Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism

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Comparative Studies in Society and History, Vol. 43, No. 4. (Oct., 2001), pp. 651-664.

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My starting point is the generation that inherited Africa's colonial legacy. Our generation followed on the heels of nationalists. We went to school in the colonial period and to university after independence. We were Africa's first generation of postcolonial intellectuals. Our political consciousness was shaped by a central assumption: we were convinced that the impact of colonialism on our societies was mainly economic. In the decade that followed African political independence, militant nationalist intellectuals focused on the expropriation of the native as the great crime of colonialism. Walter Rodney wrote *How Europe Underdeveloped Africa.*[1] But no one wrote of how Europe *ruled* Africa.

We were convinced that political economy was the most appropriate tool to come to analytical grips with the colonial legacy. The great contribution of underdevelopment theorists was to historicize the construction of colonial markets and thereby of market-based identities. The popularity of political economy spread like a forest fire in the post-independence African academy precisely because it historicized colonial realities, even if in a narrowly economic way. Political economy provided a way of countering two kinds of colonial presumptions, embedded in various theories of modernization.[2] The first was that colonial cultures were not grounded in historical processes. The second was that colonial contact marked the beginning of a history for these societies, since colonialism was presumed to have animated them culturally, economically, and politically.

The limits of political economy as a framework for political analysis began to surface in the face of postcolonial political violence, for political economy could only explain violence when it resulted from a clash between market-based identities—either class or division of labor. From this point of view, political violence had to be either revolutionary or counterrevolutionary. In the face of political violence that cut *across* social classes rather than between them—violence that was neither revolutionary nor counterrevolutionary but simply nonrevolutionary, violence animated mainly by distinctions crafted in colonial law rather than sprouting from the soil of a commodity economy—ex-

planations rooted in political economy offered less and less analytical clarity. This limit provided an opening for a second coming of cultural explanations of political conflict, most obviously those addressing the political resurgence of ethnicity.

My objective here is to try to understand the spread of nonrevolutionary political violence by breaking from widely held culturalist assumptions in two ways. First, I will argue that the process of state formation generates political identities that are distinct not only from market-based identities but also from cultural identities. Second, faced with a growing tendency to root causes of violence in cultural difference—now ominously called a clash of civilizations[3]— I will differentiate between cultural and political identities.

To return to the time of Rodney, it strikes me that none of us—neither nationalists nor Marxists—historicized the political legacy of colonialism, of the colonial state as a legal/institutional complex that reproduced particular political identities. The tendency was to discuss agency in an institutional void, by focusing on how it was harnessed to the colonial project; Marxists called the agents "compradors" and nationalists called them "collaborators." Both bemoaned "tribe" and "tribalism" as colonial concoctions, while assuming "race" and "racism" to exist as something real, in a positivist sense. It was said that ethnicity was cultural and race biological. Neither Marxists nor nationalists tried to historicize race and ethnicity as political identities undergirded and reproduced by colonial institutions—perhaps because neither had yet managed sufficient analytical distance from that legacy. Because our emphasis on agency was to the exclusion of institutions, we failed to historicize agency, to understand the extent to which colonial institutions did shape the agency of the colonized.

The question of institutions of rule has surfaced only recently, in the face of a breakdown of political institutions and an eruption of internal conflict. In the West, it has stimulated an entire genre of literature, generally called the literature on state collapse.[4] When I first heard of the crisis of governance in postcolonial Africa being referred to as a state collapse, I was a bit suspicious. I remembered the tradition from Aristotle to Hegel that considered the capacity for state life as the peak of human historical achievement. I also remembered the Hamitic hypothesis, which took all evidence of state-building in Africa as the influence of Hamites, considered as black but not Negro. And I remembered that the rationale for colonialism was always the need for tutelage, given that Africans were said to lack the capacity to build stable states and a durable law and order.

On second thought, however, I realized that these Africanists do have a point. There is a state collapse. But the point they have is too general. It is not just any state that is collapsing; it is specifically what remains of the colonial state in Africa that is collapsing. True, Africa's political institutions are in crisis. But which institutions are these? If we look at the crisis closely, we will recognize

at its heart the institutional legacy of colonial rule, particularly the political in-
stitutions of colonial rule.

   There is also a second response to the crisis. It goes under the name of Pan-
Africanism. This tendency even has an organization by that name, called the
Pan-African Congress, with headquarters in Kampala patronized by the Yow-
eri Museveni government and, until recently, by the entire phalanx of what used
to be referred to as the "new generation" of Africa's leaders: those from Rwan-
da, Ethiopia, Eritrea, and Libya. The Pan-Africanists believe that state crisis is
a crisis of colonial boundaries, because these boundaries were and are artifi-
cial—in the African case more so, since they were drawn up with a pencil and
a ruler on a map at a conference table in Berlin in the 1880s. Well, what would
be genuine boundaries? From this point of view the answer would be that they
would be "natural," meaning they would not cut through ethnic boundaries. In
other words, the political map of Africa should have followed its cultural map.

   I find two problems with this kind of argument. All boundaries are artificial;
none are natural. War and conquest have always been integral to state-building.
This was particularly the case before the era of the extraordinary mobility of fi-
nance capital, and certainly of the globalization that followed the collapse of
the Soviet bloc—a development that gave finance capital a truly global reach.
Before the era of mobile finance capital, shifting power relations often trans-
lated into shifting boundaries, with each new boundary being claimed more
natural than the previous one. With the growing power of finance capital, how-
ever, all boundaries became porous.

   The real problem with this point of view is the assumption that cultural and
political boundaries should coincide, and that the state should be a nation-
state—that the natural boundaries of a state are those of a common *cultural*
community. Basil Davidson called this "the curse of the nation state," but he
was never able to define the institutional nature of that curse.[5] After arguing—
rightly, I think—that the curse led to the politics of ethnic cleansing in the
Balkans, he argued—wrongly, and illogically—that the problem in Africa was
that Europe ignored the ethnic map of Africa. Thereby, Davidson thought, Eu-
rope ignored Africa's *real traditions* in drawing state boundaries. So he brought
us right back to the question of colonial boundaries.

   I will argue differently from both these schools. The solution does not lie in
bringing back the Europeans to address "state collapse," or even in "recolo-
nization" by presumably more benign Africans, as Ali Mazrui once suggested.[6]
Nor does the solution lie in redrawing Africa's boundaries. For no matter how
much we redraw boundaries, the political crisis will remain incomprehensible
until we address the institutional—political—legacy of colonial rule.

THE COLONIAL STATE AND LEGALLY INSCRIBED IDENTITIES

There is a language particular to the modern state, including its colonial ver-
sion. That is the language of law. Legal distinctions are different from all oth-

ers in that they are enforced by the state, and then are in turn reproduced by institutions that structure citizen participation within the state.

The colonial state made a distinction in law between "race" and "ethnicity." This is the question I would like to begin with. What is the difference in law between a race and an ethnicity? Is it the difference between biology and culture, between biological race and cultural ethnicity? Not really, if you take a closer look. In indirect-rule Africa, only natives were said to belong to ethnic groups; nonnatives had no ethnicity. Nonnatives were identified racially, not ethnically. There was in fact an entire racial hierarchy, with Europeans—meaning whites—at the top, followed by "Coloureds," then Asians, then Arabs, and then Hamites (the Tutsi). Races were considered a civilizing influence, even if in different degrees, while ethnicities were considered to be in dire need of being civilized.

The colonial state divided the population into two: races and ethnicities. Each lived in a different legal universe. Races were governed through civil law. They were considered as members, actually or potentially, of civil society. Civil society excluded ethnicities. If we understand civil society not as an idealized prescription but as a historical construct, we will recognize that the original sin of civil society under colonialism was racism.

Ethnicities were governed through customary laws. While civil law spoke the language of rights, customary law spoke the language of tradition, of authenticity. These were different languages with different effects, even opposite effects. The language of rights bounded law. It claimed to set limits to power. For civic power was to be exercised within the rule of law, and had to observe the sanctity of the domain of rights. The language of custom, in contrast, did not circumscribe power, for custom was *enforced*. The language of custom *enabled* power instead of checking it by drawing boundaries around it. In such an arrangement, no rule of law was possible.

Let me return to my basic point. Colonial law made a fundamental distinction between two types of persons: those indigenous and those not indigenous; in a word, natives and nonnatives. My *first* observation—I will have a second one later—is that rights belonged to nonnatives, not to natives. Natives had to live according to custom. Nationalism was a struggle of natives to be recognized as a transethnic identity, as a race, as "Africans," and thus—as a race—to gain admission to the world of rights, to civil society, which was a short form for *civilized* society. Before going farther, I would like to take a closer look at the two worlds: the world of the native and the world of the settler (which we shall see was not always synonymous with "nonnative"), the world of ethnicities and the world of races, the world of customary law and the world of civil law.

Customary Law

In the indirect-rule state, there was never a single customary law for all natives. For customary law was not racially specific; it was ethnically specific. It made

a horizontal distinction, a distinction in law, between different ethnic groups. This was not a cultural but a legal distinction. The point is that each ethnic group had to have its *own* law. If Europe had nations, Africa was said to have ethnicities, then called tribes. If every "historical" nation in Europe had its own state, every tribe in Africa had to have its own native authority to enter history. If every nation-state in Europe promulgated its own civic law, every native authority in Africa had to enforce its own customary law. So went the logic of indirect rule.

The colonial state was from this point of view an ethnic federation, comprising so many native authorities, each defined ethnically. Each native authority was like a local state under central supervision. If decolonization meant getting rid of the colonial power from the central state, what should decolonization have meant in the local state? I wrote a book about this in 1996, called *Citizen and Subject.*[7] Here, let me simply say that to answer the question one would need to take a closer look at what colonialism constructed as custom. I have three things in mind.

First, precolonial Africa did not have a single customary authority, but several. Each of these defined custom in its own domain. There were thus age groups, clans, women's groups, chiefs, religious groups, and so on. It is worth noting that only one of these—chiefs—was sanctified as a native authority under indirect-rule colonialism, and only its version of custom was declared "genuine." The rest were officially silenced. In sanctifying the authoritarian version of custom as "genuine," colonial power sought to construct native custom as unchanging and singular.

Second, this single native authority was reorganized as despotic. If we contrast the mode of organization of civil and customary authority under colonial rule, the point will be clear. Civic authority was organized on the basis of functional specificity and the principle of a balance of power. Even if there were no elections, there was a clear distinction between the executive, the legislative, the judicial, and the administrative moments of power. In contrast, the native authority was organized on the basis of a fusion of power.

I chaired a commission of inquiry on local government in Uganda the year after President Museveni came to power. We spent two years in different parts of the country. One thing stood out in all areas, no matter how different they were in other aspects: the relationship between the chief and the peasant. When the year began, the chief would enumerate the peasant's property and assess it for tax purposes. If the peasant was dissatisfied, he appealed to the chief. After the chief made a ruling, he would return to collect tax. If the peasant failed to pay the tax, the chief would arrest him, then decide where to put him to work during his prison term. At the end of the term, the chief would release him and require him to pay the unpaid portion of the original tax, as well as a fine on top of it for having failed to pay it in the first place. This same chief could also pass and enforce bylaws, provided they did not contradict a national law. For example, the chief could decide that every peasant must donate a chicken for

purposes of "development." So the cycle of life went on. The chief combined in his hands executive, legislative, judicial, and administrative powers. When he faced the peasant, his fingers closed and the hand became a clenched fist.

When we returned to Kampala from our district tours, we began to meet officials at the Ministry of Local Government. The single most enduring impression I carried away with me was how different the Ministry of Local Government was from every other ministry that I knew of. Every line ministry—be it the ministry of education, finance, agriculture, industry, or health—was functionally specific except for one, the Ministry of Local Government. Its concerns included primary—but not secondary—education, feeder—but not major—roads, primary—but not hospital—health, and so on. The Ministry of Local Government was like a state within the state. I realized that this was the ministry for peasants. It was the heart of the colonial state.

The *third* common thing about customary law was the great emphasis on corporal punishment. You could almost say that the very definition of a customary authority was an authority that had the customary right to use force to coerce subjects to follow custom. I wonder to what extent this may also apply to Sharia law in the colonial context. I think there is great need to historicize Sharia law, for even if God's law may not change historically, its application by humans on earth is susceptible to change. I think we need particularly to look at two aspects of Sharia law in the postcolonial context: the fusion between the executive and the judiciary, to the exclusion of judicial interpretation (*ijtihad*), and the growing emphasis on *Hudud,* that is, corporal punishment.

Civic Law

While ethnicities were demarcated horizontally and were said to represent a cultural diversity, races were differentiated vertically and were said to reflect a civilizational hierarchy. Some races were said to be more civilized than others, and therefore were said to have a claim to higher rights. While each ethnicity was said to have its own customary law, races were constituted within a single legal domain, that of civil law, except that civil law was full of discriminations; there were citizens of different categories, some real, others virtual.

My *second* observation is that the distinction between races and ethnicities was not the same as the distinction between colonizers and colonized. The hierarchy of races included both colonizers and colonized. Similarly, the colonized divided into those indigenous and those not; in other words, whereas all natives were colonized, not all nonnatives were colonizers. The hierarchy of race included master races and subject races. Who were the subject races of indirect-rule Africa? They were the Indians of East, Central and Southern Africa, the Arabs of Zanzibar, the Tutsi of Rwanda and Burundi, and the "Coloureds" of Southern Africa. The distinction between subject races and subject ethnicities is worth grasping. While both were colonized, the former were a fraction of the latter. Subject races were either nonindigenous immigrants, like the Indians of East, Central and Southern Africa, or they were constructed as

nonindigenous by the colonial powers, such as, for example, the Tutsi of Rwanda and Burundi. In contrast, subject ethnicities were indigenous. Finally, subject races usually performed a middleman function, in either the state or the market, and their position was marked by petty privilege economically and preferential treatment legally.

The distinction between subject races and subject ethnicities recalls another distinction drawn in a different context by Malcolm X. This is the distinction between the "Field Negro" and the "House Negro," the former in the field and the latter in the mansion. This distinction too was marked by petty privilege and preferential treatment and, as a consequence, had its own ideological effects. As Malcolm X put it, when the master was sick, the House Negro would mimic the master—"We sick"—and when the master was tired, "We tired."

Precisely because the legal category "nonnative" included both master races and subject races, it is important to distinguish "nonnative" as a legal identity from "settler" as a political identity. To my knowledge, the law never spoke of settlers, only of nonnatives. "Settler" was rather a political libel hurled by natives at master races, not subject races. The notion of "settler" distinguished conquerors from immigrants. It was an identity undergirded by a conquest state, a colonial state.[8] In the course of time, anticolonial nationalism would splinter into two distinct, even contradictory tendencies. Radical nationalism would identify settlers with conquerors, whereas conservative nationalism would identify them with all immigrants. In this latter category would belong the 1959 Revolution in Rwanda and the 1963 Revolution in Zanzibar.

My main concern in this article 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?

POSTCOLONIAL DILEMMAS

I will speak of three postcolonial dilemmas. The first arises from the growing tendency for indigeneity to become the litmus test for rights under the postcolonial state, as under the colonial state. The second dilemma arises from the fact that we have built upon this foundation and turned indigeneity into a test for justice, and thus for entitlement under the postcolonial state. The third dilemma arises from the growing tendency to identify a colonially constructed regime of customary law with Africa's authentic tradition.

Indigeneity and Rights

To understand why the link between indigeneity and rights continued to be reproduced after colonialism, we need to focus on the character of conservative— mainstream—nationalism. Mainstream nationalism shared with its radical counterpart a common effort to de-racialize civic rights. In contrast to militant nationalists who were determined to de-ethnicize the customary sphere, however, mainstream nationalists pledged to reproduce the customary as the au-

thentic tradition of Africa. As a consequence, mainstream nationalists reproduced the dual legacy of colonialism. This time around, though, they hoped to privilege indigenous over nonindigenous citizens. In addition to civil rights for all citizens, those indigenous were given a bonus: customary rights.

In this context arose the question of defining who was indigenous and who was 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.

Let us begin with the first type of indigenous person. How do you tell who is indigenous to the country and who is not? Given a history of migration, what is the dividing line between the indigenous and the nonindigenous? 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.

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 nonindigenous, 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.

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 are

de-ethnicized, the customary realm is uncritically reproduced as authentic tradition. The dilemma here is that while the population on the ground is multiethnic, the authority, the law, and the definition of rights are mono- or uni-ethnic. The consequence is to divide the population ethnically, empowering those considered indigenous and disempowering others considered nonindigenous.

The irony is that this dialectic inevitably leads to an unraveling of the movement built up as nationalist in the colonial period, for the nonindigenous 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 Kivu in eastern Congo, the Rift Valley in Kenya, or contemporary Nigeria.

There was a time when a clash of this sort was a signal for an exodus: those branded nonindigenous 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 nonindigenous, the trend is for the nonindigenous to arm themselves in self-defense. Thus the proliferation of armed militia in the context of ethnically driven clashes around land and other 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? That immigrants of yesterday have now become indigenous? 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. The more dynamic the economy, the greater the movement across native authorities; and the more the movement, the greater the number of nonindigenous residents inside each native authority. Here, then, is the structural dilemma: the commodity economy dynamizes, but the state penalizes those more dynamic by defining them as settlers. Even with the colonial power gone, we keep on defining every citizen as either a native or a settler!

Indigeneity and Entitlements

The *second* postcolonial dilemma arises from the very struggle to decolonize. How do you address the past without reproducing it? Just as customary law made a distinction between indigenous and nonindigenous ethnicities as a claim for group rights, civil law made a distinction between indigenous and nonindigenous races when it came to entitlements. From the time it faced militant nationalist opposition after World War II, the colonial state defined "native" entitlements in response to the struggle for justice.

The history of entitlements has gone through two phases. In the first phase, entitlements were at the expense of *subject races*. Africa's worst internal violence in the postcolonial period has targeted those defined as subject races under colonialism. This was true both of the Tutsi of Rwanda in the "social revolution" of 1959 and of the Arabs of Zanzibar in the Zanzibar Revolution of 1963. It was also true, though to a lesser extent, of the Asians of Uganda in 1972. The difference between these two types of cases lies in the following: Where the subject races made a bid for power, as in Zanzibar in 1963 and in Rwanda in 1959–1963 and 1994, they were slaughtered. Where their demand was seen to be for the protection of privilege and not a quest for power, they met a response disenfranchising them, as in the case of the Ugandan Asians, which went as far as including expulsion.

The response of the subject races has been diverse. During the constitutional discussions in Uganda in the early 1990s, the Ugandan Asians who had returned demanded that they be listed in the new constitution as one of Uganda's ethnic groups. Not surprisingly, this bid for indigeneity was seen by many as at the minimum an attempt to get legal protection against any future expropriation, and maximally to get access to land as an ethnic home. Also not surprisingly, it was rejected. The returning Arabs of Zanzibar opted for a different way to secure the same objective: they gave full support to liberalization and privatization, and thereby to narrowing the scope of citizenship-based action against them. The Boers of South Africa have taken both the Ugandan Asian and the Zanzibar Arab routes: the mainly Afrikaner poor have agitated for an ethnic homeland, complete with a customary home, and their own native authority that can enforce its own customary law, while the rich have pinned their hopes on liberalization and privatization as their salvation from majority demands for justice. Certainly the most tragic and troubling response comes from the Tutsi of Rwanda. Like the Israelis after the Holocaust, the Rwandan Tutsi also seem to have reached a conclusion that is more of a cul-de-sac: their conclusion is that there can be no survival without power, that the only durable peace possible is an armed peace.

It is the second phase in the development of the culture of entitlement as a form of justice that shows the real dilemma of turning indigeneity into the basis for entitlement. In this phase, conservative African regimes—the bearers of mainstream nationalism—have succeeded in redividing yesterday's natives into postcolonial settlers and postcolonial natives. The dilemma of indigeneity as the legal basis for entitlement is perhaps best illustrated by the Nigerian case. 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 nonindigenous 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.

The ethnic character of the Nigerian federation has an outcome that reinforces two tendencies. First, given the way "federal character" is defined, every ethnic group in Nigeria is compelled sooner or later to seek its own ethnic home, its own native authority, its own state in the Nigerian federation. Second, with each new state, the number of Nigerians defined as nonindigenous in all its states continues to grow. The cumulative outcome is to intensify the contradiction between economic and political processes. I return to my original formulation: the more the economy dynamizes, the more the polity disenfranchises. The irony and the tragedy are that our postindependence 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.

Our 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 would need to turn to the second, and militant, variant of nationalism. It is militant nationalism that tried to deethnicize the colonial political legacy and thereby repudiate the notion that indigeneity should be the basis of rights. Militant nationalist initiatives were taken from both the seat of power and from oppositional standpoints. The key experiences, in my view, were those of Tanzania under the leadership of Julius Nyerere and the National Resistance Movement during its guerilla struggle in Uganda from 1981 to 1986.

Our final challenge is also to rethink our notion of custom, for the idea of "custom" is closely tied to the idea of "native."

Rethinking the Customary Regime
Custom is not just the authoritarian version rescued and built upon by colonial power. It also includes emancipatory legacies officially silenced by the same

power. Neither custom nor sources of custom are singular. Both are plural, multiple, and diverse. If custom is to have any meaning, its reproduction has to be more through consent than through coercion. My point is that every living tradition grows; it has both a past and a future. Consensus can only be born of conflict. The idea of custom as some kind of geological fossil from the past, one that cannot be questioned or changed, is one point of view. This point of view has been key to identifying, buttressing, and salvaging a domestic authoritarianism as an authentic tradition.

Colonially crafted customary authority had two big African homes in the colonial period. One was Nigeria; the other was South Africa. While the apartheid struggle tended to debunk customary authority as antidemocratic, the postapartheid transition has kept custom intact, as "customary" homes, "customary" authorities, and "customary" rights. Having at first dismissed this legacy as "antidemocratic," the African National Congress has turned to embracing the regime of the customary as "tradition." As a result, postapartheid 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 postapartheid transition has given us a nonracial apartheid?

POLITICAL IDENTITY: A METHODOLOGICAL CONSIDERATION

We are used to thinking of identities as either market-based or cultural. Left-wing intellectuals generally saw "real" identities as market-based class identities, such as "worker" and "capitalist," or "landlord" and "tenant." Those on the right had a habit of arguing that the "real" identity was cultural. Both agreed that political identities were to be understood as expressions of prepolitical identities—"real" identities—in the political arena. The left had its verifying literature on class struggle and revolution, and the right had its version on tribalism and nationalism. Since the end of the Cold War, there has been a growing tendency in the left also to see political identities as expressions of cultural identities. The literature on class struggle is gradually giving way to that on social movements. Thus it is no longer only the right intelligentsia but also many on the left who now call for rights, even self-determination, for ethnicities.

I want to suggest the need to think of political identities as distinct from economic or cultural identities. 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. With the modern state, political identities are inscribed 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. You understand your relationship to the state, and your relationship to other legally defined groups through the mediation of the law and of the state, as 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 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.

DEMOCRACY AND INSTITUTIONS: A CONCLUSION

Democracy is not just about who governs and how they are chosen. More important, it is about how they govern, the institutions through which they govern, and the institutional identities by and through which they organize different categories of citizens. Colonialism was not just about the identity of governors, that they were white or European; it was even more so about the institutions they created to enable a minority to rule over a majority. During indirect rule, these institutions unified the minority as rights-bearing citizens and fragmented the majority as so many custom-driven ethnicities. I have suggested that this is what the legal discourse on race and ethnicity was all about. Instead of racializing the colonized into a majority identity called "natives," as did nineteenth-century direct rule, twentieth-century indirect rule dismantled this racialized majority into so many ethnicized minorities. Thus it was said that there were no majorities, only minorities, in the African colonies.

This core colonial legacy is at the root of our dilemma, the one I defined in the context of my discussion of the Nigerian federation. That dilemma is the form of the state: the economy dynamizes, and the state disenfranchises the most dynamic. In this context, what are we to do? How do we support those disenfranchised? By demanding that each ethnicity also have its own state or native authority, as, for example, in the new Ethiopian constitution? If so, do we not risk multiplying the problem, since the number of minorities will grow as do the number of ethnically defined states or native authorities? To oppose that demand, however, would be seen to be joining forces with ethnic chauvinists. Is there a way out of this dilemma? The only way out, I have argued, is to rethink the institutional legacy of colonialism, and thus to challenge the idea

that we must define political identity, political rights, and political justice first and foremost in relation to indigeneity. Let us reconsider the colonial legacy that each of us is either a native or a settler. It is with that compass in hand that we must fashion our political world.

In sum, I suggest we go beyond the conventional thought that the real crime of colonialism was to expropriate the indigenous, and consider that colonialism perpetrated an even greater crime. That greater crime was to politicize indigeneity, first as a settler libel against the native, and then as a native self-assertion.

NOTES

1. Walter Rodney, *How Europe Underdeveloped Africa* (Dar-es-Salaam: TPH, 1971).

2. Immanuel Wallerstein, "The Uses of Racism," *London Review of Books* 22,10 (18 May 2000):11–14.

3. See, e.g., Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon and Schuster, 1996).

4. See, William I. Zartman, *Collapsed States: The Disintegration and Restoration of Legitimate Authority* (Boulder, Colo.: L. Rienner, 1995).

5. Basil Davidson, *The Black Man's Burden: Africa and the Curse of the Nation-State* (New York: Times Books, 1992).

6. Ali Mazrui, "Decaying Parts of Africa Need Benign Colonization," *International Herald Tribune,* 4 Aug. 1994; also see, *CODESRIA Bulletin* 2, (Dakar: CODESRIA, 1994).

7. Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996).

8. See Mahmood Mamdani, "When Does a Settler Become a Native? Reflections on the Colonial Roots of Citizenship in Equatorial and South Africa." Inaugural Lecture, University of Cape Town, New Series no. 208, 13 May 1998.