratic participation, transparency and legitimacy, but also with measures of state capacity and governmental effectiveness, including good macro-economic performance and the control of violence.[20] Despite the challenges impeding the construction of successful multi-ethnic polities in non-Western contexts, the experiences explored in the Pluralism Lens change cases suggest that these mechanisms of inclusion, autonomy and political restraint are sustainable and adaptable paths to stable pluralistic democracy even in the most deeply divided societies.

NOTES

[1] Timothy Sisk (1996), *Power-sharing and International Mediation in Ethnic Conflicts* (Washington, DC: United States Institute of Peace), 27–28.

[2] Sisk (1996), 29; Mathias Basedau (2011), "Managing Ethnic Conflict: The Menu of Institutional Engineering," Working Paper No. 171, German Institute of Global and Area Studies, 10; Larry Diamond (1999), *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press), 5–6.

[3] John McGarry, Brendan O'Leary and Richard Simeon (2008), "Integration or Accommodation?: The Enduring Debate in Conflict Regulation," in *Constitutional Design for Divided Societies: Integration or Accommodation?*, edited by Sujit Choudry, 41–88 (Oxford: Oxford University Press).

[4] Alfred Stepan, Juan Linz and Yogendra Yadav (2011), *Crafting State-nations: India and Other Multi-national Democracies* (Baltimore: Johns Hopkins University Press).

[5] Lars-Erik Cederman, Simon Hug, Andreas Schadel and Julian Wucherpfenning (2015), "Territorial Autonomy in the Shadow of Conflict: Too Little, Too Late," *American Political Science Review* 109 (2): 354–70.

[6] Arend Lijphart (2004), "Constitutional Design for Divided Societies," *Journal of Democracy* 15 (2): 96–109.

[7] Donald L. Horowitz (2000), *Ethnic Groups in Conflict* (Berkeley: University of California Press).

[8] Most African states can be described as super-presidential or hyper-presidential because of what Kwasi Prempeh describes as their "imperial presidency" in which, "Power in the African state, and with it control of resources and patronage, continues to rest with the president, making the capture and control of the presidency the singular ambition of Africa's politicians." See H. Kwasi Prempeh (2008), "Presidents Untamed," *Journal of Democracy* 19 (2): 110.

[9] Diamond (1999), 105.

[10] Nic Cheeseman (2015), *Democracy in Africa: Successes, Failure and the Struggle for Reform* (Cambridge: Cambridge University Press), 221.

[11] Diamond (1999).

[12] Jean-Paul Faguet, Ashley M. Fox and Caroline Poschl (2015), "Decentralizing for a Deeper, More Supple Democracy," *Journal of Democracy* 26 (4): 61.

[13] Will Kymlicka (2008), "Canadian Pluralism in Comparative Perspective," Expert Roundtable on Canada's Experience with Pluralism (Ottawa: Global Centre for Pluralism).

[14] Philip Roeder (2005), "Power Dividing as an Alternative to Ethnic Power Sharing," in *Sustainable Peace: Power and Democracy After Civil Wars*, edited by Philip Roeder and Donald Rothchild, 51-82 (Ithaca, NY: Cornell University Press); Diamond (1999), 132-138.

[15] Alan Kuperman (2015), "Designing Constitutions to Reduce Conflict," in *Constitutions and Conflict Management in Africa: Preventing Civil War Through Institutional Design*, edited by Alan Kuperman, 1–24 (Philadelphia: University of Pennsylvania Press); Roeder (2005).

[16] Roeder (2005), 52.

[17] Kuperman (2015), 22.

[18] Roeder (2005), 61.

[19] Diamond (1999), 133.

[20] Arend Lijphart (2012), *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven: Yale University Press); Faguet, Fox and Poschl (2015).

AUTHOR

Rotimi Suberu teaches politics and international relations at Bennington College. His main research interests are Nigerian government and politics, the management of ethnic and religious conflicts, federalism and democratization. Suberu's publications include *Federalism and Ethnic in Conflict in Nigeria*, numerous book chapters, and several articles in journals such as *African Affairs, Journal of Modern African Studies*, and *Journal of Democracy*. Suberu has served as a consultant to the Nigerian government, the World Bank, the National Endowment for Democracy, Freedom House, and the Forum of Federations.

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