Building the Nation: Sovereignty and International Law in the Decolonisation of South Asia

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Abstract

The position of the territorially sovereign nation-state as the fundamental building block of the contemporary world order has come under increasing challenge. Historians have long focused on social, cultural, economic, and technological factors to examine the constructed nature of the nation-state. In this article, I explore the role of law, and specifically the concept of sovereignty, in the creation of the unified spatial entity constituting the nation-state. I focus in particular on the decolonisation of South Asia and analyse legal arguments made in two international disputes (over Hyderabad and the river Indus) to understand the process through which the Indian nation-state came into being.

Keywords

1 Introduction

The contemporary world order is built around nation-states. Despite significant scholarly challenge to the idea that the nation-state is the 'natural' or 'fundamental' building block of the modern world order, it remains the primary

unit of political and economic organisation in international affairs.[1] Historians
have questioned narratives of the inexorable move from empire to nation-state
in the middle of the twentieth century[2] by focusing on the manner in which
numerous actors grappled with a variety of visions of how to transform empire.
Alternatives to the British Empire, for instance, included the creation of inde-
pendent nation-states, the articulation of anti-imperial internationalisms,[3] the
espousal of federations as a political form to balance competing interests,[4] and
the advocacy of the Commonwealth of Nations as a mechanism for refashion-
ing the empire.[5] In most cases, however, these alternative structures did not
last: federations split up into nation-states and resistance from several newly-
independent states transformed the Commonwealth into a looser, more infor-
mal organisation. As Antony Anghie notes, the mid-twentieth century saw a
specific vision of sovereignty and the nation-state win out.[6]

In this article, I hope to lay out a historically informed account of the role
played by legal ideas, and specifically the concept of sovereignty, in the pro-
duction of a bounded national space and economy, i.e., in the creation of a
nation-state. Focusing on the decolonisation of South Asia, I trace the manner
in which a particular conception of sovereignty – that of exclusive, absolute
territoriality, focused on the creation of centralised economic units – became
dominant in the middle of the twentieth century, while drowning out visions
of alternative legal orders.[7]

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1   Ruggie, John. 'Territoriality and Beyond: Problematizing Modernity in International Relations'.
     International Organization 47(1) (1993), 139–174; and Agnew, John. 'The Territorial Trap:
     The Geographical Assumptions of International Relations Theory'. *Review of International
     Political Economy* 1(1) (1994), 53–80.
2   On empires as a persistent political form, see Burbank, Jane and Frederick Cooper. *Empires
     in World History: Power and the Politics of Difference* (Princeton: Princeton University Press,
     2011).
3   Goswami, Manu. 'Imaginary Futures and Colonial Internationalisms'. *American Historical
     Review* 117(5) (2012), 1461–1485.
4   Collins, Michael. 'Decolonisation and the "Federal Moment"'. *Diplomacy and Statecraft*
     24(1) (2013), 21–40; Getachew, Adom. *Worldmaking after Empire: The Rise and Fall of Self-
     Determination* (Princeton: Princeton University Press, 2019), 107–141.
5   Haines, Daniel. 'A 'Commonwealth Moment' in South Asian Decolonization', in *Decolonization
     and the Cold War: Negotiating Independence*, eds. Leslie James and Elisabeth Leake (London:
     Bloomsbury, 2015), 185–202.
6   Anghie, Antony. 'Bandung and the Origins of Third World Sovereignty', in *Bandung, Global
     History, and International Law: Critical Pasts and Pending Futures*, eds. Luis Eslava, Michael
     Fakhri and Vasuki Nesiah (Cambridge: Cambridge University Press, 2017), 535–551, 542.
7   Apart from 'territorial sovereignty', there were other versions of sovereignty articulated by
     different actors in mid-twentieth century South Asia. For a discussion of one such alterna-
     tive – divisible sovereignty – put forth by representatives of the princely states, see Saksena,

By placing the legal concept of territorial sovereignty as the key connection in the process of creating the spatial unity of India, I hope to provide fresh insights into the history of the triumph of the territorially sovereign nation-state. While scholars have traced the critical role of international law and institutions in the universalisation of the postcolonial developmental state,[8] links between the economic ideas of anti-colonial nationalists and the push towards the territorialisation of the nation remain underexplored. As I elucidate later in this article, for many of independent India's new leaders, centralised control and a consolidation of the nation-state's territories were obvious necessities for the planned economy and the nationalist development model that they considered to be the basis for building the new nation. This unified national space for development, I argue, was created through the articulation of the specific legal idea of territorial sovereignty by elite Indian politicians and bureaucrats in two international disputes soon after independence. The first was a dispute between the princely state of Hyderabad and the dominion of India at the United Nations, while the second was a dispute between the new dominions of India and Pakistan over the use of water resources of the transboundary river Indus and its many tributaries. In both cases, Indian bureaucrats articulated a version of sovereignty focused on the absolute control of a defined space and territory. By examining these historical debates, I hope to provide fresh perspectives into the creative role played by the concept of sovereignty in the construction of the nation-state and its lasting implications.

The vision of territorial sovereignty that was articulated in these disputes formed the basis of the Indian nation-state and also laid the foundation for the globalisation of the nation-state form. It was repeatedly rearticulated at numerous forums, including, most prominently, the Afro-Asian Conference held in Indonesia in 1955, and became the basis for much of the third world's interventions in international law. Although reliance on the idea of the nation-state was predicated around the promise of independence and the understandable desire for economic self-sufficiency in nations ravaged by colonialism, there was also a cost to the focus on territory. Linking sovereignty with territoriality structured a specific kind of citizen, as a result of which 'others' were rendered

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Priyasha. *Jousting over Jurisdiction: Sovereignty and International Law in Colonial South Asia, c. 1858–1950* (Cambridge: Harvard Law School, unpublished SJD Dissertation, 2018), 137–363.

8   Pahuja, Sundhya. *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011), 44–94; Eslava, Luis and Sundhya Pahuja. 'The State and International Law: A Reading from the Global South'. *Humanity: An International Journal of Human Rights, Humanitarianism and Development* 11(1) (2020), 118–138, available at: http://humanityjournal.org/issue11-1/the-state-and-international-law-a-reading-from-the-global-south/ (last accessed on 25 September 2020).

outsiders, often leading to violence and economic oppression; the problem of minorities has, as Antony Anghie argues, haunted third world states ever since.[9]

The article is divided into five parts. First, I explore the complicated historical events that led to the creation of the nation-states of India and Pakistan by tracing the numerous political possibilities that were proposed and abandoned during the decolonisation of South Asia. Then, I focus on the influence of 'developmentalism' on the structure of the new postcolonial political order and in particular on the construction of a centralised state and consolidated territory. In the next two sections, I examine the legal disputes over Hyderabad and the Indus basin to understand how this unified Indian state space was constructed through the articulation of a specific vision of territorial sovereignty. In the conclusion, I bring together these strands to reflect on the broader consequences of the territorial focus of the Indian nation-state, particularly on citizenship and belonging.

2   The Many Visions of Post-Colonial South Asia

The final years of the British in South Asia were marked by war, famine, military mutiny, and explosive violence. Anti-colonial struggle and the increasing economic costs of imperial administration led to the newly-elected Labour government's decision to quit British India.[10] However, negotiations over decolonisation were complicated by the political deadlock over the call for a separate homeland for South Asian Muslims. Historians have differed over the specific nature of this demand, but there is broad agreement about the lack of territorial attachment in visions of what would ultimately become the state of Pakistan.[11] So while Muhammad Ali Jinnah, the leader of the All India Muslim League, argued that Hindus and Muslims in South Asia constituted two separate 'nations', he remained 'extraordinarily vague in his calls for Pakistan as a clearly demarcated territorial state'.[12]

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9   Anghie, 'Third World Sovereignty' (2017) (n. 6), 551.

10   Talbot, Ian. *A History of Modern South Asia: Politics, States, Diasporas* (New Haven: Yale University Press, 2016), 131–134.

11   For some of the contrasting approaches in the literature on the formation of Pakistan, see Jalal, Ayesha. *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* (Cambridge: Cambridge University Press, 1985); Gilmartin, David. *Empire and Islam: Punjab and the Making of Pakistan* (Berkeley: University of California Press, 1988); and Devji, Faisal. *Muslim Zion: Pakistan as a Political Idea* (Cambridge: Harvard University Press, 2013).

12   Gilmartin, David. 'Partition, Pakistan, and South Asian History: In Search of a Narrative'. *Journal of Asian History* 57(4) (1998), 1068–1095, 1081.

Since the relationship between nation and territory remained ambiguous, the numerous plans of devolution of power drafted during the 1940s advanced loose, federal frameworks with multiple layers of authority rather than proposing the partition of British India into two separate states.[13] However, these plans failed to find acceptance and amidst spiralling violence, the viceroy, Louis Mountbatten, developed a plan involving three elements: the mixed provinces of Punjab and Bengal would be partitioned along religious lines; Hindu-majority provinces would remain in India; and Muslim-majority provinces would be given a choice to join India or Pakistan. Alternative plans for a united, sovereign Bengal;[14] an independent state of Khalistan for the Sikhs; and autonomy for the Pashtuns and the Balochs were all abandoned. By June 1947, the creation of India and Pakistan as two separate, territorially sovereign nation-states was accepted fact.[15]

The partition plan was limited to British India, an area directly administered by colonial officials. Another furious debate concerned the future of the 600-odd 'princely states', which were ruled by indigenous rulers called 'princes', but remained subject to British 'influence'.[16] Many princes sought independence, while others tried to negotiate loose association agreements with the new states.[17] Several rulers thought that India and Pakistan would be too weak to survive for long and made plans to fill the power vacuum by creating their own states, fusing neighbouring states into a union, or extending their own domains by annexing surrounding territory.[18] Ultimately, however, the states were bullied, bribed, and cajoled into merging with one of the two dominions.[19]

As these debates illustrate, it was far from inevitable that colonial South Asia would be transformed into two territorially consolidated independent

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13   Banerjee-Dube, Ishita. *A History of Modern India* (Cambridge: Cambridge University Press, 2015), 392, 417–418; Talbot, *A History of Modern South Asia* 2016 (n. 10), 134.

14   Chakrabarty, Bidyut. 'An Alternative to Partition: The United Bengal Scheme'. *South Asia: Journal of South Asian Studies* 26(2) (2003), 193–212.

15   Banerjee-Dube, *A History of Modern India* 2015 (n. 13), 425–426.

16   Since the category of 'princely state' was heavily contested, the exact number of princely states varied over time. See Ramusack, Barbara. *The Indian Princes and their States* (Cambridge: Cambridge University Press, 2004), 2.

17   Copland, Ian. *The Princes of India in the Endgame of Empire, 1917–1947* (Cambridge: Cambridge University Press, 1997), 250–251.

18   Copland, Ian. *State, Community and Neighbourhood in Princely North India, c. 1900–1950* (Basingstoke: Palgrave Macmillan, 2005), 135–138.

19   For overviews of this process, see Menon, Vapal P. *The Story of the Integration of the Indian States* (New York: Macmillan, 1956); Copland, *The Princes of India* 1997 (n. 17), 229–287; Bangash, Yaqoob Khan. *A Princely Affair: The Accession and Integration of the Princely States of Pakistan, 1947–1955* (Oxford: Oxford University Press, 2015).

nation-states in 1947. Rather, the end result was the consequence of a series of political choices made by British and Indian elites during the 1930s and early 1940s. Given these multiple political alternatives, why did anti-colonial nationalist leaders, particularly in what would become India, advocate the vision of the territorial nation-state? Scholars of international relations, such as Itty Abraham, have traced the privileging of territory to the aftermath of the First World War, and specifically to Woodrow Wilson's articulation of self-determination within the context of a nation-state.[20] Similarly, international law scholars like Sundhya Pahuja and Luis Eslava have argued that the nation-state is an 'ongoing project' of international law as self-determination can only be practiced within the confines of the nation-state form.[21] This view is also shared by historians like Prasenjit Duara, who notes that in the context of the Cold War, '[t]he nation was the only bearer of rights in international society, and this recognition was a critical resource for states, whatever their real status'.[22] And political geographers like Stuart Elden have also suggested that the actions of the United Nations during decolonisation privileged the 'norm of sovereignty-as-territorial-integrity' over alternative approaches such as self-determination of peoples.[23]

External requirements, particularly those of recognition under international law, played a critical role in mandating the nation-state as the default form of political organisation in the aftermath of decolonisation. There are, however, some additional factors to be considered in the South Asian context, where India had a slightly easier time than most former colonies in relation to the issue of recognition. Unlike other non self-governing colonial territories, India (a term used to refer to British India together with the princely states)[24] had been a member of several international organisations prior to independence.[25] Therefore, many anti-colonial nationalists, including Jawaharlal Nehru, soon to be independent India's first prime minister, were relatively confident that the

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20   Abraham, Itty. *How India Became Territorial: Foreign Policy, Diaspora, Geopolitics* (Stanford: Stanford University Press, 2014), 46–72.

21   Eslava/Pahuja, 'The State and International Law' 2020 (n. 8).

22   Duara, Prasenjit. 'The Cold War and the Imperialism of Nation-States', in *The Oxford Handbook of the Cold War*, eds. Richard H. Immerman and Petra Goedde (Oxford: Oxford University Press, 2013), 86–101, 97.

23   Elden, Stuart. 'Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders'. *SAIS Review of International Affairs* 26(1) (2006), 11–24, 12.

24   United Kingdom, Interpretation Act, 1889, Section 18(5).

25   Such membership was riven by controversy. See Legg, Stephen. 'An International Anomaly? Sovereignty, the League of Nations and India's Princely Geographies'. *Journal of Historical Geography* 43 (2014), 96–110.

new state would, despite contestations over the exact scope of its territory,[26] succeed to the international legal personality of the colonial entity of India, including its membership of the United Nations. Jinnah, however, maintained that the colonial entity of India would cease to exist on 15 August 1947, and the two succeeding dominions would have equal international status. The question was referred to the United Nations, whereupon Ivan Kerno, the Assistant Secretary-General for Legal Affairs, opined that the partition of British India constituted the secession of part of an existing state to create a new state (Pakistan); the part that remained (India), therefore, would continue with the existing treaty rights and obligations.[27] As a result, India retained membership of the United Nations, while Pakistan had to apply for membership and was ultimately admitted on 30 September 1947.[28]

Although international recognition was not a significant source of concern for independent India's politicians, there were other arguments in favour of the creation of an India with consolidated and demarcated territory and a strong central authority to exercise control over that territory.[29] Politicians like Nehru

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26   This confusion arose on account of debates over the exact division of territory after the partition plan had been agreed. See Devji, Faisal. 'The Minority as Political Form', in *From the Colonial to the Postcolonial: India and Pakistan in Transition*, eds. Dipesh Chakrabarty, Rochona Majumdar and Andrew Sartori (Oxford: Oxford University Press, 2007), 85–95, 92.

27   Menon, Vapal P. *The Transfer of Power in India* (Princeton: Princeton University Press, 1957), 404–407; and Higgins, Rosalyn. *The Development of International Law through the Political Organs of the United Nations* (Oxford: Oxford University Press, 1963), 321–322. A copy of Kerno's legal opinion can be found in a later memorandum prepared by the Secretariat of the International Law Commission on the succession of states in international law. See International Law Commission, The Succession of States in relation to Membership in the United Nations, A/CN.4/149, 3 December 1962, available at: http://legal.un.org/ilc/documentation/english/a_cn4_149.pdf (last accessed on 25 September 2020).

28   See United Nations, Security Council, Resolution 29, Admission of New Members to the UN, S/RES/29, 12 August 1947, available at: https://undocs.org/S/RES/29(1947) (last accessed on 25 September 2020); and United Nations, General Assembly, Resolution 108(II), Admission of Yemen and Pakistan to membership in the United Nations, A/RES/108(II), 30 September 1947, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/108(II) (last accessed on 25 September 2020).

29   For some scholars, Nehru's focus on the creation of an Indian nation-state was a stepping-stone towards the greater goal of erasing boundaries to create a world united by justiciable, universal human rights. See Bhagavan, Manu. 'A New Hope: India, the United Nations and the Making of the Universal Declaration of Human Rights'. *Modern Asian Studies* 44(2) (2010), 311–347. However, as Kavita Datla notes, although Nehru was committed to international organisations, his government was quick to shut down discussions of allegedly 'domestic' affairs by the very same organisations. See Datla, Kavita Saraswathi. 'Sovereignty and the End of Empire: The Transition to Independence in Colonial Hyderabad'. *Ab Imperio* 3 (2018), 63–88, 80.

feared that a fragmented political system 'would prevent a powerful centre from determining India's profile in the world at large'.[30] Many Indian elites were also horrified by increasing communal violence and hoped that territorially defined citizenship could provide an alternative definition of an overarching community. This sort of 'rationalist statism' was linked with science and modernity[31] and ultimately with ideas of economic development. Economic factors, therefore, played a significant role in the articulation of specific kinds of political structures. Several leaders, in particular Nehru and B.R. Ambedkar, favoured 'a strong centre that could ensure proper formulation and implementation of policies on education, economy and development at a national level'.[32] For Ambedkar, ideas of economic development were also linked to social reform and legal protections for marginalised groups; he placed his faith in a centralised state for the enactment of social reform policies necessary in a caste-ridden society that was resistant to change.[33]

Despite Ambedkar's radical ideas of socio-economic change, ideas of development in mid-century India were more circumspect and closely associated with economic planning. As a result, arguments about political structures were often framed in terms of their conduciveness for planning. In a 1959 press conference, for instance, Nehru argued that a weak federal government would have been unable to enact the economic measures that were necessary for the effective planning needed 'to make good after Independence'.[34] So the desire to resort to planning for 'development' was a significant reason for the rejection of pre-partition plans that proposed the layering of sovereign powers among a variety of political entities in favour of a unified central government that exercised absolute control over consolidated territory. The nation's external form was, therefore, closely linked with internal political and economic structures. To understand the triumph of the idea of territorial sovereignty in South Asia, it is necessary to understand the idea of 'developmentalism'.

30   Banerjee-Dube, *A History of Modern India* 2015 (n. 13), 456.

31   Gilmartin, 'Partition, Pakistan, and South Asian History' 1998 (n. 12), 1081–1082.

32   Banerjee-Dube, *A History of Modern India* 2015 (n. 13), 456.

33   Robinson, Rowena. 'Planning and Economic Development: Ambedkar versus Gandhi', in *Invoking Ambedkar: Contributions, Receptions, Legacies*, ed. Biswamoy Pati (Delhi: Primus Books, 2014), 59–71.

34   Text of Nehru's press conference, 7 February 1959, in *Selected Works of Jawaharlal Nehru,* 2nd series, vol. 46, ed. Madhavan K. Palat (New Delhi: Jawaharlal Nehru Memorial Fund, 2012), 152.

3   Developmentalism

Concerns around 'development' permeated colonial South Asia, with anti-colonial nationalism being predicated on the vision for a better economic future for the nation once independence had been achieved.[35] Within this discourse, there was almost universal acceptance of the promise of economic planning and industrialisation for independent India.[36] In this, anti-colonial nationalists were part of a broader transnational mode of economic thought that favoured a strong role for the state in the economy. Although this national developmentalist framework can be traced to the influence of late nineteenth-century political economists like Friedrich List,[37] there were additional international examples by the 1930s, including Soviet planning, New Deal interventions in the United States, Nazi and Fascist economics, and Japanese development policies.[38]

Support for planning crossed a range of political divides. Influential advocates included technocrats such as the Mysore *diwan* (chief minister), M. Visvesvaraya;[39] the Congress Socialist Party, a socialist caucus within the Indian National Congress, one of British India's principal political parties; and Indian industrialists.[40] These varied voices on the necessity of economic planning coalesced in the activities of the Congress' National Planning Committee,

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35   On the reliance on 'development' as a means of legitimacy for anti-colonial nationalism, see Chatterjee, Partha. *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton: Princeton University Press, 1993), 202–205; Goswami, Manu. *Producing India: From Colonial Economy to National Space* (Chicago: University of Chicago Press, 2004), 276.

36   An exception was Gandhi, who advocated decentralised village-based production in a framework that provided considerable autonomy for states within the union of India. See Ghatak, Subrata. 'Gandhian Economic Thought and the Economic Policy of the Indian National Congress', in *The Indian National Congress and the Political Economy of India 1885–1985*, eds. Mike Shepperdson and Colin Simmons (Aldershot: Avebury, 1988), 282–290.

37   On List's influence on anti-colonial nationalists in South Asia, see Goswami, *Producing India* 2004 (n. 35), 209–241.

38   Zachariah, Benjamin. *Developing India: An Intellectual and Social History, c. 1930–50* (Oxford: Oxford University Press, 2005), 43.

39   Visvesvaraya's influential text, *Planned Economy for India*, argued that planning was a means for national discipline and regeneration. See Khilnani, Sunil. *The Idea of India* (London: Penguin Books, 1997).

40   In 1944, eight prominent industrialists published *A Plan of Economic Development for India*. See Kudaisya, Medha. '"The Promise of Partnership": Indian Business, the State, and the Bombay Plan of 1944'. *Business History Review* 88(1) (2014), 97–131.

which was set up in 1938, and included industrialists, scientists, politicians, and academics.[41]

This intellectual consensus on the role of the state included an interest in extending the state's control over economic policy and resources, including capital, natural resources, and people. The aspiration to exert control over capital, for instance, could be seen in the tussle over fiscal control during negotiations over a possible federation of British India and the princely states in the 1930s:[42] while British Indian leaders sought extensive powers of taxation for the federal centre, the princely states preferred a model whereby they would retain those powers, with the centre being limited to raising indirect taxes.[43] Post-independence, the Indian state also sought to exert control over the banking system. In 1955, the Imperial Bank of India, the foremost commercial bank of colonial India, was nationalised to form the State Bank of India, which would 'constantly align its activities to the needs of a growing economy as envisaged in successive five-year plans'.[44] Banks of the erstwhile princely states were converted to subsidiaries of the State Bank of India,[45] thereby extending central supervision over capital that had been under the control of the states. Even partition refugees were treated as resources who could be 'utilis[ed] … in broader processes of nation building'.[46]

These aims of centralised planning and control over resources pushed advocates to argue in favour of the territorialisation of the nation. British India had been organised as a geographical space through the colonial technological

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41   Chakrabarty, Bidyut. 'Jawaharlal Nehru and Planning, 1938–41: India at the Crossroads'. *Modern Asian Studies* 26(2) (1992), 276–281.

42   On the failed proposal to create a federation in 1930s South Asia, see Muldoon, Andrew. *Empire, Politics and the Creation of the 1935 India Act* (Farnham: Ashgate, 2009); Pillai, Sarath. 'Fragmenting the Nation: Divisible Sovereignty and Travancore's Quest for Federal Independence'. *Law and History Review* 34(3) (2016), 743–782; Purushotham, Sunil. 'Federating the Raj: Hyderabad, Sovereign Kingship, and Partition'. *Modern Asian Studies* 54(1) (2020), 157–198.

43   See, for instance, the numerous references to taxation in documents relating to the federal negotiations, including Letter from Kailas Narain Haksar to Tej Bahadur Sapru, 3 March 1934, Sapru Papers, Version II, 2nd series, Reel 8, IOR Neg 5004; Note on a Memorandum Describing Federation as Dangerous to the States, 1936, India Office Records, Asia, Pacific, and Africa Collections, British Library, London, IOR/L/PS/13/613; and Report of the Constitutional Committee of the Chamber of Princes, February 1937, Federal Papers, vol. II, Nehru Memorial Museum and Library, New Delhi.

44   Ray, Abhik. *The Evolution of the State Bank of India*, vol. 4 (London: Penguin Books, 2009), 20.

45   See Balachandran, Gopalan. *The Reserve Bank of India, 1951–1967* (Oxford: Oxford University Press, 1998), 355–396.

46   Sen, Uditi. *Citizen Refugee: Forging the Indian Nation after Partition* (Cambridge: Cambridge University Press, 2018), 87.

networks of irrigation canals, roads, and railways,[47] and late nineteenth-century nationalist discourse built upon this order to envision a territorially bound national entity of India.[48] However, the landscape of colonial South Asia continued to be riven by legal distinctions among British India, the princely states, and the frontier regions,[49] which proved to be a boon for Indian capitalists who exploited these ambiguities to their advantage. A prime example was the success of the Tata Iron and Steel Company in playing authorities in British India and the princely states in eastern India off each other to gain access to valuable mineral resources at minimal cost.[50] Consequently, advocates of planning bemoaned 'the confusion created by the myriads of political units … perhaps without any parallel in the world'.[51] Since planning was seen as a technocratic exercise that was above and beyond the realm of politics,[52] the existence of entities such as the princely states, which created a space for political and legal manoeuvring, was considered to be an obstacle for the achievement of economic sovereignty. The ability to compete in an increasingly international economic order instead required centralised control, planning, co-ordination, and the consolidation of the state's territories. This unified national space for development had to be created and it was done through the articulation of a version of sovereignty that privileged exclusive and absolute control over defined territory. In the next two sections, I will examine arguments made in two international disputes – over the princely state of Hyderabad and over the river Indus – in order to trace the repeated assertion of territorial sovereignty by Indian officials.

47   Prakash, Gyan. *Another Reason: Science and the Imagination of Modern India* (Princeton: Princeton University Press, 1999), 159–170.

48   For a discussion of the creation of an imagined conception of 'Bharat' as a spatially bound national entity amongst late nineteenth-century upper caste, middle class Hindus, see Goswami, *Producing India* 2004 (n. 35).

49   For discussions of the uneven legal landscape of colonial South Asia, see Benton, Lauren. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 236–260; Ray, Reeju. 'Interrupted Sovereignties in the North East Frontier of British India, 1787–1870'. *Modern Asian Studies* 53(2) (2019), 606–632.

50   Raianu, Mircea. '"A Mass of Anomalies": Land, Law, and Sovereignty in an Indian Company Town'. *Comparative Studies in Society and History* 60(2) (2018), 369–377.

51   Sharma, Tulsi Ram. *The Location of Industries in India* (Bombay: Hind Kitabs Limited, 1946), 3–4, quoted in Raianu, 'A Mass of Anomalies' 2018 (n. 50), 369.

52   Chatterjee, *The Nation and its Fragments* 1993 (n. 35), 200–205.

4   Hyderabad and India at the United Nations

Section 7 of the Indian Independence Act, 1947 provided that British suzerainty over the princely states would lapse on the creation of the dominions of India and Pakistan.[53] The logical implication was that the states would 'become wholly independent',[54] which led to fears of the 'Balkanisation' of the subcontinent.[55] However, on account of the efforts of Vallabhbhai Patel, the minister of states, V.P. Menon, his administrative deputy, and the viceroy, Louis Mountbatten, most of the princes signed instruments of accession in favour of India.[56] In some cases, there was resistance to these claims of consolidated territory by the new dominion of India: one of the most contentious accessions was that of Hyderabad, the richest, most populous, and perhaps the most distinguished of all the states.

Hyderabad's ruler, the *nizam*, Mir Osman Ali Khan, was considered to be a symbol of Muslim kingship although the state had a majority Hindu population.[57] There were extensive debates over the appropriate path for Hyderabad after the partition of British India,[58] but ultimately, the *nizam* made a bid for independence, gathering support from across the state's political and social spectrum; Muslim subjects, the landed elite, administrative officials, and two large *dalit* organisations all provided their backing.[59] A standstill agreement executed in November 1947 between Hyderabad and the government of India retained pre-independence arrangements on matters of common concern (defence, external affairs, and communications), precluded

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53   United Kingdom, The Indian Independence Act, 1947, Section 7.
54   This expression was used by Stafford Cripps. See Text of Cripps' press conference, 16 May 1946, in *The Transfer of Power 1942–7*, vol. 7, ed. Nicholas Mansergh (London: Her Majesty's Stationery Office, 1970–83), 597.
55   This turn of phrase can be found in a letter from Nehru to Mountbatten. See Purushotham, 'Federating the Raj' (n. 42), 193.
56   Copland, *The Princes of India* 1997 (n. 17), 253–258.
57   On Hyderabad's position as a symbol of Muslim sovereignty, see Beverley, Eric Lewis. *Hyderabad, British India and the World: Muslim Networks and Minor Sovereignty, c. 1850–1950* (Cambridge: Cambridge University Press, 2015). On the composition of the population of the state, it is important to note that although Muslims and Hindus in South Asia are culturally and linguistically diverse, the communities were mobilised and constructed as uniform political categories under colonial conditions. See, for instance, Copland, Ian. "Communalism' in Princely India: The Case of Hyderabad, 1930–1940'. *Modern Asian Studies* 22(4) (1988), 783–814; and Pandey, Gyanendra. *The Construction of Communalism in Colonial North India* (Oxford: Oxford University Press, 1990).
58   For overviews of these debates, see Datla, 'Sovereignty and the End of Empire' 2018 (n. 29), and Purushotham, 'Federating the Raj' 2020 (n. 42).
59   Purushotham, Sunil. 'Internal Violence: The "Police Action" in Hyderabad'. *Comparative Studies in Society and History* 57(2) (2015), 435–466, 439.

India from sending troops to the state, and provided for arbitration in the case of disputes.[60]

Negotiations over the future relationship soon broke down, with each side accusing the other of violating the terms of the standstill agreement. Hyderabad claimed that India had started an unofficial economic blockade on account of which the state had a shortage of essential supplies. Indian officials demanded Hyderabad disband the *razakars*, a volunteer-based paramilitary force that it claimed was responsible for attacks on Hindus both in the state and across the border in Indian territory; press reports on these alleged atrocities, however, appear to have been greatly exaggerated. Hyderabad representatives made counter-accusations, insisting that militias in camps on the Indian side of the border were responsible for violence against state residents.[61]

After India refused Hyderabad's request to refer the dispute to arbitration, the *nizam*'s advisors (who included the well-respected British lawyers, Walter Monckton and Hersch Lauterpacht) decided to approach the United Nations. On 21 August 1948, the *nizam* sent a telegram to the president of the Security Council, requesting that the dispute between Hyderabad and India be brought to the attention of the Council as it was 'likely to endanger the maintenance of international peace and security'.[62] In a more detailed memorandum, Hyderabad claimed that India's actions, which included 'threatening statements of leading Indian politicians and an assiduously fostered propaganda in the press and on the wireless; … encouragement … of border incidents and actual invasions of Hyderabad territory … and … a ruthless economic blockade',[63] constituted a violation of Article 2(4) of the UN Charter that prohibited the use of force or threats of the use of force against the territorial integrity and political independence of any state.[64] On 13 September, before the complaint was put on the Security Council's agenda, Indian troops invaded Hyderabad.[65]

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60   Noorani, Abdul G. *The Destruction of Hyderabad* (London: Hurst & Company, 2014), 173.

61   Descriptions of the situation can be found in Noorani, *The Destruction of Hyderabad* 2014 (n. 60), 187–198; and Purushotham, 'Internal Violence' 2015 (n. 59), 441–450.

62   Cablegram from the Hyderabad Government to the President of the Security Council, 21 August 1948, S/986, available at: http://dag.un.org/handle/11176/87633 (last accessed on 25 September 2020).

63   *The Complaint of Hyderabad against the Dominion of India under Article 35(2) of the Charter of the United Nations*, 11, File 48, Walter Monckton Papers (Balliol College Archives, Oxford).

64   *The Complaint of Hyderabad* (n. 63), 11–16.

65   Quite duplicitously, official Indian histories have always referred to the invasion as a 'police action' rather than an invasion. See, for instance, the official ministry of defence publication, Prasad, Sri N. *Operation Polo: The Police Action against Hyderabad, 1948* (Delhi: Historical Section, Ministry of Defence, Government of India, 1972).

The Security Council started discussion of the Hyderabad issue on 16 September. Moin Nawaz Jung, Hyderabad's representative, accused India of committing 'an act of aggression by invading the independent State of Hyderabad'[66] in order 'to coerce the Government of Hyderabad to renounce the independence of its country and make it, politically and internationally, part of India'.[67] In response, Ramaswami Mudaliar, who was representing India, simply stated that in India's view, 'Hyderabad is not competent to bring any question before the Security Council; that it is not a State; that it is not independent'.[68] After Mudaliar sought time to publish documents supporting his argument, the matter was adjourned till 20 September.[69]

On 17 September, the *nizam* announced a ceasefire with his troops surrendering to the Indian army,[70] and on 22 September, he stated that the delegation had ceased to have any authority to represent the state of Hyderabad before the United Nations.[71] Hyderabad's representatives were never heard on the matter again, but on 6 October, Pakistan requested permission to participate in the discussion,[72] which was granted on 15 December.[73]

The matter was finally discussed at a Security Council session in May 1949, with India being represented by B.N. Rau and Pakistan by Mohammed Zafrullah Khan. Rau maintained that Hyderabad had 'never been a State in the

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66   United Nations, Security Council, Official Records, 3rd year, 357th Meeting, S/PV.357, 16 September 1948, 12, available at: http://dag.un.org/handle/11176/87943 (last accessed on 25 September 2020).

67   Ibid., 15.

68   Ibid., 18–19.

69   Ibid., 21–22.

70   This is unsurprising as Hyderabad's forces proved no match for the Indian army. By all accounts, Indian troops either engaged in or, at the very least, permitted atrocities to be carried out against the local Muslim population during and after the invasion. The extent of violence remains unclear, with estimates of the number of Muslims who died ranging from 50,000 to 200,000. In addition, there were also allegations of Hindu mobs engaging in the widespread looting of Muslim households and businesses, the abduction and rape of Muslim women, and forced conversions. See Noorani, *The Destruction of Hyderabad* 2014 (n. 60), 221–246; Purushotham, 'Internal Violence' 2015 (n. 59), 450–463.

71   Cablegram from the *nizam* of Hyderabad to the United Nations, 22 September 1948, S/1011, available at: http://dag.un.org/handle/11176/87459 (last accessed on 25 September 2020).

72   Letter from the Minister of Foreign Affairs of Pakistan to the President of the Security Council, 6 October 1948, S/1027, available at: http://dag.un.org/handle/11176/88015 (last accessed on 25 September 2020).

73   United Nations, Security Council, Official Records, 3rd year, 384th Meeting, S/PV.384, 15 December 1948, 41–42, available at: http://dag.un.org/handle/11176/87794 (last accessed on 25 September 2020).

international sense'[74] and had never been recognised as an independent
state by any other country in the world. He noted that in July 1947, Hartley
Shawcross, the British delegate to the United Nations, had stated that the
United Kingdom did not propose to recognise the princely states as separate
international entities. Further, from November 1947, there had been a stand-
still agreement under which India had exclusive charge of Hyderabad's foreign
affairs.[75] In Rau's words, Hyderabad was 'in the heart of India' and so 'India
cannot possibly recognize any of these Indian States lying within its borders
as independent, any more than the United States of America can allow the in-
dependence of its southern states'.[76] India, he repeated, 'cannot possibly agree
to be dismembered or disintegrated by allowing any of these Indian States to
claim international statehood'.[77] Rather dramatically, he asserted, 'Hyderabad
was not a State in the international sense before the Indian Independence Act;
it is not one now by virtue of the standstill agreement and the arrangements
that followed it; and it cannot be one at any time in the future if India is to
live. We cannot defy or ignore geography'.[78] Following from this, he argued
that it was obvious 'that any dispute with Hyderabad is not an international
dispute. All matters relating to Hyderabad are now dealt with regularly by
the Government of India as matters of domestic concern'.[79] The matter was
'wholly within the domestic jurisdiction of India' and since it was not of 'an
international character', there was little useful purpose for it to remain before
the Security Council.[80]

   In response, Zafrullah Khan described India's military action as 'entirely un-
justified', a 'breach of international peace', and 'a continuation of aggression
which calls for redress'.[81] He claimed that although the United Kingdom had
hoped for the states to accede to either India or Pakistan, those states that
did not do so, i.e. states like Hyderabad, were free to be independent.[82] He
also refused to countenance the argument that the Hyderabad case was a

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74   United Nations, Security Council, Official Records, 4th year, 425th Meeting, S/PV.425,
     19 May 1949, 2, available at: http://dag.un.org/handle/11176/87231 (last accessed on 25
     September 2020).
75   Ibid., 6.
76   Ibid., 6–7.
77   Ibid., 7.
78   Ibid.
79   Ibid.
80   Ibid. See also Letter from the Representative of India to the President of the Security
     Council, 18 May 1949, S/1324, available at: http://dag.un.org/handle/11176/86918 (last ac-
     cessed on 25 September 2020).
81   United Nations, S/PV.425 1949 (n. 74), 8–9.
82   Ibid., 9–10.

domestic matter since 'the mere fact that its independence has been destroyed does not make the dispute a domestic matter for India'.[83] Indian military action constituted, in his view, an act of aggression against an independent state and therefore, was a breach of international peace.[84] He urged the Council to take provisional action to stop the persecution of Muslims in Hyderabad,[85] and also called for a plebiscite to determine the future of Hyderabad 'under the guidance, supervision and control of the United Nations'.[86] In response to this impassioned submission, the president of the Council simply thanked Khan, stating that he was 'sure that the members of the Council will keep this information in mind'.[87] The matter slowly faded from world memory,[88] leaving Indian officials free to weld Hyderabad into the Indian union. In November 1949, the *nizam* issued a *firman* declaring that the Indian constitution would also apply to Hyderabad; this was considered equivalent to the signing of an instrument of accession, completing the process of amalgamating Hyderabad into Indian territory.[89]

The Hyderabad dispute has been seen as a key moment for state-making in postcolonial South Asia. Scholars like Sunil Purushotham have focused on the role played by violence in the process of incorporating Hyderabad into Indian territory to argue that such crises were 'constitutive events through which a new state and the regime of sovereignty emerged'.[90] Others like Taylor Sherman have used the case to trace the multiple and flexible strategies that Indian administrators used to manage issues such as relations between Hindus and Muslims and the suppression of a communist rebellion.[91] In addition to the role of violence and administration in the creation of the postcolonial Indian state, it is also necessary to focus on the legal idea of territorial sovereignty in the shaping of state space. As the arguments made before the Security

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83   Ibid., 14.

84   Ibid., 15.

85   United Nations, Security Council, Official Records, 4th year, 426th Meeting, S/PV.426, 24 May 1949, 28–29, available at: http://dag.un.org/handle/11176/87232 (last accessed on 25 September 2020).

86   Ibid., 30.

87   Ibid. 31.

88   Noorani, *The Destruction of Hyderabad* 2014 (n. 60), 247–268; Eagleton, Clyde. 'The Case of Hyderabad Before the Security Council'. *American Journal of International Law* 44(2) (1950), 277–302.

89   Yazdani, Zubaida. 'The End of an Era', in *Hyderabad: After the Fall*, ed. Omar Khalidi (Wichita: Hyderabad Historical Society, 1988), 90–94.

90   Purushotham, 'Internal Violence' 2015 (n. 59), 435.

91   Sherman, Taylor C. 'The Integration of the Princely State of Hyderabad and the Making of the Postcolonial State in India, 1948–56'. *The Indian Economic and Social History Review* 44(4) (2007), 489–516.

Council demonstrate, Indian officials repeatedly articulated a vision of sovereignty that privileged the absolute and exclusive control of defined territory. The princely states were seen by many Indian politicians as a 'fifth column' that impeded planned 'development'.[92] Centralised control over economic resources required the consolidation of territory, leaving no space for the existence of semi-autonomous entities such as Hyderabad within the territory claimed by India. As a result, Mudaliar claimed that the invasion of Hyderabad by the Indian army was not an invasion but action to preserve 'law and order', which was within the 'domestic jurisdiction' of India, rather than being a matter of 'international concern'. In the aftermath of the chaos and violence of partition, and with the vision of centralised economic planning in mind, it was the articulation of the legal idea of territorial sovereignty during the course of international disputes such as the Hyderabad case that created the notion of a uniform state space and formed the basis of the Indian nation-state.

5   India, Pakistan, and the Dispute over the Indus Basin

The decision to partition British India into two dominions was announced on 3 June 1947. The task of actually dividing the territory was given to a British lawyer, Cyril Radcliffe, whose award was published on 17 August, two days after independence, leading to administrative chaos and spiralling violence.[93] There is, quite rightly, a significant amount of literature on the human cost of partition,[94] but there has also been a recent focus on the impact of the division of infrastructure systems on the new dominions.[95] This scholarship brings to the fore Radcliffe's consideration of 'other factors' during the boundary

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92   See Prakash, *Another Reason* 1999 (n. 47), 208.

93   Khan, Yasmin. *The Great Partition: The Making of India and Pakistan* (New Haven: Yale University Press, new ed. 2017 [2007]), 1–3.

94   See, for instance, Butalia, Urvashi. *The other Side of Silence: Voices from the Partition of India* (Durham: Duke University Press, 2000); Zamindar, Vazira Fazila-Yacoobali. *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories* (New York: Columbia University Press, 2007); Khan, *The Great Partition* 2017 (n. 93).

95   See, for instance, Chester, Lucy. *Borders and Conflict in South Asia: The Radcliffe Boundary Commission and the Partition of Punjab* (Manchester: Manchester University Press, 2009), 73–105; Haines, Daniel. 'Disputed Rivers: Sovereignty, Territory and State-Making in South Asia, 1948–1951'. *Geopolitics* 19(3) (2014), 632–655; Haines, Daniel. *Rivers Divided: Indus Basin Waters in the Making of India and Pakistan* (Oxford: Oxford University Press, 2017); Amrith, Sunil. *Unruly Waters: How Mountain Rivers and Monsoons Have Shaped South Asia's History* (London: Allen Lane, 2018), 182–188. These accounts add to the early examination of the impact of partition on the canals of Punjab in Michel, Aloys Arthur. *The Indus Rivers: A Study of the Effects of Partition* (New Haven: Yale University Press, 1967).

drawing process. One of these factors was infrastructure, particularly canals, headworks, roads, railways, and ports.[96] In particular, Radcliffe 'was deeply impressed … by the great importance of not allowing the physical division of territory to sterilize the working of the interrelated irrigation systems'.[97] This understanding of the criticality of infrastructure proved to be prescient when a crisis erupted over the rivers of the Indus basin. The British had engaged in an extensive project of constructing canals in the region,[98] but these were awkwardly divided when the border was drawn, with India being allotted the Ferozepur headworks that served canals leading into West Punjab in Pakistan.[99] So partition left India, as the upstream state, with greater potential to control the flow of water in the Indus basin.

On 18 December 1947, engineers in the now-divided provinces of East and West Punjab signed a standstill agreement that provided, among other things, for the maintenance of the pre-partition allocation of water in the Indus basin irrigation system; the initial terminal date for the agreement was 31 March 1948. On 1 April, East Punjab engineers alleged that their counterparts in West Punjab had failed to renew the standstill agreement and proceeded to shut off water supplies from the Ferozepur headworks to the canal systems that supplied water to West Pakistan. Consequently, millions of farmers found themselves without water supplies at the start of the sowing season and Lahore, one of Pakistan's largest cities, was deprived of its main water source.[100]

Following furious negotiations, on 4 May 1948, India and Pakistan signed an inter-dominion agreement to restore the flow of water after Pakistan agreed to pay annual seigniorage charges.[101] In 1951, Pakistan repudiated the agreement, but the two states agreed to use the good offices of the World Bank to discuss the dispute and negotiate a settlement.[102] The Indus Waters Treaty was finally signed in 1960 and effectively partitioned the Indus river system: the eastern rivers (Sutlej, Ravi, and Beas) were awarded to India and the western rivers (Indus, Jhelum, and Chenab) were awarded to Pakistan. The treaty also

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96   Chester, *Borders and Conflict in South Asia* 2009 (n. 95), 80–82.

97   Personal Communication from Cyril Radcliffe to Aloys Arthur Michel, 28 March 1965, as quoted in Michel, *The Indus Rivers* 1967 (n. 95), 164, fn. 47.

98   For a description of the stages of the canal building process, see Michel, *The Indus Rivers* 1967 (n. 95), 58–98.

99   Michel, *The Indus Rivers* 1967 (n. 95), 7.

100   Baxter, Richard R. 'The Indus Basin', in *The Law of International Drainage Basins*, eds. Albert H. Garretson, Robert D. Hayton and Cecil J. Olmstead (Dobbs Ferry: Oceana Publications, 1967), 443–485, 449–451; Michel, *The Indus Rivers* 1967 (n. 95), 195–197; Haines, *Rivers Divided* 2017 (n. 95), 42.

101   Baxter, 'The Indus Basin' 1967 (n. 100), 452; Haines, 'Disputed Rivers' 2014 (n. 95), 640; Haines, *Rivers Divided* 2017 (n. 95), 43.

102   Michel, *The Indus Rivers* 1967 (n. 95), 225.

provided for an information-sharing mechanism and set up a two-member Permanent Indus Commission to oversee implementation and matters of treaty interpretation. If the Commission is unable to resolve the question, the issue is referred to a 'neutral expert' or ultimately to a seven-member court of arbitration.[103]

Although the treaty mechanisms reinforce the idea that the conflict was a technical dispute over water resources, Daniel Haines compellingly argues that it was shaped by political discourses and power relations. He contends that the crux of the matter, as in the case of other transboundary river disputes, related to sovereignty, and the often-complicated relationship between water, territory, and the state.[104] Pakistan based its claim to the waters of the Indus and its tributaries on the 'historical usage' approach, claiming 'it had the right to continue its historical uses of canal water that flowed through India on the way to Pakistan'.[105] India, on the other hand, insisted that it had acquired the riparian rights of British India as a successor state and owed no responsibilities to Pakistan, which did not exist prior to 1947.[106] More significantly, Indian officials continually asserted that 'everything on Indian soil was Indian', a claim of some significance since the canal headworks were in Ferozepur in India, putting Indian irrigation engineers in control of the flow of water.[107] The action of shutting off water supplies to canals in Pakistan asserted India's claim 'to all the water in all the rivers that flowed through her territory', in line with Nehru's sentiment that 'what India did with India's rivers was India's affair'.[108] Engineers in East Punjab also produced a report dismissing Pakistan's claim based on historical usage, arguing that the ability to invoke such rights depended on the two entities being part of the same 'Sovereign Entity'.[109] This was based on an 1895 argument made by the then attorney-general of the United States, Judson Harmon; he had claimed that allowing a different nation-state to claim historical use rights would be 'inconsistent' with the sovereignty of the upstream state. The Harmon doctrine, however, was repudiated by the United States shortly thereafter and few international law scholars have recognised its

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103   For discussions of details of the treaty and its working, see Baxter, 'The Indus Basin' 1967 (n. 100), 467–476; Michel, *The Indus Rivers* 1967 (n. 95), 256–257; and Sattar, Erum, Jason Robison and Daniel McCool. 'Evolution of Water Institutions in the Indus Basin: Reflections from the Law of the Colorado River'. *University of Michigan Journal of Law Reform* 51(4) (2018), 715–775, 734–739.

104   Haines, *Rivers Divided* 2017 (n. 95), 6–12.

105   Haines, 'Disputed Rivers' 2014 (n. 95), 641. For a detailed discussion of Pakistan's arguments in the Indus dispute, see Haines, *Rivers Divided* 2017 (n. 95), 49–58.

106   Michel, *The Indus Rivers* 1967 (n. 95), 200.

107   Haines, 'Disputed Rivers' 2014 (n. 95), 641; and Haines, *Rivers Divided* 2017 (n. 95), 44.

108   Michel, *The Indus Rivers* 1967 (n. 95), 197.

109   Haines, *Rivers Divided* 2017 (n. 95), 46.

validity.[110] Despite some initial misgivings about East Punjab's reliance on the Harmon doctrine and the actions of the engineers more generally, Nehru's government soon took up this argument, claiming that prevailing international law was unsuitable for application in the case of two countries that had 'come into existence from the partition of a previously existing national unit'.[111]

The controversy over the Indus basin was unsurprising since control over water was seen as essential for agrarian growth and industrial progress. Several scholars have highlighted the significance of large hydroelectric projects for developmentalist imagination and state-building in 1950s India.[112] Daniel Haines, in particular, focuses on the Indus dispute to assert that control over water was critical for the legitimacy of the independent Indian state.[113] Since sovereignty 'is not a given', but something to be acquired through the enactment of state authority over territory,[114] he argues that the dispute was significant for the creation of a distinctively 'national space' for the purposes of economic development in India. Key to fashioning this 'unified internal space of India' were activities such as the levy of seigniorage charges against Pakistan, which was a mechanism to distinguish 'Indian' from 'foreign' territory.[115] For Haines, India's territorial relationship with water was a legacy of the British colonial state's spatialisation of power through technology such as railways, canals, and telegraph systems. As a result, India linked control over water with control over territory, with consequences for the relationship among water, territory, and state space.[116]

In addition to considering the territorialisation of India through colonial technology, it is also necessary to examine the legal conception of unified territory to understand the critical role played by the Indus dispute in postcolonial state-making. Much like in the case of Hyderabad, Indian officials adopted a territorial version of sovereignty in the Indus dispute. The extension of control over resources such as water was done through the articulation of a vision of absolute control over defined territory. Law, particularly the specific legal vision of territorial sovereignty, was critical for creating and moulding the 'national

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110   Haines, 'Disputed Rivers' 2014 (n. 95), 641; Haines, *Rivers Divided* 2017 (n. 95), 46. For further discussion of the Harmon doctrine, see Lipper, Jerome. 'Equitable Utilization', in Garretson/Hayton/Olmstead, *The Law of International Drainage Basins* 1967 (n. 100), 20–23; and McCaffrey, Stephen. 'The Harmon Doctrine One Hundred Years Later: Buried, Not Praised'. *Natural Resources Journal* 36(3) (1996), 549–590.

111   Amrith, *Unruly Waters* 2018 (n. 95), 185–186.

112   Khilnani, *The Idea of India* 1997 (n. 39), 61; Prakash, *Another Reason* 1999 (n. 47), 234–235; and Amrith, *Unruly Waters* 2018 (n. 95), 186.

113   Haines, *Rivers Divided* 2017 (n. 95), 36–40.

114   Ibid., 11–12.

115   Ibid., 44–45.

116   Ibid., 2, 36–37.

space' of India at a time when the shape of the nation was uncertain. Instead of treating territorial sovereignty as an ideology that gave 'more' attention to the importance of sovereignty in international relations,[117] we should recognise it as a specific and distinct version of sovereignty that was pervasive in elite thinking and conceptions of a new India in the post-partition period. Flipping around the idea that sovereignty was 'the object of the water dispute',[118] the Indus case instead provides a lens to understand how sovereignty became the means for the construction of a defined national space in which authority could be exercised and the principal language in which international disputes were debated and resolved. The articulation of absolute and exclusive territorial sovereignty allowed Indian officials to claim control over water and other resources considered to be essential for economic planning and development. As these disputes demonstrate, the legitimation of the state as a vector for the economic development of a defined territory came through law.

6   Consequences and Conclusions

The emergence of the territorially sovereign nation-state as the established form of political and economic organisation in the world was mediated by a variety of historical, social, and cultural factors. Ideas of economic development were particularly influential since a defining trait of anti-colonial nationalism was the promise of post-independence progress, which, for many Indian elites, demanded economic planning and a centralised state. Effective planning, however, also required consolidated territory, which the landscape of South Asia, with its maze of legally differentiated territories, did not readily offer. This integrated state space, i.e. the Indian nation-state, as other scholars have argued, did not simply appear fully formed in the aftermath of decolonisation and partition; it had to be created. In this article, I have traced the role played by legal ideas – i.e. a specific version of sovereignty that focused on the exclusive control over territory – in the construction of the spatial unity forming the nation-state of India. By defining sovereignty as territorial and exclusive in disputes over Hyderabad and the Indus basin, Indian politicians and bureaucrats fashioned a distinctively 'national' economic and political space within which the state would exercise control over all persons and resources.[119]

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117   Ibid., 35.
118   Ibid., 49.
119   These assertions of absolute territorial control were considered to be part of the process of nation-state creation, even if they conflicted with or were undermined by the 'lived realities' of inhabitants. See Leake, Elisabeth and Daniel Haines. 'Lines of (In)Convenience:

Given global intellectual currents, the postcolonial pursuit of economic development within a coherently defined national space was, perhaps, to be expected. The process of territorialising the nation, however, was often violent (as seen in the Hyderabad case), and also had other long-lasting consequences, particularly for the nature of citizenship. As the idea of consolidated national territory became increasingly important, the difference between 'inside' and 'outside' India became increasingly sharp, with borders becoming ever more significant in defining the nation. Initially, India's constitution drafters proposed *jus soli* as the basis of citizenship, considering the grant of citizenship based on birth within Indian territory to be 'enlightened' and 'modern' as opposed to *jus sanguinis*, which was seen as 'racial' citizenship.[120] Despite the promise of equality in this conception of citizenship, specific groups within the borders of the new state were quickly defined as 'minority' communities that were different from the national majority and were increasingly cast as 'aliens' and 'outsiders', even if they had resided in India for considerable periods of time.[121] The idea of linking citizenship with territory was also brought under pressure by the enormous influx of refugees after partition, most of whom had no links with the territory of what became India. So in addition to *jus soli* citizenship, the constitution also provided for citizenship to persons who had migrated to India from what had become the state of Pakistan.[122]

Despite making these changes to citizenship laws to accommodate refugees, India did not go on adopt the principle of *jus sanguinis*; territory persisted in playing a significant role in the definition of citizenship. Most notable was the decision by independent India's constitution drafters to not bestow citizenship to persons of South Asian descent who resided in other countries. A specific consequence of this choice was the abandonment of the large diaspora, which Indian nationalists had been particular in courting during the struggle against

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120   Jayal, Niraja Gopal. 'Citizenship', in *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (Oxford: Oxford University Press, 2016), 163–179, 166.

121   Abraham, *How India Became Territorial* 2014 (n. 20), 69; Jayal, Niraja Gopal. *Citizenship and Its Discontents: An Indian History* (Cambridge: Harvard University Press, 2013), 53–56.

122   Although the constitution was welcoming of Muslim refugees on paper, in reality, the claims of returning Muslims was intensely contested. As a result, Niraja Jayal argues, there were elements of *jus sanguinis* in official bureaucratic decisions from the very beginning, with more explicit changes in the law coming later on; the tension between these two ideas of citizenship, therefore, was present from the founding of the republic. See Jayal, *Citizenship and Its Discontents* 2013 (n. 121), 51–81.

colonialism.[123] The strong transnational element of the independence move-ment, which had included participation from overseas Indians, was soon over-shadowed by the concerns of territorial nationalism.[124] As a result of this focus on the territorial nation-state model, citizenship (although strongly inflecting by notions of religion and class) and its attendant rights were soon restricted to those who resided within new India's territorial borders. This decision has had lasting consequences on questions such as the claims of immigrants on state resources (for instance, welfare or access to justice) and the ramifications of statelessness.[125] The definition of citizenship has only become more contested in recent years as seen in the massive popular protests over India's recently-enacted Citizenship Amendment Act that provides a path to citizenship for certain non-Muslim refugees from neighbouring countries.

With the universalisation of the nation-state model in the middle of the twentieth century, there were similar consequences of the crystallisation of borders and the emphasis on territory across the world.[126] By exploring the assertion of territorial sovereignty by Indian elites in post-independence inter-national disputes, we can see the key creative role played by law and legal ideas in the spatialisation of the nation, i.e. in the construction of the territorially sovereign Indian nation-state in the aftermath of decolonisation.

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123   Chatterji, Joya. 'South Asian Histories of Citizenship'. *Historical Journal* 55(4) (2012), 1049–1071.

124   Talbot, *A History of Modern South Asia* 2016 (n. 10), 117–118.

125   Niraja Jayal charts the difficulties faced by immigrants from Pakistan into India in obtain-ing access to the Indian state's resources, including welfare programmes or public educa-tion. See Jayal, *Citizenship and Its Discontents* 2013 (n. 121), 82–97.

126   Although there were restrictions on movement within the British Empire, particularly based on race, decolonisation and the emergence of new nation-states led to an explo-sion in controls over the movement of people and ever-stricter regulation of who could become a citizen. See Amrith, Sunil. *Migration and Diaspora in Modern Asia* (Cambridge: Cambridge University Press, 2011), 117–150; Sherman, Taylor C. 'Migration, Citizenship and Belonging in Hyderabad (Deccan), 1946–1956'. *Modern Asian Studies* 45(1) (2011), 81–107.

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