Political Violence and State Formation in Post-Colonial Africa

Mahmood Mamdani

Foreword

Responding to the need to spark discussion and debate in order to strengthen ideas, theories and methodologies, the Open University's International Development Centre (IDC) is launching this new Working Paper Series. I am delighted to start with Professor Mahmood Mamdani's examination of the crisis of state formation and citizenship in Africa.

Professor Mamdani is a distinguished African scholar whose work has shaped contemporary debate on Africa. This paper was presented as a keynote address to the international conference on African Development and the Next Generation: Towards a Research Agenda organized by IDC on 16-17 May 2007 at The Open University. In his paper Mamdani argues that colonialism in Africa left a legacy of dual citizenship - the civil and the customary - which reflected not different histories or different cultures, but a different political relationship between the colonial power and the populations defined as races and tribes. He argues that the inability of postcolonial states to move away from the colonial legacy and "depoliticize" cultural difference hinders processes of Nation-building and gives rise to political and ethnic violence in Africa.

The issues discussed by Mamdani are critical for understanding current developments in Africa. Thus, the IDC Working Paper series starts as it intended to go forward, by creating a space for disseminating new ideas and generating debates on critical issues of international development. The Series will include key papers presented at IDC events, papers produced by OU academics and partners, by visiting scholars, and as IDC commissioned papers.

The IDC is an inter-faculty research centre at the Open University aimed at developing research and teaching collaborations on development issues in the global south. Drawing from researchers across the university, IDC engages in networking, research partnerships and academic exchanges with colleagues and institutions from around the world, especially from Africa.

I am proud to launch this Working Paper series and hope with colleagues and collaborators to make IDC a centre of creative research and discussion on international development.

Alcinda Honwana
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This paper is a reflection on the political crisis of post-colonial Africa. It is a reflection around three issues. My first concern is based on an observation that there has been a paradigm shift in African politics during the past half century. The preoccupation of politics has shifted from justice to reconciliation. The shift of the pendulum is clear if you contrast Rwanda 1959 with South Africa 1994. The paradigm of justice was concerned with redress: criminal justice at the individual level and social justice at the group level. The paradigm of reconciliation accents rights, which is seen as a constraint on the pursuit of social justice. The shift has been informed by two kinds of discussions, each emphasizing a different lesson. On the one hand is the lesson of Rwanda: when does the relentless pursuit of justice degenerate into a vendetta and end up in revenge? On the other hand is the lesson of South Africa: when does the pursuit of reconciliation turn into an embrace of evil?

The paradigm of rights is about a different preoccupation, that with political justice. The difference is this: if social justice is defined in relation to the market, political justice is defined in relation to the state.

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The pursuit of political justice is in the final analysis that of equal citizenship: the right to rights, in the language of Saddam Hussein, the mother of all rights.

My second concern is with political violence, not individual but group violence, not armed terror but armed struggle. More specifically, I am concerned with the disorienting nature of armed struggle, with the way in which lines have come to be drawn in violent struggles in post-colonial Africa. The market-based vision expected that poor would fight the rich; instead, we see poor fighting poor, and rich fighting rich. The difference between those who fight is defined less by class or wealth and more by ethnicity or religion.

The tendency in the social sciences, on both the left and the right, has been to see ethnicity and religion as part of the pre-modern. The debate then is around which is more relevant to explaining political reality: class or ethnicity and religion, the modern or the pre-modern? The assumption is that the pre-modern is the domain of culture (ethnicity, religion). I shall question this by *historicizing* culture, and by focusing on the *politicization* of culture. To do so, I shall shift attention from the market to the state. My argument is that the politicization of culture is not a pre-modern carryover but a very modern process.

A useful point to understand the politicization of culture is the mid-19th century crisis of the British empire, stretching from Morant Bay in Jamaica to the uprising in 1857 India. The latter was the largest anti-colonial uprising in the modern history of the empire. It gave rise to two debates about the causes of the uprising. The debate in India was around tradition and superstition: it was claimed that Indian soldiers had revolted because the bullets were coated with cow and pig fat, a fact

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which offended the religious sensibilities of Hindu and Muslim soldiers. A different debate unfolded in the British parliament where the opposition wondered why this fact did not stop the same soldiers from using the same bullets to kill the British and their families.

1857 marked a major shift in British colonial policy. The shift was announced by Queen Victoria: henceforth, the empire will not interfere in the domain of religion. It was the proclamation of a secular colonialism. The proclamation raised two questions: what are the *boundaries* of religion which the empire will not cross? Who is to *define* those boundaries, even more, the true religion with which there will be no interference? The fact was that the claim of non-interference inaugurated an era of the most active interference in religion by colonial authorities. At the heart of this interference was the construction of a religious law. As the protector of tradition, the colonial state politicized tradition by turning it into a political project. The result was a new mode of governance, one based on a state-sanctioned and state-enforced discrimination. In India, that discrimination was based on race and religion; in 20th century African colonies, it was based on race and ethnicity.

When economists want a summary representation of the process of production and distribution of wealth, they look at GNP or national income tables. For those who are interested in the question of rule, of how states rule, such a representation is best provided by the census. For a summary representation of the technology of colonial rule in 20th century Africa, I suggest we look at the census of the apartheid state. I will later explain why this can be considered the most representative, a sort of generic census in colonial Africa. The Apartheid census divides the

population into two groups. Everybody is counted and classified as either belonging to a race or belonging to a tribe. As you read the census, the distinction becomes clearer: races are those not indigenous to Africa, and tribes are those indigenous to Africa. Here, I would like to offer a *first* word of caution: the legal distinction between race and tribe is not that between colonizers and colonized, but that between *indigenous* tribes and *non-indigenous* races.

Here is my *second* observation. What difference did the distinction between tribe and race make?[1] The immediate consequence was legal, for each was governed under a different legal regime. Races were governed by a regime that claimed to be civic; its rule was mediated through civil law. Tribes, in contrast, were governed by a customary regime, one that claimed to administer customary law. The difference between the two is, first, a difference in language. The civic regime spoke a language of rights. Its claim to legitimacy was that it observed rights of the governed by setting limits on exercise of state power. This is not to deny the practice of discrimination internal to this regime. For civil law discriminated between different kinds of races, first and foremost, between the master race of whites, and subject races, which Indians and colored, and Arabs in some places.

The customary regimes spoke a different language and claimed a different kind of legitimacy. It spoke the language of custom and claimed to enforce custom. As an enforcer of custom, it did not set limits on state power; instead, it enabled state power. This had a dual effect. The civic regime was organized on the basis of *differentiation* of power: the executive,

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[1] On the legal and political distinction between tribes and races, see, Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda*, Princeton: Princeton University Press, 2001.

the legislature, the judiciary, and the administrative apparatus differentiated between different moments of power. In contrast, the customary regime was based on a *fusion* of power. After the Museveni government came to power in Uganda in 1986, I headed a commission of inquiry for two years on the relationship between peasants and the central state. During our visits to villages and discussions with peasants, I was struck by one fact: at the beginning of every year, the village chief would go from one peasant household to another, enumerate the property of the peasant and assess who would pay how much tax. If the peasant thought he had been wrongly assessed, he would appeal – to that same chief, who would then decide on the outcome of the appeal. If the peasant failed to pay the tax, the chief would arrest him; since there was no village jails, arrest meant that the chief got to decide where the 'arrested' peasant would work for free. At the end of the imprisonment, the chief would fine the peasant for having failed to pay his taxes on time. This same chief had the power to pass a bye-law – say, requiring each peasant household to contribute a fixed amount for 'development' or a hen as hospitality for a visiting Member of Parliament – to enforce it, and to arrest or fine any peasant who failed to observe the bye-law. So the chief had his fingers on all moments of power: legislative, executive, judicial, and administrative. When he faced the peasant, his fingers closed and the hand became a clenched fist.

This fused power further combined with the right to inflict corporal punishment, for corporal punishment was central to customary law. When the British Empire passed a reform bill at the end of the First World War and disallowed corporal punishment, this limitation applied only to the civic regime in the

colonies, not to the customary regime. Similarly, when France outlawed the use of direct force in its colonies, it made the same distinction between civil and customary power. It was said that the right to inflict corporal punishment would be limited to those who had the sanction of custom – the customary chief!

One may be tempted to think that all that had happened was that colonial powers had simply been permissive, for either moral or pragmatic reasons, that the customary represented a continuing African tradition and the civil the introduction of Western civilization, and that it would take no more than time to correct the situation and replace customary with civil power. But the point is that not only was there no single African tradition but also that the customary did not represent any significant tradition in pre-colonial Africa. It has been a staple in the discourse on African tradition and backwardness that there was no absolutist state in Africa, no state whose writ was law over the entire territory, and that in fact there were different domains with different authorities defining rules for each: for examples, women in the market place, kin groups when it came to land, age groups on the battle field, and so on. To be sure, there was a tradition of administrative power in the newly centralized state, where chiefs were appointed by the central power (king) and were not hereditary. But this was the tradition with the least historical depth.

The colonial construction of tradition allowed for no room for *contradictory* traditions. The colonial notion was that tradition in the colonies was singular, non-contradictory, and imposed, if necessary, by force. This was a notion very different from that of tradition at home. For when the English spoke of a liberal or a conservative or a socialist tradition, they meant by it

a tradition that moved forward by internal debates and dissent, so that the history of a tradition was a history of debates internal to it. The debate was a critical punctuating mark for it was the point at which things could have been resolved differently and made for a different trajectory of change. In contrast, colonial tradition was antithetical to change; in fact, any change was considered prima facie evidence of the corruption of a tradition. The presumption was that the farther back you got in time, the purer your grasp of tradition. Everywhere, colonial customary law was based on two assumptions: one, that every colonized group must live according to tradition and, two, that it was the business of (customary) law to enforce tradition on its subject. These two assumptions are common to every form of political fundamentalism today, whether ethnic or religious.

My point is that the difference between civil and customary law did not reflect different histories or different cultures. It reflected, rather, different political objectives in the relationship between the colonial power and the populations defined as races and tribes in the colonies. Let us begin with the language of the colonial power, which always claimed that the regime of customary law in the colonies was proof that European powers were committed to respecting native tradition. But that still does not make sense of the difference between civil and customary law. After all, the races – Europeans, Indians, Arabs, Coloreds in South Africa, the Tutsi in Rwanda and Burundi, even if the last three were constructed as non-indigenous – came from different parts of the world, spoke mutually unintelligible languages, had memories anchored in widely divergent historical archives. Yet, they all lived under a single law. But the tribes were neighbors, with shared histories and similar languages so

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they could often hear one another – and yet they were supposed to live under different laws because it was said they had different cultures. When you realize this difference, you realize that the colonial project was not cultural but political. Living under a common law, whatever the historic differences, creates the basis of a shared common future. You have to learn how to live in a single community. Living under different sets of laws means you have different futures. Races were meant to live in a single political community, but not tribes. Races were meant to have a common future, but tribes were meant to have separate futures. For tribes were not just races without rights. Tribes were pinned to a locality, to a homeland, to a custom and a customary authority, and this was true even where there were no races. For even where there were no settlers, the state organized as a settler state. The colonial project was to fracture a majority into separate minorities. The British used to say, there is no majority in Africa, only minorities. And it was true, but it was not an original truth, rather a constructed truth, one brought into being by a set of state policies. This is why nation-building in the African colonies did not begin with colonialism; it could only begin at independence.

Post-Colonial Dilemmas

My main concern is the following: how does this institutional inheritance, with its legally enforced distinctions between races and ethnicities, civil law and customary law, rights and custom, subject races and subject ethnicities, play out after colonialism? I do not know of any government which came into power after

independence which was not pre-occupied with de-racializing, with ending racial privilege. Everywhere, racial privilege was dismantled, sooner or later. The real question which distinguished governments in post-colonial Africa was not their attitude to race but their attitude to ethnicity and custom: Did they uphold the customary regime created under colonialism as genuine African custom or did they see through this construction as a colonial project and try and change it?

Nigeria: Let me begin with those who embrace the colonial customary as genuine custom. A prime example is Nigeria. There was a civil war in Nigeria, a devastating civil war. After the civil war there was a constitution, the 1979 constitution, and the constitution was meant to be a document for peace, an agenda for living together. At the heart of the constitution was a clause, which was known as the federal character clause. This clause says that key federal institutions in Nigeria should reflect the federal character in Nigeria. I am referring specifically to the ethnic character of the Nigerian federation, as embodied in the constitutional provision that key federal institutions—universities, civil service, and, indeed, the army—must reflect the "federal character" of Nigeria. This means that entrance to federal universities, to the civil service, and to the army is quota driven. Where quotas are set for each state in the Nigerian federation, only those indigenous to the state may qualify for a quota. This means that all Nigerians resident outside their ancestral home are considered non-indigenous in the state in which they reside. The effective elements of the Nigerian federation are neither territorial units called states, nor ethnic groups, but those ethnic groups that have their own states.

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It means, first of all, that growing numbers of people at the top (traders, capitalists, professionals), and at the bottom (jobless workers, landless workers) are disenfranchised because they cease to have the rights of citizenship in a meaningful sense. It also means that of those who don't move, there is a continuous impetus to try and create a state of your own where you become an indigenous majority. So there's a dynamic which has been created from a Nigeria with 12 states in 1949 to a Nigeria with 30 plus states today. With each new state, the number of Nigerians defined as non-indigenous in all its states continues to grow.

This is because the native-settler dialectic is also played out at the micro level, the level of the native authority. Where neither customary law nor customary authority is de-ethnicized, the customary realm is uncritically reproduced as authentic tradition. The dilemma here is that while the population on the ground is multi-ethnic, the authority, the law, and the definition of rights are uni-ethnic. The consequence is to divide the population ethnically, empowering those considered indigenous and disempowering others considered non-indigenous.

The irony is that this dialectic inevitably leads to an unraveling of the movement built up as nationalist in the colonial period, for the non-indigenous in the postcolonial period are less and less racial, more and more ethnic. The clashes about rights too are less and less racial, more and more ethnic. Put differently, ethnic clashes are more and more about rights, particularly the right to land and to a native authority that can empower those identified with it as ethnically indigenous. For evidence, look at contemporary Nigeria, Kivu in eastern Congo, the Rift Valley in Kenya, or the Ivory Coast. There was a time when a clash of this sort was a signal for an exodus: those

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branded non-indigenous would leave, their belongings on their head, and run in the direction of home. Now, the tendency is for them to fight it out. Faced with a native authority that divides the resident population into two, pitting the indigenous against the non-indigenous, the trend is for the non-indigenous to arm themselves in self-defense. Thus the proliferation of armed militia in the context of ethnically driven clashes around land and other rights.

The cumulative outcome is to generate a growing structural contradiction between the economic and the political system: the economy dynamizes the population, but the polity disenfranchises those most dynamic, those who move beyond their ancestral boundary, by treating them as settlers. The thrust of a market economy is to move products of labor, but sometimes producers and distributors themselves, from one place to another. The thrust of liberal reform is to remove internal barriers to this freedom of movement, and thereby to create a free national market. But this economic reform does not necessarily and automatically translate into a political reform. A native who crosses an administrative boundary becomes a settler. If this boundary is between states of the Nigerian union, then the native-settler distinction will most likely reflect an ethnic distinction, but even then not always so: since the larger ethnic groups in Nigeria (the Hausa-Fulani, the Yoruba, the Ibo) have more than one state, it is possible for an ethnic Ibo person to live in an Ibo-majority state and still not be native to that state, because they had emigrated from a neighboring Ibo-majority state. But if the boundary that person crosses is between local authorities inside a state, thereby becoming a settler in the

neighboring local authority, then the native-settler distinction is most likely to be an intra-ethnic one.

If an essential qualification for securing a place in a school, a job in the civil service or a commission in the armed forces is to be indigenous to the state in question, and if competition for a place in a federal university, civil service or security forces is quota-driven, then two questions become salient: how are quotas set for each state in the Nigerian federation, and what is the definition of indigenous? Not surprisingly, answers to both questions are highly political and highly contentious. Quotas are set centrally, and a key basis for setting them is the population of a state as a percent of the overall population in the federation. This, and not simply the once-in-several-year electoral process, is what makes the census in Nigeria a highly charged affair, for its results define the life chances of not just the political class but every civilian aspirant to education or a career. Unlike the determination of federal quotas, the definition of native is more locally-driven, and so constantly subject to change. The definition of a native has varied over time: from residence (two decades), to birth to ancestry (that at least one grand-parent must have been born in the locality in question). The tendency has been for competition to increase and indigeneity to be defined in narrower terms, from residence to birth to ancestry.

The result is that the settler-native distinction no longer reflects a race-tribe distinction as it did in the colonial period. The settler-native distinction in contemporary Nigeria is not racial; it is ethnic, whether between ethnic groups or even inside the same ethnic group. Effective citizenship in contemporary Nigeria is local, not national. As in pre-Civil War United States at
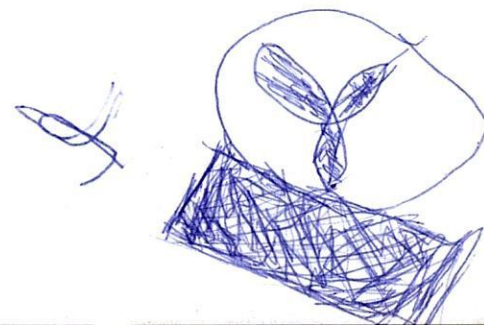
the time of the Dred Scott case, a Nigerian is effectively a citizen of the state to which he or she is indigenous, rather than of the union to which the state belongs. Contemporary Nigeria presents the African challenge in bold script: how to dismantle the legal regime of discrimination installed and sanctioned in the colonial period as *customary*.

The irony and the tragedy are that our post-independence political arrangement disenfranchises those most energized by the commodity economy. Once the law makes cultural identity the basis for political identity, it inevitably turns ethnicity into a political identity. The law thus penalizes those who try to fashion a future different from the past by mechanically translating cultural into political identities. We need to recognize that the past and the future overlap, as do culture and politics, but they are not the same thing. Cultural communities rooted in a common past do not necessarily have a common future. Some may have a diasporic future. Similarly, political communities may include immigrants, and thus be characterized by cultural diversities, even if there is a dominant culture signifying a history shared by the majority. The point is that political communities are defined, in the final analysis, not by a common past but by a resolve to forge a common future under a single political roof, regardless of how different or similar their pasts may be.

Let me come to those instances where there was an attempt to change the colonial inheritance enshrined as custom. I shall look at four different examples from around the African continent: Congo, Uganda, post-apartheid South Africa, and Tanzania.

Those Who Tried to Reform Tradition

The African challenge is to define political identities as distinct from cultural identities, without denying that there may be a significant overlap between the two. One way of doing so is to accent common residence over common descent—*indigeneity*—as the basis of rights. For initiatives that tried to make this shift, we need to turn to the militant variant of nationalism. It is militant nationalism that tried to de-ethnicize the colonial political legacy and thereby repudiate the notion that indigeneity should be the basis of rights. Militant nationalist initiatives were taken from both oppositional standpoints and from the seat of power. The key experiences, in my view, were those of the National Resistance Movement during its guerilla struggle in Uganda from 1981 to 1986, and of Tanzania under the leadership of Julius Nyerere.

Congo (Kinshasa): Contrary to the notion of "homeland" and "tradition" evoked by colonial customary law, African populations have not been historically rooted to the soil. Given that migration – both local and regional – has been an integral part of African life, how does one define who is indigenous and who is not, at both the central and the local levels? Within the country as a whole, one had to decide which ethnic groups were indigenous and which ones were not, for only the former would have a right to a native authority of their own. Locally, each native authority would have to distinguish between those ethnically indigenous and those not, for only the former would belong to the native authority ethnically and thus have the right of custom.

In 1997, a colleague and I undertook a mission for the Council for the Development of Social Research in Africa (CODESRIA) to Kivu Province in Congo. The particular focus of the mission was the citizenship dilemma of the Kinyarwanda-speaking population of Kivu. In North Kivu, there were two Kinyarwanda-speaking groups: Banyarutshuru and Banyamasisi. The former were considered indigenous, the latter were not. We wondered why. The answer was disarmingly simple: unlike the Banyarutshuru, whose presence predated Belgian colonization, the Banyamasisi had only moved to Congo in the colonial period, as labor migrants.

There were two responses to the citizenship dilemma of the Kinyarwanda-speaking population, one seeking to challenge this legacy, the other to reinforce it. In our discussions with intellectuals and activists in Kivu, our mission to Congo kept trying to get information on initiatives that tended to challenge this legacy. The earliest indication we got was that of the Banyamulenge after 1972. The context was the aftermath of the 1972 genocide of an estimated 200,000 Hutu schoolchildren in Burundi. As a result, Tutsi became very unpopular in the region. The Banyamulenge, who until then used to be known as the Banyarwanda (those who came from Rwanda, or the speakers of the language Kinyarwanda) changed there name to Banyamulenge - those who live in the mountain of Mulenge. This shift from an origin-based to a place-based identity was at the same time a shift in their claim for political right - based on residence rather than origin or cultural identity. The fact that it was not accepted by the sovereign national conference in Kisangani and was at the crux of the political crisis in post-genocide Congo should not

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detract us from its importance in placing the question of citizenship on the political agenda.

It is worth noting that whereas the Mobutist state wavered in its legal treatment of colonial migrants, in 1972 even going to the point of passing a decree that recognized as citizens all those who had been resident on Congolese soil since 1959, the democratic opposition to Mobutu showed little inclination to repudiate the colonial legacy on this question. Organized as the Congolese National Conference, a gathering of over four hundred civil society organizations and nearly one hundred political groups, the democratic opposition passed a law in 1991 defining a Congolese as anyone with an ancestor then living in the territory demarcated by Belgians as the colony of Congo. Let us ponder the meaning of this declaration. It means that the independent state of Congo accepts the establishment of the colonial state of Congo as its official date of birth, the date establishing the line of demarcation between those to be considered indigenous to the land and those to be considered immigrants. The Congo was not and is not an exception. If we look at the definition of citizenship in most African states, we will realize that the colonial state lives on, albeit with some reforms. My point is that in privileging the indigenous over the non-indigenous, we turned the colonial world upside down, but we did not change it. As a result, the native sat on the top of the political world designed by the settler. Indigeneity remained the test for rights.

At this point I suggest we pause and ask ourselves two questions. First, is not the shift from a homeward flight to a tendency to fight it out where one is resident proof enough that the definition of home has changed? Does not the spread of political violence in this context suggest that immigrants of

yesterday have now become indigenous, and that were it not for the form of the state and its definition of indigeneity, yesterday's immigrants would be today's citizens? Second, what is likely to be our future if these tendencies continue? For if they do, clashes will increase, not decrease. The dilemma is the following: the commodity economy moves people at the top and the bottom, traders and capitalists of all types at the top, land-poor peasants and jobless workers below. As I have already pointed out in the Nigerian case, we have the making of a common structural dilemma throughout post-colonial Africa: The more dynamic the economy, the greater the movement across native authorities; and the more the movement, the greater the number of non-indigenous residents inside each native authority. Thus the structural dilemma: the commodity economy dynamizes, but the state penalizes those more dynamic by defining them as settlers.

Uganda: The 1980-1986 guerilla war in Uganda took place in the Luwero Triangle in Buganda. Although Buganda is identified as the homeland of the largest ethnic group in Uganda, the Baganda, the Luwero Triangle is actually a place where over 50% of the population is made up of immigrants. According to customary law as enshrined in the colonial world, only those who trace a local ancestry would have a claim to customary rights. This legacy presented the guerrilla movement, the National Resistance Movement, with a problem. When the guerrillas liberated a village from governmental authority and reorganized a new power around new institutions - a council and a committee - they had to face several questions over and again: who can vote, and who can run for office? To neutralize the native/migrant divide, which would otherwise have paralyzed them politically, they arrived at

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a new solution. Instead of confirming the colonial legacy, that one's rights depended on origin, they displaced it with a new dictum: one's rights depended on where one lived. All adults who lived in the village had the right to vote in the village and to run for office in the village committee – no matter their origin. One outcome of the altered practice was that immigrants – particularly those from Rwanda, since they were the most numerous – were the most eager to join the guerrilla movement so as to give the new order a longer lease on life.

When the NRM came to power in 1986, the political leadership changed the citizenship law in line with their practice during the guerrilla struggle: not ancestry, but a five year residency in the country, was the new law requirement for citizenship. The opposition united against this law, and was joined by the more ambitious "indigenous" elements inside the NRM. Together, they alleged that the new law was designed to deliver the country to foreigners. Pressed by a powerful coalition, the President was compelled to change the law again. With a renewed emphasis on ancestry as the basis for rights – that you had to show at least one grandparent as born in the land that became Uganda – those who had emigrated over the past two generations, and that included the most experienced fighters in the guerilla army, were disenfranchised. They formed the RPA and invaded Rwanda in the next few months.

South Africa: Colonially crafted customary authority is identified with two big African homes in the colonial period: Nigeria and South Africa. If Nigeria was the home of 'indirect rule' whereby Lord Lugard first set about harnessing local rulers to the colonial bandwagon claiming to be conserving native tradition, South

Africa was the last place where lessons of British-style indirect rule were introduced as *apartheid*, also in the hope of stabilizing racial segregation by reinforcing it with ethnic segregation. Roughly half the population of apartheid South Africa lived in urban areas and the other half lived in the rural areas. The urban African population was administered through a set of decrees and the rural areas were governed under customary law. After apartheid, urban rule was de-racialized. But the governments in the rural areas continued as traditional. While the apartheid struggle tended to debunk customary authority as antidemocratic, the post-apartheid transition has kept custom intact, as "customary" homes, "customary" authorities, and "customary" rights. A key mandate of the Truth and Reconciliation Commission was to create a rule of law in South Africa, but its multi-volume report no more than one paragraph on customary law. Having first dismissed this legacy as "antidemocratic," the African National Congress turned to embracing the regime of the customary as "tradition." As a result, post-apartheid South Africa has a dual legal structure—as did apartheid South Africa. While the new government has deracialized civil law, civil society, and civil rights, it still works with an ethnicized "customary" law enforced by an ethnicized native authority. If the legal definition of nonnatives was as citizens governed under civic law and of natives as tribespersons governed under customary law, would it be an exaggeration to say that the post-apartheid transition has given us a nonracial apartheid?

Tanzania: My last example is Tanzania, Nyerere's Tanzania. Mainland Tanganyika is the only country in this region that has never victimized any group on either racial or ethnic grounds.

Everywhere else in the region, the record is one of genocide or ethnic cleansing. To understand the reason for this remarkable political achievement, we need to appreciate the political achievements of Tanzania's first and longest serving President, Mwalimu Julius Nyerere.

Nyerere is usually known for his economic and social policies, usually referred to as Ujamaa. I suggest we look at him as a statesman first and foremost. For mainland Tanzania is the only former colony that has managed to uproot the colonial legacy of customary rule, and do so peacefully. Its great achievement was to do away with the regime of legal pluralism where pluralism was not based on territorial decentralization, but on having different laws for different groups even if the groups are living on the same territory. It managed to create a single Tanzanian common law deriving from multiple traditions: pre-colonial history, the entire complex of common law (both civil and customary) and the corpus of anti-colonial practices. To create a common substantive law enforced by a single hierarchy of courts was to create the legal basis of a single citizenship.

Conclusion

I suggest we distinguish between different kinds of identities, to begin with, by distinguishing between voluntary and enforced identities. Further, I suggest we distinguish between three kinds of identities: *economic*, *cultural* and *political*. If economic identities are a consequence of the history of development of markets, and cultural identities of the development of communities that share a common language and meanings, political identities need to be understood as specifically a consequence of the history of state formation.

The modern state inscribes political identities in law. In the first instance, they are legally enforced. If the law recognizes you as member of an ethnicity, and state institutions treat you as member of that particular ethnicity, then you become an ethnic being legally. By contrast, if the law recognizes you as a member of a racial group, then your legal identity is racial. Not only your relationship to the state, but also your relationship to other legally defined groups is through the mediation of the law and a consequence of your legally inscribed identity. Similarly, you understand your inclusion or exclusion from rights or entitlements based on your legally defined and inscribed race or ethnicity. From this point of view, both race and ethnicity need to be understood as political — not cultural, or even biological — identities.

The tendency of the left has been to think of the law as individuating or disaggregating classes and thus creating false identities. But the law does not just individuate, it also collates. It does not just treat each person as an abstract being — the owner of a commodity in the market, a potential party to a

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contract — it also creates group identities. These identities are legally inscribed and legally enforced. They shape our relationship to the state and to one another through the state. In so doing, they also form the starting point of our struggles.

The antidote to ethnic conflict lies not in the spirit of culture but in the spirit of law and politics. The citizenship challenge needs to be thought through in the concrete context of former colonies with a legacy of 20th century indirect rule mediated through a regime of customary law enforced by customary authorities. We are used to discussing citizenship in a universal Marshallian context of three generations of rights: civil, political, and socio-economic. The relevant question from this point of view is: Which rights? I am suggesting that the key question in the post-colonial African context is not which rights, but whose rights. Who has the right to rights, the right to be a citizen?

If the question was pertinent on the morrow of independence, it has now become explosive. It used to be that those who were declared non-indigenous would just pack up their bags and leave. But now they don't. Now they create their own militia and they fight it out. That they fight it out means their definition of home is changing. That recognition has to be the starting point of any intervention.

I have argued the importance of understanding the political legacy of colonialism, one that politicized cultural difference by turning it into a basis of discrimination. I have also argued that the failure of mainstream nationalism lay in not being able to depoliticize cultural difference through legal and political reform. In the final analysis, the colonial system was based on dual discrimination, around race and ethnicity. It gave rise to a

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contradiction between the economy and the polity: if the economy led to trading places, quintessentially through migrant labor, the polity tended to keep each in their own place, their own homeland governed by their own Native Authority. It is the population that crossed the boundaries between different Native Authorities that provided the energies and the vision for the nationalist revolt. These were the intellectuals and the migrant workers, Nkrumah's *verandah* boys and Cabral's boatmen. The failure of the nationalist project – with the partial exception of countries like mainland Tanzania and Senegal – lay in the failure to create a single citizenship based on a single substantive law drawn from multiple sources: pre-colonial, colonial and anti-colonial. For the fact was that the creation of the nation-state in Africa began at independence, not with colonialism.

Biography

Mahmood Mamdani from Uganda is Herbert Lehman Professor of Government in the Department of Anthropology and Political Science and the School of International and Public Affairs at Columbia University, where he was also director of the Institute of African Studies from 1999 to 2004. He has taught at the University of Dar-es-Salaam, Makerere University, and University of Cape Town. He was the founding director of the Centre for Basic Research in Kampala, Uganda (1987-96). His most recent books include: *Good Muslim, Bad Muslim: America, the Cold War and the Origins of Terror* (Pantheon, 2004); *When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda* (Princeton, 2001); *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, 1996). *Citizen and Subject* was recognized as 'one of Africa's 100 best books of the 20th century' in Cape Town in 2003 and was also awarded the Herskovitz Prize of the African Studies Association of USA for 'he best book on Africa published in the English language in 1996. Mahmood Mamdani was President of CODESRIA (Council for the Development of Social Research in Africa) from 1999 to 2002. In 2001, he was invited to present one of nine papers at the Nobel Peace Prize Centennial Symposium in Oslo.