

Federalism as a safeguard of national integrity

Trial and error in the case of Jammu and Kashmir

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Abstract

When in 2019 the Indian State of Jammu and Kashmir was stripped of its special status and transformed into two closely integrated Union territories, an international outcry erupted among politicians, legal scholars, and the general public. It was the first and only time in which the powers of Article 3 of the Indian constitution have been used not to convert a Union territory to a State to grant it more individual powers but for the opposite purpose. The legal flawlessness of the “constitutional sleight of hand” used to achieve this has still to be determined by India’s Supreme Court. In the meantime, it is still possible to investigate how this unprecedented move has been made possible.

This paper begins by briefly examining how the once independent State of Jammu and Kashmir became part of the Indian Union in the first place, delving into the reasons that had led to the State’s accession and the special guarantees that had been promised to the Maharaja and his people and that made it possible for the Muslim-majority State to be incorporated into the Indian Union. Furthermore, it discusses whether the integration into the Indian Union could have been regarded as “complete” before the events of 2019, or if the move by PM Narendra Modi and his Bharatiya Janata Party had been a foreseeable outcome, albeit a surprising one in terms of the means used.

The study adopts a comparative constitutional law perspective with the aim of investigating if the State’s political class failed to act in order to prevent what has been seen by some in the State as a hostile takeover by the Indian government. Finally, the article uses these lessons as a reminder that the autonomy of a subnational entity is only as strong as the legal framework in which it is embedded.

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Keywords

India, Kashmir, State of Jammu and Kashmir, Indian Union, federalism, national integrity.

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Introduction

The bad news first: There is no globally accepted theory of federalism.¹ Defining which systems are federal and which are not has been troubling scholars for decades. The naming practices have not been of much help either, particularly because meaning differs according to the perspectives of constitutional law, political science, or economics,² leaving comparative scholars often no other way out than coming up with coping mechanisms.³ India is a prime example of the insufficiency of nomenclature. The Indian constitution and with it the founding fathers of India have avoided the “F-word” meticulously. While the Government of India Act of 1935, which also served as the constitution *ad interim* for a few years,⁴ had references to the word federalism all over it, in the 1949 Constitution of the Indian Union there is no more trace of it.

As D.D. Basu notes, however, there is some consensus on the essential features of a federal polity, which consist of a) a dual government; b) the distribution of powers; c) the supremacy of the constitution; and d) the authority of courts.⁵ All boxes that the Indian Constitution does check. Focusing on the first aspect of a dual government: while in a unitary state there is only one (central) government, in a federal state there are two: a sub-national and a federal government. Accordingly, federalism has also been defined as a combination of self-rule and shared rule,⁶ which links polities in lasting but limited unions in which they can pursue common ends while allowing them to maintain their respective integrity.⁷

To understand the Union model adopted by the Indian Constitution in 1949, as well as the peculiar case of Jammu and Kashmir, it is imperative to examine every step of the evolution of the system in the light of historical circumstances as history and the development of the political system go hand in hand. As an example for this, one of the primary reasons that led to the elaboration of the Union model as adopted by India in 1949 is the failure of previous attempts of creating a federation including also what would soon afterwards become Pakistan: the trauma of partition left the members of the Constituent Assembly to cry for a strong centre.⁸ This aside, it was still necessary to incorporate nearly 600 inhomogeneous princely states (vassal principalities with native Indian rulers who accepted the “paramountcy” of British power)⁹ into one union.¹⁰ As a result, and taking into account the specificities

¹ Anna Gamper, ‘A “Global Theory of Federalism”: The Nature and Challenges of a Federal State’, *German Law Journal*, 6:10 (2005), 1297–1318 <<https://doi.org/10.1017/S2071832200014334>>. P. 1297

² Ibid. p. 1298

³ See i.e. “the pragmatic approach” used by Francesco Palermo and Karl Kössler, *Comparative Federalism: Constitutional Arrangements and Case Law*, Hart Studies in Comparative Public Law, volume 19 (Oxford; Portland, Oregon: Hart Publishing, 2017);

⁴ Abdul Gafoor Noorani, *Article 370: A Constitutional History of Jammu and Kashmir* (New Delhi; Oxford: Oxford University Press, 2011). P.3

⁵ Durga Das Basu, *Introduction to the Constitution of India*, 22nd edition (Gurgaon: LexisNexis, 2015).

⁶ Then again, the notion of shared rule itself is debated. Cf. Sean Mueller, ‘Self-Rule and Shared Rule’, *50 Shades of Federalism* <<http://50shadesoffederalism.com/theory/self-rule-shared-rule/>>.

⁷ Daniel Yehudah Elazar, *Exploring Federalism* (Tuscaloosa, Alabama: Univ. of Alabama Press, 2006). P.5.

⁸ A.G. Noorani, ‘Centre-State Relations in India’, *Verfassung in Recht Und Übersee*, 8.3 (1975), 319–29 <<https://doi.org/10.5771/0506-7286-1975-3-319>>. P.322; Rekha Saxena and Wilfried Swenden, ‘The Indian Supreme Court and Federalism’, *Fédéralisme Régionalisme*, 17 (2017), 1–12.

⁹ Sumantra Bose, *Kashmir at the Crossroads: Inside a 21st-Century Conflict* (New Haven: Yale University Press, 2021).

¹⁰ On the subject Arun K. Thiruvengadam, *The Constitution of India: A Contextual Analysis*, Constitutional Systems of the World (Oxford ; Portland, Oregon: Hart Publishing, 2017), Chapter I: Origins and Crafting of the Constitution.

of the country, the Indian system shows at the same time an asymmetrical (centrifugal) and centralized (centripetal) character,¹¹ resulting in the paradox of a system of “centralized federalism”.¹²

What can be said at the outset is that India’s peculiar federal system has, in the main, managed to accommodate many of its different ethnic groups¹³ and it succeeded in doing so despite the initial doubts of many.¹⁴ It is one of the few (arguably partial¹⁵) ethno-federal systems that has succeeded so far and the most successful large-scale post-colonial democracy.¹⁶

In 2019, an important change took place as the autonomy of the State of Jammu and Kashmir was formally abolished. The abolition of the special status has been lively discussed by many scholars due to the “constitutional sleight of hand” which made it possible and the methods through which a “secure” transition was being pursued by the Indian government.

This paper will first and foremost explain how Jammu and Kashmir became part of the Indian Union. It will be highlighted how it being part of the Union was by no means a foregone conclusion and that the accession occurred under particular circumstances. In the following section, the general territorial markup of the Union will be summarized in order to, subsequently, explain how it was possible for the Union government to transform the State of Jammu and Kashmir into two, more tightly integrated, Union territories. This will bring up the question if what has happened to Jammu and Kashmir can be used to draw conclusions as to whether asymmetrical federalism and the perception of it, played a role in the fate of the state. The paper will show that the right balance between self-rule and shared values is necessary to avoid ideological conflicts and how legal protections are the only safeguard for avoiding disasters.

1 Accession of Kashmir to the Indian Union

After decolonization, the Indian subcontinent was divided into the two multiethnic federations of India and Pakistan.¹⁷ When in 1947 the midnight children were born, Jammu and Kashmir was a princely state caught between the two newly created dominions. As with all the other princely states of the Indian subcontinent and according to section 7 of the Indian Independence Act, it was free to choose to either a) accede to the dominion of India; b) accede to the dominion of Pakistan; or c) remain an independent and sovereign state. Whereas for some of these states, due to geopolitical compulsions,¹⁸ it turned out to be *de-facto* a forced decision, for Kashmir¹⁹ and its Maharaja (the ruler of the State)²⁰ the adherence to the Indian Union was not a foregone conclusion, especially considering that Kashmir was and still is a Muslim majority state. The Maharaja feared losing power in case he acceded to either Pakistan or India: on one hand, as a Hindu prince, he could not expect to remain in power in the Islamic Republic of Pakistan and on the other hand, in the Indian Union with the Indian National Congress opposing

¹¹ Tommaso Amico di Meane, ‘Una fine annunciata? La revoca dell’autonomia del Kashmir nel fragile federalismo indiano’, *Diritto pubblico comparato ed europeo*, 1, 2020, 85–115. P.93

¹² Ambar Kumar Ghosh, ‘The Paradox of “Centralized Federalism”: An Analysis of the Challenges to India’s Federal Design’, *ORF Occasional Paper No. 272*, September 2020.

¹³ Elisabeth Alber and Michael Breen, *Encyclopedia of Contemporary Constitutionalism*, 2022.

¹⁴ Domenico Amirante, *Lo Stato multiculturale: contributo alla Teoria dello Stato dalla prospettiva dell’Unione Indiana*, Ricerche di diritto pubblico comparato (Bologna: Bologna University Press, 2015). pp.66-67; Katharine Adeney, ‘Does Ethnofederalism Explain the Success of Indian Federalism?’, *India Review*, 16.1 (2017), 125–48 <<https://doi.org/10.1080/14736489.2017.1279933>>.

¹⁵ Liam Anderson, ‘Ethnofederalism: The Worst Form of Institutional Arrangement...?’, *International Security*, 39.1 (2014), 165–204.

¹⁶ ‘Federation as a Method of Ethnic Conflict Regulation’, *Forum of Federations* <<https://forumfed.org/document/federation-as-a-method-of-ethnic-conflict-regulation/>> [accessed 28 February 2022].

¹⁷ Ibid.

¹⁸ Mustafa Faizan in a speech at IIT-Madras makes also the example of the State of Rampur, too small to remain independent” 02:15.

¹⁹ Throughout the paper the terms “Jammu and Kashmir” and simply “Kashmir” will be used as synonyms.

²⁰ Even though Jammu and Kashmir had already adopted a constitution in 1934, it has to be said that it did not provide for a separation of powers (cf. Article 3), leaving the Maharaja to be a *de-facto* absolute monarch.

authoritarian rule and being close to his political nemesis Sheikh Abdullah his fate was dubious too.²¹ The road less travelled by seemed to be the one to remain independent or to, at least, gain time, by seeking a standstill agreement with both newly created states. An effort which turned out to be futile. As history has shown, Kashmir had neither the political nor the military strength to retain its sovereignty and not long after having sent out the two telegrams seeking for a standstill agreement, it had to appeal to the Indian Union for help against Pakistani invaders.²² In turn, the Maharaja signed the instrument of accession, which laid down the fundamentals of Kashmir's autonomy within the Union.²³

In fact, article 370 of the Indian Constitution, the heart of the Kashmir autonomy that governed the relationship between the State and the Union for about seventy years, is nothing if not the constitutional transposition of the instrument of accession signed by the then Maharaja in 1947. When comparing the contents of both – the text of the instrument of accession and article 370 – it becomes obvious that the special provisions, which Narendra Modi and the BJP (Bharatiya Janata Party) had planned to abrogate for decades,²⁴ have their foundation in these pages which laid down the conditions for surrendering its sovereignty. Accordingly, to give just one example, since in 1947 Kashmir acceded to the Indian Union only in respect of defence, foreign affairs, and communications (cf. Schedule of the instrument of accession signed by Maharaja Hari Singh) – article 370 of the Indian Constitution restricted the Union's legislative powers to exactly those three subjects (cf. Article 370 c.1 b).²⁵

When accepting the accession of Jammu and Kashmir to India – a step necessary for the validity of it (section 6 of the Government of India Act of 1935) – Lord Mountbatten, the last Viceroy of India, had promised the Kashmiri people a plebiscite:

*"Consistently with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question if accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people".*²⁶

This plebiscite, however, never took place and the State in 1974 even waived the claim of it (Indira-Abdullah Agreement of 1974).²⁷ The relationship between the two once independent and sovereign entities was therefore absorbed and externalised in the sole article 370 of the Indian Constitution. Since for any further integration into the Union a new treaty would have been necessary, as the text of Instrument of accession made clear,²⁸ the original article 370 was inherently limited. The constitutional drafters however came up with a smart and handy solution: a mechanism that would allow for further adjustments to the *status quo* if there was the will – the *concurrence* – of the Kashmiri government (article 370 c.1) or its Constituent Assembly (article 370 c.2).

²¹ See Sergiu Constantin and Karl Kössler, 'Jammu and Kashmir', Online Compendium Autonomy Arrangements in the World (2016). P.7. See also K. L. Bhatia, *Jammu and Kashmir: Article 370 of the Constitution of India* (New Delhi: Deep & Deep Publications, 1997). P.17.

²² As a matter of fact, the Indian Union intervened militarily in all three of the States that chose independence, as correctly pointed out in Adeel Hussain, 'Kashmir: A Prologue to a Farce or a Tragedy', *Verfassungsblog: On Matters Constitutional*, 2020 <<https://doi.org/10.17176/20200113-221917-0>>.

²³ Constantin and Kössler (2016) op.cit. P.7.

²⁴ Cf. 'TOWARDS A NEW POLITY - BJP Election Manifesto 1984' <<http://library.bjp.org/ispui/bitstream/123456789/237/1/BJP%20ELECTION%20MANIFESTO%201984.pdf>>.

²⁵ A.G. Noorani (2011) op.cit. pp.4-5.

²⁶ Text of Lord Mountbatten's letter dated 27 October, 1947 to signify his acceptance of the Instrument of Accession signed by the Kashmir Maharaja

²⁷ For the text see Noorani (2011) op.cit. pp.402 ss.

²⁸ Cf. Clause7

370. Temporary provisions with respect to the State of Jammu and Kashmir

(1) Notwithstanding anything in this Constitution,

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify
Explanation For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharajas Proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub clause (b) of clause (1) or in the second proviso to sub clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification

The reason for also mentioning the Constituent Assembly of the State of Jammu and Kashmir, which would be elected only the subsequent year, was that the founding fathers of India and the then leaders of Kashmiri politics had postponed the final decision on how closely integrated the newly joined State shall be. This was mainly due to the first Indo-Pakistani War and also the United Nations' role in it, which as well pushed for a plebiscite²⁹. For the time being, article 370 was inserted in Part XXI of "Temporary, Transitional and Special Provisions" and had alternatively given the same power, which is to consent to an adaption or the extension of further constitutional provisions and the transfer of new legislative powers to the Centre, to the Kashmiri government or the Constituent Assembly of the State. Moreover, the third comma envisioned the possibility to modify or abrogate article 370 itself if the Constituent

²⁹ Cf. Summary of AG-046 United Nations Commission for India and Pakistan (UNCIP) (1948-1950) <https://search.archives.un.org/downloads/united-nations-commission-for-india-and-pakistan-uncip-1948-1950.pdf>.

Assembly (NB this time the government is not mentioned) proposed to do so, and should have been activated once the question had been settled.

Therefore, to modify the relationship between the State and the centre and the arrangement the two parties operated in, it was not necessary to use the regular amendment procedure contemplated in article 368 of the Constitution. According to article 368, an amendment of the Constitution can be initiated only by the introduction of a bill in either house of parliament. The bill must then be passed in each house by a majority of the total membership of that house and by a majority of no less than two thirds of the members of that house present and voting. Furthermore, for a number of subjects, especially those dear to the states, the amendment has to be ratified by the legislature of no less than half of the states (Article 368 c.2).³⁰ All this was not necessary in regard to the constitutional provisions governing the relationship between the State of Jammu and Kashmir and the Indian Union.

Hence, on one hand, the state's autonomy within the constitutional order of the Indian Union was safeguarded in a very decisive manner with only a few articles being applicable to the state – while on the other hand, for the modification of the terms and even for the abrogation of the whole foundation of the autonomy, article 370 itself provided a very simple procedure and therefore, one could say a shortcut or a “tunnel”.³¹

These circumstances allowed that for nearly seventy years an erosion of Kashmir's autonomy took places. As Indian Prime Minister Nehru openly admitted,³² the existence of this tunnel gave India no real reason for intervening on the *status quo*, once the Constituent Assembly of the State had been dissolved without having modified the original article 370. The fact that the Constituent Assembly had dissolved without prior final decision on how closely the State shall be integrated left the question suspended.

Consequently, from an interpretative point of view, in the abstract one could: (a) consider paragraph 3 of Article 370 a dead letter, devoid of legal effect since in the absence of a Constituent Assembly the mechanism cannot be activated³³; (b) consider the whole of article 370 to be unusable on the grounds that with the enactment of the Constitution, the purpose of article 370 and its temporal effect had come to an end - a solution which, however, is in contrast with the case-law of the Court of Justice, and which was not accepted by *Sampat Prakash v. State of Jammu and Kashmir*³⁴ and the more recent *State Bank of India v. Santosh Gupta* of 2017³⁵, where the courts reiterated that article 370 continues to be in force; (c) try to replace the subject in question (the Constituent Assembly) with a successor in order to still be able to activate the said mechanism. The latter road was finally chosen by the BJP in 2019 as explained below.

Until then, there was an enormous number of amendments to the original arrangement by means of the special procedure contained within article 370. By 2011, 94 of the 97 entries in the Union list of the seventh schedule (legislative powers) and 260 out of the total 395 articles of the constitution have been made applicable to the State.

³⁰ Such subjects are: the election of the President, the extent of executive power of the Union and State; the provisions dealing with the Supreme Court; the provisions dealing with High Courts in the States and Union territories; the distribution of legislative power between Centre and State; the representation of States in Parliament; the Seventh schedule and article 368 itself.

³¹ Expression used by Gulzari Lal Nanda, Noorani (2011) op.cit. P.2.

³² Speech to the Lok Sabha on the 27 November 1963. The text of which can be found in Noorani (2011) op cit. Chapter 9 Doc. No. 1.

³³ See i.e. Laya Maheshwari, 'How the Indian Government Changed the Legal Status of Jammu and Kashmir', 12 August 2019, www.lawfareblog.com/.

³⁴ *Sampat Prakash vs State of Jammu and Kashmir*, AIR 1970 SC 1118.

³⁵ *State Bank of India v. Santosh Gupta & Anr. Etc.* (2017) 2 SCC 538.

2 India's "quasi-federalism"

India has a very distinct territorial markup. With over 550 princely states and more directly controlled provinces that had to be united in one Union, one can argue that federalism was the only reasonable answer.³⁶ After lengthy debates in the Constituent Assembly,³⁷ and in light of the partition which had thrown overboard the previous projects of the British Crown, a federalism *sui generis* was adopted. Corroborating this, Thakur Das Bhargava (of East Punjab), famous for having held the longest debates in the Constituent Assembly, after complaining that the British had tried to impose a purely federal form of state on India, and declaring himself satisfied with the result, defined it as a "unitary-cum-federal system of government".³⁸ There are multiple reasons for not defining the Indian system as a plain and simple federal system³⁹ but for the purpose of this paper, one reason has to be stretched in particular: the presence of the emergency provisions, in Part XVIII of the constitution, through which it is possible to "convert" India into a unitary state if a state of emergency is proclaimed. There are three types of emergencies envisaged by the Indian Constitution: article 352 deals with a national emergency such as war or external aggression or armed rebellion, article 360 with a financial emergency (though this article has never been activated) and finally article 356 which deals with an emergency in a state. Especially article 356, which is a derelict of the Government of India Act of 1935 (Section 93) is rather eccentric for a federal system of government, as it allows – as will be shown – the President to claim upon himself certain powers (therefore article 356 is also known as President's rule). The same strong centripetal bias can also be found in the Pakistani Constitution (article 243) since it inherited the same emergency model from the same source.⁴⁰ How exactly article 356 works in practice will be shown in the subsequent section using the example of the recent events. The conclusion for now has to be, in the words of D.D. Basu, that the Constitution of India is neither purely federal nor unitary, but it is a combination of both.⁴¹

Scholars have tried in various manners to define the essence of this system. Daniel Elazar noted that it is part of one of those "new" federal arrangements that were born after World War II and that constitute "postmodern applications of the federal principle".⁴² Moreover, in the specific case of Jammu and Kashmir, he used the term "federacy",⁴³ which has been criticized by others.⁴⁴ Others again have tried to describe the federalism *sui generis* by adding qualifying prefixes or suffixes to it,⁴⁵ like Kenneth C. Wheare, who used the term "quasi-federal".⁴⁶ However, as Granville Austin rightfully claims in his seminal manual on the Indian Constitution, all these definitions have the virtue of being interesting but they are not particularly enlightening.⁴⁷

³⁶ Rasheeduddin Khan, *Federal India: A Design for Change* (New Delhi: Vikas Pub. House, 1992).

³⁷ Which can be found on: <https://www.constitutionofindia.net/>

³⁸ Constitution Assembly Debates (CAD) 11.159.153.; For an overview of the founders' perspectives on Indian federalism: Ajay Kumar Singh, 'The Union Model of Indian Federalism', *50 Shades of Federalism* <<http://50shadesoffederalism.com/case-studies/union-model-indian-federalism/>> [accessed 3 April 2021].

³⁹ See D.D. Basu.

⁴⁰ For a comparison: Panch Rishi Dev Sharma, 'Comparative Federalism with Reference to Constitutional Machinery Failure (Emergency) in India and Pakistan', *BRICS Law Journal*, 4.2 (2017), 71–94 <<https://doi.org/10.21684/2412-2343-2017-4-2-71-94>>.

⁴¹ D.D. Basu., see. also US Supreme Court justice

⁴² Daniel Elazar (2006) op cit. P.7.

⁴³ In a federacy arrangement, a larger power and a smaller polity are linked asymmetrically in a federal relationship whereby the latter has greater autonomy than other segments of the former and, in return, has a smaller role in the governance of the larger power. The relationship between them is more like that of a federation than a confederation and can be dissolved only by mutual agreement.

⁴⁴ See i.e., Alfred C. Stepan, Juan J. Linz, and Yogendra Yadav, *Crafting State-Nations: India and Other Multinational Democracies* (Baltimore: Johns Hopkins University Press, 2011). P.207

⁴⁵ Rajendra Kumar Pandey, 'Accommodating Diversity, Consolidating Nationhood. A Country Study of Constitutional Asymmetry in India', in *Constitutional Asymmetry in Multinational Federalism*, ed. by Patricia Popelier and Maja Sahadžić (Cham: Springer International Publishing, 2019), pp. 197–225 <https://doi.org/10.1007/978-3-030-11701-6_8>. P.198

⁴⁶ Kenneth Clinton Wheare, *Federal Government*, 4th edn (London: Oxford University Press, New York, 1963). P-27.

⁴⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford India Paperbacks (Oxford ; New York: Oxford University Press, 1999). P.186.

The one, very fundamental distinction is the one between coming-together and holding-together federalism.⁴⁸ While coming-together federalism refers to federations that are born through the aggregation of prior sovereign states – i.e. because there is a common cause, common threat to those states which force them to get united and form a more powerful union⁴⁹ – holding-together federalism refers to federations that are born through a devolution from the pre-existing constituent units of a unitary state.⁵⁰ The latter, like India, tend to be more centralized and, quite often, the centre will retain certain intervention rights,⁵¹ as is the case with the emergency provisions provided in the Indian Constitution.

One might observe that the territorial markup of the Union has changed considerably through the years. However, these affirmations may not be true for the whole existence of the Union. The original clustering in four categories of States (Part A-D) was overhauled already in 1956 (The Constitution (Seventh Amendment) Act 1956) allowing for the sole distinction between states and union territories.⁵² The latter are more closely tied to the central government wherefor only the states can be considered federal units. A series of further interventions between 1953 and 1966 made states linguistically more homogeneous⁵³ even creating new states like Nagaland in 1963 to accommodate tribal communities.⁵⁴

This was made possible by article 3 of the Indian Constitution, one of its most characteristic provisions, with a clear demos-enabling nature. This kind of design of federalism places fewer checks on the power of national majorities. A point on that is highlighted also further in this paper.

Article 3 allows for the “formation of new states and alteration of areas, boundaries or names of existing states” by means of ordinary law. The Supreme Court concluded that this power, which can be exercised after a mere consultation with the states, extends even to the extinction of an existing state.⁵⁵ Even though it is not clear if this observation holds precedential value,⁵⁶ one could argue that article 3 has at least the capacity of destroying the identity of a state by altering its boundaries and renaming it. Said Article 3 was also activated in 2019, with the Jammu and Kashmir Reorganisation Act 2019 and used for the bifurcation of the state into two union territories.

3 From Union State to territory of the Union – a tragedy in three acts

As illustrated above, for nearly seventy years Jammu and Kashmir existed as a state in the Indian Union and its special autonomy was based on article 370 of the Indian Constitution. This setup safeguarded the state from the extension of additional constitutional provisions in absence of the concurrence of the state’s government (as explained in a subsequently added interpretation clause and confirmed by the Supreme Court⁵⁷ this means the governor) and, moreover, allowed the state to adopt its own constitution and to fly its own flag. As discussed in the first section, the special procedural provisions have not stopped the Indian government from extending a large part of the constitutional provisions to

⁴⁸ Alfred C. Stepan, ‘Federalism and Democracy: Beyond the U.S. Model’, *Journal of Democracy*, 10.4 (1999), 19–34 <<https://doi.org/10.1353/jod.1999.0072>>. P.22.

⁴⁹ Waseem Ahmad Sofi, ‘Conceptual and Theoretical Framework of Federalism: A Special Case Study of Jammu and Kashmir’, in *Autonomy of a State in a Federation*, by Waseem Ahmad Sofi (Singapore: Springer Singapore, 2021), P-4-

⁵⁰ Alber and Breen (2022), *op.cit*

⁵¹ Ibid.

⁵² Arun K. Thiruvengadam (2017) *op. cit.* P.76

⁵³ Saxena and Swenden (2017) *op.cit.*

⁵⁴ Alber and Breen (2022) *op.cit.*; This constitutes only the first example of such interventions.

⁵⁵ State Of West Bengal vs Union Of India 1963 AIR 1241, 1964 SCR (1) 371

⁵⁶ Balu Gopalakrishnan Nair, ‘Article 370: Is It a Basic Feature of the Indian Constitution?’, *Verfassungsblog: On Matters Constitutional*, 2019.

⁵⁷ Mohammed Maqbool Damnoo vs State of Jammu and Kashmir AIR 963, 1972 SCR (2)1014.

the state and from supplanting the elected *Sadar-i-Riyasat* with its own president appointed governor (The Constitution (Application to Jammu and Kashmir) Sixth Amendment Order 1965).

One might argue that in the end, the special provision of article 370 which could also be used as a “tunnel” to operate on the federal arrangement, was also the state’s Achilles’ heel and that the continued back and forth between India trying to limit the autonomy of the state and the State of Jammu and Kashmir fighting back in various manners only deepened the alienation.

When in 2019 article 370 was hollowed, the State of Jammu and Kashmir was split into two Union territories of Ladākh on the one side, and Jammu and Kashmir on the other. Moreover, Ladākh after being detached from Jammu and Kashmir was also deprived of its legislator. The happenings of 2019 were made possible by proclaiming a state of the emergency in the state which, as mentioned above, allows for the transformation of the federal or “quasi-federal” system into a unitary one. The provision in question is article 356, which is activable in case of a “failure of constitutional machinery in states”, in which case the *President’s rule* enters into force wherefore the President of India may a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State; b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; c) make such incidental and consequential provisions as appear to the president to be necessary or desirable for giving effect to the objects of the Proclamation [...].

Article 356 has been made applicable in the State of Jammu and Kashmir already in 1950 (The Constitution (Application to Jammu and Kashmir) Order 1950) although with one important difference: the President’s rule in the State of Jammu and Kashmir is preceded by the Governor’s rule, as regulated in Section 92 of the State’s Constitution.

The Governor’s rule entered into force in June 2018, and in December 2018 the President’s rule followed.⁵⁸ The most consequential part of the provision proclaiming the President’s rule is probably c) iii):

(iii) any reference in the Constitution and the State Constitution to the Governor shall, in relation to the said State, be construed as a reference to the President, and any reference in the Constitution and the State Constitution to the Legislature of the State or the Houses thereof shall, in so far as it relates to the functions and powers thereof, be construed, unless the context otherwise requires, as a reference to Parliament, and, in particular, the reference in section 91 of the State Constitution to the Governor and to the Legislature of the State or the Houses thereof, shall be construed as references to the President and to Parliament or to the Houses thereof respectively(...)

In execution of this for the extension of new constitutional articles to the State of Jammu and Kashmir under article 370, the need to consent was transferred from the governor (as representative of the government of the state) on to the president. Based on this, in August 2019, in only three days - and in three acts - the autonomy of the State was wiped out.

First, on 5th August 2019, through the constitutional order n. 272, a modified article 367 was made applicable to the State of Jammu and Kashmir. It contained a new interpretation clause for article 370 with the main effect being that wherever article 370 referred to the no longer existing Constituent Assembly, like in the third comma which provided a way to modify or abrogate article 370 itself, the

⁵⁸ The Economic Times (India) ‘After Governor’s Rule, President’s Rule Comes into Force in Jammu and Kashmir’, 20 December 2018
<<https://economictimes.indiatimes.com/news/politics-and-nation/after-governors-rule-presidents-rule-comes-into-force-in-jammu-and-kashmir/articleshow/67168758.cms>>.

reference would be to the legislative assembly of the state⁵⁹. Bearing in mind that the powers of the state legislator had already been transferred to the parliament, by means of the provision of President's rule cited above, it was now the parliaments' decision to adopt the statutory resolution needed for the abrogation of article 370 in the third paragraph.

The statutory resolution was passed the next day and therefore in a second step, with the subsequent constitutional order n. 273, article 370 was rewritten from scratch. Today it reads:

370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.

Last but not least, even though the autonomy had been *de facto* abolished by then, the State was split up into two Union territories, by means of ordinary law (Jammu and Kashmir Reorganisation Act 2019) in the exercise of the powers provided to the parliament by article 3 of the Constitution.

All this has not come without numerous doubts about the constitutional legitimacy of this move.⁶⁰ The main problem was without a doubt the fact that the concurrence needed was not expressed by a state actor but by the Indian parliament on behalf of the Kashmiri citizens, a parliament in which these citizens are barely represented and that should have just exercised temporarily – for the emergency period - the legislative powers of the State legislator. The Supreme Court, however, for one reason or another,⁶¹ has still not pronounced itself on the controversy and is now the *deus ex machina*, in which the hopes of the supporters of autonomy lie.

4 The perception of national integrity

There is a lot that can be said about the autonomy of Jammu and Kashmir and its setup until 2019. One could mention the legal powers of the state and how more and more subjects in the seventh schedule got transferred from the state to the center, or fiscal aspects and how Kashmir was attributed a special category status, different from the special status that has been taken into consideration so far and its implications.⁶² The political debate, however, always boils down to symbolic aspects. As stated elsewhere: "The significance of calling one group a nation, and giving it a "special status," or refusing to do so, is much more apparent than the intricacies of, say, a federation's fiscal redistribution formula".⁶³

Corroborating this, article 370 of the Indian Constitution was deliberately undermining that only two constitutional provisions would be *de jure* applicable to the State of Jammu and Kashmir: article 370

⁵⁹ Prior to 2019, the State of Jammu and Kashmir had a bicameral legislature with a legislative assembly (lower house) and a legislative council (upper house).

⁶⁰ A collection of the writs can be found on <https://www.scobserver.in/cases/manohar-lal-lohia-union-of-india-article-370-case-background/>

⁶¹ See also <https://economictimes.indiatimes.com/news/politics-and-nation/2nd-anniversary-of-abrogation-of-article-370-what-is-scs-view/articleshow/85060863.cms?from=mdr>

⁶² The special category status is attributed to States that face geographical and socio-economic disadvantages.

⁶³ Karlo Basta, *The Symbolic State: Minority Recognition, Majority Backlash, and Secession in Multinational Countries*, Democracy, Diversity, and Citizen Engagement Series, 7 (Montreal Kingston London Chicago: McGill-Queen's University Press, 2021) PP.47

itself and article 1 of the Indian Constitution – a symbolic nod to the fact that Jammu and Kashmir had become an integral part of the Union of States, that is Bharat.

Likewise, section 3 of the Constitution of Jammu and Kashmir, promulgated a few years later and titled “Relationship of the State with the Union of India”, confirmed that “[t]he State of Jammu and Kashmir is and shall be an integral part of the Union of India.” This, however, was not sufficient to convince the BJP and its voters that Jammu and Kashmir had been fully integrated; a result which, as Modi would claim, would have been achieved only in 2019.⁶⁴

This might bring up doubts as to whether asymmetrical federalism and subnational constitutionalism are compatible with national integrity. At the outset it was argued that federalism was the only reasonable answer to create this multinational state but in the light of the recent events one might think that the history of Jammu and Kashmir is a proof that the inherited dissociation between the two levels of government cannot be anything but an obstacle to national integrity.

There certainly are voices that claim that federalism (and autonomies) gives minorities the possibility to exert terror over the majority, and some fear that federalism drives secessionism.⁶⁵ This fear of secessionism was also omnipresent when the Constitution of India was written. The reason the term “Union” was preferred over “Federation” in the first place was to underline that it was indestructible.⁶⁶ A completely opposite approach to other, younger, federal arrangements like Ethiopia where the constitution provides for internal secession as a constitutional right and outlines a procedure to do so.⁶⁷

However, one has to be hesitant to compare the case of Jammu and Kashmir to other autonomies in the world and to draw conclusions from one isolated case. Jammu and Kashmir has always had a far wider-reaching impact on nationalist sentiments than other autonomies around the globe and it has been a *cause célèbre* for Hindu nationalism⁶⁸ so far that it has been said that the “incomplete integration” has led to the mastering of the politics of “othering” in India.⁶⁹ The dissimilarities between the Union territories and the other Indian states and Jammu and Kashmir have been far-reaching: starting from allowing it to have its own constitution,⁷⁰ its own flag, a peculiar legal administration⁷¹, and the possibility to discriminate between so-called “permanent residents” and non - due to article 35A of the Indian Constitution.

When talking about symbolic provisions, article 35A has to be included in the discussion. With it, when in 1954 Part II of the Indian Constitution and the provisions regarding citizenship and fundamental rights have been made applicable to the state, the state was also given the ability to define who its permanent residents are and to dictate special provisions for them. Through this “quasi-citizenship”⁷², they became the only ones with the right to own and, therefore, buy, property in the state and have been attributed

⁶⁴ So the Prime Minister in a address to the Nation on the 73rd Independence Day, which can be found on: https://www.pmindia.gov.in/en/news_updates/pms-address-to-the-nation-from-the-ramparts-of-the-red-fort-on-the-73rd-independence-day/

⁶⁵ Andreas Heinemann-Grüder „Does Federalism Drive Secession?” in *Qualified Autonomy and Federalism versus Secession in EU Member States*, ed. by Annegret Eppler, Charlie Jeffery, and Stefan August Lütgenau, Foster Europe - International Studies Series, volume 4 (Innsbruck Wien: Studienverlag, 2021). PP. 89-103.

⁶⁶ CAD 7.48.248.

⁶⁷ Yonatan Fessha, ‘Internal Secession and Federalism in Ethiopia’, *IACL-AIDC Blog*, 15 July 2019 <<https://blog-iacl-aidc.org/2019-posts/2019/7/15/internal-secession-and-federalism-in-ethiopia>>.

⁶⁸ Louise Tillin, ‘The Fragility of India’s Federalism’, *The Hindu*, 8 August 2019 <<https://www.thehindu.com/opinion/lead/the-fragility-of-indias-federalism/article28872165.ece>>.

⁶⁹ Kanad Bagchi, ‘Of Constitutional Subterfuge and the “Integration” of Kashmir’, *Verfassungsblog: On Matters Constitutional*, 2019 <<https://doi.org/10.17176/20190809-080912-0>>.

⁷⁰ Palermo and Kössler underline that the asymmetry of a federal system is often reflected in asymmetrical constitutional autonomy. Palermo and Kössler (2017) op.cit. P.129.

⁷¹ As evidenced clearly in Jean-Philippe Dequen, ‘A Journey to the Brink of India’s Legal Landscape: Jammu and Kashmir’s Relationship with the Indian Union’, *South Asia Multidisciplinary Academic Journal*, 17, 2018 <<https://doi.org/10.4000/samaj.4415>>.

⁷² Term used by Constantin and Kössler (2016) op.cit.

a series of other privileges detailed in the constitution of the state and other state laws like the Jammu and Kashmir Representation of the People Act.

Furthermore, article 35A contains a non-obstacle clause wherefor “*no existing law in force in the State of Jammu and Kashmir, and no law thereafter enacted by the Legislature of the State [...] shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this part [Part II of the constitution]*”. This provides for a clearly different set of (directly or derived) constitutional rights between permanent residents and non.

So, the question whether asymmetrical federalism is compatible with national integrity needs to be rephrased as follows: To what extent these asymmetrical provisions or concessions can weigh on the federal constitutional values? And what degree of cleavage between the two polities is still acceptable in order to be able to talk of “one nation”? As Ronald Watts notes “the effectiveness of a federal political system depends on the degree of public acceptance of the need to respect constitutional norms and structures, and on a spirit of compromise and tolerance”.⁷³

When drawing a comparison with the United States, where constitutional rights are also blatantly differently protected depending on the state a person is living in,⁷⁴ two major differences can be observed: first, under the Guaranty Clause (U.S. CoNST. art. IV, § 4) and the Supremacy Clause (U.S. CoNST. art. VI.), citizens are never free to choose substantive state values that conflict with federal ones; they can only choose state values that add to or embellish them⁷⁵ as opposed to the non-obstacle clause in article 35A, which shelters states law from the supremacy of the Indian Constitution in the cases listed. Secondly, whereas American federalism permits citizens to “vote by feet” meaning that there is competitive pressure produced by a possible interjurisdictional migration which can have the positive effect of levelling-up rights protection, in Jammu and Kashmir this gets hindered through the negation of property rights of individuals who are not permanent residents, making it harder to sell property and making it more unattractive for permanent residents to effectively leave their state. One could add to the second point that there is another problem with the inability of “voting by feet”: since the internal borders of federal systems are usually quite static, unless there is massive internal migration, federations cannot be easily made more homogeneous.⁷⁶

This said, federal constitutions usually contain a mixture of integrationist and accommodationist elements⁷⁷ and the degree of asymmetric features in the Indian Constitution reflect the different bargaining powers of the states at the time the constitution was written as explained above.⁷⁸ The question remains, however, how many pages can be ripped out of the common rulebook before there will be a lack of “we-feeling”⁷⁹, and the “othering” will lead to some sort of attack on the federal arrangement?

⁷³ Ronald L. Watts, ‘FEDERALISM, FEDERAL POLITICAL SYSTEMS, AND FEDERATIONS’, *Annual Review of Political Science*, 1.1 (1998), 117–37
<<https://doi.org/10.1146/annurev.polisci.1.1.117>>.

⁷⁴ For an in-depth analysis see Palermo and Kössler (2017) op.cit. P.321 ss.

⁷⁵ David Schuman, ‘A Failed Critique of State Constitutionalism’, *Michigan Law Review*, 1992. P.279

⁷⁶ Wilfried Swenden, *Federalism and Regionalism in Western Europe: A Comparative and Thematic Analysis* (Basingstoke [England] ; New York: Palgrave Macmillan, 2006). P.270.

⁷⁷ Sujit Choudry ‘Bridging comparative politics and comparative constitutional law’ in *Constitutional Design for Divided Societies: Integration or Accommodation?*, ed. by Sujit Choudhry (Oxford ; New York: Oxford University Press, 2008). P.34.

⁷⁸ See i.e. Nirvikar Singh and Govinda Rao, *The Political Economy of Federalism in India* (Oxford University Press, 2006)
<<https://doi.org/10.1093/acprof:oso/9780195686937.001.0001>>.

⁷⁹ Juan J. Linz, Alfred C. Stepan, and Yogendra Yadav, “Nation State” or “State Nation”? Conceptual Reflections and Some Spanish, Belgian and Indian Data’, *Human Development Human Development Occasional Papers (1992-2007) HDOPCA-2004-15*, Human Development Report Office (HDRO), United Nations Development Programme (UNDP).Papers (1992-2007).

5 Protections

The answer might depend – strictly legally speaking – on the framework the two polities are operating in. Where there are constitutional safeguards in place to protect the autonomy, it will be far more difficult to unilaterally (this means without the consent of the subnational polity) alter the arrangement, even if the federal government has broad support from the majority of citizens. This means that stronger legal protections, and the care of these protections inevitably lead to stronger federal arrangements. As Palermo puts it elsewhere: “irrespective of the stand that anybody might take on [a] particular territorial conflict, a legal response cannot but be procedural in nature and additional procedural guarantee can be used to reduce the potentially distorting impact of majority decisions”.⁸⁰

Arguably, these might be considered counter-majoritarian models of democracy, which are typical for European constitutionalism for clear historical reasons,⁸¹ and models that might not be applicable 1:1 to the present case. At the other end of the spectrum, however, there is the risk to end up with extreme majoritarianism, where the distinction between ordinary and constitutional politics tends to collapse,⁸² bringing along a series of problems. Article 3 of the Indian Constitution can be considered an example of this.

To use two examples: an autonomy which has its roots in constitutional (and supranational) enshrined protections (as i.e. South Tyrol in Italy) is more resilient to a hostile nationalist majority than an autonomy (i.e. Gagauzia in Moldova) which is largely relying on the application of the *lex specialis* principle.⁸³

It is no secret that India has used any means available to alter the relationship between itself and the State of Jammu and Kashmir over the years, having found the constitutional sleight of hand necessary to completely rewrite the agreement only in 2019. This was made possible, in part, by a lack of care for the constitutional arrangement – and, in particular, the inertia of the Kashmiri Government to replace the Constituent Assembly with a successor. Whether the *modus operandi* was, or was not, constitutionally sound, will be decided by the Supreme Court but it was, in any case, a decision that was politically supported by the majority of Indians⁸⁴ and it was a predictable outcome as the BJP grew bigger and bigger.

Again, the backlash that the Indian Government has received for the way it has acted, in particular for not only removing article 370 but also downgrading and splitting the state into two Union territories might very well be considered rightful but the outcome itself came as no surprise once the procedural guarantees were removed.

Conclusions

For what concerns the case study of Jammu and Kashmir, and the reason for the (for now) unhappy end for the federalist approach in India, there are certainly more elements to be factored in than can be laid

⁸⁰ Francesco Palermo, ‘Proceduralizing Territorial Conflicts in the Name of Constitutionalism’, *RevistaIdeas* <<https://revistaideas.cat/en/proceduralizing-territorial-conflicts-in-the-name-of-constitutionalism/>>.

⁸¹ Cf. Valentina Volpe, ‘Drafting Counter-Majoritarian Democracy. The Venice Commission’s Constitutional Assistance’, *Heidelberg Journal of International Law*, 2016, 811–43.

⁸² Paul Blokker, ‘Populist Constitutionalism? (4): The Populist Threat to Democratic Constitutionalism’, *European University Institute - Blog* <<https://blogs.eui.eu/constitutionalism-politics-working-group/populist-constitutionalism-4-populist-threat-democratic-constitutionalism/>>.

⁸³ Special organic law, see Dawn Walsh, *Territorial Self-Government as a Conflict Management Tool*, 2018.PP. 141 ss. and Article 72 & 111 Constitution of the Republic of Moldova.

⁸⁴ <https://www.indiatoday.in/mood-of-the-nation/story/58-back-modi-govt-s-article-370-move-50-find-j-k-as-ut-unconstitutional-motn-1639558-2020-01-23>

down in one single paper. Territorial accommodation is a process rather than a one-off event and one that is characterized by complex feedback loops.⁸⁵ Capturing all the facets of the case seems quite frankly impossible and, as pointed out correctly elsewhere, also in the media coverage with its “living hell vs. happy place” narratives, the multi-layered truth is and has been a fatal casualty.⁸⁶

What can be most certainly stated is that the Kashmiri autonomy has undergone various mutations through the years and it has been slowly eroded while its special rights have been constantly whittled down.⁸⁷ There have been a number of interventions through numerous presidential orders. It seems clear that the demands for a closer integration on one hand collided with the demands for more protection of the local minority and oftentimes separatist aspirations on the other hand. This has undoubtedly contributed to the alienation of a state which had been, at least legally and arguably symbolically, always an integral part of the Union of States.

Nevertheless, in 2019, the government of Narendra Modi proceeded with the abolition of the autonomy as promised in its election manifestos. In the wake of this, a security lockdown has been imposed and telephone networks (mobile and landline) as well as the internet were cut off.⁸⁸ Moreover, tens of thousands of soldiers moved into the region and a large number of opposition politicians have been unlawfully arrested.⁸⁹

Whereas this part of recent history came rather as a surprise, the approach of the Indian government of integrating states and minorities through an internal reorganisation is not new⁹⁰ and, as discussed, has been used in the past to make i.e. states linguistically more homogeneous. The power for this lies in article 3 which has been made applicable also to Jammu and Kashmir in 2019 through the abrogation of the special provision of article 370. Again, the outcome here was foreseeable. The absence of minority protections resulted in a majority coup.

While in other nations demands for the abolition of autonomies come and go, in India the demand for the abrogation of the special status of Kashmir has been more of a constant static noise in politics, news, and everyday life. This can constitute a clear sign that the right balance with regard to integration has not been found. The constitutional orders of 2019 have not done anything in this regard if not taking the weights of one half of the scale and putting it on the other half. The Supreme Court assured the Kashmiri citizens that it can always move the clock back, but this will be resulting unavoidably in restoring the pre-existing unbalance and hence here ends the *deus ex machina* metaphor as it will not and cannot resolve all problems. In the words of D. Horowitz, “one of the great challenges of political engineers is to make moderation pay”⁹¹ and also in the present case the fine-tuning required has still to be done by human beings, in this case, politicians, with all the strengths and weaknesses that this entails, and hopefully with the right lucidity.

⁸⁵ Karlo Basta op.cit. pp.12-13.

⁸⁶ Barkha Dutt, ‘How Indian and International Journalists Are Missing the Full Story in Kashmir’, *The Washington Post*, 9 September 2019
<<https://www.washingtonpost.com/opinions/2019/09/09/how-indian-international-journalists-are-missing-full-story-kashmir/>>.

⁸⁷ M.P. Singh and Rekha Saxena, ‘Subnational Constitutionalism and Asymmetrical Federalism in India’, in *The Routledge Handbook of Subnational Constitutions and Constitutionalism*, by Patricia Popelier, Giacomo Delle Donne, and Nicholas Aroney, 1st edn (London: Routledge, 2021), pp. 162–75
<<https://doi.org/10.4324/9781003052111-11>>. P.162

⁸⁸ <https://www.bbc.com/news/world-asia-india-49246434>

⁸⁹ Huassain (2020) op.cit.

⁹⁰ Cf. Maya Chadda, ‘Integration through Internal Reorganization: Containing Ethnic Conflict in India’, *Global Review of Ethnopolitics*, 2.1 (2002), 44–61
<<https://doi.org/10.1080/14718800208405122>>.

⁹¹ Donald L. Horowitz ‘Making Moderation Pay: The Comparative Politics of Ethnic Conflict Management’ in *Conflict and Peacemaking in Multiethnic Societies*, ed. by Joseph V. Montville, 3. [print.] (New York, N.Y.: Lexington Books, 1991). PP.451-476.