NEITHER SETTLER NOR NATIVE

The Making and Unmaking of Permanent Minorities

MAHMOOD MAMDANI

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For Zohran,
You teach us how to engage the world in difficult times.
May you inspire many and blaze a trail!

It's like a path across the land—it's not there to begin with, but when lots of people go the same way, it comes into being.

—LU HSUN, "Hometown"

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INTRODUCTION

The standard biography of the modern state begins with the signing of the Treaty of Westphalia in 1648. That accord largely brought to an end decades of warfare across Europe, in particular the Thirty-Years War that decimated the Holy Roman Empire. At Westphalia, two key components of the modern state were born: religious toleration at home and the reciprocal guarantee of sovereignty abroad. Catholics, Lutherans, and Calvinists were each given official sanction within the empire, and across much of Europe states agreed to respect one another's legitimacy and authority in their domestic affairs.

This European story tells a moral lesson. In this story, the modern state is associated with tolerance. It is both a product and a guarantor of tolerance—among states and within them. At this triumphant moment, the state imposed a secular peace on the warring factions of society; whatever differences persisted among individuals and groups were subordinated by the law in the interest of peaceful coexistence. But this story starts too late, and, as a result, provides the wrong lesson.

This book traces the founding moment of the modern state instead to 1492. That year marked the beginning of the nation-state, the endurance of which was later secured by Westphalian tolerance. The nation-state was born of two developments in Iberia. One was ethnic cleansing, whereby the Castilian monarchy sought to create a homogeneous national homeland for Christian Spaniards by ejecting and converting those among them who were strangers to the nation—Moors and Jews. The other development was the taking of overseas colonies in the Americas by the same Castilian monarchy that spearheaded ethnic cleansing. In this story, modern colonialism was not something that states started doing in the eighteenth century. Modern colonialism and the modern state were born together with the creation of

the nation-state. Nationalism did not precede colonialism. Nor was colonialism the highest or the final stage in the making of a nation. The two were co-constituted.

The birth of the modern state amid ethnic cleansing and overseas domination teaches us a different lesson about what political modernity is: less an engine of tolerance than of conquest. Tolerance had to be imposed on the nation-state long after its birth in order to stanch the bloodshed it was causing. In Europe tolerance emerged after Westphalia as the key to securing civil peace within the nation-state. Minorities at home were tolerated in exchange for their political loyalty, which, in practice, meant they were tolerated to the extent that they were seen by the national majority as non-threatening. This regime of tolerance solidified the structure of the nation-state by defining the relation between the national majority and minority. It is this structure of tolerance that is seen as defining the liberal character of political modernity.

But that is political modernity in Europe. In the colonies overseas, and in the settler colonies where there is no clear spatial divide between nation and nonnation, political modernity and its liberalism meant something else. It meant conquest. As a Eurocentric ideology and political discourse, modernity did not require tolerance abroad. Only people deemed civilized had to be tolerated. Others—marked by their cultural differences from Christian Europeans—had to be made civilized before earning the right to be tolerated. The light of civilization could shine wherever populations conformed to Eurocentric ideals. Thus did Europeans turn to the colonies and seek to build there the avatar of modernity: the nation-state, as it existed in Europe. The French called this the "mission civilisatrice," which was anglicized as the "civilizing mission."

Had the civilizing mission succeeded, colonial political modernity might have looked a great deal like its European counterpart, with European-style nation-states the world over practicing Christianity and Westphalian tolerance. But the civilizing mission failed, resulting in a colonial modernity that veered sharply from the course taken by European modernity. While liberal tolerance took hold in the European nation-state, liberal conquest inflamed the colonies. By the mid-nineteenth century, the colonizer's forcible imposition of its laws, customs, educational practices, language, and community life provoked fierce resistance among the natives—the word that was used

to describe those deemed uncivilized. In response, the British put aside the torch of civilization in order to maintain order.

As I introduce below and explain in detail in later chapters, the new colonial method involved drafting native allies and claiming to protect their ways of life. In the colonies, there would be no native majority built to resemble the colonizer; instead there would be assorted minorities, each preserved under the leadership of a native elite. The native elite's power was said to derive from custom, but it was the backing of the colonizer that was their true source of authority. Separated into so many distinct races and tribes, the natives would look to their "own" rather than to each other in a solidarity that could challenge the colonizer. Although the British were adept in this method, they did not invent it. The Americans did, in the context of controlling the people Columbus had called Indians.

Historians of colonization refer to the civilizing mission as direct rule and the methods that succeeded it as indirect rule. Part of my focus in the coming pages is on a surprising outcome of this shift from one system of rule to another: the emergence in the postcolonial situation of a violent nationalism following from the creation of minorities under indirect rule. The minorities the colonizer created in the colonies sought, after independence, to become the nation. Postcolonial nationalists struggled to consolidate power by transforming society into the home of the nation as they imagined it. The result was an era of blood and terror, ethnic cleansing and civil wars, and, sometimes, genocide. These are the wages of postcolonial modernity, in which political modernity is instantiated by people whose ancestors rejected it.

Embracing political modernity means embracing the epistemic condition that Europeans created to distinguish the nation as civilized and thereby justify aggrandizing the nation at the expense of the uncivilized. The substance of this epistemic condition lies in the political subjectivities it affords. How does the subject understand herself? If she understands herself as a member of the nation, she is participating in political modernity. Colonized peoples lacked this subjectivity until Europeans foisted it on them, much as this subjectivity was foisted on Europeans themselves, at least in the early days of the nation-state. The Castilians had to impose the nation in order to make it thinkable. Later Europeans, steeped in the idea of the nation, could hardly think of any other. The immense historical irony of the civilizing mission is

that its failure created the conditions in which the nation would come to flourish under postcolonial modernity. Parts of this book are devoted to showing how exactly this happened—how the techniques of indirect rule produced in colonized subjects the nationalist political subjectivity.

The violence of postcolonial modernity mirrors the violence of European modernity and colonial direct rule. Its principle manifestation is ethnic cleansing. Because the nation-state seeks to homogenize its territory, it is well served by ejecting those who would introduce pluralism. Ethnic cleansing can take a variety of forms. These include genocide, whereby the minority population is killed en masse, and population transfer, whereby the minority is removed from the territory or concentrated in a minimal portion of it, away from the majority. Ethnic cleansing unites the examples in this book: the United States, which perpetrated both genocide and population transfer against American Indians; Germany, which perpetrated genocide against Jews and was in turn victimized by Allied population transfers following the Second World War; South Africa, where white settlers forced blacks into tribal homelands known as Bantustans; Sudan, where the British segregated Arabs and Africans into separate homelands; and Palestine, where Zionist settlers forcibly exiled and concentrated non-Jews, an ongoing process.

These examples serve different roles in this book. The United States emerges as the model modern colony from which the others—the Nazis, white power in South Africa, the British in Sudan, and Zionists—learned. Sudan is the chief example of postcolonial modernity, in which the racial and tribal structures imposed by the British became the basis for explosive civil wars following independence. Israel provides a distinctive expression of colonial modernity. Germany provides an example of European political modernity, but my discussion of it is not primarily oriented toward Nazism's place in the pantheon of destructive nationalisms. Rather, I look to the German case primarily to understand why it has been so hard to dislodge the political roots that nourished the Nazi political project. The failure of denazification is the key here. The denazification process treated Nazi atrocities as forms of criminal violence rather than political violence, thereby submerging the nationalist political objectives of the Third Reich and protecting its political project from scrutiny.

South Africa, by contrast, shows us a way out of the morass of the nation-state and its obsession with civilization. The transition away from apartheid

involved a rejection of the permanent majority and minority identities that lie on each side of the civilizational divide at the heart of the nation-state. Post-apartheid South Africa could justifiably have replaced white rule with black majority rule. Instead the new state adopted nonracial democracy. At the same time, tribalism persists in South Africa, and so there is more work to be done.

Building Blocks of Political Modernity

As I noted, the history of the prevailing state system begins in 1492, with the Reconquista, whereby the Castilian monarchy took over regions of Iberia that had for centuries been under Moorish rule. This was a state-building exercise, in that it sought to erect a government—that of the Castilians—over a territory and the people within it. But it was more than that. It was also a nation-building exercise in that it sought to change the people within the territory in order to make the population culturally homogeneous. Under the banner of "one country, one religion, one empire," the Castilians first expelled from Castile and Aragon any Jews who would not convert to Christianity. This was the work of the Alhambra Decree of 1492. Then edicts promulgated between 1499 and 1526 forced the conversion of Muslims across Spain. Next came a series of Inquisitions, each aimed at ridding the nation of impurities said to be harbored by recent converts to Christianity.

A similar nationalism was implicit in the conquest of the Americas. Columbus got royal support for his westward adventure from the conquistadors only months after they entered Granada. He also received support in the form of the doctrine of discovery, announced by the pope in 1493. The pope asserted that explorers could claim foreign territory in the name of Christian monarchs and that such claims were legitimate because the inhabitants of the "discovered" lands lacked European civilization, principally Christianity. In this way the Indians in the Americas became Moors and Jews on the other side of the ocean.

The Treaty of Westphalia brought about significant changes to the nation-state model by ushering in the regime of tolerance. At Westphalia, the European nation-state agreed to protect internal minorities rather than oppress and expel them, as the Castilians had. In turn the nation-state was guaranteed

protection from invasion by other states, where presumably these minorities constituted majorities. Europe's religious wars were predicated on just these sorts of "protective" invasions. The majority in one polity looked across its borders and saw that, in the next polity over, its brethren were a persecuted minority. This became a reason, or perhaps a pretext, for war. To prevent such wars spiraling further out of control, European states agreed to stop persecuting their internal minorities. As long as minorities did not revolt, sovereigns would not persecute them; and as long as sovereigns did not persecute minorities, other sovereigns had to respect their right to rule unmolested.

After 1648, then, the nation-state became liberal. But what exactly did this mean? The Peace of Westphalia did not spell out with precision what it meant to be tolerant or where the boundaries of tolerance lay. Many key questions were beyond the scope of the accord. Just what sort of difference was tolerable? Did Europeans have to tolerate non-Europeans? Did Christians have to tolerate non-Christians? If some peoples were beyond toleration, could they be made tolerable through the erasure of their intolerable differences? Answers to these questions came from various corners of European political discourse, with enormous consequences.

European Modernity and the Boundaries of Tolerance

The most influential theorist of tolerance is the English philosopher John Locke. Notions of tolerance predate him, but his ideas are the ones that became pillars of the nation-state. Unlike Thomas Hobbes, whose *Leviathan* (1651) argued against Westphalia by asserting uniformity of religion as essential to maintaining political order, Locke, in his *Letter Concerning Toleration* (1689), argued for a regime of tolerating minorities on the condition that they renounce rival allegiance and support the state. His objective was to "distinguish the business of civil government from that of religion," so that civil government may promote worldly interests and leave the business of salvation to the Church. In particular, in England, it was Catholics who needed to give up their allegiance to the pope in exchange for toleration by the Protestant majority. The Church would also have to limit itself to persuasion, leaving the monopoly on violence to the state government. For its part, the state would abandon the idea that "faith is not to be kept with heretics"—it would cease oppressing apostates, atheists, and nonconformists.[1]

Locke's regime of toleration institutionalized the relationship between a national majority on one side and a national minority on the other, each cast permanently in its political identity. Tolerance therefore became a key structure of the nation-state, for it legitimated the permanent separation of the majority and the minority, a distinction without which the nation-state collapses.[2] This distinction is a product of the essential incoherence of the nation-state, which joins the nation, a political community whose boundaries are determined by its members, to the state, a legal form in which membership (citizenship) is determined by law. These two objects, state and nation, are necessarily incompatible, for the purpose of the state is to apply law equally to all members, while the purpose of the nation is to protect and valorize only members of the nation. If the state does the bidding of the nation, it will instantiate in law the national prejudice, which is antithetical to the rule of law. Locke's compromise was toleration, whereby the state agrees not to enact the national prejudice against the inhabitants of the state who are not also of the nation, as long as these minorities accept their minority status. Minority status boils down to the forgoing of sovereignty. The state will never exist in the image of the minority, which renounces any political project that would change the character of the state.

But if Locke's compromise ensured a degree of peace in Europe, it has had the opposite effect in Europe's colonies. In the colonies, the permanent majority-minority distinction became the division between the nation and the uncivilized, referred to as the native. Europeans generally agreed that they had to find ways other than violence to resolve differences among themselves, but they also agreed that they had a right to colonize the uncivilized because the uncivilized, like the permanent minority in the nation-state, lacked sovereignty. Important thinkers such as the nineteenth-century international jurist Richard Cobden decreed that the principle of sovereignty applied only to civilized countries of Europe—not, for instance, to the Ottoman empire. John Stuart Mill approved: the uncivilized were not sovereign and so were at the mercy of the civilized.[3] Indeed, conquest was portrayed not merely as an option but as a moral responsibility. Sovereigns were obligated either to bring civilization to peoples branded uncivilized, or to save the vulnerable hostages of uncivilized societies, such as women and the enslaved—to rescue them, in today's human rights language.

The terms of tolerance in foreign policy were variously formulated, starting well before Westphalia with the doctrine of discovery, which confirmed that the uncivilized—that is, non-Christians—had no rights that Christians were bound to respect. Not everyone shared that perspective, though. Much debate characterized the centuries between 1493 and the era of Cobden and Mill. The dispute among European intellectuals was triggered by the Iberian conquest of the Americas and the Dutch conquest of the Indies. Europeans agreed that they had the right to colonize the less civilized non-European world, but they disagreed on whether that right was contingent on the consent of the colonized. In the late sixteenth and early seventeenth centuries, two schools of thought emerged on relations between the civilized and the uncivilized. We know these schools as the humanists and the scholastics; the difference between them has been discussed by several authors, including Anthony Pagden, Robert Williams Jr., and Richard Tuck.[4]

The two schools came to loggerheads on the issue of whether the civilized enjoyed a right to preemptive war against the uncivilized. Both schools embraced the necessity of war, but they disagreed on the justifications for it. Humanists, in spite of their name, were warmongers in the Classical Roman tradition. In *De Jure Belli* (1598), the Italian humanist Alberico Gentili looked to Cicero to justify striking at enemies even when they had not committed violence. The Spanish philosopher Juan Ginés de Sepúlveda argued that Spain had a right to rule over Indians because barbarian customs violated natural law. Scholastics felt otherwise. Luis de Molina, a Spanish Jesuit, turned to medieval Christian thinkers to oppose preemptive strikes and denounce warfare against barbarians as unjustifiable unless to protect innocent victims of their aggression. And even such a protective war could not justify occupying barbarian lands. Domingo de Soto, Francisco de Vitoria, and Bartolomé de las Casas drew on Dominican teachings to insist that the Spanish Crown could have true dominion over America only if the Indians consented.[5]

The humanist articulation of rights was a justification of sovereignty and raison d'état—not a critique of these concepts, as many contemporary human rights thinkers would have us believe. In particular, humanists such as the Dutch jurist Hugo Grotius analogized the rights of the individual to those of the state and therefore saw the state as having wide latitude. Importantly, and in contrast to earlier thought that had seen the right to punish as a right possessed only by civil magistrates, Grotius argued that the state had a right

to punish because individuals, he claimed, had a right to punish in the state of nature for purposes of self-preservation. Abstract notions of autonomy, sovereignty, and self-preservation—so central to liberalism—developed in tandem with international practices of conquest and served to rationalize them.[6] It is in this sense that we may understand humanist thought as the founding moment of a colonizing tradition.

Humanism, in the emerging mold of human rights, only became an apparent foil for the pursuit of big-power interests toward the end of nineteenth century, when humanists argued that Europe's new nation states should be required to preserve minority rights. All major Western European powers agreed, and in the 1878 Berlin Treaty minority-protection requirements were imposed on the Balkan states emerging from the Russo-Turkish War in the East. But, demonstrating again that humanism is a fig leaf for the powerful, the same strictures were not applied to Europe's old states, which would not be enjoined by treaty to protect minorities. The primacy of this new variety of humanism was solidified in the Versailles Treaty in 1919, following the dissolution of the Ottoman, Hapsburg, and Hohenzollern empires that had lost the First World War. The resulting international order was based on the Allies' commitment to recognize only those states that pledged to guarantee the rights of their internal minorities. As in earlier treaties, none of these powers accepted the minority-rights provision when it came to their own minorities, such as American Indians in the United States, Welsh and Irish in the United Kingdom, and Britons and Basques in France. Even Germany, in spite of having lost the war, was not subject to these stipulations. The minority rights asserted by the League of Nations Covenant applied only to Eastern Europe. Not much changed when it came to the discussion of rights after the Second World War. When the United Nations gathered to discuss the Universal Declaration of Human Rights, Eleanor Roosevelt insisted that the minority question did not exist in North America.[7]

Colonial Modernity and the Making of Permanent Minorities

Armed with doctrines rejecting minority rights for the uncivilized—and sanctioning any self-serving action of the civilized—Europeans went abroad with the intent to convert natives into nations constructed in the European image. This effort failed, but the nation-state project persisted in former colonies. The colonizers had to give up their goal of nation-building in the interest

of consolidating power and maintaining order. Yet, where Europeans left off, the locals took over, absorbing the nationalist project into their own politics.

The failure of the European project triggered the shift from direct rule—the civilizing mission—to indirect rule, which harnessed the "native tradition" to the colonial political project. Direct rule sought to build nations akin to that of the colonizer, indirect rule merely to hold and exploit territories. I have discussed the distinction between the two phases of colonialism in earlier books.[8] Here I sum up that distinction so that we can begin to see how the politics of the nation was installed in diverse colonized states, including those that Europeans left without realizing the nation-building dream.

Direct rule mirrored top-down nation-building in Europe. Much as the forced conversions and Inquisitions of the Reconquista aimed to refashion heretics into members of a nation identified as Christian, direct rule in the colonies sought to make the colonized fit for membership in the colonizer nation. Missionaries, church societies, and colonial officials came together in this project. In one colony after another—British, French, Dutch, Portuguese, and the US internal colony of American Indians—institutions of formal education replaced local modes of education. The laws of the colonizer were imported wholesale. Local customs with respect to religion, language, marriage, inheritance, land use, and so on were replaced with European practices. Colonizers were not under the illusion that they could transform the whole colonized people, so the brunt of their efforts was directed at local elites. By inducing elites to take the role of colonizer nation, colonizers hoped to inject a kind of Trojan Horse into subject societies. The idea was that these colonized members of the nation would, through their example and their power, bring the rest of the natives along. The rationale for direct rule was famously summed up by Thomas Babington Macaulay, a member of the Supreme Council for India in the 1830s, in his "Minute on Education":

> I am quite ready to take the Oriental learning at the valuation of the Orientalists themselves. I have never found one among them who could deny that a single shelf of a good European library was worth the whole native literature of India and Arabia. . . . We have to educate a people who cannot at present be educated by means of their mother-tongue. . . . We must at present do our best to form a class who may be interpreters between us and the millions whom we

> govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect.[9]

British efforts to impose direct rule met with insurrection: the Indian Uprising (1857), the Morant Bay Rebellion in Jamaica (1865), and the Mahdiyya (1881–1898) in Sudan. The durability of this resistance forced British leaders to rethink principles of colonial governance. Their solution was indirect rule. Instead of building a nation in the imperial image by uprooting and replacing native customs and authorities, the empire would preserve both. Rather than build the national permanent majority, there would be a proliferation of permanent minorities, each kept down through indirect management by so-called natives deputized by the colonizer. The logic of the civilizing mission had to go so that the British could maintain control. The French also adopted indirect rule, replacing the policy of "assimilation" with that of "association." In Senegal and Morocco, the French followed the British by building a durable alliance with local elites whose moral and ideological standing was intact, even if their political power was on the wane.

But while indirect rule began as an alternative to nineteenth-century nation-building, it wound up creating the conditions for nation-building in the twentieth century. What emerged from indirect rule was a new kind of political community in which colonized groups were subdivided into territorial homelands and made subject to separate legal regimes. These divisions were drawn along lines of cultural and ethnic distinction, thereby transforming ethnic groups into administrative-political units known as tribes. Each territorial division was said to be the homeland of its tribe, administered by local authorities who combined the sanction of custom with the backing of colonial power. These native authorities were empowered to bestow benefits on those said to be indigenous to the homeland, generating native investment in tribe and homeland. This investment endured long after the colonizer departed. The territorial and legal boundaries created by indirect rule thereby became the basis for postcolonial conflicts over political belonging.

In thinking about nineteenth-century indirect rule, we need to be careful to distinguish from very different earlier invocations of indirect rule. The history of indirect rule, understood as rule through local mediation, goes back as far as the Roman Empire. The British, however, brought a kind of genius

to their efforts. They did not merely resurrect Roman divide-and-rule practices but rather pioneered an altogether different form of statecraft based on the recasting of identities. Whereas Romans took the self-consciousness of their subjects as a given, British colonial governance sought to reshape the self-consciousness of the colonized. Another way to put this is that the Romans were content to rule peoples as they found them, but the British were not. In this sense nineteenth-century indirect rule turned out to be a far more ambitious project than direct rule had been: whereas direct rule aimed at civilizing elites, indirect rule looked to impose a native subjectivity on the entire local population.

This effort to create a specifically native subjectivity for colonized peoples—as opposed to an elite subjectivity, à la direct rule—began after the 1857 Indian Uprising, when Queen Victoria called for the protection of native culture. The jurist Sir Henry Maine was a key influence on the queen, elaborating such protection as both a justification and blueprint for colonial rule. By identifying distinctive local customs and histories and incorporating these in the imperial historical narrative, census, and law, the British transformed existing cultural differences into boundaries of political identity that fragmented and fractured those they governed.

Historical writing, census-taking, and lawmaking fostered new subjectivities by creating for the colonized a new past, altering their status in the present, and anticipating for them futures that otherwise would never have come to pass. Colonizers wrote European race theories and perverted variations on local history into the histories of colonized peoples, making European categories of race and tribe appear local and natural. Thus did colonized peoples learn that they had always been rivals. Colonizers then mapped the colonized using census categories organized according to these histories, reinforcing racial and tribal identifications. Finally, by predicating laws and their application on identification with racial and tribal distinctions, colonizers ensured that future political, economic, and social realities would reflect these distinctions.

The British did not cut the novel identities they exploited from whole cloth. The British noted the real cultural differences among colonized people and even asked them how they identified themselves. The genius of the British was not in inventing differences to exploit but in politicizing real and acknowledged differences by turning them into legal boundaries deemed inviolable

and predicating security and economic benefits on locals' respect for these boundaries. The British thereby coopted locals into the myth that they were not just culturally different from each other but in fact had always harbored mutually incompatible interests. In this way the British Empire took the old Roman strategy of divide and rule a step further. A more apt name for this project is define and rule, a concept I explored in a 2012 book.[10]

The present work builds on this argument by looking more closely at the construction, content, and consequences of indirect rule. I now identify three different forms of mediation pursued under indirect rule: individual, institutional, and territorial. Individual indirect rule is associated first with the Romans. They governed their less organized Western Empire directly, through armed settlements of soldiers *(coloni)*. But in the more organized Eastern Empire in Asia and Africa, Roman rule was indirect and individual, effected by taking tribute from local potentates such as Cleopatra of Egypt and Herod of Judaea.[11] After switching to indirect rule, the British used much the same method in ruling Indian princely states, striking deals with the royals. But outside the princely states the British turned to institutional indirect rule, governing through customary law and religious authority, such as Anglo-Mohammedan law. The Ottoman *millet* system is another example of institutional indirect rule, in which the empire's ethnic groups had their own leadership subordinate to that of the central state. In this way, an Armenian in Istanbul and an Armenian in Eastern Anatolia were said to be members of the same millet and subject to its authority—an authority granted by the sultan and superseded by his own.[12] The Mughal practice of governing through local religious institutions and traditions is yet another example.

I mention these two forms of indirect rule—individual and institutional—mainly to distinguish from the third, territorial indirect rule. This is the form I explore in detail in this book. Territorial indirect rule embraces the customary authority and law of institutional indirect rule but binds these to tribal homelands. The innovation that brought about territorial indirect rule was the American Indian reservation. First tested in the mid-nineteenth century in California, then put into practice more formally and completely by presidents Abraham Lincoln and Ulysses S. Grant, the reservation segregated Indians from whites, stripped Indians of land, and minimized the political threat they posed by subjecting them to domination under colonially supervised customary law.

Although others learned a great deal from the American invention of territorial indirect rule, the chapters that follow make clear that indirect rule is not everywhere the same. It has consistent features, but its fine-grained mechanics vary depending on circumstances. Territorial indirect rule is a technology of colonial modernity deployed in different ways in different eras and places. Thus there are differences between the US system of Indian management and the implementations of indirect rule in South Sudan and South Africa. In addition, the US Indian management system has changed markedly over the years, as indirect-rule technologies morphed with the times. Continuities across time and space are valuable in understanding territorial indirect rule and its consequence for postcolonial modernity. But we should not be too firm in our definition, lest we risk losing sight of what that consequence everywhere has been: the manufacture of permanent majority and minority identities.

Postcolonial Modernity and the Problem of Extreme Violence

Contests over national belonging are at the heart of extreme violence in the post-independence period. Their bloody confrontation notwithstanding, colonialism and anticolonialism share a common premise: that society must be homogenized in order to build a nation. I recall taking a bus in the mid-1970s from Dar-es-Salaam to Maputo, the capital of the newly liberated Mozambique. As the bus entered the square in the middle of the city, I could see a huge banner inscribed with a quote from the Mozambican revolutionary Samora Machel: "For the Nation to Live, the Tribe Must Die." The tribe here referred not to the ethnic group—as in a cluster of culturally unique people—but to political identification with the ethnic group. The message was that every potential source of competing identity had to be cleansed in order to homogenize the nation.

Like other nationalist projects, postcolonial nationalism has been deeply violent. Indeed, the violence of the militant nationalist project often felt like a second colonial occupation. "When will this independence end?" a Congolese peasant asked, in a story related to me by the University of Dar es Salaam professor Ernest Wamba dia Wamba, amid the reign of Mobutu Sese

Seko. But it was not until later, during and after the Rwanda genocide, that many of us African scholars started thinking systematically about why, contrary to what we had expected, political violence had exploded rather than diminished after political independence. Why had Europe's past become our present? Why were nationalist elites reviving the civilizing mission that colonialism had abandoned when it embraced the defense of "tradition"? This was a question that stayed with me, from Rwanda to Darfur and then South Sudan. In kick-starting the nation-building project after independence, postcolonial elites turned their backs on the history of colonialism and thus on their own history. Instead they modeled their political imagination on the modern European state, the result being that the nationalist dream was imposed on the reality of colonially imposed fragmentation, leading to new rounds of nation-building by ethnic cleansing.

Two Models of Understanding Extreme Violence

The ways in which societies respond to such extreme violence tell us something important about how they see themselves and what the future holds for them. Is nation-building violence a criminal act, calling for prosecution and punishment? Or is it a political act, the answer to which must be a new, nonnationalist politics? Where societies choose the first option, criminalizing nation-building violence, progress toward eradicating the political sources of that violence will not come easily, if at all. This is because nation-building violence tends to be cyclical. Those excluded by new boundaries of nationhood turn to a new round of violence in order to establish a national political community in which they are included, necessarily excluding others. And then the cycle restarts.

I seek to theorize extreme violence as political, and thereby to argue that a crime-and-punishment approach is more likely to aggravate than to ameliorate this violence. The examples I discuss in this book are all marked by extreme violence triggered against groups framed and identified politically in the process of state formation. In each instance, I show perverse consequences of countering political violence with responses fashioned in the battle against criminal violence. Those who call for criminal justice focus on individual acts of violence: they draw a list of atrocities, identify its perpetrators, and call for justice for victims. Rather than demand that we hold perpetrators to account, I look for an alternative to this turning of tables. A focus on

the priority of victim's justice, based on the identity of victim as defined by the perpetrator, translates into court processes that call for each crime to be followed by a proportional punishment. By individualizing the crime and the violence, the demand for criminal justice obscures the issues that feed group grievances and hides the constituencies that mobilize around group demands. The postcolonial crisis is first and foremost a political crisis, not a criminal one.

The more political understanding of violence can be glimpsed in Walter Benjamin's distinction between law-making and law-preserving violence. Law-preserving violence is a response to crime; as such, it claims to dispense criminal justice. Law-making violence is fundamentally political. Rather than address the transgression of an existing law, law-making violence seeks to establish a new law—new law in a very general sense, referring to a new political order. Law-making violence is, as Jacques Derrida points out in his comment on Benjamin, an originary violence that establishes a new authority and cannot itself have been authorized by an anterior legitimacy. The state fears this founding violence more than it does crime, for founding violence is able to justify, legitimate, and transform political and legal relations, and so present itself as having a right to right and a right to law.[13]

The tendency to think of all violence as criminal and thus the response to all violence as law-preserving can be traced to the euphoria surrounding the alleged triumph of the liberal democratic model at the end of the Cold War.[14] Since this type of polity was presumed to constitute the final stage in political development, all violence henceforth would appear as criminal. The claim was that the era of law-making (political) violence had come to a close; all responses to violence therefore must be law-preserving, aiming to suppress crime and thereby maintain the existing and final order. Where the political approach is open to reconsidering and changing the rules, the criminal approach reasserts and reaffirms existing rules.

The anti-apartheid movement in South Africa bucked the post–Cold War trend. The great achievement of the anti-apartheid movement was to understand the violence of apartheid as political and therefore seek a political rather than criminal solution for it. This was the negotiated end to apartheid that led to the emergence of nonracial democracy. A criminal approach would have sought to separate apartheid's perpetrators from its victims and punish the perpetrators while producing justice for the victims. This might have gen-

erated good moral sentiments, but it would not have furthered the goal of political reform, which is what South Africa badly needed: the creation of a democratic state in which all could participate, regardless of race. Instead, by taking a political approach, South Africans reconfigured perpetrators and victims—alongside beneficiaries and bystanders—as something altogether new: survivors. All groups were survivors of apartheid, with a place at the table after its violence.

In contrast to criminalization, I offer a South African–inspired model focused on rethinking the political community and political process in the aftermath of extreme nation-building violence. Rather than individualize violence as a stand-alone act, the political model addresses cycles of violence sustained by constituencies in conflict. A single-minded focus on identifying perpetrators leaves undisturbed the logic of institutions that make nation-building violence thinkable and possible. Instead of identifying and punishing perpetrators, the political model attempts to overwrite the institutional context. All survivors—victims, perpetrators, beneficiaries, bystanders, exiles—are included in an expanded political process and reformed political community. It is political reform, not criminal prosecutions, that enables escape from nation-building violence.

My claim is not that societies should dispense with criminal justice. But political reform has to come first because the call for criminal justice within the parameters of the existing political order leaves that order intact. Societies must rethink the order resting on nation-states, each with a permanent political majority alongside equally permanent political minorities, before they can usefully address demands for criminal justice. Political reform also is a prerequisite to the struggle for social justice. That distributional choices are made by reference to cultural, ethnic, and racial identities reflects the politicization of these identities. Only when the political system is decolonized—that is, when identities are uncoupled from permanent majority and minority status—will it be able to secure equity.

Key Objectives

This book is an inquiry into political modernity, colonial and postcolonial. It is also an exploration of the roots of extreme violence that has plagued

postcolonial society. I seek to understand colonization as the making of permanent minorities and their maintenance through the politicization of identity, which leads to political violence—in some cases extreme violence. Decolonization, the counterpoint, is the unmaking of the permanence of these identities. I discuss the making of permanent minorities through historical narratives, found in individual chapters on the United States, Sudan, South Africa, and Israel. But the book also offers a normative claim on how to unmake and undo this reality. Here, South Africa is presented as a counterpoint to the failure of denazification in Germany. Both lessons are brought to bear on a penultimate chapter on Israel. The book invites the reader to think of the relation between these two moments, the narrative and the normative, and their making and unmaking.

When South Africans threw off apartheid and replaced it with nonracial democracy, they began the process of rethinking and restructuring the internal political community. I call this process the *decolonization of the political*. A major aim of this book is to describe what it means for the political to be colonized and what it would look like to achieve political decolonization.

The political is colonized in North America. Rather than equal citizens in the United States, American Indians are wards of Congress. On reservations, they are governed by separate law, much as peoples deemed tribal in South Africa were historically governed by a law distinct from that governing the white national majority. And, like the South Sudanese, Indians in North America have internalized tribalization and the legal structures that come with it. For example, in both the United States and Canada, indigenous groups define membership racially, by "blood." This notion of membership is not in any sense traditional; it was imposed on Indians in order to achieve the national majority's interest in reducing the size of the population deemed native, thereby reducing the number of natives making claims to land. Decolonizing the political requires the end of governance on the basis of such supposedly customary law.

Sudan and South Africa clarify what it means for the political to be colonized. Both are formally independent states, yet both have laws on the books that constrain individuals' rights—or grant them rights—according to their tribe. For instance, the government ministries of South Sudan are set aside for management by particular tribes. Yet the transformation of ethnic groups into territorialized administrative units called tribes was a colonial project.

That "native" citizens of South Sudan, South Africa, and other contemporary states take tribe to be a source of political identification, as in North America, is a sure sign of the ongoing colonization of the political, even in the postcolonial age.

Colonization continues as well in Israel, under the distinctive colonial-modern ideology of Zionism. Jewish settlers, backed by the state, aggressively pursue conquest in the Occupied Territories, the flipside of which is the dispossession of Palestinians. Within the territory of Israel, the state concentrates non-Jewish citizens in towns that are barred from development, much as the United States concentrates Indians in reservations and South Africa concentrated natives in Bantustans. The indigenous homeland is a technology of rule, extended across nation-states seeking to homogenize.

In Israel the civilizing mission, too, has been crucial to the formation and maintenance of the nation-state. Israel's European elite, Ashkenazi Jews, have sought to civilize "oriental" Jews—in particular, Mizrahim, or Arab Jews. They have been de-Arabized, stripped of the culture they shared with other Arabs, and now represent some of Israel's most ardent Zionists. They demonstrate, again, how the victims of modernity internalize its mentality. Indeed, Israel as a whole reflects this. It is a nation-state whose national majority—Jews—were disgorged from Europe, where they were the despised other, the ethnicity that had to be cleansed to make room for the nation.

Decolonizing the polity joins the epistemic and the political in a mutually productive endeavor. The epistemic project both yields changes in policies and follows a change in how we see ourselves in the world. Decolonizing the political means upsetting the permanent majority and minority identities that define the contours of the nation-state. The idea of the nation-state naturalizes majority and minority identities, justifying their permanence. I aim, therefore, to historicize these identities that are taken as natural. Understood as historical objects, political identities are revealed to be products of power, not nature. South Sudanese have learned to see themselves as tribal because tribes have been invested with political power. Zionist Jews have learned to see themselves as natives of Palestine because their conception of nativity involves exclusive rights to the land. Americans have learned to see themselves as immigrants rather than settlers, which suits their sense of the American nation as a historic rupture from Europe rather than a European colonial outpost. Americans pride themselves on being immigrants who

coalesce around the democratic creed of this new nation. But this disables recognition of the settler-colonial dynamic. Today American Indians are an essentially imperceptible component of the population, their ongoing domination by the federal government not just misunderstood but unknown. The American national majority would have to see their history differently, as a continuation of European settlement, in order to begin the decolonization of the political.

So the decolonization of the political demands an intricate engagement with history. The main chapters undertake this project. But before they arrive, I want to head off an objection that may arise from the preceding discussion. I am not merely arguing for humility before the facts of history. Most Americans will readily agree that their state has done terrible things to Indians. Nor do I believe that national majorities and minorities should, by dint of history, be enjoined to switch places. The transformation of native into settler, victim into perpetrator, is nothing to celebrate, as the story of Israel attests. Rather, the point is that history provides resources for seeing past identities of majority and minority, settler and native, perpetrator and victim. The people of today can, through concerted engagement with the facts of political modernity, be convinced of the necessity of discarding its divisive identities. We can all learn to see ourselves as *survivors* of political modernity—created by it, but not doomed to repeat it. Survivors do not necessarily agree on what the shape of society and the affordances of the state should be, but survivors at least are not configured from the start as enemies in a zero-sum contest for power.

How, then, has political modernity persisted? Why is it so hard to decolonize the political? The reasons are various, and I will discuss some later in this introduction, before delving into them in detail in later chapters. My major claim, however, is that a number of forces preserve political modernity by rendering it invisible. These forces are epistemic; they are ideas that discourage the recognition of what should be obvious. One such idea, emerging from anticolonial discourse, is that independence from foreign control is sufficient to ensure the political end of colonization. Another is the conflation of immigration and settlement: immigrants join existing polities, whereas settlers create new ones. If Europeans in the United States were immigrants, they would have joined the existing societies in the New World. Instead they destroyed those societies and built a new one that was reinforced

by later waves of settlement. The conflation of settlers and immigrants is essential to settler-colonial nation-state projects such as the United States and Israel. Through this historical error, settlers wrongly justify their claims to the land and their positions in society on the basis of a rule of law. The political project of the settler—to create and fortify the colonial nation-state—becomes obscured by the nonpolitical project of the immigrant, who merely seeks to take advantage of what the state allows every citizen. The conflation of settler and immigrant is a product of the same false histories that teach natives to behave as natives.

There are two ways of demeaning history and thereby concealing political modernity. One is to falsify history; the other is to diminish and obliterate it. Powerful epistemic forces in the world today seek to make history go away and to replace it with a universal impulse called human rights. Human rights denies the existence of history, instead looking only to the here and now and asking who did what to whom, so that perpetrators may be punished and victims vindicated. The arena of human rights is that of the courtroom, specifically the post-atrocity tribunal. When atrocities are committed, human rights activists find the perpetrators, name them and shame them, maybe even put them in jail. What these activists rarely seek to do is understand why the atrocities happened or what they tell us about the political community. Extreme violence in the postcolonial condition is very often nationalistic violence, as ethnic groups, organized as separate tribal units under colonialism, vie for privileged access to public goods. Human rights ignores this historical background, thereby depoliticizing violence and treating it as merely criminal. Where violence is merely criminal, we can only see it as a function of individual pathology. We cannot see it as a political outcome calling for a political solution.

One of my chief goals in this book, then, is to see political violence for what it is and contrast this vision with the faulty vision of human rights, the better to advance the effort of decolonizing the political. To this end, I articulate two models of understanding and responding to extreme violence: the criminal model and the political model. The criminal model of contemporary human rights was inaugurated by the Nuremberg Tribunals after the Second World War. The tribunals were based on the neoliberal conviction, avant la lettre, that all violence is the act of individuals. Nuremberg effectively depoliticized Nazism, saddling responsibility for Nazi violence with

particular men (mostly men) and ignoring the fact that these men were engaged in the project of political modernity on behalf of a constituency: the nation, the *volk*. The Allies who prosecuted individual Nazis at Nuremberg were invested in ignoring Nazism's political roots, for these roots are also America's. Both the United States and the Third Reich were nation-building projects; the United States is the outcome of a history of genocide, ethnic cleansing, official racism, and concentration camps (known as Indian reservations), and Nazi Germany followed a similar path in the construction of a German nation. Indeed, Hitler made plain that he modeled his program of genocide on that of the United States. The Allies also sought to protect themselves from censure for their contemporary actions. After the war the Allies engaged in many atrocities similar to those the Germans had, including the ethnic cleansing of millions of Germans across Central and Eastern Europe. These Germans were loaded onto the same cattle cars the Nazis used to transport Jews to concentration, labor, and death camps; large numbers of Germans found themselves the new occupants of those camps. Some half a million Germans died amid the ethnic cleansing. But because the Nuremberg process was constrained to providing justice for victims of individual German perpetrators, the political context, contemporary and historical, was not subject to scrutiny.

Victim's justice in Europe ushered in colonial modernity in Palestine, as Western guilt over the mass murder of the Jews became a justification for the founding of the state of Israel. Guilt, of course, is the language and sentiment of crime. If Nazism had been understood not as a crime but as a political project of the nation-state, there may yet have been a place for Jews in Europe, in denationalized states committed to the equal protection of every citizen. However, because the response to Nazism took the nation-state for granted, the solution for the Jews turned out to be the nation-state, again. Israel gave the Nazis what they had wanted all along: national homogeneity, by means of the ejection of Jews from Europe.

Nuremberg was designed both to protect the Allies in particular and to perpetuate a nation-building project and its homogenizing goals. Human rights tribunals, emblematic of the post–Cold War triumphalism that announced the end of history in the form of a neoliberal takeover, carry this tradition into the present. But there is hope of a way out. This lies with the political model. To understand the political model, I look to the anti-apartheid

movement in South Africa. By rethinking political identities, and reforming the political order, South Africa points the way to decolonizing the political. In South Africa, various groups learned to reject the political identities they had been given under colonialism: white, African, Coloured, Indian. Through political mobilization, Afrikaners, the descendants of Dutch colonists, came to realize that they did not have to be members of a racist white national majority—that this was not their natural political identity, but rather an identity they had adopted for historical reasons that need not prevail for all time. Similarly, the various nonwhite groups defined as separate by apartheid's racial categories came to understand themselves as black, a cohesive identity whose solidarity defied the will of the state. Newly conscious of their blackness, they redefined their foe as white power rather than white people, another shift of political identity.

Black South Africans didn't stop being black; Indian South Africans didn't stop being Indian. Afrikaners didn't suddenly start identifying as English or black or Indian. South Africans didn't give up their cultural identities and reject diversity. They rejected the politicization of diversity. Decolonizing the political through the recognition of a shared survivor identity does not require that we all pretend we are the same; far from it. It requires that we stop accepting that our differences should define who benefits from the state and who is marginalized by it.

Case Studies

In the colonizing process I describe, the central part is played by the settler state we now know as the United States of America. It was in North America that the paradigm of territorial indirect rule emerged. It spread from there.

The profound cost of the American scheme has been clear for two centuries and more. Hegel knew it in the 1820s. In his lectures on world history, he noted that, across the Americas, "nearly seven million people have been wiped out." He lamented that "the natives of the West Indian islands have died altogether. Indeed, the whole North American world has been destroyed and suppressed by the Europeans." But the fate of Indians in South America differed from the fate of Indians in the North: "a larger native population has survived in South America," Hegel wrote, "despite the fact that the natives

there have been subjected to far greater violence, and employed in grueling labors to which their strength was scarcely equal." He thought the difference stemmed from a single fact: "South America was conquered, while North America was colonized." Whereas "the Spanish took possession of South America in order to dominate it and to enrich themselves both through political office and by extracting tributes from the natives," the British settlers looked to populate North America. One looked for riches, the other for land.[15]

Therein lies a key difference between premodern and modern practices. For millennia, conquerors have bled resources from far-off places and sent the bounty home. Europeans in South America followed this playbook, taking what they could—including the labor of the locals—but steering no new course in world history. It is the land-devouring settlers in North America who had transformative impact on both sides of the colonial divide, in Europe as well as its colonies.

The impact of settlement in North America is summed up in two words: genocide and homelands. The physical elimination of Indians of the Western Hemisphere was the first genocide in modern history and is probably the most brutal and most complete ever undertaken, resulting in the deaths of about 95 percent of a pre-Columbian population of at least 75 million people, according to David Stannard.[16] In the United States, the natives who survived were excluded from the US political community—an exclusion that was integral to the construction of that community—and placed in homelands. As I discuss in chapter 1, the formation of the US political community comprised two broad developments. One was the coming together of settlers, both voluntary and forced, from Europe and Africa. The other was the legal designation of Indians as aliens without rights, in spite of their residence in US territory. As Chief Justice John Marshall put it in 1831, Indians belonged not to the American nation but to "domestic dependent nations." This was a recipe for the creation of a permanent internal colony in the homelands.

Settlers thought of themselves both as running away from Europe and as recreating Europe anew in the New World. The confederal imagination saw the New World as a coming together of European nations, each with its own state. The Civil War marked the defeat of this imagination and its displacement by another. Championed by Lincoln and summed up in his Gettysburg Address, the alternative view was that America was not Europe; it was not about the coming together of nations of Europe, even in a loose confedera-

tion, each maintaining its political identity as a separate political community with its own membership. Rather, America and Americans would be born again as a new political community, in which rights would be based not on descent but on residence.[17] The post–Civil War constitutional amendments declared that anyone born in any part of the United States would be a citizen of the United States first and foremost, and not of one of its states. Thus, a citizen who moved from one state in the union to another would have the same rights as another citizen born and living for the duration of their entire life in that same state. The move from a confederal to a federal vision was a decisive move *away* from the European nationalist vision. To date, citizenship based on residence continues to show the way forward for Americans of color, mainly African Americans and Latino people, in their bid for equal citizenship. Settlers in the United States—and later in other settler colonies—would craft a federal state structure as an alternative to the nation-state that could provide political order and ensure the political unity of all settlers. But there was a limit to this innovation. That limit was the failure to embrace Indians as part of the new political community, let alone joining existing political communities established by Indians.

Over the years the United States has developed a cascade of measures for maintaining this colony. So successful were these measures that today Americans hardly realize the colony within exists. Reservations were critical to these developments: the Civil War that led to the formal emancipation of enslaved people was followed by the internment of Indians in reservations, the first known concentration camps in the modern era. Indians were eventually granted US citizenship after the First World War, but they were treated as naturalized immigrants. The rationale was both simple and profound: Indians belonged to a different political community, variously called a tribe or nation. To become a citizen by virtue of native birth, as guaranteed by the Constitution's Fourteenth Amendment, one must already have been accepted in the political community. Thus one could reside within the borders of the nation-state while being excluded from it politically, rendered a permanent minority without rights.

Even the 1964 Civil Rights Act excluded Indians from the group whose rights were deemed inalienable. This is why Congress passed a special civil rights act, applicable only to Indians, just four years later. Even then, the Indian Civil Rights Act of 1968 was only advisory. The rights it acknowledged were not constitutionally enforceable, thus not inalienable.

The answer to the question "Who is an American?" has changed over the decades as excluded groups have mobilized and won the right to be included as citizens equal before the law, at least in principle if not always in practice. What has not changed, so far, is the exclusion of reservation-based American Indians from membership in the American political community. Indians living on reservations remain aliens in the United States, bound by special laws and unprotected by the Constitution.

The American experience had profound impact when it came to designing systems of minority management in the evolving global nation-state system. European states, most obviously Germany, followed the US model. When it came to the Jewish question, Hitler drew lessons from America's westward expansion and settlement of the Indian question. After defeating the Nazis militarily, the Allies, having arrogated to themselves the task of redrawing Eastern Europe's boundaries, created homogeneous nation-states. At Nuremberg the Allies denounced Nazi ethnic-cleansing policies, but they ensured that Eastern European territories would be cleansed of their own minorities.

Nuremberg and denazification are the focus of chapter 2. I do not focus on the Third Reich in order primarily to elucidate the working of political modernity, although Nazi Germany is very much an instance of that era and ideology. Rather, I show how, in the aftermath of the war, the Allies perpetuated nation-state formation by criminalizing Nazism rather than addressing it as an instance of nationalist politics. Criminalization occurred in the court setting at Nuremberg and through the larger program of denazification. The United States, in particular, was obsessed with rooting out individual Nazis and penalizing them. Millions of Nazis were identified in the American zone of occupation alone, and hundreds of thousands were punished with imprisonment, hard labor, job loss, and other sentences.

The goal of US-led denazification was to establish the collective guilt of the German people. This was a mistake, for two reasons. First, the notion of guilt rendered the violence of the war and the Holocaust a matter of crime and therefore an offense against the state. This foreclosed a reckoning with Nazism's political roots and undercut the possibility of reform, for offenses against the state necessitate no reform of the state, only the restoration of its authority through corrective action against offenders. Second, while many Germans were in fact Nazis, and while many more benefited from Nazi policies, Germans were not in fact collectively to blame. Germany was also home

to an antifascist opposition, which paid dearly for its position. The Americans, however, refused to work with antifascists after the war. Doing so would have undermined the collective-guilt thesis and put the United States in league with the left in the middle of the postwar red scare. As a result, denazification alienated all parties in Germany—ex-Nazis, many of whom were nominal party members, who had joined not out of conviction but because their employers required them to; bystanders, who, like most people, are disengaged from politics and could feel some justification for rejecting the idea of collective guilt; and homegrown idealists, who could have been the vanguard of a new politics. It is no wonder that, during the years of occupation, most Germans felt little remorse about what had happened to the Jews of Europe. Ordinary Germans—already defeated, already crippled by economic crisis and aerial bombing during the war—were battered and bullied by the occupiers, leaving them to wonder at their own victimization. No one in power considered that, after the horror of the war and the Holocaust, something might change fundamentally. For a time, perpetrator became victim, although before long punished Germans were rehabilitated. The status quo ante of the nation-state was restored.

Indeed, after the war, the Allies joined their former enemies in promoting a new homogenizing, nation-building effort that proceeded from the very presumption underlying Nazi ideology. The basis of Nazi thought, unrepudiated at Nuremberg, was that Jews constituted a nation foreign in Europe. The same presumption is foundational to Zionism. Postwar Germans, no less than Americans and Britons, could readily embrace the idea that Israel was the home of the Jews, separate from Germany and Europe at large. The establishment of the state of Israel was the solution to the Jewish question in Europe.

This brings us to another case study in the constitution of the nation-state in the context of colonial occupation. With the European experience stamped indelibly on their psyche, postwar Jewish settlers in Palestine were determined never to be a minority there or anywhere else. To become a majority, they carried out an ethnic-cleansing campaign. Known in Arabic as the *Naqba* (Catastrophe), this was the exile in 1948 of about half the Arab population from the territory that would become Israel. The Palestinians who stayed behind, or returned from exile, formed a permanent minority in Israel.

In so many ways, Israeli Jews appear to have drawn inspiration from the US model of defining and ruling the Indians, as I detail in chapter 5. Much like

the United States, Israel considers membership in the national majority—not birth or residence in the common territory—the key to full citizenship. Thus the law guarantees every Jewish person a right of return to the state of Israel, even if that person has never stepped on its soil, while non-Jewish Palestinians have to navigate countless obstacles en route to citizenship, a process that is designed to ensure they never try. Non-Jewish Palestinians are like American Indians: of the land, but not part of the political community—a domestic dependent nation. Like the American Indian, the Palestinian has rights, but they are not enforceable according to the state's basic laws. Palestinians' rights—including rights to vote and be elected to office—do not extend to representation in the corridors of power, for the disempowerment of Palestinians precedes the democratic process. No matter who is in the Knesset, the state's laws and governing structures ensure that Palestinians are unable to secure the benefits and protections of the state.

In Israel as in the United States, this project of creating aliens at home has been an ongoing one, in which relations and definitions crystallize over time. A basic law declaring "Israel as the Nation-State of the Jewish People," enacted in 2018, formally and finally marks the Palestinians as beyond the bounds of the nation-state and therefore an internally colonized population. Notably, this declaration replaced the earlier notion that Israel is a Jewish and democratic state. This was always false; Israel has never been a democracy, for the majority there is defined prepolitically. Now we know that the balance of the Knesset agrees. In a democracy, majorities are formed through the political process. In a nation-state, democracy can be real only for the national majority. The permanent minority may have voting rights, but it is ever unable to exercise sovereignty. Nation-state democracy only ratifies the permanent majority, which prevents the political process from addressing the sources of its privilege.

America's experience with the Indians made genocide and ethnic cleansing thinkable in Germany and ethnic cleansing thinkable in Israel. But America's influence was felt elsewhere, too. Europeans responded to the mid-nineteenth-century crises of empire by adopting American tools for creating and managing minorities and applying these tools to colonized populations. These tools included the ethnically demarcated and confined territory known as the tribal homeland; the installation of native authority, said to be customary, within the tribal homeland; the enforcement on the native popula-

tion of a customary law that was in fact sculpted by the state; and close monitoring of natives' movement, by means of a pass system.

All of these methodologies were put to use in South Africa, which is the subject of chapter 3. For decades European colonizers struggled to repress rebellions there, but ultimately they alighted on a cocktail of tribalizing measures much like those of the United States, fusing homelands, native authority, customary law, and surveillance. The first homelands in South Africa were even called reserves. And, as in the United States, neither customary law nor authority was an innocent reproduction of custom. Custom had first to be purified of elements deemed repugnant to the settler conscience. Only then was custom included in the regulatory framework of the state.

In both South Africa and the United States, an essential feature of customary law was the drawing of distinctions among natives to determine who was entitled to customary rights and who was not. Those said to be natives belonging to the tribal homeland were endowed with customary rights, such as rights to land and the protection of native authority. In South Africa and other African colonies, natives whose ancestry could be traced to other homelands were denied these rights. An African who migrated away from her supposed tribal homeland and settled in another was out of luck. If her home was enveloped by the boundaries of a newly created tribal homeland, she was suddenly on the wrong side of customary law. In the United States, too, settlers distinguished natives by tribe, and also by race, which was measured by means of "blood quantum." The true native was defined by blood count; only those biologically deemed Indians could have customary rights, including to land. Race was also an important predicate of native-sorting in Africa. In South Africa, natives were first distinguished from mixed-blood persons (Coloureds) by various race-based tests. If the test—which might involve, say, running a comb through the person's hair to determine its texture—resulted in African as opposed to Coloured identity, then the person would be assigned to a tribe. Similarly, in Sudan, the racial distinction of Arabs from Africans preceded the sorting of the Africans into separate tribes.

Sudan, discussed in chapter 4, was not a settler-colonial state, yet, rather remarkably, British officials deployed the settler-native distinction in the absence of settlers. The British demarcated two races, Arabs said to be Northern and Africans said to be Southern, and described the Arabs as settlers and the Africans as natives. The distinction was based on the concocted history and

ethnography implicit in colonial modernity, which presumed that Arabs were civilized, Africans were uncivilized, and that any civilization in Africa came from abroad. Certainly the peoples deemed Arab and African had their own wide-ranging concocted histories, too, but again the British innovation lay not in inventing histories but rather in politicizing them.

By selecting Arabs for privileged positions under conditions of indirect rule, and by ensuring that Africans were disadvantaged, the British fostered resentment among Africans. This hatred exploded in the aftermath of independence in the mid-twentieth century, leading to a decades-long civil war between the Arab-dominated central government in the North and African militias concentrated in the South. Like nationalists everywhere, Arab nationalists, good pupils who had come to believe themselves inherently superior, attempted to maintain their place in the sun of colonial modernity long after the colonizer departed.

These were the wages of race in Sudan. The wages of tribe were clear in day-to-day administrative practices, especially in rural areas, whether in the South or the North. Once southern soldiers crossed the racial line to join their northern comrades in anti-British demonstrations in the 1920s, the British took to sealing off the southern border. On both sides of the border but primarily in the South, African tribes were confined to homelands under customary law and native authority. Peoples with long histories of migration, coexistence, and cultural exchange were thereby atomized into separate nations in separate territories under separate rule. Here, again, the true native was distinguished from the interloper and was privileged within the domain of the homeland.

This method of governance did not end with Sudanese independence in the 1950s. It did not end with South Sudan's secession from Sudan in 2011. Rather, tribalism as an administrative practice and as the currency of political competition has endured and today been taken to its absurd extreme. Each of the major tribes in South Sudan has its own separate ministries in the government. Each has its separate militias. The army of the state is itself fragmented by tribal rivalries; various wings of the armed forces fought each other in the South Sudanese civil war that began in 2013, a conflict costing hundreds of thousands of civilian lives. As of this writing, a peace is in place, but tenuously. Wealth and power in South Sudan come to whomever can mobilize enough troops to terrorize a population. A new militia could arise

and, if it intimidates enough people, earn its own slice of tribal homeland and its own perch in the government. If the United States, with hardly any surviving natives, can continue to be organized as a settler state, South Sudan can continue to be organized as a collection of native tribes, even with no settler presence.

In the midst of the South Sudanese civil war, the African Union set up a commission of inquiry to investigate its root causes and formulate a response. The commission's majority report followed the Nuremberg precedent, calling for formal criminal investigations of alleged human rights abuses and punishment for those found guilty at trial. As a member of the commission, I wrote the minority report, drawing inspiration from the talks that led to the end of juridical apartheid in South Africa.

The South African Moment

If the United States is the founding settler-colonial regime, then South Africa is at the frontier of decolonization. Over the years, anticolonial resistance has come in two forms, one mimicking colonial logic, the other undermining it. It is the latter that informs my vision of the nonnational state we might aspire to after postcolonialism.

The first phase of the anti-apartheid movement, which lasted into the 1970s, mobilized along lines defined and politicized by the apartheid regime. Each of its designated races—African, Indian, Coloured, and white—formed distinct factions opposed to apartheid power. The African National Congress, the South African Indian Congress, the Coloured People's Congress, and the Congress of Democrats (for whites) all opposed apartheid. But they reproduced the apartheid imagination in their internal architecture.

It was the student movement of the 1970s that broke through apartheid's cognitive order. I call this the South African moment. This was the epistemological revolution that would spur decolonization. It was characterized by a two-fold development: radical white students joined nonwhite migrant workers in a mobilization that gave birth to South Africa's nonracial unions; and African, Indian, and Coloured students, inspired by the Black Consciousness Movement, were reborn as black. In the 1980s these activists organized under the aegis of nonracial groups like the United Democratic Front and Mass Democratic Movement, which mobilized spectacular confrontations with the enforcers of apartheid. These efforts were the precursor to the

referendum in which the same white community that had repeatedly and "democratically" endorsed apartheid voted for talks with anti-apartheid voices.

White civil society delegations began meetings with Nelson Mandela's African National Congress long before the ruling National Party (NP) did. The NP was the party of apartheid, its inventor and protector. The NP repeatedly returned to power on an apartheid platform. But it, too, eventually changed. Behind this remarkable turnabout was the realization that the apartheid project was rapidly losing the support of the white intelligentsia, and that, given time, the party would lose its political majority in the white community. The state was not defeated militarily or by virtue of intense social disorder. What changed was the political landscape. White South Africans were learning to adopt a new kind of political subjectivity that defied that of the nation. The change was especially pronounced among student youth. Soon they were joined by leading academics at Stellenbosch University, the prestigious home of the Afrikaner intelligentsia. These alliances made clear that the nation could no longer be defined by whiteness, compelling the NP to change its tune and take part in the transition. The state might have used its power to violently break the stalemate with anti-apartheid forces, but the nation had changed underneath it, rendering apartheid no longer a viable nation-state project. As in Algeria and Kenya, where the supremacy of colonial militaries did not yield political victory, in South Africa political defeat required no military result. When the time for political change came, and right-wing Afrikaner groups attempted an organized revolt, they found themselves isolated. Settler defection made an enormous difference in bringing down apartheid.

The outcome has been mixed. On the positive side, one kind of permanent minority has unraveled: that based on race. The solidarity fostered by black consciousness and the radicalization of whites in the labor movement made this possible. However, the ethnic tribe, the other category naturalized by apartheid, remains a source of political identity driving what South Africans call "xenophobic" violence. The target of xenophobic violence in South Africa is not the racial stranger but the tribal stranger. Even as South Africa has consciously moved away from a race-based nation-state project, it has maintained the logic that equates African or native political identity with tribe. Claims associated with tribe have been sanctified as traditional prac-

tices. While race-based privilege in the central state is being dismantled, however unevenly, masses of South Africans have yet to conceptualize and challenge tribe-based privilege, which mostly plays out in local governance in rural areas.

Another way to think about this differential outcome with respect to race and tribe is that South Africans have recognized that racial political identities are impermanent but have yet to realize that tribal political identities are too. The end of apartheid teaches us to appreciate more fully the challenge of the political and to better craft our understanding of decolonization. Political community and political identity are historical. Neither permanent nor natural, the boundaries of community and identity are imagined in specific historical circumstances and can be reimagined as circumstances change. The end of juridical apartheid in South Africa provides us with a new way to think of decolonization in other contexts, including the United States and Israel / Palestine, which could also experience settler defection from the nation. The starting point of decolonization is to rethink political identity and the political community based on the nation.

Decolonizing the Political

The period since World War II has seen a flourishing of anticolonial intellectual discourse. Yet this discourse has been unable to make sense of extreme postcolonial violence. Anticolonial intellectuals have taken their lead from Marx's reflections on the 1848 revolutions in Europe. The political revolution must clear the way for the social revolution, Marx argued in his seminal *On the Jewish Question*. Political revolution (or political independence) confers formal political equality and citizenship but at the same time sharpens the experience and thus the consciousness of social inequality, broadening the horizons of struggle from the political to the social. The final stage in this process, according to the teleology of anticolonial theory, is epistemological revolution, whereby the very consciousness of being, the vocabulary in which we understand the world around us, is transformed.

And yet, in a growing number of cases, the attainment of political independence and formal citizenship has not led to mobilizations for social equality. Rather, recurring civil wars have followed in the course of nation-building.

Europe's past, ethnic cleansing and all, has become our present. Participants in these civil wars are not primarily demanding redistribution and social equality; they are fighting for or against inclusion in the political community. That the new political community is constituted in the course of anticolonial resistance is clearly an unreasonable presumption. So the question must be asked anew at independence: Who belongs to the political community? Who is the citizen and who is the sojourner? This question short circuits the social question; it is prior to it.

Marx was silent about the political community within whose boundaries these struggles were presumed to unfold. He assumed that political and social equality will be realized within the bounds of a preexisting political community. Following his lead, scholars of colonialism, particularly in Africa, have focused attention on the artificiality of boundaries drawn up at the conference table in Berlin in the late nineteenth century while ignoring the boundaries created inside the colony. This work draws attention to these boundaries, outcomes of administrative and political classifications that comprised the architecture of colonial governance. When civil wars end either because one side wins or because both are exhausted, responses to these questions frame new constitutions, each a founding document of a new political community. Politically, decolonization is best thought of as a two-sided process: externally, the assertion of political independence from the colonial power and a claim to membership in the community of states in the world at large; internally, the reimagination and redefinition of the political community.

Like Marxist theory, decolonial theory too gets decolonization backward. Not only does the political precede the social, I argue that the political is twinned with the epistemological. The first question at independence is not "how do we distribute wealth?" but "who belongs?" Answering the question of belonging in a productive way necessitates decolonizing the political, which is a process of reimagining political identities as historical rather than natural. The epistemological revolution is closely tied to internal political revolution—not throwing off outside rule but excising the ideology of political modernity internalized under colonialism.

This calls for a further rethinking of the mainstream literature on citizenship. That literature is strongly influenced by T. H. Marshall, whose work assumed the nation as the political community joined to the state. This literature tends to downplay the political and tells the story of rights as one of a

linear development. Marshall's 1950 classic, *Citizenship and Social Class,* provides a historical account of the birth of three generations of rights and justice: civil, political, and social. For Marshall, these came to constitute the meaning of citizenship over three centuries, signaling the dawn of civil rights in the eighteenth century, political rights in the nineteenth century, and social rights in the twentieth century.[18] Whereas Marshall focused on the question of which rights citizens have, I shift focus to a different question, one explicitly political: Rights for whom?

My project, then, is to tell a new story that historicizes political identities. I take us back to the colonization process, so as to historicize the categories of race and tribe on which national identities are based. I did not realize, when I began the research for this book, that I would end up focusing on this history. I was primarily concerned with justice in the aftermath of extreme violence. I wrote the first draft from this perspective, trying to differentiate among three dimensions of justice: criminal, social, and political. My object was to think of political justice in terms broader than those of criminal justice. I wrote articles wrestling with these issues.[19] The more I turned out variations of my argument, and shared them with colleagues, the more they probed my assumptions. The most insistent of these colleagues was Raef Zreik at Tel Aviv University, who politely reminded me that justice presumes the existence of a political community. In so doing, he challenged me to theorize more deeply the alternative to which I was pointing.

I came to realize that we need to rethink not only justice but also the political order in which it is pursued. To obtain justice for victims necessitates an end to the conditions that marked them for unjust treatment, and that means decolonization at last. Getting to justice is not just a normative project of imagining a better world—that is the stuff of mainstream political theory. Yes, we should imagine that better world, but realizing it means also understanding the making of the world we live in, a world of permanent minorities, reproduced through the politicization of identity under the structure of the nation-state. Unmaking the permanence of political identities begins with the recognition that they are not natural and are not forever. They were invented by power and are reinforced by those who mobilize them in a bid for power. If enough people think through the violent consequences of these identitarian power struggles, then they will have the insight to rethink and remake the world.

I don't pretend to know exactly what this next world will look like. Decolonizing the political is nothing less than reimagining the order of the nation-state. I cannot prescribe the outcome. I do have some recommendations for getting there, though. First, to reform the national basis of the state by granting only one kind of citizenship and doing so on the basis of residence rather than identity. Second, to denationalize states through the institution of federal structures in which local autonomy allows diversity to flourish. And third, to loosen the grip of the nationalist imagination by teaching the history of the nation-state, juxtaposing the political model against the criminal, and bolstering democracy in place of neoliberal human rights remedies. The case studies throughout the book justify these recommendations and speak to both their urgency and their promise.

I am an incorrigible optimist, given to privileging the future over the past. Perhaps that is why I believe that blood enemies can become political adversaries, adjudicating their differences through a political process rather than on battlefields or in courtrooms. Perhaps that is why I believe that perpetrators and victims can live together as survivors. I have never been persuaded that we live the Foucauldian nightmare in which power produces the subject, productively, as we now repeat endlessly, and the subject mimics power—not so productively, I might add. I am not convinced that we are like so many moths fatally attracted to the candle, revolving around it until we perish in its flame, a tragic fate immortalized in Urdu poetry. In the Foucauldian vision, power and knowledge—for what else is there?—together produce a closure. Every beginning is fated to end as a tragedy. Any attempt to write or make something else, something new, produces nothing but a romantic illusion.

But I am not a Romantic. I embrace the Foucauldian insight but not the closure it points to. The logic of power does permeate agency, but only in its formative stage. The logic of power does inform the parameters within which the subjugated mobilize and organize, but again, only in the first instance. The power of the South African story is that it gives us more than just the proverbial first instance. It gives us the glimpse of another possibility, a beyond, a suggestion that the relation between power and agency is neither determinative nor irrelevant, because identities are politically created. Neither history nor identity has to be permanent, and decolonization does not have to be a romantic illusion.

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THE INDIAN QUESTION IN THE UNITED STATES

In his presidential inaugural address in January 2009, Barack Obama reflected with both pride and humility on US history. "We sometimes make mistakes," he acknowledged. "We have not been perfect. But if you look at the track record, as you say, America was not born as a colonial power."

Compare this with the verdict of Martin Luther King, Jr, from his 1964 book *Why We Can't Wait:*

> Our nation was born in genocide. . . . We are perhaps the only nation which tried as a matter of national policy to wipe out its indigenous population. Moreover, we elevated that tragic experience into a noble crusade. Indeed, even today, we have not permitted ourselves to reject or feel remorse for this shameful episode.[1]

The innocence of Obama's statement is the innocence of America, the lie the population tells itself over and over again. While nearly everyone in the United States would agree that Europeans settled on North American land that was at some point occupied by indigenous people, virtually no one recognizes this process of settlement as an act of colonial subjugation that continues today. Many would reject that premise, arguing instead that the territory was (mostly) unoccupied when Europeans arrived. Others suggest that if the Europeans who became Americans were guilty of anything, it was military superiority—that the continent is just another spoil of war. War might

be hell, but it is neither genocide nor inherently a colonial effort. Some will feel a pang of sorrow over what happened, but that was a long time ago, and the sins of the fathers have been rectified by their sons. On this view, America, despite its flaws and continuing socioeconomic disparities, has made good on the promise of liberty and justice for all by extending equal political inclusion—citizenship—to the descendants of the conquered. In all of these stories, the United States is not a colony, for there is no substantive legal or political distinction between settler and native.

King's radical revisionist claim is the truthful one. The land of the United States was indeed conquered—not in a fair fight but through ethnic cleansing. Engaging in a mixture of genocide, forced migration, and legal and economic coercion, white settlers and their governments systematically drained North American territories of their Indian inhabitants, so that the land could instead be owned and used by Europeans and their heirs. The results were, in the aggregate, enormously gratifying for the settlers, who became the richest nation on earth. But on the downside of the ledger was a colonial problem that has lingered across the centuries: What to do with the surviving natives?

The solution to this Indian question turned out to be a permanent internal colony both separated from the settler state—physically, juridically, politically—and at its mercy. This is the system known euphemistically as tribal sovereignty; its principal manifestations are the reservations and the second-class citizenship of their inhabitants. Americans have heard of reservations, but few realize that their Indian residents have no constitutional rights. Their citizenship and civil rights are specified only in federal statutes revocable by congressional decree. Indians are omitted from the Constitution's protections by virtue of the document's explicit language, and federal Indian statutes do not replicate the full range of these protections, even in revocable form.

America did not have to choose a two-state solution, with a majority state for settlers and a minority protectorate for natives. For decades, certain whites and Indians envisioned a single state. These visions took various forms, but all involved the assimilation of the natives as equal citizens, at least at some distant time. Instead, across the nineteenth and twentieth centuries, the three branches of the federal government together rendered American Indians wards of the Congress, hemmed into lands "granted" them from the larger realms stolen. The two-state solution has only solidified over the years; Amer-

ican Indians are more completely colonized today than they were in 1789 or 1924, when they were allowed their second-class citizenship.

The United States is not the world's only colonial state, but it is unique in its failure to recognize itself in the mirror. Perhaps what is needed, then, is a new mirror: a new story of what America is, written through careful attention both to what happened and to the ways in which these events have been narrated and interpreted. As to the historical details of these events, I do not claim to break ground. I have had guides, such as the scholars Francis Paul Prucha and Roxanne Dunbar-Ortiz. I turn to them and others to show how America became the first modern colonial nation as well as the inventor of the two-state solution to the problem of the native. This story, in whole or part, will be familiar to some readers, but it is worth retelling both for the sake of those readers less familiar and because, later, it will illuminate the global transmission of the innovative American colonial technique.

The stories told by Prucha, Dunbar-Ortiz, Robert A. Williams, Richard Slotkin, and others are not the stuff of the American consensus that Obama expressed. They reflect our first efforts to topple the idols erected during the preceding 350 years of American colonialism. Consensus political theorists, on the right and left, have ignored the Indian, developing accounts of US political membership as not just unproblematic but as a model for the world. These theorists understand that there are injustices here and there—that society may even be fundamentally unequal in terms of economic power. But the big challenge is to explain American pluralism—that is, America's exceptional combination of individual liberty, democracy, economic inequality, and social cohesion. How, these theorists wonder, have all of America's many differences escaped politicization, leaving a single nation to thrive in spite of its heterogeneity?

Political historians have at times been more sensitive to the presence of Indians, but rarely to their experience as colonized people or to the mechanics of the colonizing state. Instead, throughout the nineteenth century, historians took an exclusively Eurocentric perspective. These writers detailed the settler-native encounter from the viewpoint of the settler fascinated by a primitive and alien, but also promising, natural environment populated by unusual flora and fauna, such as the dangerous wild Indian. Other historians saw the Indian as less akin to an animal than a punishing winter, a famine, or a vein of gold. The Indian was a feature of the continent itself, a hardship to be

overcome and a resource to be exploited in the course of agrarian, industrial, and civic progress. In these stories the heroes of the frontier are not so much the roughneck pioneers of civilization as the builders: the yeoman farmer, the railroad baron, the Christian missionary, the statesman.

In the twentieth century, Eurocentric naturalism received updates from the likes of Theodore Roosevelt. In his many books, the US president synthesized the champions of farm and frontier, industry and state. Above all he celebrated the hunter-presidents—Thomas Jefferson, Andrew Jackson, and Abraham Lincoln—who were especially effective in thinning the Indian herd, penning the survivors, and domesticating them. But Roosevelt did not just synthesize. His writings also reflected intellectual novelties. For Roosevelt, in the wake of Charles Darwin and Herbert Spencer, all people were animals. Now nature incorporated settler and native alike, engaged in the unceasing race war required by the law of the survival of the fittest. Roosevelt was one of many Americans who chronicled, justified, and explained the eugenic roots of Indian genocide, making a signal contribution to Nazism and other doctrines of scientific racism.

Although eugenics has been discredited, the other frontier visions have persisted, woven together with exceptionalist narratives about American pluralism. These remain the pillars of the consensus story of what it means to be an American: always ambitious, always reaching outward, always one nation of individuals united by a shared democratic creed. But this story is not uncontested. In recent decades revisionist intellectuals have questioned it by highlighting oppression in the United States, especially on the bases of racism and gender. Yet their accounts fail to address the Indian question. Indeed, they omit Indians entirely. This reflects a remarkable—even shocking—transformation. The most esteemed American writers of the nineteenth and early twentieth centuries were obsessed by the settler-colonial encounter, elaborating it in a mounting canon of Eurocentric and naturalizing stories. Then, in the mid-twentieth century, Americans turned first to class consciousnesses and later race and sex consciousness, forgetting the Indian in the process. Today Indians are absent from the work of cutting-edge intellectuals. As disfavored Latino immigrants, enslaved Africans, and the descendants of enslaved Africans occupy center stage in the drama of deracialization, the Indian is more marginalized than ever in the American story and resulting sense of national identity. Why this radical omission?

A big part of the reason is that many American thinkers and activists concerned with human rights and social justice have conflated the African American and American Indian experiences. They have subsumed colonization under the umbrella of racism. This is an intellectual error with consequences. It suggests that Indians and blacks are both racially oppressed groups and therefore should follow the same emancipation strategies. But racial oppression and colonization are not the same thing, and neither are the solutions they call for.

I do not mean that racism has no role in North American colonialism. I have already alluded to social Darwinism, and later in this chapter I detail the US and Canadian imposition of blood-quantum laws to determine membership in tribes that traditionally understood affiliation in terms of lineage and shared culture rather than biology. What I do mean is that, in American history, blacks and Indians are different, have been treated differently, and are not reducible to each other. Blacks have been a source of labor and Indians a source of land, resulting in different governance regimes. Blacks have been governed by a regime of white supremacy, the struggle against which has been incorporated into the American sense of self—a fact demonstrated by the comfort with which racists cite King and other icons of civil rights. Indians, by contrast, have been governed by colonialism, which, if recognized, would destroy the American sense of self.

The absence of Indians from the history of emancipation struggle confirms the continuing colonized status of the Indian today. The story of Indian emancipation cannot be told because it never began. Throughout the second half of the nineteenth century and then all of the twentieth, America fitfully, violently, and partially deracialized. But throughout that period, US colonialism only solidified and became an invisible fact of life. By telling the story of America's colonial past, we can hope to make visible its colonial present and its colonial self.

The Legal Origins of Indian Colonization

In the early period of American colonization, "there was no reference to a place called Indian country." That is because every place was Indian country. All attempts to access land in North America began with "the recognition

that it belonged to Indians," Charles Wilkinson writes.[2] Settlers in Maine rented land from Indians. In the Dutch and English colonies, settlers purchased land from Indians, either wholesale or piecemeal.

The term "Indian country" was first used in King George III's Royal Proclamation of 1763.[3] Under the system delineated by the Crown, Indian country was territory that Indians had the right to use but over which they did not have domain. The Crown retained the title to all colonized lands occupied by Indian tribes and granted the tribes use rights, which the king could revoke at will. Because the land belonged to the Crown, Indians who wished to sell their use rights could sell only to the Crown. After the American Revolution, the United States adopted the same scheme, and to this day Indians on reservations retain only "Indian title" or "right of occupancy." Their holdings can be dissolved by Congressional action.[4]

These are bookends to a long process in which European settlers in North America deprived indigenous people of their land and rights by legally designating them as permanently excluded from the political community. The Constitution continued the work of the Crown by explicitly excluding Indians from the rights-holding public, even though they lived within the boundaries of the United States. In key Supreme Court opinions of the 1820s and 1830s, Chief Justice John Marshall untangled this paradox by providing the legal-philosophical framework whereby the permanent colonization of the Indians could make constitutional sense. Indian tribes, he determined, were domestic dependent nations, a status that would eventually be realized in the reservation.

Indians as Domestic Dependent Nations

The original language of the Constitution makes clear that Indians are aliens in the United States. The document makes just one substantive reference to Indians. In Article 1, section 8, Congress is granted power "to regulate commerce with foreign nations and among the several states, and with Indian Tribes." Leading theorists of the early republic also understood the Indians as a foreign challenger to settlement. In *Federalist* 24 Alexander Hamilton described "the savage tribes on our western frontier" as natural enemies of the United States and natural allies of the British and Spanish, and he cited Indian tribes as justification for maintaining a national defense force. In *Federalist* 25 Hamilton reiterated his view that Indians were foreign enemies, raising

the specter that Britain and Spain would join forces with Indian tribes to encircle the union from Maine to Georgia.[5] Later arguments for the Second Amendment right to form armed militias for collective defense of the "free state" are easily understood from the perspective of citizens who feared attacks by Indians perceived to be enemies of that state.

The view of Indian tribes as enemies and aliens had to be squared with the undeniable fact that Indians lived in territories claimed by the nascent United States. Indeed, US law acknowledged Indians' rights to use the soil, and to move around as they pleased. Unlike chattel, Indians were free persons in law—free foreign persons, living indefinitely within the boundaries of the state.

The contradictions inherent in this system bloomed and boiled in the first decades after the US founding. Ultimately it fell to the Supreme Court to bring clarity to the Indian question. In the critical cases *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832), Chief Justice Marshall offered candid reflection on the relationship between conqueror and conquered, the role of political exigency in deciding which rights the conquered would have, and the differences between Indians and chattel. With acute honesty and rare insight, Marshall said what the authors of the Constitution would not: that conquered peoples such as the Indians should over time be integrated as equal members of the new society, adopted into the nation. But he also explained—really, rationalized—why this could not be. He pointed out that, in practice, Indians were neither citizens nor fit to exercise citizenship. He reasoned that, under the constitutional scheme, Indian tribes in the borders of the United States were best thought of as domestic dependent nations, which meant that they would be subjects of the federal government, not the states. But as the Constitution explicitly denied Indians rights, Indians would have to be wards of the state rather than citizens, subject to congressional decrees not reviewable by courts.

The first opinion, in *Johnson v. M'Intosh,* got to the heart of the matter: the Indians were a conquered people. Marshall explained that every bit of soil in the New World was the exclusive property of one or another European power:

> On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they

> could respectively acquire. . . . But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle, which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.[6]

Next he argued that, though Indians continued to possess the title of occupancy, this was inferior to European powers' right of domain: "an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest." This right was not a product of the doctrine of discovery, justification, provided by the pope in 1493, on which so much New World conquest relied. Marshall rejected the doctrine as "opposed to natural right, and to the usages of civilized nations." But he also argued that, though the doctrine was faulty, in practice it had proven "indispensable to that system under which the country has been settled." It was this history of settlement that had to be respected, even if it had been predicated on a false doctrine. In as unequivocal a confirmation as one is likely to come across in legal texts, Marshall concluded that politics trumps law:

> Conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted. The British government, which was then our government, and whose rights have passed to the United States, asserted title to all the lands occupied by Indians, within the chartered limits of the British colonies. . . . The title to a vast portion of the lands we now hold, originates in [British rights]. It is not for the Courts of this country to question the validity of this title, or to sustain one which is incompatible with it.[7]

Under such an arrangement, can one speak of Indians possessing rights? If they did, Marshall thought, these rights could not be vindicated in the courts of the United States.

In *Cherokee Nation v. Georgia,* Marshall further justified and elaborated on this system. He affirmed that the Cherokee were a "state, . . . a distinct political society, separated from others, capable of managing its own affairs and governing itself." But exactly what kind of political society was this? The Cherokee and others like them could not be "denominated foreign nations," he argued, for they were territorially "a part of the United States," subject to its "jurisdictional limits." Marshall suggested that the Indians therefore "may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."

> They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory, and an act of hostility.[8]

Marshall did not invent the idea of wardship; in a creative effort to make sense of the oddity of the Indian, he imported it from other areas of law. A ward, regardless of his or her age, is a child in law. A ward cannot hold or claim a property right or bring independent action in courts of the United States.[9] Wards may have a right to reside in a particular territory, but they do so on the sufferance of its citizens and their political institutions. Thus, Marshall observed, "If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted." As if clairvoyant, he concluded, "If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future."[10] Even now, Indians on reservations are wards of Congress, without rights that federal courts are required to respect.

Legal wardship must have seemed very sensible to white elites who viewed Indians as pupils in their tutelage. For generations, colonial and then US authorities referred to Indians as their children and in turn insisted that

Indians address them as "father." Andrew Jackson, a contemporary of Marshall's, used the parent-child metaphor during the negotiations leading to the 1817 Cherokee Treaty. In other talks, leading to the Choctaw treaty of 1820, he spoke of himself as the protector of Indian children and claimed to be the defender of "real Indians" against the very chiefs he was bribing to sign the treaty. At the same time as he disparaged the Indians as "savage bloodhounds," he urged Congress to take the role of tribal "guardian." Later, after Marshall's system began to take concrete form in the reservation, the infantilization of Indians became an argument for federal "protection," without which these survivors of genocide would surely go extinct. There must have been many who refused such paternalism. One instance appears in the record of negotiations between William Henry Harrison, then the governor of Indiana Territory, and the Shawnee chief Tecumseh. According to this report, Harrison's interpreter instructed Tecumseh, "Your father requests you to take a chair." "My father!" replied the chief. "The sun is my father and the earth is my mother; I will repose upon her bosom."[11]

In any event, the idea that Indians were children in law stuck. It was an important invention, not least because wardship served to distinguish Indians and enslaved Africans. Specifically, in *Cherokee Nation,* Marshall developed a legal theory in which enslaved people could be under state jurisdiction, while Indian wards were subject to the federal will. *Cherokee Nation* originated from an attempt by Georgia to assert control over the tribe through state law. The law in question extinguished the Cherokee as a distinct, self-governing society within its borders by eliminating official recognition of tribal membership and lands and integrating the Indians as "free persons of color." Like blacks not enslaved, the Cherokee would be subject to the state's white racial dictatorship. The Cherokee would be unable to vote, serve in the state militia, send their children to public schools, or serve as witnesses in court cases involving most whites.[12] Meanwhile, per the "Cherokee codes," the state would be able to take control of the immensely valuable Indian lands within its borders and make them available to Georgia's white citizen farmers, plantation owners, and gold prospectors. In essence, Georgia was trying to replace federal colonial subjugation with state racial subjugation, thereby ensuring preferential access to natural resources.

The Cherokee sued, claiming that they were a foreign nation not subject to Georgia law. The Court did not make a determination regarding the application of Georgia law, instead deciding that it lacked jurisdiction to hear

the case. But its reasoning in reaching that conclusion was crucial. In an opinion written by Marshall, the court ruled that the Cherokee were not a foreign nation and therefore could not bring suit against the United States in federal courts. Rather, the Cherokee were a domestic dependent nation. The justices split three ways. One, a group of dissenters argued that the Cherokee were indeed a foreign nation, though a defeated one. A second group joined the majority but in concurring opinions argued that the Cherokee were a conquered people with no status as a nation at all, either foreign or domestic.[13] Each point of view augured a different political future for the Indian. A defeated foreign nation might one day regain independence. A conquered people who had lost their nationhood could be integrated into the conquering society, as individuals but not as a group. It would never be independent, and its members, subject to state law, might or might not enjoy political and social equality. A domestic dependent nation would be a part of the United States but also separate, either as an internal colony, which is what happened, or with some novel status not contemplated by the Constitution. The third view was formulated by Marshall.

A year later, in *Worcester v. Georgia,* the Court decided the Cherokee nation's suit on the merits, ruling that the Georgia law was unconstitutional because only the federal government, not the states, had authority over Indian nations. More important than the direct outcome of voiding the Georgia law was Marshall's justification, which established the legal and historical underpinnings of the federal government's exclusive rule over Indians. Marshall made clear that tribal sovereignty—the erroneous term for Indian subjugation to Congress rather than the states—was a product of the deep colonial past. But, crucially, it was not discovery or superior civilization that granted the right of dominion. It was war.

Reflecting on the world in 1491, Marshall wrote, "America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws." Under these circumstances, the mere fact of discovery could never be the basis of a claim to dominion:

> It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they

> occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

As for superior civilization (the Lockean claim), Marshall dispensed with that, too. "Has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?" he asked rhetorically.

What underlay the claim of dominion was neither discovery nor civilization. Rather, might made right: "Power, war, conquest, give rights, which, after possession, are conceded by the world; and which can never be controverted by those on whom they descend."[14] The rights in question, therefore, belonged to the federal government because, according to the Constitution, the power to make war and therefore conquer belonged to the federal government—not the states.[15]

Marshall was not establishing in any detail what the federal-Indian relationship would look like, only that Indian nations were nonstates at the mercy of Congress and without constitutional protection. He may, however, have had an inkling of what was to come. As Indian legal scholar Robert A. Williams notes, "Marshall's response to an 1828 address made by his close friend and colleague on the Court, Justice Joseph Story, suggests that Marshall himself was keenly aware of the Indian's essential fate as perpetual colonial subject under U.S. control." Responding to Story with his own views on "the Indian Question," Marshall justified the segregation of Indians in colonial times on the grounds that they "were a fierce and dangerous enemy whose love of war made them sometimes the aggressors, whose numbers and habits made them formidable, and whose cruel system of warfare seemed to justify every endeavor to remove them to a distance from civilized settlements." But now that the United States was stronger and safer "principles of humanity and justice . . . ought always to govern our conduct towards the aborigines when this course can be pursued without exposing ourselves to the most afflicting calamities." The Indians were now "a helpless people depending on our magnanimity and justice" in the face of "disreputable conduct" as "in the affairs of the Cherokees in Georgia."[16]

And already, in *M'Intosh,* Marshall had described what this magnanimity and justice could look like:

> humanity . . . acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually, they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections, and united by force to strangers.

But he also hesitated, concluding that Indians were an exception who could not be so integrated into the society of their conquerors, for

> the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

Marshall therefore concluded "that law which regulates, and ought to regulate in general, the relations between the conqueror and conquered, was incapable of application to a people under such circumstances."[17]

Marshall was neither the first nor the last to resort to the culturalist argument, rationalizing native subjugation—if not claims to dominion—as a civilizing mission. This despite the fact that the New World was hardly new, hardly so primitive as he suggested. Contemporary research attests that this Old World had gone through its own agricultural revolution long before the arrival of European settlers. Plants were domesticated in the Americas around 8500 BCE. Indians did not focus on animal domestication but had developed

sophisticated game management. Their methods supported large numbers of people: the total human population of the Western Hemisphere in the fifteenth century is estimated around 100 million, at a time when the population of Europe up to the Urals was about 50 million. Political organization varied from one group to another, but one cannot fail to note the existence of a remarkable federal structure, the Haudenosaunee Confederacy. Often referred to as the Iroquois Confederacy, it comprised the Seneca, Cayuga, Onondaga, Oneida, and Mohawk nations and, from the early nineteenth century, the Tuscarora. This system "incorporated six widely dispersed and unique nations of thousands of agricultural villages and hunting grounds from the Great Lakes and the St. Lawrence River to the Atlantic, and as far south as the Carolinas and inland to Pennsylvania." The Haudenosaunee constitution, called the Great Law of Peace, is said to have inspired essential elements of the US Constitution: "The first principle is peace. The second principle equity, justice for the people, and the third, the power of the good minds, of the collective powers to be of one mind: unity."[18]

But as a practical and legal matter, it did not matter that Marshall was wrong about the state of the Indians, for their level of civilization was simply not a guide to their treatment. The rights of the conqueror were not predicated on the civilization of the conquered; they were predicated only on the fact of conquest, which meant that the conqueror's rights were without limit. The courts had no authority to say otherwise:

> However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned.[19]

In sum, through his reading of the Constitution and resort to the facts of history, Marshall created the framework of Indian legal standing known as tribal sovereignty whereby Indians are neither foreigners nor state subjects. History made clear that Indians were conquered, a fact that the state of Georgia, for instance, would not have disagreed with. But because the Constitution determined that conquest was a federal power, Indians were not sub-

jects of the states. History—conquest—also demonstrated that Indians were not foreigners, who possessed a constitutional right to sue the federal government. But the Constitution declared these nonforeigners noncitizens. With the states and the Constitution out of the picture, Indians were at the mercy of Congress alone. Congress could choose to grant Indians no rights at all, but if it chose otherwise—if it chose, for example, to respect an Indian right of land use—the courts would have no authority to vindicate these rights. Tribal sovereignty means congressional wardship, without recourse to the courts or constitutional rights.

Over the years the federal courts and the federal law have hewed rigorously to Marshall's framework. For instance, the courts have used the doctrine of tribal sovereignty to check state interests, as when Justice Hugo Black held for the majority in *Williams v. Lee* (1959) that the Navajo possessed a "right to govern themselves," a right that Arizona could not infringe by enforcing state civil law on the reservation.[20] But if courts have been rigid in maintaining the doctrine of tribal sovereignty, that does not mean the doctrine itself is rigid. It was born as an instantiation of the de facto state of affairs, and it has continued to serve this function, flexibly accommodating whatever forms of law were necessary to maintain and deepen Indians' colonized status.

A key mechanism of the tribal sovereignty doctrine has been legal dualism, with tribal law on one side and US law on the other. This system was established in the Intercourse Act of 1834, which allowed Indians to create tribal courts with jurisdiction over Indians (though not whites) in Indian Territory, a large swath of land west of the Mississippi. This regime of legal dualism has been the means of circumscribing Indian autonomy, not enhancing it, as may seem to be the situation.

The case of *Ex Parte Crow Dog* (1883) and its aftermath are critical in this respect. The case concerned the murder in Sioux Territory of one Indian, Spotted Tail, by another, Crow Dog. A tribal council dealt with the matter, determining Crow Dog's guilt and demanding that he pay restitution. But thereafter US authorities tried Crow Dog in federal court, where he was again found guilty and, this time, sentenced to hang. Crow Dog appealed to the Supreme Court, arguing that the federal courts did not have jurisdiction over his case. At the Supreme Court, the government's attorneys argued that the Sioux Treaty of 1868 forced the tribe to hand over Crow Dog for federal prosecution. The treaty, they noted, required the Sioux to provide to the federal

government "bad men among the Indians" who had committed crimes in their territory. This provision, the government argued, was "an implicit surrender to the United States of any exclusive sovereign right of the Sioux tribe to criminal jurisdiction over member-on-member crimes."

Yet did not tribal sovereignty and the tribal-court jurisdiction stipulated by the Intercourse Act entail that the federal courts lacked authority to adjudicate Crow Dog's crime? The Supreme Court thought so, ruling against the government. This has inspired a widespread sense that *Crow Dog* is a landmark of Indian rights to self-government. But, as Williams points out, the case was in fact anything but, because the justices reasoned on the basis of the "Marshall Model of Indian rights."[21] In the words of Justice Stanley Matthews's majority opinion, Indians were

> to be subject to the laws of the United States, not in the sense of citizens, but as they had always been, as wards, subject to a guardian; not as individuals, constituted members of the political community of the United States, with a voice in the selection of representatives and in the framing of the laws, but as a dependent community who were in a state of pupilage, advancing from the condition of a savage tribe to that of a people who, through the discipline of labor, and by education, it was hoped might become a self-supporting and self-governing society.[22]

The judgment in *Crow Dog* gave Congress a roadmap toward more fully undermining Indian sovereignty. The Court's reversal of Crow Dog's conviction demonstrated that there were holes in the existing system of colonial domination, which Congress could plug. The ruling "aroused such a popular outcry that Congress was compelled to enact the Major Crimes Act of 1885, extending federal jurisdiction to major felonies occurring between Indians in Indian country." The Supreme Court, writes Sidney Harring

> colluded in this destruction of tribal institutions by . . . legally justifying Congress's assertion of total power over the tribes. . . . Crow Dog's case is important because it is a bridge between the ambiguous and ineffective sovereignty language of *Worcester* and the complete subjugation of tribal sovereignty in late nineteenth century. The Con-

> gressional passage of the Major Crimes Act in response to *Crow Dog* was a keystone in the development of the new plenary power doctrine that put the tribes completely under the control of Congress and the US political process.[23]

In other words, at a moment when it looked like tribal sovereignty might mean actual sovereignty, the Court went out of its way to remind Congress that Indians were not in fact self-governing but were at best working toward that condition. Congress had passed a law in 1834 that prevented federal prosecution of Crow Dog, but there was no reason this restriction had to continue. Congress had plenary power; it could change the rules to suit its preference.

At no point has the Supreme Court repudiated the plenary power doctrine. It is compatible with the idea of tribal sovereignty invented by Marshall as he tried to think through the colonial question. In the years after him, the core assertion that Indians are a domestic dependent nation has only been articulated more intricately in the law, while the federal government pursued new policies to realize the colonial domination of tribal sovereignty in concrete form. That form is the reservation.

The Reservation: A Two-State Solution to the Indian Question

There have always been two basic answers to the Indian question: assimilation or separation; one state or two. Once conquered, would the Indians join the settler society, and on what terms? Or would settlers as they became a majority be permanently distinct from the ever-shrinking conquered minority?

Early treaties with Indian communities offered coexistence under a common political roof: a one-state solution. The first such treaty was signed in September 1778, between the United States and the Delaware Nation. Article 6 of the treaty invited the Delaware "to form a state" by joining with "other tribes who have been friends to the interest of the United States," and provided that "the Delaware nation [*sic*] shall be the head" of the state. The state would "have a representation in Congress."[24] Similarly, the Hopewell

Treaty of November 1785, signed with the Cherokee, contained a provision acknowledging the Indians' right "to send a deputy of their choice, whenever they think fit, to Congress."[25] There were also one-state efforts after the Civil War, a time when Americans experimented with political equality more generally. For instance, Florida granted the Seminole two representatives in its state legislature.

Two-state ideas developed alongside. They began with proposals to establish separate political entities for Indians, such as a US protectorate west of the Mississippi. In his last annual message to Congress in 1825, President James Monroe argued that such a protectorate would help to reduce tensions among Indians and whites and would extend US influence toward the Pacific.[26] In 1834, after Monroe's idea came to naught, Congress considered a new proposal for a permanent Indian home in Indian Territory with a governor and a council of tribal representatives. Eventually, officials suggested, this separate home might become a state of the union.[27]

While officials debated Indian assimilation, protectorates, and timelines for statehood, an important precursor to the reservation-based two-state solution was established. This was the Indian Removal Act of 1830, which made official policy of an activity that had been underway throughout the colonial and early republican periods: genocidal bloodletting.

Between 1492 and the US founding, the Indian population of the Americas had declined dramatically, reduced from 100 million to 10 million. The losses were most devastating in North America.[28] Few challenge the numbers, but some ask whether this was a natural or a social catastrophe. After all, most died of disease—smallpox, specifically. Yet this hardly relieves the settlers of responsibility. As Dunbar-Ortiz points out, Europe lost at least a third of its population to medieval pandemics, but it recovered; why didn't the Indians? "If disease could have done the job, it is not clear why the European colonizers in America found it necessary to carry out unrelenting wars against Indigenous communities in order to gain every inch of land they took from them—nearly three hundred years of colonial warfare," Dunbar-Ortiz writes. Besides, there is evidence that settlers were aware of the natives' extreme vulnerability to smallpox and sought to employ the disease for purposes of germ warfare: "Could it not be contrived to send the Small Pox among those disaffected tribes of Indians?" the English general Jeffery Amherst wrote in 1763 to his subordinate Colonel Henry Bouquet. "We must,

on this occasion, use every stratagem in our power to reduce them." The colonel promised to do his best. To the extent that settlers intentionally fostered the conditions of the Indians' vulnerability, they are no less culpable than the agents of the Holocaust. As Dunbar-Ortiz observes, "No one denies that more Jews died of starvation, overwork, and disease under Nazi incarceration than died in gas ovens, yet the acts of creating and maintaining the conditions that led to those deaths clearly constitute genocide."[29]

Indian removal, which President Jackson called for in 1829 and signed into law in 1831, continued this longstanding practice, while undermining the one-state possibility. Removal involved the forced expulsion of tens of the thousands of Indians from the East to points west of the Mississippi. By the end of Jackson's presidency, Michael Paul Rogin writes, "every tribe east of the Mississippi and south of Lake Michigan, save for two tiny bands in Ohio and Indiana, had come under government removal programs." Martin Van Buren, Jackson's successor as president, carried out the same policy with similar zeal. By 1844 "removal uprooted 70,000 southern Indians from their homes. . . . Only a few thousand, scattered in swamps and mountains, were left." Jackson knew full well that, under his orders, the Indians were being not just relocated but also destroyed. "Humanity has wept over the fate of the aborigines of this country, and Philanthropy has been busily engaged in devising means to avert it, but its progress has never for a moment been arrested, and one by one have many powerful tribes disappeared from the earth," he told Congress. There was no cruelty in this, Jackson assured, it was simply the way of the world. "To follow to the land the last of his race and to tread on the graves of extinct nations excites melancholy reflections. But true philanthropy reconciles the mind to these vicissitudes, as it does to the extinction of one generation to make room for another."

Further waves of genocidal violence solidified the impossibility of a one-state solution. One of these followed the Compromise of 1850, which, among other effects, resulted in the admission of California to the union as a free state. In Rogin's words, what came next in California was "a genocide that concentrated in time, space, and brutality the Jacksonian project of Indian dispossession." California Governor Peter Burnett joyfully predicted in 1851 "that a war of extermination will continue to be waged between the two races until the Indian race has become extinct."[30] Genocide also unfolded in Texas over the course of the 1850s and then in the Great Plains during the

Indian Wars of 1860–1880. There was no shortage of men like General William T. Sherman, who in 1866 telegrammed General Ulysses S. Grant, "We must act with vindictive earnestness against the Sioux, even to their extermination, men, women and children." On another occasion, he wrote, "during an assault [on Indians], the soldiers cannot pause to distinguish between male and female or even discriminate as to age."[31]

Genocide reduced Indians' numbers until they fit easily into a much-reduced tribal homeland. Between 1834 and the turn of the century, law, treaty, coerced land sales, and other transactions shrank Indian Territory from an area encompassing the entirety of the plains to a cluster of districts in Eastern Oklahoma. The survivors of removal and extermination lived on the reservations there and in other scraps of former Indian lands.

The Birth of the Reservation

As an institution designed to hold a subject population captive, the reservation had a prehistory, starting with British efforts to set up an enclave for "wild Irish" during the colonization of Ulster in the late sixteenth and early seventeenth centuries. As in the United States, the reservation emerged to clean up after the bloodshed. The Crown paid bounties for Irish heads, scalps, and ears. But, as William Christie Macleod explained in his ethnographic study of the Indians, published in the late 1920s, "neither the Crown nor any feudal lord was wealthy enough to finance the work of extermination." The alternative was a reservation system for the lingering natives. The final British scheme for the colonization of Ulster, developed in 1600, divided the territory into six British counties and ordered all the natives to leave immediately or to gather on reservations within the counties. In reality that meant all had to go to the reservations, given that there was nowhere else they could settle. Any indigenous person found in the colony, but outside the reservations, would be put to death.[32]

According to the treaties they signed with the Crown, the Celtic tribes were required to submit to British sovereignty and stop internecine warfare, but they were allowed to retain their tribal organization for administrative purposes. The British installed virtual bans on the sale and transportation of liquor, permitting only home brew, save permission for the chiefs to import a little good whisky or wine for their personal use. The British targeted as barbaric native customs such as trial marriage and forced the hitherto Catholic

tribes to join the Episcopal Church, build churches, and support an Episcopal clergy. There was the strictest prohibition against bards, or *seannachies,* who were forbidden to sing lest they remind the tribesmen of their ancient glory and the chiefs of their age-old leadership. The chiefs were also forbidden to support the bards—the better to silence them through backbreaking labor and starvation. At the same time, the eldest children of the chiefs and nobles were to be educated in English schools, under the direction of the Crown but at the expense of their parents.[33] From the outset, compulsory segregation went hand in hand with forced assimilation.

The earliest reservations in the English colonies in North America did not form a well-organized system, like that envisioned in Ulster or later on by the US federal government. These first North American reservations comprised survivors from among the conquered Pequot of Southern New England, a Christianized people known as "Praying Indians." They were allocated a ring of lands outside of Boston and settled there by the mid-1670s. The first reservation was the town of Natick. Over time, these reservations became like magnetic islands attracting freedmen seeking refuge. The freedmen intermarried, acquired land, and settled down, in the process bringing accumulated skills in European agriculture to the Indian population.[34]

The first hints of the modern American reservation system are found in 1848, in a proposal from William Medill, who served as the federal government's commissioner of Indian affairs. In his annual report of that year, Medill renounced the concept of a separate Indian state and suggested instead two "colonies" for tribes standing in the way of expansion: "one north, on the head waters of the Mississippi and the other south, on the western borders of Missouri and Arkansas."[35] The following year, on March 3, 1849, the Senate approved the creation of the Department of the Interior, to which it transferred responsibility for Indian administration. The department's Bureau of Indian Affairs (BIA), also known as the Indian Office, would soon carry out experiments with a system like the one Medill outlined.[36]

The reservation system had its test run in gold-rush California. Federal officials proposed the reservations in a series of eighteen treaties negotiated in 1851 and 1852 with various native bands and villages. When the Senate refused to ratify the treaties, the BIA proceeded to found reservations in a manner that would not require Senate ratification. Edward F. Beale, a prominent

naval officer and frontier adventurer, was installed as superintendent of Indian affairs in California, with orders to establish a "system of colonization" for the purpose of "making useful, our present worthless, and troublesome Indian population."

Yet the purpose to which the reservations were put was not education, as claimed, nor was it long-term separation from white society, which would eventually emerge as their chief motivation. Rather, the goal was extermination. Indians were force-marched from one site to another. Early reservation policy "assumed not only a high degree of impermanence but also a substantial amount of coercion," in the words of historian John Findlay. This was no concern from the standpoint of the state of California, which had denied civil and political rights to Indians as soon as it was admitted to the union in 1850. The state even authorized and financed local militia campaigns against Indians, to facilitate the larger removal effort. Those directly involved in California's three earliest reservations understood that they were waystations to destruction. In 1855, Captain E. D. Keyes of the US Army praised the superintendent at one reservation, Nome Lackee, because the superintendent made no pretense about the possibility of Indian survival and assimilation. This able administrator, Keyes was pleased to report, understood that his chief purpose "must be to deprive the Red Man of his power to do mischief." The best way to achieve that goal was elimination: "We ought . . . to act," Keyes wrote, "on the determined certainty that the aborigines of this Country will soon become extinct." The army joined the BIA in its efforts; the BIA administered subdued Indians, and the army broke hostile ones.

This early style of California reservation was a milder version of the Nazi's industrial concentration camp—a place of internment and slow death. It was eventually discredited and during the late nineteenth and early twentieth centuries supplanted by a new generation of smaller reservations and rancherías. Findlay identifies several factors that shaped the early system's failure: "The institution was too weak to provide [Indian residents] with food and clothing, too weak to protect them from white attacks, and too weak to make them stay." Starving, subject to constant harassment, and administrated by corrupt and incompetent government agents, most of the Indians who lived in California's first three reservations "either died there or departed." Others managed to avoid the reservations altogether, although they were not necessarily better off.[37] The Indians of California experienced a true reign of

terror in this period: between 1845 and 1870 their numbers fell from roughly one hundred thousand to thirty thousand.[38]

Not all settlers were in favor of a reservation policy. Others preferred to skip intermediate steps and proceed straight to extermination. For instance, when the federal government proposed establishing a reservation in Texas as a way of separating the races and securing peace, the *Democratic Telegraph and Texas Register* of Houston bitterly opposed and called for a war of extermination. The Texas legislature approved a reservation policy on February 16, 1854, but no sooner were the reservations established than "armed parties invaded . . . and began a systematic slaughter of the tribesmen." Finally, in 1859, the federal government settled the debate by authorizing the complete removal of all tribes north of the Red River.[39]

In spite of some opposition, reservations eventually became the favored solution across the United States. In 1854 the Missouri were placed in a reservation and in 1867 so were the Cheyenne and Arapaho. The Great Sioux Reservation was established in the Fort Laramie Treaty of 1868 as a reservation for the Teton Sioux, also known as the Lakota. The policy was generalized in the context of the Indian Wars of 1860–1890. During this period, in the words of Robert Trennert, the United States "decided to put a full reservation system into operation by defeating or starving the tribes into compliance."[40]

The Reservation in Practice

The reservation system as we know it today was begun under President Lincoln. This outcome was shaped by two large developments: the Civil War and the building of the transcontinental railroad.

One of Lincoln's key wartime objectives was to prevent the Indians and the Confederacy from joining forces against the Union. This was a pressing concern; in October 1861, during Lincoln's first year in office, the Confederacy granted the Cherokee Nation representation in its congress, in return for alliance.[41]

Lincoln's Indian policy began with sporadic massacres and culminated in a generalized reform that combined treaty-making with large-scale land grabs and removal to reservations. The Santee Sioux in Minnesota were crushed in 1862 after rebelling against their treatment by the federal government, charging that it "was violating treaty guarantees when it failed to provide

annuities and rations, especially food." Major General John Pope, who led the Union forces, acted "without mercy," ordering "the destruction of Indian farms and food supplies as well as the killing of Indian warriors." Pope wrote Colonel Henry Sibley, "It is my purpose utterly to exterminate the Sioux if I have the power to do so and even if it requires a campaign lasting the whole of next year. They are to be treated as maniacs or wild beasts, and by no means as people with whom treaties or compromises can be made."[42] After the carnage of the war, thirty-eight Indian men were hanged, as though to suggest that the genocidal operation had been a police action.

Similar events unfolded in New Mexico the next year. Given "a relatively free hand . . . ostensibly to end Navajo raids on white settlers, General James Carleton ordered Kit Carson to force them to move to a reservation." Carson "burned the Navajos out of Canyon de Chelly," rounded up the survivors, and forced them to march some 450 miles to Bosque Redondo, an episode known as the Long Walk. More than two thousand died, after which a treaty was signed and the Indians were placed in a reservation. The following year, US troops perpetrated the Sand Creek Massacre in southeastern Colorado, resulting "in the deaths of hundreds of Cheyenne and Arapaho."[43]

While the massacres were ongoing, the Department of the Interior was reassessing Indian policy in hopes of preventing further need for military engagement. As the secretary of the interior explained, "The duty of the government to protect the Indians and prevent their suffering for the want of the necessaries of life should be fully recognized." In other words, under Lincoln, reservations were a counterinsurgency policy. The Indians "should be taught to earn their subsistence by labor, and be instructed in the cultivation of the soil," so that they would turn to docile activities.[44]

In addition to preventing further rebellion, reservations were seen as key to opening up the West to the railroads and to settlers. The transcontinental railroad and the expanded reservation policy were two sides of the same coin: confining the Indian in the reservation ensured the security of the settler economy. The Homestead and Pacific Railway Acts of 1862 "opened the west to accelerated white settlement on lands taken from Indians through treaties." As Lincoln informed Congress in December 1863, "The measures provided at your last session for the removal of certain Indian tribes have been carried into effect. . . . They contain stipulations for extinguishing the pos-

sessory rights of the Indians to large and valuable tracts of lands." During that address, Lincoln celebrated the cession of over 1.4 million acres of Indian land to the United States. The following year, he announced to Congress that another 1.5 million acres had been obtained.[45]

The historian David A. Nichols has concluded that "Lincoln's vision for the West carried with it the implicit doom of the Indians" and paved the way for "a series of bloody wars," which continued after his death. This did not trouble Lincoln's mind for, like Marshall, he believed it was impossible for whites and Indians to coexist. "The pale-faced people are numerous and prosperous because they cultivate the earth, produce bread, and . . . depend upon the products of the earth rather than wild game for a subsistence," Lincoln explained. "This is the chief reason of the difference; but there is another. Although we are now engaged in a great war between one another, we are not, as a race, so much disposed to fight and kill one another as our red brethren."[46]

After the Civil War, the reservation push was intensified by President Ulysses Grant under what he called his Peace Policy. In an 1869 inaugural address, Grant promised to "civilize" Indians, leading to their "ultimate" citizenship. To achieve this sudden demand for assimilation, he refreshed the federal Indian service. All existing Indian agents were fired and replaced by new ones chosen by Quakers and later by members of other Christian denominations as well. Thus began the most extensive collaboration between the federal government and the churches in the history of the United States. As Rogers Smith puts it, the new policy made the "repudiation of native religion and ways of life, and acceptance of middle-class American Christianity with its attendant customs, official prerequisites for admission to US citizenship."[47]

It is no coincidence that this policy seemed so attractive in 1869. That year, the transcontinental railroad was completed, opening a pathway into the West with its endless "acres of fertile and mineral-rich soils." The only trouble, as Eric Foner notes, is that this same land was still "roamed by immense buffalo herds that provided food, clothing, and shelter for a population of perhaps a quarter of a million Indians, many of them members of eastern tribes forced inland two centuries before from the East Coast, and moved again earlier in the nineteenth century to open the Old Northwest and Southwest to white farmers and planters."

These Plains Indians were in the way of white economic dreams, but Grant's Peace Policy would change that. "Nearly all" of the military and civilian officials who executed the policy "shared a common presumption: that the federal government should persuade or coerce the Plains Indians to exchange their religion, communal form of property, and 'nomadic' way of life for Christian worship and settled agriculture on federally supervised reservations. In a word, they should surrender most of their land and cease to be Indians." Toward this end, generals employed methods they had perfected during the Civil War, destroying "the infrastructure of the Indian economy," including the buffalo. "In 1871, Congress abrogated the treaty system that dealt with Indians as independent nations—a step that was strongly supported by railroad corporations, which found tribal sovereignty an obstacle to construction."

By the time Grant left office, the world of the Plains Indians had been shattered by a combination of railroads, agriculture, ranching, battles with the US Army, and reservations. The population of Plains Indians dwindled as that of whites in the Middle Border states (Minnesota, the Dakotas, Nebraska, and Kansas) grew from three hundred thousand in 1860 to well over 2 million by 1880. On the ashes of the Plains Indians, white settlers built "a new agricultural empire." The surviving Indians were in large part relocated to reservations in Eastern Oklahoma, the rump end of the ever-shrinking Indian Territory.[48]

The reservation, in its era of consolidation, was presented to white society both as a way of segregating the races and accelerating the "civilization" of Indians, so that they could eventually be assimilated. This is important to keep in mind: although the reservation became the permanent two-state solution, it was sold to the public as an essential step toward a one-state solution. The catalyst in the civilizing process was to be the Indian agent. The Department of the Interior defined the role of an agent thusly: "The chief duty of an agent is to induce his Indians to labor in civilized pursuits. To attain this end every possible influence should be brought to bear, and in proportion as it is attained, other things being equal, an agent's administration is successful or unsuccessful."

The civilizing mission was a codeword for ethnic cleansing. The want of civilization justified an endless list of ethnocidal policies—efforts to destroy Indian culture, if not kill every individual Indian. These ranged from a ban

on the practice of Indian religions to the prohibition of long hair on men. To enforce the BIA's whims—and their own—agents called on the Indian Police, formed in 1879. As Prucha puts it, "Under the command of the agent, the Indian police functioned as 'quasi-military forces' that were 'a substitute for army control of the reservations.'" He quotes the chairman of the House Committee on Indian Affairs, who in 1880 worried these armed police possessed "the fearful power to execute not known laws, but the will of the agent."[49] The BIA argued that agents' nearly absolute powers were justified because the tribes were not ready for the full responsibilities of US citizenship.[50]

The Indian police were joined in 1883 by Courts of Indian Offenses. As Secretary of the Interior Henry M. Teller explained, the Indians were given to various degradations that were "a great hindrance to the civilization of the Indian." The criminal process would discipline them.[51] "Any Indian who shall engage in the sun dance, scalp dance, or war dance, or any other similar feast, so-called, shall be deemed guilty of an offense," the BIA announced. "Any Indian who shall engage in the practices of so-called medicine men, or who shall resort to any artifice or device to keep the Indians of the reservations from adopting and following civilized habits and pursuits, or shall adopt any means to prevent the attendance of children at school, or shall use any arts of a conjurer to prevent Indians from abandoning their barbarous rites and customs, shall be deemed guilty of an offense." The rules granted authorities arbitrary power, holding that "if an Indian refuses or neglects to adopt habits of industry or to engage in civilized pursuits or employments, but habitually spends his time in idleness and loafing, he shall be deemed a vagrant and guilty of a misdemeanor."[52]

Courts were effectively extensions of the agents, at whose pleasure the judges were appointed and served. Occasionally the judges were police officers, but often they were influential chiefs. The degree of an Indian's apparent assimilation was a major criterion in his selection as a judge; agents' reports are replete with descriptions of Indian judges as "Christian," "wearing white man's clothing," or "monogamous." By placing the legal process in the hands of assimilated Indians, agents factionalized notions of authority on the reservations, as some Indians continued to practice their own ways, while others implemented BIA rules. The installation of chiefs as judges making determinations on the basis of BIA edicts was an important step in the

development of customary law, whereby natives enforce settler-drawn rules said to be sensitive to the natives' traditional ways of life.

Most of the reservations lacked functioning courts of Indian offenses; in these cases the agents simply jailed whoever they wanted on their own authority, sometimes with the aid of the military. Army officers were happy to assist, believing that the military had authority over Indians as a conquered people. According to Harring, there is no question that many thousands of Indians were detained by the military for offenses ranging from murder to resisting land-allotment laws.[53]

The BIA encouraged the development of reservation police states by proscribing basic aspects of life. There was the aforementioned ban on long hair; William A. Jones, commissioner of Indian affairs from 1897 until 1905, believed the wearing of long hair by men was "not in keeping with the advancement [the Indians] are making, or will soon be expected to make, in civilization." "Certainly all the younger men should wear short hair," Jones directed, "and it is believed that by tact, perseverance, firmness, and withdrawal of supplies the superintendent can induce *all* to comply with this order." (The term "superintendent," used in the early reservation period, replaced "agent" during the presidency of Theodore Roosevelt.) Jones also wanted his agents to discourage Indian dress. If Indians employed by the BIA refused to comply, they could be discharged and their supplies cut off. If they became obstreperous, "a short confinement in the guard house at hard labor, with shorn locks, should furnish a cure," Jones offered.[54]

Commissioner Thomas J. Morgan made war on what might be the most elementary of cultural signifiers: names. Morgan argued in a March 1890 circular that there will be "needless confusion" and "considerable ultimate loss to the Indians if no attempt is made to have the different members of a family known by the same family name on the records and by general reputation." This was just one "among other customs of the white people it is becoming important that the Indians adopt," he explained. He also condemned the translation of Indian names into English, a practice that often resulted in "awkward and uncouth" nicknames. He was against "the habit of adopting sobriquets given to Indians such as 'Tobacco,' 'Mogul,' 'Tom,' 'Pete,' etc. by which they become generally known." He suggested that "unusually long and difficult" Indian names be shortened arbitrarily, authorized the substitu-

tion of English names for Indian ones too difficult for whites to pronounce, and approved the introduction of Christian given names before surnames.[55]

The full brunt of the effort toward civilization and reeducation was directed at Indian children, who were brought together at reservation schools run by whites and compliant Indians or were shipped away from the reservation. The philosophy underlying this pedagogical program was most simply expressed by Richard Pratt, the founder of the Carlisle Indian Industrial School: "Kill the Indian and save the man."[56] Thousands of Indian children were sent to Pratt's Pennsylvania school between 1879 and 1918. The wider Indian education process, Shari Huhndorf writes, led to "heartbreaking experiences that drove Native children to commit suicide and to run away repeatedly."[57]

Civilization was always an excuse to justify fiat authority. The BIA and its agents ran an occupation regime. Besides wielding police force and influencing courts where they existed, the agent determined the flow of resources to the reservation. By 1915 the superintendent had "control of all welfare services, and anyone who found fault with his doings could be set down as a malcontent."[58] More often than not, reservations appeared as "mammoth poorhouses rather than nurseries of civilization."[59]

If social progress had in fact been the goal on reservations, then perhaps the BIA would have dissolved. After all, as the Board of Indian Commissioners, a congressional advisory panel, noted in 1901, since the object of the BIA was to "make all Indians self-supporting, self-respecting, and useful citizens of the United States," the bureau should always aim at its own speedy discontinuance.[60] But, as Prucha has shown, the trend was to the contrary: the number of employees in the BIA increased from 115 in 1900 to 262 in 1920, and the number of communications received across its offices rose from 62,691 to 261,486 over the same period.[61]

That is because, in practice, the reservation was a place of crisis, not civilization, education, or improvement. Subjugation and isolation robbed the Indian way of life of vitality and meaning, reducing it to a set of rituals disconnected from each other and from the material circumstances of the tribe. Indian culture was to an extent preserved, but it was placed in a museum, where it could no longer meet the problems of the moment or evolve to meet those of the future. Not only were the buffalo and the wide stretches of open

territory gone, but also systems of social organization, built up through generations to protect fundamental interests, were deteriorating or archived. To be sure, there were substitutes, such as agricultural life and Christianity, but these were sometimes unfamiliar and not always relevant to the emotional and communal needs of the people.

In this spiritual and social vacuum, Indians did attempt to create some new practices that harkened back to their own, such as the Ghost Dance religion that emerged in the 1920s among tribes crowded onto reservations. Ghost Dance was a syncretic phenomenon, drawing on many traditions. Macleod recognized an essential point of Ghost Dance's origin: "Engendered by the wish for the old security and distaste of the white man's civilization, and eagerly sought and accepted by one after another of the distraught plains tribes," Ghost Dance brought together different peoples under a single ritual that expressed the unity brought on by collective subjugation.[62]

A Permanent Homeland

If the reservation had lived up to its billing, it would have vaulted the Indian from backwardness to civilization, from the status of alien enemy to the status of citizen. The reservation would have been a waypoint on the route to equal participation in the US political community. But the true purpose of the reservation lay elsewhere. The very policies that, on paper, were most straightforwardly intended to foster Indian citizenship, were in fact tools for turning over Indian land to white settlers while ensuring the losers had no recourse and would be stuck in their open-air prisons in perpetuity.

The critical legal maneuvers were the Dawes Act of 1887 and Curtis Act of 1898, also known as the allotment acts. These gave reservation authorities the power to identify deserving Indians and grant them allotments of land in "trust patent." This meant the land title would be held in trust by the United States for twenty-five years, after which the premises would at last be conveyed to the Indian as common law property. Initially the Dawes Act called on the BIA to allot 160 acres of tribal land to each Indian head of household, but this was later amended to 80 acres. Those taking allotments were also required to renounce their tribal membership but were promised citizenship instead. The guarantee of citizenship was soon diluted. The 1906 Burke Act amended Dawes, requiring that the promise of citizenship would only be realized after the twenty-five-year period was complete.[63] This had the effect

of tethering Indians to reservations. They had to maintain verifiable control of their holdings for two and a half decades, lest their citizenship be denied.

Allotment eliminated Indian traditions of land occupancy, which fostered mobility, and replaced them with the US system of private property, which nurtured sedentary agriculture and industry. It was a means of destroying what Harring has called "communistic" tribal culture and of compelling Indians to accept roles as farmers and ranchers in the style of white Americans—roles seen as civilized.[64] As one commissioner of Indian affairs put it in 1838, "Common property and civilization cannot coexist."[65] Allotment was also a land grab, which was, after all, the goal of most strategies the settler arranged against the Indian. The law might have gifted the occasional Indian strong property rights, but it also designated large tracts as surplus that could be taken by white buyers.[66] The incorporation of Indian land into the settler property regime also was a boon to whites, who suddenly could buy that land as though it were any typical piece of real estate. Every speculator who hoped to benefit from the sale of Indian land championed their right to sell, knowing that many Indians desperate for better lives would trade their allotments for cash.[67]

Allotment had many serious consequences. First, there was a drastic reduction in land under Indian control. Already diminished to 156 million acres in 1881, the extent of Indian land plummeted to "about 50 million acres" in 1934. Another 500,000 acres were taken over by the government for military use during the Second World War, and then there were losses registered by "over one hundred tribes, bands and Rancherias" as a result of various acts of Congress during the termination era of the 1950s, described below.[68] According to the Bureau of Indian Affairs, Indian lands today comprise "approximately 56.2 million acres . . . held in trust," which is about the size of the state of Minnesota.[69] Second, instead of turning Indians into farmers, allotment resulted in leasing. By 1898, 140,000 acres had been allotted and, of these, 112,000 acres had been leased. This involved two-thirds of the men with allotted land. The few Indians deemed worthy of allotments and citizenship were not becoming farmers; they were creating opportunities for whites to cultivate arable land.[70] Finally, allotment opened reservations to non-Indian settlement, resulting in a patchwork of ownership that left "much of the remaining Indian land . . . crippled," as Charles Wilkinson puts it. "The tribal land ownership pattern became checkerboarded, with individual Indian,

non-Indian and corporate ownership interspersed," which "weakened Indian culture [and] sapped the vitality of tribal legislative and judicial processes."

The Dawes Act was presented as a measure that would enhance reservation Indians' independence by giving them their own land and placing them on the road to citizenship, but it merely divided Indians from each other, making it easier for whites to homestead and for the BIA to rule the Indians. It was during allotment, Wilkinson argues, that "the BIA moved in as the real government."[71] Far from independent, Indians were dominated in "every aspect" by the Indian Service.[72] As Frederick E. Hoxie describes, in the wake of allotment

> schoolmasters continued to separate children from their parents. Religious organizations continued to operate with a level of federal support that clearly violated the First Amendment of the U.S. Constitution. Authorities continued to break up unauthorized religious activities and destroy sacred objects. Officials could even 'withhold rations' from tribal members who opposed them.[73]

The regime of dictatorship on the reservation persisted into the early 1930s, when its first major critic in government, the sociologist John Collier, took office as commissioner of Indian affairs.[74] Collier proved to be a sensitive observer of Indian oppression, as compared to his contemporaries. He recognized that Indians on reservations had systematically been subjected to the capricious regime of white agents whose principal goal was not to create US citizens but to ensure white access to land. Collier sought to transform the Indian regime by ending "monopolistic and autocratic control over person and property by a single Bureau of the Federal Government." He promoted the protection of Indian property rights and respect for Indians' access to "elementary rights guaranteed to other Americans by the Constitution or long-established tradition." He also believed that cultural pride and "native social endowments and institutions" were essential to the education of the Indians. Rather than Christian ministers and armed police, he brought in a flock of anthropologists tasked with shaping new policies and programs.[75]

The centerpiece of Collier's policy was the Indian Reorganization Act (IRA) of 1934, an ambitious package of reforms designed to halt and reverse

the destruction of Indian communities. Collier won supporters in Congress, who proposed the IRA

> to grant the Indians living under Federal tutelage the freedom to organize for the purposes of local self-government and economic enterprise; to provide for the necessary training of Indians in administrative and economic affairs; to conserve and develop Indian lands; and to promote the more effective administration of justice in matters affecting Indian tribes and communities by establishing a Federal Court of Indian Affairs.[76]

One important effect of the bill lay in preferential hiring of Indians by the BIA. The number of permanent Indian employees in the service rose from a few hundred in 1933 to 4,682 in 1940. These included 8 superintendents, 251 professionals, 935 clerical workers, and approximately 3,475 in other skilled jobs. By 1980, 78 percent of all BIA employees were Indians and Alaska Natives. Tribes were encouraged to organize their own governments and to establish business corporations, with capital available from a $10 million federal loan fund. But this vision of tribal autonomy was extremely limited: every important decision was subject to approval by the secretary of the interior.[77]

The IRA augmented administrative paternalism by deputizing Indians to the cause of BIA control. The IRA's first major detractor, the BIA's Scudder Mekeel, was clear on this point. In a critique published in the mid-1940s, he noted that while "the native political and social organization is strengthened by utilizing it for administrative purposes," Indians did not thereby attain autonomy. Even if "many 'Tribal Councils' have been organized under Indian Office sponsorship," they "have been almost completely controlled by the reservation superintendent." In effect, the bureaucracy was being Indianized, but the decisions were still made by the BIA. "Practically all tribes, aside from certain groups in the Southwest, have seen their native form of government disintegrate and disappear under the bureaucracy of the Indian Service," Mekeel wrote. The IRA, then, did not devolve governance to locals; rather, it "closely resemble[d] the British policy of 'indirect rule'" in which locals were drafted to implement colonial governance on the basis of supposedly

customary law and supposedly traditional forms of administration. Mekeel also rightly pointed out that "the Indian Reorganization Act continues the policy of segregating the Indian population from the white—a policy inherent in the reservation system itself."[78]

Collier's policy, though gentler than those of his predecessors, did not fundamentally change the role of the reservation as a vehicle for legalizing and facilitating settler land grabs. But his efforts did face opposition in Washington. Collier left office in 1945 and Secretary of the Interior Harold Ickes, his strong backer, resigned the following year. Thereafter policymakers took an entirely new approach. Whereas Collier had sought to make the reservation more livable, what came next was a joint congressional and executive-branch effort to eliminate the reservation—and therefore Indian land holdings under federal trust—once and for all.[79]

The point person for this new approach was Dillon S. Myer, who was appointed commissioner of Indian affairs in 1950 by President Truman. Among Myer's important qualifications was his experience leading wartime internment and resettlement of Japanese Americans.[80] The thrust of Indian policy under Myer and Truman was termination of reservations. Adopted into law by Congress in August 1953, termination was intended to make Indians "subject to the same laws and entitled to the same privileges and responsibilities as . . . other citizens of the United States" by "freeing" them from "all Federal supervision and control" and leaving them under state authority.

From 1954 to 1960, the reservations of fourteen recognized tribes were terminated by the federal government, often without their consent. Most of the communities were small and impoverished and had little idea of what was happening to them. A few larger tribes with considerable natural resources—most notably the Menominee of Wisconsin and the Klamath of Oregon—fought the decision.[81] As troubling as the reservation system could be, from the standpoint of Indian opponents of termination, the total removal of federal land protections, the loss of reservation-based tax benefits, and subjection to state law seemed worse. Removing tribal sovereignty to the state domain would have meant potentially many new indignities and constraints. The termination policy was repudiated by the Nixon administration in 1970, and what followed was something like a return of the IRA regime.

As George Castile and Robert Bee observe, the longer-run impact of Collier and the IRA was to move "away from seeing [reservations] as temporary

impounding points for ultimate assimilation and toward . . . recognition of their status as permanent homelands." Although intended on its face to foster Indian autonomy, the IRA mainly served to stabilize and prolong the colonial relationship between Indians and the United States.

The ultimate legislative expression of this regime is the Indian Self-Determination Act of 1975. Pushed by grassroots Indian activists, the law allows various government agencies to fund efforts by federally recognized Indian tribes to strengthen the Indian bureaucracy. But that same bureaucracy enforces rules created by, and subject to, Congressional decrees—rules created without democratic representation for the tribes themselves. This law promoting self-administration merely perfects the regime of indirect rule, ensuring more completely that Indians enforce the settler's customary law. Under this regime, "the reservation system and federal-Indian relations," Castile and Bee write, "have seemingly become permanent."[82]

The Case of the Five Civilized Tribes

Until now I have focused on the subjugation of those deemed uncivilized. But what of the so-called Five Civilized Tribes? We encountered them briefly before. The reservation was supposed to be the civilizing institution that rendered Indians fit for citizenship—a waypoint on the road to one state, which became a two-state solution. Yet the Five Civilized Tribes were also subjected to the reservation regime.

Here again the civilizing paradigm proved to be a deception, a rationalization of a hardening colonial regime that served the interests of white settlers. But there was more to the story. In the case of the Five Civilized Tribes, the lie of the civilizing mission definitively broke down and was replaced by a new one that was a kind of precursor to the IRA's program of culturally sensitive administration. In justifying domination of the Five Civilized Tribes, the federal government claimed to be preserving and prioritizing native ways of life threatened by the very achievements of civilization the government otherwise claimed to promote.

The tribes in question—the Cherokee, Creek, Choctaw, Chickasaw, and Seminole—originated in what is now the southeastern United States. Unlike nomadic tribes whom Europeans deemed barbaric, these natives inhabited permanent communities and practiced agriculture. During the colonial and early republican periods, exchanges between settlers and the tribes were

common, with the natives adopting many European practices they found useful. But ultimately, no matter how much they embraced the ways of civilization, the Indians were in the way of white goals. In the 1830s, the tribes were promised that, if they would leave their homes, they would be given land west of the Mississippi protected from white settlement. They were not, however, being given a choice. Thousands of Indians, Cherokee in particular, died in the process of forced removal, along the route aptly known as the Trail of Tears. The Seminole resisted for decades, fighting off US forces in Florida until the late 1850s, when large numbers finally agreed to migrate. Migrants from all of the five tribes were relocated to Eastern Oklahoma, at the southern end of Indian Territory. Eventually Eastern Oklahoma would be all that was left of Indian Territory.

The post-removal period was profoundly challenging for the tribes, as their allegiances split during the Civil War and conflict wracked the territory. The tribes were also riven by contests between reformers and traditionalists. For instance, the Cherokee built a modern prison, whereas the Creek maintained that a prison was not fitting punishment for an Indian. The debate between civilization and tradition had its most tragic outcome among the Creek: this nation of roughly ten thousand people experienced five civil wars between 1860 and 1908 and on several occasions had parallel governments, one representing those calling for adaptation and the other championing old ways.[83]

For some time, the Five Civilized Tribes in Eastern Oklahoma were allowed an exceptional status. They were consistently exempted from federal laws, such as the Major Crimes and Dawes Acts, which were applied to the Plains Indians.[84] On their own initiative, they worked with moderate success to prevent white settlement, which was in any case illegal. But farmers from the surrounding states of Arkansas, Texas, and Kansas, who coveted "rich acres only partially used by the Indians," were eager to displace the status quo. They received political support from whites who called for "the Americanization of all the Indians."[85]

These forces combined in a series of land rushes which, though sometimes unlawful, were generally tolerated. In any case, in the 1880s the federal government began to legalize the previously unauthorized homesteading, while officially opening areas of Eastern Oklahoma to white settlement. The government also used proclamations to undermine the value of Indian lands, inducing them to sell to whites. The largest of the land runs occurred in 1893,

when the Cherokee Outlet, an area that had been designated for the Cherokee during the 1830s, was opened to whites. The process was shepherded by the federal government's General Land Office. The state of exception was fully and finally overturned in 1898, when the Curtis Act extended the provisions of the Dawes Act to the five tribes.[86]

There is nothing remarkable about the assaults and broken promises that the five tribes suffered. What is notable is the reasoning that underlay the extension of allotment, which is apparent in the findings of the Dawes Commission. In a report issued on November 20, 1894, the commission explained that the special treatment of the Five Civilized Tribes had to be ended precisely because they were so civilized.[87]

The report brimmed with indications of the very "progress" the settler population had been preaching. The commission noted that tribal "governments consented to the construction of a number of railways through the Territory, and thereby consented that they bring into the Territory all that is necessary in the building and operation of such railroads—the necessary depots, stations, and the inevitable towns which their traffic was sure to build up, and the large building which white men alone could develop and which these railroads were sure to stimulate and make profitable." The tribes had "invited [white] men from the border states to become their employees in the Territory, receiving into their treasuries a monthly tax for the privilege of such employment." The Indians had encouraged the development of lucrative commercial crops: "In some sections of the Territory the production of cotton has proved so feasible and profitable that white men have been permitted to come in by thousands and cultivate it and build trading marts and populous towns for the successful operation of this branch of trade alone." The Indians had developed "vast and rich deposits of coal" along with "large and valuable plants for mining coal" and "vast pine forests." Furthermore, "towns of considerable importance have been built by white persons under leases obtained from Indians," leading to "permanent improvements of great value . . . induced and encouraged . . . by the tribal governments themselves." These were "immovable fixtures which cannot be taken away."

But this progress, the commission noted, came with downsides. The report referred to "fraud" and "corruption of the grossest kind," in the face of which "courts of justice have become helpless and paralyzed." The commission also claimed that "violence, robbery and murder are almost of daily

occurrence" resulting in "a reign of terror." It is difficult to credit these assertions, given that the economic boom was apparently well organized and involved successful cooperation between Indians and whites. And few in Washington seemed concerned when problems of crime and corruption arose in western territories during the more haphazard gold rushes. Probably more accurately, but also brazenly, the commission took great exception to ordinary problems arising from just the sort of development it preached. The officials decided that they could not abide inequality, though it is predictable under capitalism and was unmistakable all over Gilded Age America. They took up the cudgel on behalf of the poor and oppressed in Indian Territory.

> The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.
>
> In one of these tribes, whose whole territory consists of but 3,040,000 acres of land, within the last few years laws have been enacted under the operation of which 61 citizens have appropriated to themselves and are now holding for pasturage and cultivation 1,237,000 acres. This comprises the arable and greater part of the valuable grazing lands belonging to that tribe. The remainder of that people, largely the full-bloods who do not speak the English language, are excluded from the enjoyment of any portion of this land, and many of them occupy the poor and hilly country where they get a scanty living from such portions as they are able to turn to any account.

Here the commission was implementing a logic that, as we will see elsewhere, became central to indirect rule the world over: distinguishing the true native from supposed interlopers. By claiming to protect the true native, colonial powers introduced distinctions that prevented solidarity among the colonized and justified the supervision of clusters of natives as discrete groups potentially engaged in rivalry with each other.

The commission also expressed sympathy for formerly enslaved people adopted by the tribes. According to the report, the condition of these freedmen was worst among the Chickasaw, where "they are shut out of the schools of the tribe, and from their courts, and are granted no privileges of occupancy of any part of the land for a home, and are helplessly exposed to the hostilities of the citizen Indian and the personal animosity of the former master." Among the Choctaw and Cherokee as well, the condition of freedmen was far from satisfactory: "They are yet very far from the enjoyment of all the rights, privileges and immunities to which they are entitled under the treaties," the commissioners lamented. Finally, there were poor whites: "thousands of white children in this territory who are almost wholly without the means of education, and are consequently growing up with no fitting preparation for useful citizenship." Clearly, the record of the Indian tribes was being measured against rhetorical standards rather than real practice among the custodians of civilization, who otherwise tolerated and indeed engineered the oppression of freedmen and poor people without a grumble of protest.

When it came to its final recommendation, the commission pulled no punches. Eastern Oklahoma's Indian administrators had been given special privileges and abused them, so they had to go. "These tribal governments have wholly perverted their high trusts," the report read. "It is the plain duty of the United States to enforce the trust it has so created and recover for its original uses the domain and all the gains derived from the perversions of the trust or discharge the trustees. . . . They have demonstrated the incapacity to so govern themselves, and no higher duty can rest upon the Government that granted this authority than to revoke it when it has so lamentably failed."

Having been promised that the embrace of civilization would secure their autonomy, civilization was now advanced as the reason the tribes could no longer remain autonomous. Of course, the commission did not pretend this was the only reason. "The present growth of the country and its present relations to this territory were not thought of or even dreamed of by either party when they entered into these stipulations," the report stated, referring to the treaties that had birthed Indian Territory. "These stipulations naturally grew out of the situation of the country at the time they were made, and of the character of the Indians with whom they were made." But the situation had changed; no longer the inaccessible far west, Oklahoma was an opportunity

for whites seeking land. The character of the Indians had changed, too, according to the report, and so they could no longer be allowed the benefits of the treaties.

Congress moved on the commission's recommendation without hesitation, ordering that the national governments of the Five Civilized Tribes be stripped of their powers. On July 1, 1898, the order went into effect, and the people of Indian Territory were brought under the full jurisdiction of the courts of Oklahoma Territory, the federally recognized territory to the west.[88]

The leaders of the Five Civilized Tribes persisted. Their goal, they said, was to preserve their identity within the federal system by promoting separate statehood for Indian Territory. Creek, Cherokee, and Choctaw officials, supported by the Chickasaw, met in a joint convention at Eufaula in the Creek Nation on November 18, 1902, and adopted a statement against union with Oklahoma Territory, which was slated for statehood. The individual tribes also made separate protests. In the summer of 1905, the tribes renewed agitation for the separate statehood of Indian Territory. They made strong arguments, pointing, for instance, to the Atoka Agreement of 1897, which spoke of the preparation of Indian nation lands "for admission as a state of the Union." On August 21 the tribes held a constitutional convention at Muskogee. The convention "drew up a constitution for a proposed state of Sequoyah, and on November 7, the document was ratified by a vote of 56,000 to 9,000 (though not more than half of qualified voters went to the polls)."[89] All residents of Indian Territory, Indian and white, were invited to vote for delegates, and many whites took part.

Once again, Congress blocked any further development. Although bills for Sequoyah's admission were introduced in both houses, no action was taken, and the movement died.[90] Indeed, Congress not only prevented Sequoyah's admission, it took further steps to undermine tribal authority in Indian Territory. In the Five Civilized Tribes Act of 1906, Congress, acting with plenary power, denied the legislatures of the tribes the right to meet for more than thirty days per year, and their actions were made subject to veto by the president of the United States. Congress also granted itself power to expropriate money due to tribes from tribal assets. Congress even claimed "the ultimate authority to determine who was a tribal member for purposes of distributing property, annuities and trust money, and how that money was spent." Finally, Congress gave itself the right to authorize the consolidation of tribes, no

matter their history or ethnology.[91] These powers, we will later see, were similar to those the colonial governor of the South African province of Natal assumed over the Zulu tribes toward the end of the nineteenth century.[92]

In 1907 Indian Territory and the Oklahoma Territory were fused into the new state of Oklahoma. With that act, the prospect of Indian self-government was definitively laid to rest. The Indians of Oklahoma had nowhere else to turn. They had succeeded in meeting Congress's civilizing demands, but instead of being allowed finally to participate in the US political community, their democratic decision to join the union was ignored by a federal government that responded by asserting its authority to decide what was best for Indians.

In 1910 the Supreme Court affirmed Congress's unchecked powers to supervise native communities for their own good. "Congress, in pursuance of the long-established policy of the Government, has the right to determine for itself when the guardianship which has been maintained over the Indian shall cease," the Court determined, "It is for that body, and not for the courts, to determine when the true interests of the Indian require his release from such condition."[93] Whatever Indians might themselves demand, even through democratic procedure, did not reflect their true interests—that was for Congress to decide, without input from the governed. The simple fact was that, no matter their achievements or citizenship status, Indians were wards of Congress—subject to its decree—and only Congress could terminate the colonial relationship.

Citizens without Rights

On its face, citizenship would seem to be an alternative to the two-state solution. As Supreme Court Justice Roger Taney noted in *Dred Scott v. Sandford* (1856), Indian citizenship would entail abandoning tribal ties and taking up "abode among the white population."[94] In other words, citizenship means assimilation and political incorporation, the essence of the one-state idea in which the conquered blend into the society of the conqueror.

Yet, over time, the United States managed to bring citizenship into line with the two-state system. Notably, the allotment acts that were essential to the crystallization of the reservation system—the two-state solution—were also citizenship measures. But what must be recognized is that few Indians were granted citizenship on the same terms as whites. The federal government

invented new forms of legal status and called them citizenship, but true citizenship has always eluded American Indians on reservations.

Taney was out of step with the times when he considered the possibility of Indian citizenship. Others had discussed it before him, and later in the nineteenth century the government would open pathways to citizenship. But in the 1850s, his voice was, if not a singular one, at least lonely. After the Civil War, the United States explicitly maintained Indians' noncitizen status by ratifying the Fourteenth Amendment, which, like the original text of the Constitution, pointedly excluded "Indians not taxed" from the right to vote or to be elected to Congress. Indians not taxed included all Indians on reservations, a proportion that only increased with the energetic reservation-building policies of the Reconstruction era. As Akhil Reed Amar has pointed out, this Indian exclusion also "appeared in plainer language in the text of the companion Civil Rights Act of 1866." The act legislated birthright citizenship, but it omitted Indians: "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States."[95]

Not long after the civil rights revolution of the 1860s, some in government began considering Indian citizenship more seriously. In its very first annual report, of 1869, the Board of Indian Commissioners urged citizenship for Indians considered civilized, in particular the Five Civilized Tribes in Indian Territory. At the same time, the board advised that "uncivilized Indians" be designated "wards of the government."[96] Then came the Dawes and Curtis acts, which offered deferred promises of citizenship to selected reservation-based Indians who agreed to allotment.

Finally, in 1901, Congress passed a law directly conferring citizenship on Indians, though only those residing in Indian Territory. In practice, however, this citizen status was largely ignored. When a Senate select committee was sent to investigate conditions in Indian Territory in connection with the Five Civilized Tribes Act of 1906, it remarked that the citizenship law appeared not to have taken any effect. The committee reported that "Congress in its subsequent legislation, and the Department of the Interior, acting under such legislation . . . has treated the questions arising within the Five Civilized Tribes as though no [citizenship-conferral] act had ever been passed and as though the Indians were still in the broadest sense wards of the Government."[97]

In effect, settlers were creating second-class citizenship, whereby Indians could be citizens in name while remaining wards of the federal government, subject to its plenary power. This may seem legally impossible, but courts approved of this citizenship without rights. In *United States v. Nice* (1916), a majority of the Supreme Court held that citizenship was "not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians or placing them beyond the reach of congressional regulations adopted for their protection."[98]

It was under these terms that Indians born in the United States were decreed citizens according to the Indian Citizenship Act of 1924.[99] The newly naturalized Indians were divided into full citizens and less-than-full citizens, according to their degree of assimilation. The least assimilated were Indians with tribal membership, who partook of the tribe's collective resources. Then came Indians with a "restricted" status. They had received their allotment of tribal land less than twenty-five years earlier, so their land title was still held in trust by the US government. Finally, there were those with "unrestricted" allotment, who were full citizens.[100] Tribal and restricted Indians were wards, which meant they were subject to limitations placed specifically on Indians. To take an example, Indian wards could be subjected to federal liquor laws directed at Indians specifically, whether or not they had severed tribal relations and whether or not they lived on a reservation.[101]

Post-1924 second-class citizenship extended to voting as well, as Indians were often barred from access to the ballot. The courts enabled this feature of second-class citizenship, too. The relevant caselaw was *Elk v. Wilkins* (1884), which held that the tribal Indian owed allegiance to the tribe from birth and therefore was not born "subject to the jurisdiction" of the United States.[102] This meant that even Indians born in the United States were not considered native-born. States, which determined voter eligibility, adopted this opinion as a reason to restrict the franchise. Thus in 1928, four years after all Indians were made citizens, only about 29,000 had qualified as voters.[103] Arizona and New Mexico withheld the franchise until 1948, and, even then, only unrestricted Indians were given the right to vote.[104] Indians continue to face considerable obstacles to voting, even if they are legally granted the opportunity to vote. For example, voter ID laws stymie Indians from registering, and inadequate access to both postal mail and mail-in voting further subverts the possibility of civic participation.

Today American Indians on reservations remain the only US citizens without rights guaranteed in the Constitution or protected under the 1964 Civil Rights Act. Indian civil rights are assured instead by the Indian Civil Rights Act of 1968 (ICRA), a law that selectively incorporates portions of the Constitution as an Indian bill of rights. Certain constitutional guarantees, "including the prohibition against laws respecting the establishment of religion and the right to indictment by a grand jury," are wholly omitted from the law. Meanwhile, some of the incorporated constitutional guarantees are limited: "the right to counsel is only available at one's own expense and the right to jury trial is limited to those accused of crimes punishable by imprisonment." Title III of the ICRA directs the secretary of the interior to draft and recommend to Congress a model code governing courts of Indian offenses, which is to "assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal Court for any similar offense." But the code is not binding on tribal courts; it is only advisory.[105] The Supreme Court made this plain in *Santa Clara Pueblo v. Martinez* (1978), bluntly denying that ICRA violations are subject to federal remedies. The ICRA can only be enforced in tribal forums.

The ICRA's omissions can be read as culturally sensitive efforts to allow Indians to maintain tribal traditions, such as their court procedures and the quasi-theocratic practices in place at some reservations.[106] But these traditions are not actually traditional; they refer to colonial tools of indirect rule, whereby settlers instrumentalized what they claimed to be Indian traditions. What is protected as tradition is actually colonial customary law.[107]

Not only these so-called traditions but also the protectors signal wardship. Indian self-governance is like the tribal self-governance of the South African Bantustans I discuss in chapter 3: it may look like self-rule, but it is carried out under the eye of a settler state. Reservations do not have representation in Congress; instead they have an authority—tribal government—that represents the tribe to the BIA. Usually this tribal government is elected, but this is not enough. The authority must be approved by the secretary of the interior. The outcome is a hybrid combining features of democracy, autocracy, and standard-fare colonial bureaucracy. The chief executive of a tribe presides over its legislative body and executive branch; most tribes have no judi-

cial branch. Decisions of tribal authorities must be approved by the secretary of the interior before they can be acknowledged as laws. The BIA provides funding—just enough development and security dollars to keep tribal governments on life support—while otherwise trying to do everything on its own: from building roads and dams to fighting fires and administering probate.[108] The notion of tribal sovereignty could hardly have noneuphemistic meaning under such conditions.

Wardship is not just a condition of law. It is also a state of mind. Thus have federal policymakers and Indians alike, including militant activists, defended colonial paternalism in the language of self-determination. Take, for example, the "policy for the future" as summed up by the American Indian Policy Review Commission, which was established in the aftermath of demonstrations at the Bureau of Indian Affairs in 1972 and at Wounded Knee in 1973. In its final report of May 17, 1977, the commission begins by affirming "that the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker." The commission treats this "trust responsibility" as a kind of warm blanket:

1. The trust responsibility to American Indians extends from the protection and enhancement of Indian trust resources and tribal self-government to the provision of economic and social programs necessary to raise the standard of living and social well being of the Indian people to a level comparable to the non-Indian society.
2. The trust responsibility extends through tribe to the Indian member, whether on or off the reservation.
3. The trust responsibility applies to all United States agencies and instrumentalities, not just those charged specifically with administration of Indian affairs.[109]

A critical arena of ongoing wardship, also defended by tribes, is the process by which tribal governments establish membership roles. The BIA says that tribes, as "sovereign political bodies," have "the power to determine their own membership." Yet the criteria on which membership is based have been determined entirely by settlers. Historical modes of membership have no legal standing in North America; when Indians determine tribal membership,

at least as a matter of law, they do so not by practicing true autonomy but by implementing racial notions of membership invented by white settlers with the intention of minimizing the Indian population.

Historically Indians had taken a different approach. The operative definition of identity was cultural rather than racial, which enabled assimilation. Thus there are many examples of Indian societies adopting captured whites and members of other Indian groups.[110] Audra Simpson points out that the Mohawks of Kahnawà:ke, for instance, "had among their numbers assimilated outsiders—whites and other Indians who had been taken captive." These were full members, who had roles in Kahnawà:ke politics. Descendants of captives taken from a 1704 Mohawk raid on Deerfield, Massachusetts, retained ties to their white families even as they influenced decisions of the Mohawk community. Either blood—matrilineal descent—or culture could make one a Mohawk.[111]

But in the context of settlement, this kind of open-ended assimilationist practice was doubly problematic. From the standpoint of Indians packed into reservations of fixed or shrinking size, openness to new membership meant less land for every tribal member.[112] And from the standpoint of the settler state, new membership meant an increase in the numbers of Indians who might continue pressing claims to land the state wanted to turn over to whites. It also meant more Indians seeking reservation-based refuge from tax liability.

Whites across North America undertook various measures in order to close this loophole and uphold the racial framework. As we saw in the case of Indian Territory, US officials responded to Indian absorption of whites and blacks by pitting the interests of full-blood Indians against those of half-bloods who had developed a multiracial—if unequal—economy. The government also constrained mixing by hamstringing Indian mobility. Federal overseers instituted on reservations a pass system inspired by similar mechanisms developed on slave plantations of the American South. Because many enslaved people had families beyond the plantations to which they were attached, they were eager to make visits, which their supervisors were eager to monitor. Pass systems in North America were forced on Indian tribes by the BIA and Canadian authorities. Until 1924, when reservation-based Indians gained sufficient citizenship recognition to enable free movement, they faced daunting challenges in leaving their assigned territories. They would have to secure a

pass from agents who were encouraged to limit the number distributed, and while traveling they were subject to forms of harassment that ranged from questioning to searches, whippings, and beatings. Such punishments might be carried out even where no laws were broken.[113]

Perhaps most importantly, settlers enacted laws that withdrew from Indians the right to establish membership according to their own traditions. These reforms reflected a shift toward race-based control and the installation of customary law. Early versions of Canada's Indian Act, passed in 1876, allowed that Indian status was transferable to both male and female non-Indian spouses of Indians. Non-Indian men or women could hold land, operate businesses, and claim tax exemption on reserves. But later revisions to the Indian Act introduced two changes. First, matrilineal descent was replaced with patrilineal descent. Second, the law defined membership according to blood quantum—the "percentage" of a person's ancestry understood to be Indian. As a result many women and their children lost tribal status and therefore the right to live in their homes on reserves. Their petitions "to raise their children, and exercise their rights as Indians" were rejected by band councils that upheld the Indian Act. Eventually dispossessed women organized into political action groups, such as Equal Rights for Indian Women and the Native Women's Association of Canada, which brought the Canadian government to court alleging gender bias in the Indian Act. When they lost, they went on to bring the case to the United Nations Human Rights Commission. In 1982 Canada was found to be in violation of the Covenant on Civil and Political Rights. The Canadian government then amended the Indian Act to eliminate the patrilineal-descent requirement. But membership in First Nation bands is still, by law, determined according to blood quantum.[114]

In the United states, blood became a legal marker of Indian identity with the passage of the Indian Reorganization Act in 1934. This usage of blood descent marked Indians as permanent, inassimilable racial minorities in a way that even the Canadian law did not, as confirmed by a federal court in *Goodwin v. Karnuth* (1947). In this case, a Canadian-born Indian woman crossing the border from Canada to the United States without papers was detained by the Immigration and Naturalization Service (INS), even though US law required that Canadian-born Indians had a right of free passage across the border. The INS claimed that, because the woman had a white husband, she had no Indian status under Canadian law and therefore had no right of free passage.

But the court disagreed, holding that her blood made her Indian, regardless of her marriage. In other words, as a matter of US if not Canadian law, Indian status was indelibly racial: it could no more be obtained through acceptance into the tribe than it could be discarded by dint of marriage.

As a follow up to the case, the INS revised its immigration manual: "The words 'American Indians born in Canada' . . . must be given a racial connotation. Thus an alien born in Canada who is of American Indian race is entitled to the immunities of this section regardless of membership in an Indian tribe or political status under Canadian law."[115] In 1952 the INS instituted a refined blood-quantum requirement whereby Indians traveling from Canada had to possess at least 50 percent Indian blood to gain free passage into the United States. The applicant had to prove that at least two of his or her grandparents were Indian; no one questioned the presumption that every great-grandparent had 100 percent Indian blood.[116]

Blood quantum has become a feature of customary law, recognized by state bodies as expressions of Indian traditions that the state cannot infringe on. The case of Peter Jacobs, a phenotypically black man brought up in a Canadian Indian community, illustrates the point. Although he was raised as a Mohawk of Kahnawà:ke, married to a Mohawk woman, and living on the Kahnawà:ke reserve, Jacobs was denied his rights as a Mohawk by the band council because he lacked the necessary blood quantum. In 1998 he brought his case to the Canadian Human Rights Tribunal. The tribunal agreed that blood quantum was a form of racist discrimination but ultimately determined that it could offer no remedy. Rather, it had to defer to the tribes' right to determine membership according to its own customs—as though predicating membership on blood quantum were in fact a Mohawk tradition and not a settler machination.[117]

That Indians today hold fast to wardship—the "special trust"—and customary law is a tragedy of history. It reflects their ever-murky status as citizens without rights. Forced to compete over the scraps left them by settler states, Indians seem to have little choice but to carry out the will of the oppressor. It is hardly surprising that some Indians, not to mention government bodies, have in the process forgotten just whose will this is. Nearly all of us have forgotten. Even knowledgeable historians such as Dunbar-Ortiz celebrate the agency of Indians and promote a narrative in which Indians are now on the other side of colonialism, preserving timeless ways of life. "Today's

Indigenous nations and communities are societies formed by their resistance to colonialism," she writes, "through which they have carried their practices and histories."[118] Undoubtedly Indians have resisted, but, to date, resistance has been compatible with tribal sovereignty. Until the BIA is abolished, and the structures of tribal governance it designed and authorized are scrapped in favor of democracy and self-rule, supposedly sovereign Indian tribes will remain protectorates of the US government.

How can it be that even Indian activists, tribal governments, human rights tribunals, and scholars of indigeneity fail to see that the colonial relationship endures? That Indian societies, though they have indeed been formed by their resistance to colonialism, have also been formed by their embrace of it? To say so is not to blame the victim but to recognize that victims sometimes must go to terrible lengths to survive. As Simpson puts it, the Mohawk she writes about—and, I would add, all Indians in North America—face the "imperative to live upon and move through their territory in the teeth of constraint."[119] Colonialism, in the forms of wardship and customary law, is an ongoing constraint. If few Americans seem to realize this, it is perhaps because they have been telling themselves the wrong stories. They have written the native out of the autobiography of the settler.

The Missing Native in the Autobiography of the Settler

In the minds of many, the past I have described is both dimly remote and appropriately left in archives. Though regrettable, it is not of direct relevance in the present. The alternative view is that this is a living past that shapes today's American power and popular subjectivity. Indeed, this dark history has informed diverse national imaginations in the twentieth century and since—those of Nazis, Zionists, and supporters of South African apartheid. The past has also determined contemporary institutional realities that perpetuate a colonial occupation and deny Indians rights.

The struggle to grasp the contemporary relevance of the Indian question is embedded in the settler autobiography. This is not one story, of course. It is the work of generations of intellectuals across disciplines and ideological persuasions. These thinkers and writers include citizens and foreign observers. They are leftists, feminists, and antiracists, as well as nationalists

and enthusiasts of genocide. Collectively, they offer narratives about what it means to be an American. In none of the major narratives does being an American mean being a colonizer.

America the Exceptional

For much of its history, American political theory has been preoccupied with comparisons between the United States and Europe. The challenge driving mainstream theory has been to account for a unique American political culture that has enabled unparalleled liberty while avoiding the ethnic, religious, and political strife so characteristic of the Old World. The exceptionalist project, in other words, aims to understand how America has managed not to accrue the sorts of politicized group differences that repeatedly overwhelmed European states, resulting in bloody revolutions and profound changes in governing regimes.

The godfather of this exceptionalist project was the French aristocrat Alexis de Tocqueville. Scholars have continually returned to his two-volume work *Democracy in America* (1835, 1840), which marveled at how unlike Europe America was. Why so? The key feature distinguishing America from Europe, Tocqueville said, was the absence of feudalism: free of a feudal tradition—that is, a tradition of rigid class distinction—America could enjoy the benefits of revolutionary change without having to pay a price in social upheaval. And because there had been no social upheaval, Americans were able to flourish with minimal coercion by the state. In this story, pluralism reigned as Americans built their communities through volunteerism. In such a society of individuals respecting each other, there was no soil in which politicized group differences could take root.

One of Tocqueville's influential successors was Louis Hartz. In *The Liberal Tradition in America* (1955), Hartz wrote, "When Tocqueville wrote that the 'great advantage' of the American lay in the fact that he did not have 'to endure a democratic revolution,' he advanced what was surely one of his most fundamental insights into American life." Fundamental because, according to Hartz, the absence of such a revolution translated into a weak state. It was because America did not need a strong state that it was able to nurture pervasive individualism. Hartz harked back to the early republic to assert that, "where the aristocracies, peasantries and proletariats of Europe are missing, where virtually everyone, including the nascent industrial worker

has the mentality of an independent entrepreneur, two national impulses are bound to make themselves felt: the impulse toward democracy and the impulse toward capitalism."

For Hartz, "the absence of the experience of social revolution" explained why Americans "find it hard to understand Europe's 'social question'" and "are not familiar with the deeper social struggles of Asia." A nonfeudal society was bound to lack both "a genuine revolutionary tradition" and "a tradition of reaction." Unlike Europe, America was gifted equality, without having to struggle for it.[120]

Leftists did not join Hartz in celebrating American equality, but they also took for granted the absence of a feudal past. This unique American condition explained the feebleness of class consciousness in the United States, again eliminating sites of politicized group difference. Seymour Martin Lipset reasoned that it was for lack of a feudal past that the United States was the only industrialized country without a significant socialist movement or labor party. The German socialist Werner Sombart reached the same conclusion in *Why Is There No Socialism in the United States?* (1906). H. G. Wells, in *The Future of America* (1906), noted that the United States lacked not only socialism but also Toryism. He traced this outcome to the absence of two major social classes, a land-bound peasantry and an aristocracy. Friedrich Engels, in *Socialism: Utopian and Scientific* (1880), reached a similar result, pointing out that "America has never known feudalism and has grown up on a bourgeois basis from the first." And for Antonio Gramsci, Americanism was a form of pure rationalism, uncontaminated by the tradition of rigid social classes derived from feudalism. "Americans," Gramsci argued, "regardless of class, emphasize the virtue of hard work by all and the need to exploit nature rather than people."[121]

These scholars, for all their differences, take at face value Alexander Hamilton's claim that the settlers came to build a state based on "reflection and choice" rather than "accident and force." But of course that was not the whole story. As Rogin puts it, "America clearly began not with primal innocence and consent but with acts of force and fraud." The escape from Europe meant a fresh start, but "stripping away history did not permit beginning without sin; it simply exposed the sin at the beginning of it all."[122] The claims of these exceptionalists ring hollow to anyone who does not equate America with white America and who is familiar with the conquest of American Indians and the chaining of enslaved Africans. Scholars of Southern slave plantations

have also shown the links between bondage and feudalism.[123] And, as Gordon Wood has found, colonial America was in fact riven by hereditary class distinctions; the desire of nonaristocratic whites to obtain equal social standing became a major source of revolutionary fervor—and post-revolutionary reform.[124] Their sights set on a supposed absence of all things feudal, Tocquevillians are unable to focus on what was overwhelmingly present: not just racist oppression in the making of America, but also the colonial encounter with the Indian.

Another influential theorist of American exceptionalism, outside the Tocquevillian tradition but nonetheless inspired by it, is Michael Walzer. Walzer, too, tries to explain the weakness of the US state, to understand why it did not need to impose a single social vision on the American people. But he does not trace this weakness, and concomitant American individualism and pluralism, to the absence of feudalism. Instead he looks to America's status as an immigrant society. Immigration, he argues, both enables and necessitates a radical rupture between culture and territory, producing a state that does not serve any particular nation. Under such conditions, pluralism and individual difference can flourish, and there will never develop national majorities and minorities to which politicized difference attaches. By contrast, where there is "an anciently established majority," as in European societies, "politics is bound to draw on history and culture," and "the state won't be neutral in the American style."[125]

This state neutrality makes America special—a place where difference can coexist with difference, neither being stifled nor seeking to stifle the other. In Europe, difference destroyed difference or sought refuge through the establishment of homogeneous nation-states. As Walzer describes it, Europe was a continent of empires in which territorially distinct ethnicities felt oppressed by national (imperial) majorities and therefore sought self-determination. But in a land of immigrants, difference is always groundless: since "nationality and ethnicity never acquired a stable territorial base" in the United States, "the Old World calls for self-determination had no resonance here."[126] For Walzer, then, Europe is divided among so many tribes, while America is multicultural.[127] If European tribalism is political, joining territory with nationality, American multiculturalism is nonpolitical, based on a rupture between territory and nationality.

This narrative is wrong about both Europe and America. The assumption that the old world comprises polities with "established majorit(ies)" is obviated by research documenting the history of ethnic cleansing and the role of organized power in the making of nations. Those majorities are not ancient; they were made by modern nation-states.[128] And Walzer's presentation of the United States as a country of immigrants mistakes the nature of a polity comprising settlers, enslaved Africans, quarantined Latinos, and colonized natives. His notion of rupture between territory and nationality makes little sense in the context of the United States, where the colonial ethnic homeland was invented. US multiculturalism flowered in a garden prepared by the decimation of natives whom Walzer ignores. This single bit of historical honesty would clarify that so-called immigrant societies—Walzer cites the United States, Canada, and Israel—are better thought of as settler societies, based on conquest rather than the occupation of empty lands. Multiculturalism may be an answer to certain problems of racism—it is not as though Walzer is unaware of "blacks—brought to this country as slaves and subjected to a harsh and continuous repression"—but it is no antidote to settler colonialism.

Nor is Walzer unaware of the "conquered . . . Indian tribes" and "Mexicans—who stood in the path of American expansion." But he describes them as "incorporated peoples," as though they form so many threads in the quilt of American pluralism.[129] As incorporated peoples, any rights claimed on their behalf are vestigial—the rights of "aboriginal peoples like the Native Americans or the Maori in New Zealand . . . are eroded with time." Here the colonial question is but a relic. Yet he also recapitulates civilizing narratives in which the Indian was unfit to exercise rights, arguing that even if Indian rights have not eroded, to vindicate them would be both impossible and wrong because "it isn't at all clear that their way of life can be sustained, even under conditions of autonomy, within liberal limits," for "it isn't historically a liberal way of life." The tendency is to ascribe to minorities precisely those characteristics forced on them by conquest and coerced isolation in ghettoes and reservations and thereby to dismiss their claims as either tribal and therefore incompatible with the contemporary condition or else as compatible but unenforceable because eroded. (In this view, which echoes those of Marshall and Lincoln, Walzer also sees Palestinian rights inside Israel as having

eroded, although, for some reason, the rights of ancient Israelites did not erode and instead were bequeathed to modern Jews. He does see the potential for "some kind of local autonomy for Arab towns and villages" inside Israel, so evidently Palestinian-Israeli ways of life must not be too illiberal.)[130]

When Walzer asserts that "the boundaries of the [United States], like those of every other country, were determined by war and diplomacy" and that "immigration . . . determined the character of its inhabitants" he overlooks the natives who inhabited the boundaries. Elsewhere he does see the natives, noting that they and other disfavored minorities were "politically impotent and socially invisible." But the "shape" of American pluralism "was not determined by their presence or by their repression." It does not matter that the opportunity to volunteer, be oneself, and participate in tolerated difference was denied those racialized and distinguished as not-white.[131] America is indeed exceptionally free of politicized difference when the exceptions are ignored.

Mainstream US historical writing has also sought to define what is exceptionally American, coalescing around the idea that the frontier experience is the source of American uniqueness. In some of these stories, the frontier is primarily a natural place. The Indian, while present, is akin to a wild horse or buffalo. Indians are in the world but play small roles. In others, the frontier is a social place, where new communities and even civilizations are built while the Indian is displaced. In these stories, Indians may take on central importance. Each imagined frontier provides the historical foundation for distinctive political visions.

The notion of the frontier as wilderness was most influentially elaborated in Frederick Jackson Turner's 1893 address to the American Historical Association on "The Significance of the Frontier in American History." Turner argued that the frontier "stimulated invention and rugged individualism and was the important factor in the formation of a distinctive 'American' character." The Indians, and the violence against them, had but a bit part in this character formation.[132] The historian Charles Beard took up this idea and expanded on it. There was not one frontier but many, wave upon wave, the first transoceanic, the second from the Eastern Seaboard to the Alleghenies, then the trans-Allegheny frontier, and so on. So powerful was the frontier metaphor across generations that it found a place in John F. Kennedy's 1960 inaugural call to mobilize America around a new frontier. For many, the fron-

tier was the site of a struggle that defined the key ideological contest in American history: that between popular forces identified as Western and centralizing forces identified as Eastern.[133]

To the extent that the frontier thesis focused on nature rather than society and polity, it was subject to a simple and devastating critique. Nature, as in God's creation, was universal and therefore could not explain the uniqueness of the American experience. What is more, no sooner did settlers reach the frontier than they began cultivating it. The frontier was therefore a historical landscape, not nature.

Given these deficits, there was space for another naturalistic vision alongside that of the frontier as wilderness, although, as the Kennedy example suggests, the second vision did not replace the first. The new approach was less ruminative than its predecessor and more instrumental to statecraft. This was agrarian populism.[134] When agrarian populism mentioned Indian wars, it was as a prehistory, not the real stuff of American history. Real history was the work of the yeoman farmer, whose toil was said to be responsible for the clearing and cultivation of the soil and the continuous extension of the frontier. As Richard Slotkin notes in his remarkable study of violence in America, this collective hero—very much in the spirit of Walt Whitman—took credit for pushing the frontiers of the democratic republic. Like Turner, the ideologues of agrarian populism—from Thomas Jefferson to Andrew Jackson—marginalized the role of violence in the development of the frontier.[135]

If agrarian populism took its cue from Turner and explained America's great triumph as the taming of nature, progressivism, another frontier philosophy, placed conflict with the Indians at the center of its reading of the American past. Where agrarian populism saw American history through an economic lens—man against nature, with the Indian a fact of nature—progressivism saw the same history through a political lens, as a struggle between races competing for mastery. At its heart was the contest between the settler and the native, the civilized and the savage. Because the dispossession of the Indians "did not happen once and for all, in the beginning," Rogin writes, "America was continually beginning again on the frontier." This was the essence of the progressive vision, and its exponents would not hesitate to agree with Rogin that, in the course of this expansion, America "killed, removed, and drove into extinction one tribe after another."[136] The

progressive historians celebrated this fact, even as they mistook it as an expression of white victory in what was mutually understood as a race war.

One of the key architects of this mythology was Francis Parkman, whose monumental history of Indians in the European colonial era, published between 1859 and 1892, stood for decades as orthodoxy. Even now its imprint is felt across popular novels and films, inflaming the public perception of Indians as bloodthirsty warriors. Parkman put forward "the idea that Indian warfare was characteristically exterminationist and genocidal in its objective and tactics," Slotkin explains. That is, Indians were constantly fighting each other for supremacy and so gave no quarter. This was, however, more a projection of settler warfare than an accurate characterization of conflicts among Indian groups.

Parkman attracted enthusiastic disciples, who detailed versions of the American West as an arena for race war. Among these disciples was Theodore Roosevelt. According to Slotkin, Parkman was "one of young Roosevelt's favorite authors" as well as Roosevelt's "model as a historian." Roosevelt dedicated the first volume in his epic *The Winning of the West* (1889–1896) to Parkman. *The Winning of the West* details a Darwinian contest for mastery between contending races. In this literature the primary agent of American expansion is "the man who knows Indians," from the fictional Hawkeye to historical figures like Daniel Boone, Davy Crockett, Robert Rogers, Kit Carson, Sam Houston, and in particular the "three hunter-presidents, Washington, Jackson and Lincoln."[137] The idea of hunting Indians was deeply compelling to Roosevelt, who, in Slotkin's words, would "'naturalize' force and violence by representing it chiefly through stories of big-game hunts." In Roosevelt's telling, Indian wars, at the border between civilization and savagery, were endemic: "The chief feature of frontier life was endless warfare between the settlers and the red men." Roosevelt believed the Indians had to be unconditionally pacified, even exterminated, for peace was only possible between those who "feel the same spirit."[138]

On the one hand, it might be viewed as a historical irony that this warmonger, whose sense of history as a contest for racial supremacy was shared by the likes of Hitler in *Mein Kampf,* won the Nobel Peace Prize in 1906. On the other hand, his argument that peace demanded comportment in "spirit" remains popular today. Recall Walzer's opposition to American Indian autonomy on the grounds that they lack "historically a liberal way of life."[139]

Other contemporary thinkers have formulated this view under the banner of democratic peace, which claims that peace is only possible between liberal democracies.[140]

While exceptionalism remains the currency of American identity and politics, at the margins and in academia, another kind of political writing has lately emerged to contest consensus accounts of remarkable pluralism and the onward march of democratic civilization. These revisionist accounts focus on the remainders whom consensus thinkers leave out—those who have had to struggle for emancipation and inclusion in the political community. But even these narratives, largely focused on African Americans and women, omit the native from the autobiography of the settler, reinforcing the present colonial condition.

The Limits of Emancipation

The cutting edge in political scholarship takes seriously the suffering and inclusion struggles of blacks and women especially, as well as those of disfavored immigrants, religious dissenters, and gender nonconformists. It can be critical or redemptive and is often both. American Indians rarely find their way into such revisionist narratives, but the problem with these stories is not just a lack of Indian representation. The problem is the continuing failure to articulate America's colonial past and present, even in literature concerned with indigenous people. Revisionist intellectuals promote and celebrate emancipation and inclusion, not decolonization. In doing so they contribute to the erasure of colonialism from America's sense of itself.

In the most searching and poignant narratives of US exclusion and inclusion, the moments of promise—both realized and frustrated—are Reconstruction, the achievement of women's suffrage, and the postwar civil rights and women's liberation movements. Reconstruction was the first time in US history when the federal government worked to ensure equality for nonwhites. Although Reconstruction was only briefly successful in achieving equal citizenship for black men, it at least signaled a possibility of coming to terms with racial subjugation. It began a process of deracializing that continued in the civil rights movement, which produced further key steps toward legal equality for African Americans.

As Judith Shklar recounts in *American Citizenship: The Quest for Inclusion* (1991), Reconstruction also had an important influence on movements for

women's rights—by ignoring women. "I have only tried to recall something that has often been neglected by historians of American political thought," she writes. This is "the enduring impact of slavery not merely on black Americans and on the Civil War generation generally, but also on the imagination and fear of those who were neither threatened by enslavement nor deeply and actively opposed to it."[141] Shklar contrasts the trajectories of movements that responded to citizenship exclusions on the bases of race and gender, noting that even if the Fifteenth Amendment "did not do nearly enough for the black voter," it "did nothing at all for women." The resulting "bitter resentment" led to "an unhappy chapter in the women's suffrage movement."

> The women's suffrage movement had grown directly out of abolitionism, but when disenfranchised women saw black men achieve a right they still lacked, their deep racism quickly asserted itself, and it grew worse as they began to seek the support of southern women. . . . When [the abolitionist] Wendell Phillips said, 'One question at a time. This hour belongs to the Negro,' the suffragettes walked out on him. They saw their standing as above the black man's and they acted accordingly. It was a short-sighted move.[142]

Forced to strike out on their own, suffragists pressed a separate claim to inclusion, in the form of a constitutional amendment introduced in 1878. After decades of advocacy, the amendment won passage in Congress in 1919 and was ratified by the states the following year.

Like women, Indians were excluded from the voting protections enshrined in the Reconstruction amendments. But, unlike women, Indians have never seen their constitutional status changed. Instead, as we have seen, they were made citizens as a matter of statute in 1924, after which the states exercised their authority to deny the Indian franchise, an authority they were allowed because the Constitution offers no protections to Indians. The civil rights movement had no effect on this situation, either. The Civil Rights Act of 1964 does not apply to Indians, hence the creation of the separate 1968 Indian Civil Rights Act. The ICRA continued the work of the Reconstruction amendments in solidifying the colonial domination of Indians as wards of Congress, subject to its whim.

Histories that celebrate Reconstruction and civil rights, and that lament their limits without reference to Indians, are the foundation of a kind of revisionist settler autobiography in which history speaks of imperfect but widening inclusion. These days, the most popular expression of this story may be the Broadway hit *Hamilton:* a salute to an America where the politicization of difference does occur but is also overcome. The idea of citizenship promoted here is one so admirably flexible that, though the road to inclusion be long and dangerous, the destination is reachable by all. One cannot join honestly in such celebrations while also engaging seriously the problem of the Indians.

This elision has consequences. In the first place, it erases the colonial past and present. Beyond this, it subsumes the Indian struggle under the very different struggle for racial equality. Antiracism is not the same as decolonization; the former does not achieve the latter, and to the extent that they are conflated or antiracism pursued and decolonization ignored, one good is achieved at the expense of another. America can deracialize without decolonizing because African Americans and American Indians occupy different social and political locations of marginalization, and these translate into different perspectives on emancipation and strategies for pursuing it.

My claim, again, is not that blacks have been subject to racism and Indians have not. But even the racial regimes to which both groups have been subject point to the key difference in their treatment by whites: blacks have been sources of labor, and Indians sources of land. The case of Peter Jacobs is instructive on this point as well. If his blood could not prove him Mohawk, it would easily have proved him black. The rules for admission as Indian tend to be stringent, thereby reducing membership. On the other hand, in societies enculturated with the one-drop rule, even the least African descent—the least "contamination" by African blood—was historically enough to establish racial membership. What could be the rationale for racial permissiveness in one case and strictness in the other? Why reduce the number of Indians in law to a minimum while increasing the number of Africans to a maximum? Because so long as there exists an Indian community, it constitutes a claim on land and therefore a critique of settler sovereignty and an obstacle to the growth of the settler economy. To reduce the number of legally recognized Indians is to reduce claims on land and naturalize settler power. By contrast,

it was by increasing the number of Africans in law that settlers served themselves. More Africans meant more enslaved labor, and later more membership in a class marked for semi-servile labor.

The land-labor distinction explains why settlers sought to master enslaved Africans as individuals but conquered American Indians as tribes. And here we see most starkly why racial emancipation is not decolonization. Personal enslavement is a condition that could be, and was, rescinded. In contrast, the Indians were destroyed as peoples, a condition that cannot be reversed. This fostered a circumstance in which African Americans were able, over time, to make certain choices: embrace an assimilated-immigrant status by struggling for equal citizenship in America, as W. E. B. Du Bois emphasized, or else return to Africa, as Marcus Garvey recommended. Against the obstacles of white supremacy, white fear, and white violence, blacks could seek to create a new home by struggling for equal citizenship, or else embrace an old one. Indian survivors of genocide never had such a choice. They could not return, for there was nowhere to return to; they were either imprisoned on their ancestors' land, or that land had been transformed into something alien and inaccessible. And equal citizenship, were it attainable, could never restore peoplehood. A struggle limited to establishing equal citizenship of individuals is merely the masked acceptance of final defeat: total colonization. For the American who empathizes with the African American struggle for equal citizenship, discussing the race question is often a privileged way of not talking about the Indian question.

The Limits of Resistance

Audra Simpson has argued that we must look for a third space, between independence and assimilation, to grasp the specificity of the Indian question in North America. This third space is "a category [defined by] refusal." In particular, this is a refusal to embrace the identity of the colonizer. Simpson points to several examples of what this might look like in practice. For instance, the three Mohawks of Kahnawà:ke who had so much trouble getting home from the 2010 World People's Conference on Climate Change in Bolivia because they refused to use Canadian passports. Instead, they traveled with Haudenosaunee passports. First they were detained in El Salvador for seventeen days, and then they were denied entry into Canada. They rejected emergency travel documents and spent ten days at the airport before they

were finally permitted into Canada. Similarly, in July of that year, the Iroquois Nationals lacrosse team turned up at the World Lacrosse League Championship in Manchester, England, with passports signed and issued by the chiefs of the Haudenosaunee Confederacy. They pulled out when the United Kingdom refused to accept the legitimacy of their passports.[143]

The notion that "refusal is an alternative to recognition" has much to recommend it. But Simpson goes further. She claims that the Mohawk have successfully resisted colonization: their "'conquest' is fundamentally a failed one," she writes, "as those people survived and remain not only Indigenous or Indian, but specifically Mohawk and in possession of their own philosophical and governing charter, the Kaianere'kó:wa, or 'Great Law of Peace.'" On this basis, Simpson concludes that Mohawks, and presumably other North American tribes in a similar position, are "semi-sovereign."[144]

Such celebrations of agency and survival mistake the circumstance Indians face and reinforce America's denial about its colonial condition. Indian tribes in the United States are not sovereign but rather subject to rule by decree of Congress, a body in which they have no representation as peoples. Their wardship is a marker of colonization, not sovereignty or even semi-sovereignty. Meanwhile, the survival of native identity and institutions believed to be traditional testifies not only to resistance but also to the incorporation of Indians into the structure of indirect rule. Indian activists and governments are themselves colonized. When they grasp for the protections of the federal trust system, it is because they know that the alternative is likely to be worse. When they implement blood-quantum laws, it is because incumbent tribal members benefit from strict boundaries on inclusion—even if these laws enact racist policies imposed on tribes. The tribal councils that preserve supposedly traditional forms of governance are unelected authorities who falsely claim to be custodians of customary power when their power has either been created or reinforced by agents of the BIA.

Without wading into controversies over the value of identity, one can confidently say that self-identification is not the same as self-determination. Colonization in the United States, as elsewhere, is a legal process, not just a cultural one. And in America, that process is very much ongoing. Meanwhile, to the extent that colonization is a cultural process, the proclamation of Indian identity is not a solution. It can in fact be counterproductive, for it satisfies the settler's insistence that he is not a settler at all—that America is not

a colony but rather a beautiful and diverse land of immigrant identities flourishing side by side. America will never decolonize while the colonized themselves tell us they are sovereign.

Decolonizing America

America can only begin to decolonize when it acknowledges that it is a colonial state. Americans should be able to see coloniality in the birth of their nation, its history, and its present. But if they need guidance, they can also look abroad, as I do in the chapters to come. The significance of the comparison between the United States and other colonial states became clear to me in 1993, when I first went to South Africa to study apartheid. The mechanics of ethnic cleansing in South Africa were suspiciously recognizable. In 1913 the Natives Land Act declared 87 percent of the land in South Africa for whites and divided the remaining 13 percent among many tribal homelands into which the African population would be herded. These homelands were called reserves. I wondered why the name sounded so uncannily like that of the American reservation. The answer was illuminating and chilling. Soon after white South Africa became independent from Britain in 1910, the new settler government sent a delegation to North America to study how the United States and Canada set up their own tribal homelands. The American reservation and Canadian reserve became the South African reserve. In time, apartheid authorities came to claim that the Bantustan was a form of tribal sovereignty.

Inserted in the global history of colonialism, America appears less as exceptionally pluralistic and cohesive—unmarred by the politicization of group identity—and more as a pioneer in the technology of settler rule. The American reservation had a rudimentary precursor in Ulster, but, as I show in later chapters, all of the defining institutions of settler colonialism as practiced in the nineteenth, twentieth, and twenty-first centuries were first developed in North America. The US tribal homeland was the prototype not only for the South African reserve but also the Nazi concentration camp. The unaccountable and unelected native authority with state backing, and the uncustomary customary law this authority wielded, were adopted by British

indirect rule. And the pass system was forced on North American Indian tribes long before it was forced on any colonized African.

Adopting such a global-historical standpoint brings the native into focus. With our eye on the native, the American Revolution of 1776 no longer seems like the prelude to the "first new nation," as Lipset called it.[145] Rather, the revolution merely ushered a different group of white settlers into the seats of government. This was not a revolution, because the ideology of the state was maintained; it was a rebellion, a change of leadership. During its first 150 years, America did not celebrate the revolution; it celebrated the "War of Independence."[146] This was apt terminology, for the independence of the United States was akin to the independence of Liberia in 1847 under black-settler rule, South Africa in 1910 under white-settler rule, and Israel in 1948 under Zionist-settler rule. Had Ian Smith and his followers succeeded in 1974, an independent white settler–ruled Rhodesia would have joined these ranks. America mistakes itself for a new kind of nation, whereas in fact it is the continuation of the settler-colonial nation that the Crown and other Europeans created.

What would decolonization mean from the point of view of Indians in the United States? In the words of Roxanne Dunbar-Ortiz, "That process rightfully starts by honoring the treaties the US made with Indigenous nations, by restoring all sacred sites, starting with the Black Hills [of South Dakota] and including most federally held parks and land and all stolen sacred items and body parts, and by payment of sufficient reparations for the reconstruction and expansion of Native nations." Decolonization should also feature "extensive educational programs" and extend beyond Indians, requiring "the full support and active participation of the descendants of settlers, enslaved Africans, and colonized Mexicans, as well as immigrant populations."[147]

The further question, as I see it, is what exactly the participation of the settlers should look like. Dunbar-Ortiz rightly points to the payment of reparations; I would add further conditions. One is the establishment of constitutionally defined federal autonomy. This could mean statehood, building on the demand of the Five Civilized Tribes "for admission as a state of the Union." Such a change would be impossible without the cooperation of the wider American people and their representatives in Congress. Another

possibility is to end the status of wardship by granting reservations themselves representation in both houses of Congress, abolishing the BIA, and democratizing tribal governance. These conditions are enabled by another: the rewriting of the American autobiography. America will be able to decolonize when its presidents, intellectuals, and the proverbial average Jill and Joe recognize that they live not in the first new nation but the first settler colony.

2

NUREMBERG

The Failure of Denazification

The American nation-building project was not the first based on ethnic cleansing. As we saw, one can look back to the Reconquista for an earlier instance. But the extermination of the Indians was the first genocide in the modern period, and its influence was felt elsewhere. The genocide of the American Indians, and the celebration of that genocide within the US settler regime, had a significant impact on Adolf Hitler and fellow Nazis. Hitler studied carefully the treatment of the American Indians. He also adopted the eugenic justifications of genocide that Americans promoted at the end of the nineteenth century and into the twentieth.

It may seem, though, that today these narratives have diverged. Whereas Americans no longer recognize the colonial history that their predecessors forthrightly embraced, Germans have atoned for the Nazi past and continue to do so. They have paid reparations, built monuments and museums, and set aside a national day of remembrance. They have repudiated antisemitic ideology. Even Germans born decades after World War II readily internalize a strong sense of responsibility for the horrors of the Third Reich.

Yet in Germany no less than the United States, the political meaning of genocide has never been widely understood. Both populations have, for the most part, denounced genocide as a racist act, but neither has recognized that it was also a productive one, whose outcome is the nation-states in which they live. Germans lament the Final Solution without admitting that they live out its success every day in a state where the national majority was effectively

severed from the national minority, and the majority elevated as the nation at the expense of the minority. Now that the Jews are gone, Germans are content to uphold Israel as a refuge for the minority they could not abide under the terms of European political modernity. German support for Israel, meanwhile, reflects an acceptance of guilt but also a failure to recognize the same nationalist ideology at work in both the Third Reich and Israel. Nazis demanded an end to Jews in their midst so that Germans could have the homogeneous nation-state that was their right under political modernity. As I detail in chapter 5, Zionists created a Jewish state in Palestine so that Jews, too, could have their rightful homogeneous nation-state.

That Germans—indeed, the whole of the West—considered Israel a kind of compensation after the Holocaust demonstrates that they saw the attempted elimination of European Jewry only as a monstrous crime, not as an effort to establish in national terms the boundaries of membership in a political community. For supporting the Zionist cause also means supporting just such a nationalist boundary-drawing effort. In Israel, the political community is open only to Jews, the majority nation. In Nazi Germany, the political community was open only to the *volk*. The Holocaust was an effort to police and solidify that boundary. Israel has not pursued the political closure of the nation-state through genocide, but it has pursued that closure by other means. Again, the world has repudiated genocide in Germany, but not its political aims.

The depoliticization of genocide in Germany was the result of a deliberate and organized process. In the immediate aftermath of World War II and the Holocaust, the victorious Allies in the West reinvented Nazism as an accumulation of individual crimes rather than a political project. By identifying Nazism with the crimes of hundreds of thousands, even millions, of individuals, denazification became a punitive effort rather than a politically transformative one. The Americans, British, and French all sought, with varying degrees of commitment, to punish individual Germans but not to reform the political institutions and social relations that made the Holocaust thinkable and desirable inside Germany and among its allies in Austria and elsewhere—allies who were not only pointedly omitted from denazification but cast as the Nazis' first victims.

By interpreting Nazism narrowly as a set of crimes committed by Germans rather than as an expression of nationalism, the Allied Powers protected

themselves and their citizens from scrutiny. Most fundamentally, the Allies absolved the nation-state form they shared with Germany, lest they be forced to account for their own nationalist violence at home and in their colonies (which, in the case of the United States, *was* home). The United States further avoided awkward conversations about its own hypocrisy, as the prototype whose methods were taken to a new extreme in Germany. More imminently, during and after the war, the Allies committed large-scale atrocities in Europe and Asia, including the forced migration of millions of Europeans in an effort to create homogeneous ethno-states—a political project uncomfortably similar to that of the Nazis. Roughly half a million Germans died in that effort, some in the very concentration camps where Nazis implemented the Final Solution. It was essential that these atrocities be ignored. Finally, by limiting culpability to Germans, the Allies spared their own nationals who collaborated with Nazis. Had Nazism instead been understood as a political project, all of these uncomfortable—but vital—truths would have been on the table, potentially leading to a revolutionary reimagining of modern political organization.

The principal vehicles of depoliticization were the Nuremberg tribunal and the wider bureaucratic process of denazification in the Western occupied zones of postwar Germany. At Nuremberg, the Allies brought up individual Nazi leaders on charges in the context of a criminal court. The proceedings were designed to ensure that only the violent acts of selected German perpetrators would be assessed and punished. No effort was made to address the predicates of their violence. German industrialists who invested in—and were handsomely rewarded by—the Nazi regime were largely ignored, the better to support the commercial goals of Western corporations looking to collaborate with German businesses. Nazi intellectuals and journalists, precisely the people who most forcefully enunciated German nationalism, were left out of the tribunals. Foreign corporations that supplied Hitler's war machine were entirely exempted from charges and punishment, and "useful Nazis"—especially scientists who could develop advanced armaments and defenses—were eagerly embraced by the Allies. Such amnesties made clear that, if denazification had political goals, these were simply the advancement of the Allies' immediate desires within the context of nation-state competition.

When it came to lesser Nazis, the Americans expended tremendous efforts to identify and punish huge numbers of individual Germans through

detention and work limitations. At one point nearly 2 million Germans had been personally classified as punishable through demotion; all were constrained to do only manual labor. For their part, the British focused less on everyday people and more on reeducating former officials and teachers. The French were selective, in an effort to avoid purging thousands of their own Vichy collaborators. If the British sought to distinguish civic employees from ordinary people, they never imagined an alternative political project that might fundamentally supplant the German nationalism those bureaucrats carried out. And the Americans flattened the German population, asserting collective guilt. The result was widespread resentment toward what appeared to be not true justice but victor's justice.

The British, French, and Americans might have looked inside Germany itself for a new kind of politics to supplant German nationalism. Doing so would have led them to the legions of homegrown German antifascists. But, among the Allies, it was only the Soviets who sought to cultivate these groups. Fearing bolshevism, the Western Allies marginalized Germany's internal prodemocracy forces, some of which leaned left. Eventually, amid the hardening politics of the Cold War, the Soviets also abandoned German activists. The diversity of opinion among antifascists in the Soviet-occupied zone was quashed as Soviet-backed authorities and security forces imposed an uncompromising official Marxism on the population. Many of those authorities and agents were themselves former Nazis. Once the bane of Eastern Europe, responsible for incalculable carnage in the USSR, these Germans were now useful to Stalin's cause. And so denazification sputtered in the East as well.

The failure of denazification became obvious in the 1950s. The German state had been neutered, its capacity for violence suppressed. But public opinion remained appreciative of the Final Solution and dismissive of Jewish suffering. In the West and the East, former Nazis occupied large numbers of state posts—they were public school teachers, civil servants, police, and even diplomats. Indeed, in the West, just a few years after the war, ex-Nazis held the majority of civil service positions. It was in this context that West Germany threw its weight behind Jewish nation-building in Israel. Ex-Nazis seemingly understood that giving Jews a place of their own, far away, was an acceptable outcome.

Although the denazification process was widely reviled in Germany and beyond, in the aftermath of the Cold War, the logic of Nuremberg was re-

vived in postcolonial contexts under the name of transitional justice, which repackages criminalization and victim's justice in the language of human rights. The latest one-size-fits-all international regime, transitional justice is offered as panacea for postconflict situations from Yugoslavia to Rwanda. Yet "transition" just means rebuilding the state that broke down in the throes of extreme violence, without asking questions about the nature of the state to be reconstructed. Because its focus on restoring the rule of law precedes a discussion of the nature of the state that would be the guarantor of this rule, the project forestalls political reform in the name of ensuring individual legal accountability. That was precisely the Nuremberg method.

The criminal model of Nuremberg and human rights provides cover for the nation-state and its underlying ideologies of European and colonial political modernity. In the next chapter, we will see how South Africa tried an alternative to Nuremberg-style justice in the transition out of apartheid, political reforms that promoted coexistence rather than ethnic separation—that is, political reforms premised on new political identities rather than those of permanent national majorities and minorities. In chapter 4 we will find that transitional justice preserved colonial modernity in post–civil war Sudan. In chapter 6 I come back to the comparison of criminal and political models for understanding and responding to extreme violence, discussing the promise of the political model in breaking cycles of violence over political belonging.

Nazi Policies, American Politics

When the Nuremberg tribunal convened with a singular focus on German culpability, it did so at the expense of a searching inquiry into the underlying commitments of Nazi ideology and policy. Above all, what went missing was the thread linking National Socialism to other nationalisms. Following this thread reveals facts that would have been uncomfortable for the Allies, in particular the Americans, who saw victory in World War II as a precursor to US political and moral leadership on a global scale.

As the historian Norman Rich puts it, "The United States policy of westward expansion in the course of which the white man ruthlessly thrust aside the 'inferior' indigenous populations served as the model for Hitler's entire conception of Lebensraum."[1] Hitler understood that the dispossession and

genocide of the American Indians was an organized effort by white settlers to occupy a domain that would allow the development of the settlers' full potential. Germany's own expansion into Eastern and Central Europe would, Hitler hoped, follow this template. America, he made clear, was a laboratory for Germany and proof that the Nazi project could succeed. He wrote in *Mein Kampf,* "The racially pure and still unmixed German has risen to become master of the American continent, and he will remain the master, so long as he does not fall victim to racial pollution." Hitler was under no illusions about how this mastery was attained. In a 1928 speech, he noted approvingly that the Americans had "gunned down the millions of Redskins to a few hundred thousand."

Hitler was inspired not just by American history but also by contemporary US policy. In the unpublished 1928 sequel to *Mein Kampf,* Hitler deemed America "a 'race-state' that deserved admiration." As evidence, he looked appropriately to the introduction in the United States of racist immigration restrictions that had begun with the Chinese Exclusion Act of 1882 and expanded dramatically in 1924. That year's Immigration Act instituted a "national origins" quota that aimed unambiguously to promote immigration from Northern and Western Europe while keeping out others. "American immigration policies provide confirmation that the previous 'melting pot' approach presupposes humans of a certain similar racial basis," Hitler wrote, demonstrating a keen appreciation for the limitations Americans assumed when they congratulated themselves on their own pluralism. Like the authors of the Immigration Act, Hitler believed that such an approach "immediately fails as soon as fundamentally different types of humans are involved."

James Q. Whitman writes that, in the early 1930s, when Nazi lawyers were engaged in creating a race law that would function as a barrier to miscegenation and race-based immigration, "they went looking for foreign models and found them—in the United States of America." For instance, they learned from the United States how to rank residents into superior and inferior classes. Until 1924, American Indians were considered "nationals" but not citizens; the Nazis adopted that same terminology. Hitler had written in *Mein Kampf* that "the volkish state divides its inhabitants into three classes: *Staatsburger* (citizens), *Staatsangahorige* (nationals) and *Auslander* (aliens)." Nationals in the Reich would be treated much as the Indians were after 1924: as "second class citizens entitled to the protection of the state, but not to full political rights."

The Germans also learned from their American counterparts how to distinguish members of the subjugated class in racial terms. Much as Indians were separated into categories of full-blood, half-blood, and so on, German Jews were ranked by ancestry. A 1935 census counted 550,000 full and three-quarter Jews, 200,000 half Jews, and 100,000 quarter Jews. The Nazis held that anyone with at least one Jewish grandparent—in other words anyone at least one-quarter Jewish—was a Jew according to the law. In this sense, Nazi mongrelization laws did not go as far as US laws applied to Americans of African descent. Even the most radical of Nazi lawyers recoiled in the face of the one-drop rule; it was, Whitman writes, "too harsh to be embraced by the Third Reich."[2]

In addition to their shared commitment to racial ideology, Americans and Nazis had a strong affinity for industrial capitalism and did what they could to promote US businesses in the Third Reich, even when doing so served to advance German military aims. In the fall of 1936, "more than a hundred American corporations" either had subsidiaries in Germany or had cooperative agreements with German firms. Several had direct connections with German firms involved in armaments production. William E. Dodd, the US ambassador to Germany between 1933 and 1937, reported to President Franklin Roosevelt that Du Pont–controlled companies had "allies in Germany that are aiding in the armament business," Standard Oil investments were "helping Germans make Ersatz gas for war purposes," and the International Harvester Company was making huge gains thanks to "arms manufacture" in Germany. Ford and General Motors also had "enormous businesses" in Germany. Dodd noted that "even our airplanes people have secret arrangements with Krupps," referring to the giant firm led by Aflried Krupp, an unrepentant Nazi who was close to the heart of the regime. The leaders of all of these US companies had to have known that they were operating in league with the German state, as the US government also knew, per Dodd's report.[3]

The interests of US companies and the Reich were aligned not just financially but also politically. According to Mira Wilkins, Germany was attractive to US companies thanks to "the absence of labor problems so evident in the United States, France, and elsewhere." Meanwhile, in their four-year plan of 1936, German policymakers explained that making life in Germany easy for American companies furthered "national goals." American firms got access to the sort of political environment that was good for profits, and the

Reich obtained allies who, though not in government, were close to the center of American power.[4]

Remarkably, the United States continued to secure US investments to the benefit of the German war machine even after Washington decided to enter the war against Hitler. In his description of the results of Allied bombing in Germany, Henry Morgenthau, Jr., the US Treasury secretary, noted that a "surprisingly large number of factories were damaged only superficially while many were entirely unscathed." This could not have been accidental: "Some of the latter apparently owed their escape to the careful, precise work of the Allied airmen," he observed. Ford and British Courtauld plants at Cologne "shared the immunity of the famous cathedral." General Motors' Opel works "were said to be almost the only buildings intact in Russelsheim." In the face of "the seemingly miraculous escape of the IG Farben works at Hoechst, . . . London's *New Statesman* noted that American firms had been associated in the enterprise before the war."[5] After the war, a report led by the economist John Kenneth Galbraith found that strategic bombing had been a "disastrous failure" as "German war production had, indeed, expanded under the bombing."[6]

When it came time for judgment at Nuremberg, the Americans and other non-Germans who had supported the Reich politically and economically were not brought to account, and the US influence on Nazi decision-making was inadmissible at the court proceedings. This is a key mechanism by which denazification left Nazism itself intact. To put Nazism—as opposed to individual Nazis—on trial would have revealed that it was not just a German project but also an American one and indeed a global one; a complex of the nation-state and big business, working toward the aims inherent in themselves.

Judgment at Nuremberg

With the International Military Tribunal (IMT) at Nuremberg, the Allies had a choice. Either they could restrict the indictment to actions committed by individual agents of the Reich during the war, or they could take a broader approach by considering general principles of moral conduct by states. But this would have risked their own skin. A court enjoined to account for the

behavior of all combatants in the war would have found plenty guilt to go around—not just among the Nazi adversaries.

The Allies chose the narrower path. They protected themselves, and the world paid a large price. Nuremberg was a rare thing: an occasion, in the wake of extreme violence, to transform the international order. From the despair of genocide and war on unprecedented scale arose an opportunity to establish ground rules in international law to govern the behavior of states. That opportunity was squandered. In the words of Karl Jaspers, one of Germany's most liberal, Western-oriented thinkers, the IMT "was, in effect, a singular proceeding of the victors against the vanquished, in which the foundation of a shared legal understanding and legal intention of the victorious powers was absent. It therefore achieved the opposite of what it should have. Law was not made, rather mistrust of law increased. The disappointment is . . . crushing."[7]

Victor's Justice

At Nuremberg, what was claimed to be an act of justice resulted merely in "the continuation of hostilities by means purporting to be judicial." Instead of demonstrating the high ideals of Germany's enemies and the rule-based order of which they boasted, the Nuremberg process served to undermine the rule of law. In doing so, it marred the denazification process generally, undermining the possibility of political reform in the wake of the Second World War.[8]

Although Nuremberg featured countless hypocrisies and rule-of-law violations, it nonetheless left a large imprint on international law by developing the principle of individual criminal accountability for state acts. At Nuremberg, and now in the mission statements and rules governing institutions from Human Rights Watch to the International Criminal Court, the injustice wrought by states was depoliticized and repackaged as the responsibility of specific people who had done wrong or authorized others to do wrong. The tribunal did not invent this idea, but it was the first to successfully implement it. As Gary Bass has shown, individuals were first considered subjects of international criminal law following the collapse of the Ottoman empire at the end of the First World War, when the British demanded that certain Turkish leaders be held individually and criminally accountable for the Armenian genocide.[9] The goal at the time was not only justice but also to

use international law to hold down the vanquished state and the emergent Turkish Republic, which was at the time under a tenuous Allied occupation. Nuremberg would provide a more dramatic and influential repetition of this performance.

The IMT is often given credit for another development: establishing the notion of crimes against humanity. But while the tribunal did announce a meaning of crimes against humanity—violations against stateless individuals, specifically Jews and Roma—it reached no conclusions on how to deal with such crimes. Furthermore, the concept of crimes against humanity originated earlier, in a colonial context in which it meant something very different. The notion of crimes against humanity arose in reference to atrocities unleashed by Belgium in the Congo more than a half century before the Holocaust; the term described acts so horrific that they transcend statutes of limitations. The charge was formulated in 1890 by George Washington Williams, a historian, Baptist minister, and lawyer and the first black member of the Ohio state legislature. After a visit to the Congo, he wrote a letter to the US secretary of state documenting atrocities committed by King Leopold's colonial regime and concluding that Belgian conduct should be condemned as a "crime against humanity."[10]

If there is any doubt about the IMT's failure to foster a legal regime or moral norms surrounding crimes against humanity, one need only keep in mind that, at Nuremberg, the Holocaust was a footnote. When it came to the brutalization of Jews as a people before the war began in 1939—acts which were later understood as part of the Holocaust—the Tribunal declared that "revolting and horrible as many of these crimes were," they would be exempt from the court's jurisdiction: "The Tribunal cannot make a general declaration that the Acts before 1939 were Crimes Against Humanity within the meaning of the Charter."[11]

Even the Final Solution was not deemed a crime against humanity. "According to the IMT, mass extermination in Auschwitz and elsewhere were 'war crimes,'" Jeffrey Olick writes. This reference to the traditional international law concept of war crimes—violation of laws and customs of war, such as mistreatment of prisoners of war and abuse of enemy civilians—served the court's purpose of preserving the Allies' impunity. "The idea," Olick explains, was "that by coupling the right to prosecute such crimes (up to that point a matter of domestic law) with subsequent violations of

international law was a way to hold the Germans accountable without at the same time opening up the possibility, for instance, of holding American leaders responsible for racial crimes in the United States." By calling the Final Solution a war crime, the allies were able to hold Germans accountable for racist violence within their territory, something that otherwise would not be possible under international law. The ongoing racial terrorism of Jim Crow, however, could not be recognized as a matter for international law, for though it was plainly a crime against humanity in the sense that Williams had described, it was not a war crime. "On this basis, one could reasonably conclude that Nuremberg was more about dictatorship and aggressive war—that is, about 'crimes against peace'—than about what would come to be known as the 'Holocaust' or at least about the racial policies of Nazi Germany toward German Jews," Olick concludes, "though that is the opposite of how Nuremberg has been remembered."[12]

In retrospect the IMT has been granted a moral authority it did not enjoy when it was under way. As Jaspers's comment suggests, observers at the time understood that the tribunal was interested neither in establishing a new moral regime to guide state behavior nor in imposing a universal rule of law on states. This became obvious as soon as the charges were revealed. Leading Nazis were accused of four crimes: conspiracy to wage aggressive war, waging aggressive war, war crimes, and crimes against humanity. The first two, categorized as "crimes against peace," were not defined as crimes when they were committed; they were ad hoc inventions designed to punish Germans for acts that were typical of states throughout history. The fourth—crimes against humanity—was introduced for the technical reasons described above: to try Germans for crimes against individuals having no recognized nationality. Only the third, war crimes, was a crime in the conventional understanding of the term.

Thus, early in the proceedings, in November 1945, the German defense counsel issued a series of objections to the validity of the tribunal. Among other claims, the defense argued that there was no international law on the basis of which to try the accused for crimes against peace. Never before had anyone been tried for unleashing an unjust war, and no events in the course of the war changed this. True, the United Nations had been established as the political expression of the wartime alliance against Germany, but this involved no new legal developments with respect to crimes against peace,

meaning that the defendants at Nuremberg were being accused according to ex post facto law. This was a clear violation of the rule-of-law principle of nonretroactivity. There was clear precedent in the laws of war only for prosecuting war crimes. The court, however, claimed competence over conduct that preceded its institution.[13]

Even among the Allies, some admitted that the charges of crimes against peace amounted to a bridge too far. The French acknowledged that waging war was not a crime in law; it was, they said, what states do.[14] The International Military Tribunal for the Far East, carried out in Tokyo, took twice as long as the trial in Germany in part because Justice Radhabinod Pal of India argued strenuously that the charge of crimes against peace was ex post facto law and therefore could not be countenanced by a legitimate court. "When the conduct of nations is taken into account the law will perhaps be found to be that only a lost war is a crime," he wrote. The charges smacked of politics, not law: "It has been said that a victor can dispense to the vanquished everything from mercy to vindictiveness, but the one thing the victor cannot give to the vanquished is justice. At least, if a tribunal be rooted in politics as opposed to law, no matter what its form and pretences, the apprehension thus expressed would be real, unless justice is really nothing else than the interests of the stronger."[15] Much later, in 1992, Telford Taylor, who had served as a US prosecutor at the IMT in Nuremberg, conceded that the court's judgment on crimes against peace had indeed relied on ex post facto law.[16]

Rule-of-law questions aside, the decision to charge the German general staff with aggressive war was rank hypocrisy. As the socialist leader Norman Thomas wrote in 1947, "Aggressive war is a moral crime but this will not be established in the conscience of mankind by proceedings such as those at Nuremberg, where Russians sit on the bench and exclude evidence of Hitler's deal with Stalin. What was the latter's war against Finland, Poland and the Baltic states but aggression? Indeed, what major power had not in comparatively recent years been guilty of acts of aggression?"[17]

Thomas's criticism points to another failure of Nuremberg: that the defendants were tried by the parties they were accused of injuring. All the judges involved were appointed by the Allies, who also provided the Statute of the Tribunals, determined the rules of evidence, and arranged the prosecutors. This was a clear warning that Nuremberg would be unable to provide justice—that it could dispense only victor's justice, which would focus on acts

by the indicted parties while ignoring similar acts—which I discuss below—committed by the Allies. Such a court cannot be seen as legitimate in a rule-of-law system. It is for this reason that, today, bodies of international arbitration such as the Permanent Court of International Justice at The Hague demand that judges be citizens of states that are neutral with respect to the proceedings.

Not only was the IMT biased by virtue of its composition, but as Danilo Zolo points out, "the rights of defense were subject to the discretionary powers of the judges, including the inadmissibility of the evidence regarding the unilateral nature of the court, appointed by the victors who had been responsible for the same, or indeed more serious, crimes as those imputed to the losers."[18] Had the Nuremberg Statute been applied to the Allies, they would have been found guilty of war crimes as well, but arguments to this effect were inadmissible.

Particularly notable on this front was the air war against Germany. The British unleashed more than two years of carpet bombing against German cities, with the intent to kill civilians. As the British Air Ministry directed the Royal Air Force (RAF) on February 14, 1942, "It has been decided that the primary object of your operations should now be focused on the morale of the civilian population and in particular of industrial workers." The ministry provided a list of civilian targets to attack. The losses were extraordinary. The RAF's July 1943 raid on Hamburg created a firestorm, killing some 40,000 civilians and rendering another 900,000 homeless. Anglo-American raids in February 1945 wiped out Dresden, an open city, killing about 80,000 people, many of them refugees who had fled the Russian advance in the east. An RAF sergeant celebrated from the air: "There was exhilaration from the absolute conviction that we had pulled off something special."[19] The view of the victim was provided by Anna Lie Schmidt, a survivor on the ground:

> Women and children were so charred as to be unrecognizable. Those that had died through lack of oxygen were half-charred and unrecognizable. Their brains stumbled from their burst temples and their insides from the soft parts under the ribs. The smallest children lay like fried eels on the pavement. Even in death they showed signs of how they must have suffered—their hands and arms outstretched as to protect them from that pitiless heat.[20]

Altogether, in excess of half a million died in Anglo-American raids on residential areas, yet the Allied commanders and their political bosses faced no judgment at Nuremberg.[21] Speaking to the Nazi official newspaper on May 28, 1944, none other than Josef Goebbels, the Reich's chief propagandist, seemed to anticipate what would happen to the Germans at the tribunal, but not to the Allies:

> The [Allied] pilots cannot validly claim that as soldiers they obeyed orders. No law of war provides that a soldier will remain unpunished for a hateful crime by referring to the orders of his superior, if their orders are in striking opposition to all human ethics, to all international customs in the conduct of war.[22]

The prehistory of aerial bombing further clarifies just how canny the Allies were in charging individual Germans and refusing to consider any historical context of the war. As Sven Lindqvist has detailed, aerial bombing was developed by Italians in Libya and Somalia.[23] No one called it a war crime in the colonial circumstance. This fact was not lost on Aimé Césaire; after the Second World War, he observed that the Nazis had crossed the line not by using weapons of mass destruction but by "applying to Europe colonialist procedures which until then had been reserved exclusively for the 'Arabs' of Algeria, the 'coolies' of India and the 'niggers' of Africa."[24] Of course, when the Allies applied the same colonialist procedures in Europe, they spared themselves judgment.

Ironically, the Charter of the International Military Tribunal was signed in London on August 8, 1945, during the few days between the nuclear attacks on Hiroshima and Nagasaki. Would not President Truman's order to firebomb Tokyo and drop atomic bombs on Hiroshima and Nagasaki, leading to untold civilian deaths at a time when the war was already ending, qualify as a war crime owing to the gratuitous human suffering imposed?

Had the individual Germans on trial been permitted to raise in their defense the wider context of the war, what else might they have mentioned? Perhaps they would have argued that the Allies were at least partly responsible for the rise of Nazism, owing to the repressive Versailles Treaty that followed World War I and to the US-born economic crisis that finally killed off

the Weimar Republic, paving the way for Hitler and fostering the grievances on which he preyed. Indeed, had the Allies allowed a different kind of reckoning, one that did not seek to impose individual punishment, but instead sought to understand how fascism proved so attractive, they might have realized that the war was an inevitable consequence of the colonial order: denied empire, Germany had exploded into Europe.[25]

For the Allies, such considerations were impossible, because of their histories and because of their policies during and after the war. Not only had the United States perpetrated ethnic cleansing in the course of continental settlement, energizing and inspiring Hitler, but also, joined by the Allies, it was carrying out ethnic cleansing in Europe even as it demanded German accountability for the very same crime.

Allied Ethnic Cleansing in Europe

The mass evacuation of ethnic Germans in Eastern and Central Europe during and after the Second World War came in three overlapping phases. The first was the organized evacuation of ethnic Germans by the Nazi government in the face of the Red Army's advance from mid-1944 to early 1945.[26] The second was the disorganized flight of ethnic Germans immediately following the defeat of the German military. The third phase, which is our focus, was the organized expulsion that followed the Potsdam Agreement signed by the victors in the summer of 1945. The agreement redefined Central European borders and approved expulsions of ethnic Germans from Poland, Czechoslovakia, and Hungary "in an orderly and humane manner."[27] But there was nothing "orderly and humane" about what followed, nor could there have been. Paul Robert Magocsi estimates that about 31 million ethnic Germans *(Volksdeutsche)* and German citizens *(Reichsdeutsche)* fled or were removed from their homes in Central and Eastern Europe between 1944 and 1948.[28]

This postwar expulsion was not simply punishment visited on the defeated. The Allied goal was to create ethnically homogeneous nations within redefined borders, normalizing the nation-state in a region with a legacy of multiethnic and multinational populations. Winston Churchill set out the policy in a major speech to the House of Commons on December 15, 1944. As R. M. Douglas puts it, "Churchill spelled out . . . that expulsions on a larger scale

than had previously even been imagined would be not just a component, but one of the basic foundations, of the postwar European order." In Churchill's words

> The transference of several millions of people would have to be effected from the East [of Poland] to the West or North, as well as the expulsion of the Germans—because that is what is proposed: the total expulsion of the Germans—from the area to be acquired by Poland in the West and the North. For expulsion is the method which, so far as we have been able to see, will be the most satisfactory and lasting. There will be no mixture of populations to cause endless trouble, as has been the case in Alsace-Lorraine. A clean sweep will be made. I am not alarmed by the prospect of the disentanglement of populations, nor even by these large transferences, which are more possible in modern conditions than they ever were before. The disentanglement of populations which took place between Greece and Turkey after the last war . . . was in many ways a success, and has produced friendly relations between Greece and Turkey ever since.

One MP recalled that the Commons listened in "a sort of awful, ugly, apprehensive, cold silence."[29]

The governments of Yugoslavia and Romania were quick to take advantage of the environment of impunity by deporting their own ethnic minorities. Douglas writes,

> By mid-1945, not merely the largest forced migration but probably the largest single movement of population in human history was under way, an operation that continued for the next five years. Between 12 and 14 million civilians, the overwhelming majority of them women, children and the elderly, were driven out of their homes or, if they had already fled the advancing Red Army in the last days of the war, forcibly prevented from returning to them.

Mass displacement was accomplished through state-sponsored terror. There were "forced marches in which inhabitants of entire villages were cleared at fifteen minutes' notice and driven at rifle-point to the nearest

border." In scenes reminiscent of the Holocaust, they were packed into trains with "up to 80 expellees crammed into each cattle car without adequate (or, occasionally, any) food, water or heating" and sent on journeys lasting weeks. "Hundreds of thousands of detainees" were herded into former Nazi concentration camps including Auschwitz and Theresienstadt, which were "put to a new purpose," Douglas writes. Red Cross officials recorded the brutal regime in the camps, "with beatings, rapes of female inmates, grueling forced labour and starvation diets of 500–800 calories the order of the day." Children were routinely "incarcerated, either alongside their parents or in designated children's camps." The British Embassy in Belgrade reported in 1946 that the conditions of Germans in Allied concentration camps "seem well down to Dachau standards." The refugees who finally arrived in Germany were "declared ineligible by the Allied authorities to receive any form of international relief." Lacking accommodation in a bomb-ravaged country, many "spent their first months or years living rough in fields, goods wagons or railway platforms." Death followed devastation. The most conservative estimates put the number of Germans who died during relocation at about five hundred thousand.[30]

What are we to make of the fact that the same parties responsible for these expulsions signed the Fourth Geneva Convention, of which Article 49 prohibits the mass movement of people out of or into an "occupied territory"? The very Allies who at Nuremberg tried Nazi leaders on charges of carrying out "deportation and other inhumane acts" against civilian populations did the same thing less than a hundred miles away. This is why the first draft of the UN's 1948 Genocide Convention outlawed the "forced and systematic exile of individuals representing the culture of a group," but the final version did not. The provision was deleted at the insistence of the US delegate, who pointed out that it "might be interpreted as embracing forced transfers of minority groups such as have already been carried out by members of the United Nations."[31]

The postwar expulsions did indeed create a new Europe in which territorial borders reflected ethnic divisions. But that only exacerbated the ethnic divisions, leading to nationalist excesses. In this, the violent reconfiguration of Europe is not unlike that of the postcolonial states, where some of the same victors drew boundaries into which they separated other formerly multinational people—people who, once penned, became violent nationalists themselves.

That the forced expulsion and relocation of millions of Germans came against the background of Nuremberg offers another preview—not just of the postcolonial violence that would come later, but of the judicial procedures that would follow. The omission of the guilty Allies from Nuremberg-style proceedings is a premonition of the double standard of justice that became established in international relations and inscribed in international law after the Cold War. From Yugoslavia to Rwanda, it remains the losers who pay for war crimes, not the winners.

The expulsions were also the ultimate demonstration of Nuremberg's futility: a judicial process in which there was no place for the rule of law, presided over by governments guilty of the same crimes as the accused. Such a process could never be understood as legitimate; nor could its aims, for these were obviously the securing of Allied political goals rather than the fostering of a just world order in which those goals, too, would be suspect. This was Otto Kirchheimer's argument in *Politische Justiz* (1965), as summarized by Zolo: "If the functional differentiation between justice and politics is abolished, the penal trial ends by performing merely para- or extra-legal functions: a theatrical ritualization of the political struggle in which the enemy is personalized and stigmatized, and the measures to be taken (including physical elimination) are given a procedural legitimation, as in an expiatory sacrifice."[32]

This is what Nuremberg offered. The sacrifice of individual Nazi bodies—some placed in prisons, others executed—with no serious interrogation of the Nazi mind or its deep inheritance from and sympathy with the nationalist and colonialist imagination and the institutions animated by it. The broader course of denazification, in other courtrooms but also across the cities, towns, and civic life of postwar Germany, offered much the same thing: victor's justice, pressed upon individual Germans, that served only to solidify the nation-state order and its inevitable cruelties.

Who Was to Blame?

After World War II, both Germans and the Allies faced a fundamental question concerning Nazism: Who was responsible? Was it only the political class that could be accountable for the atrocities of National Socialism? If so, then

May 8, 1945, the date of Germany's unconditional surrender, was also the date of Germany's liberation. On the other hand, perhaps Germany faced collective guilt—the whole of the nation was at fault. In that case, on that day in May, Germany was not liberated but rather defeated and occupied.

The Allies were divided over the issue, both internally and with respect to each other. After some debate, the Americans decided to promote in their occupation zone a narrative of collective guilt in which Germans were made to understand that they were a defeated people. But collective guilt did not entail equal atonement by every German. In keeping with the individualism of Nuremberg, the Americans developed a complex bureaucratic procedure for assessing the guilt of the millions of Germans in their zone. Although the Americans distrusted the Germans universally and promoted the narrative that every German was responsible, they tried to distinguish Nazis from others who simply lived through Nazism. Still, millions were punished. There were many tiers of culpability, with punishments varying according to tier.

The British agreed with the American perspective on collective guilt but found themselves, for material reasons, unable to execute a similarly thorough policy in their zone. Instead of punishing large numbers, they focused on the "reeducation" of a smaller number in the civil service. The French did not object to collective guilt but also did not promote it. They ignored the issue. The French had embraced the Nuremberg process, but they were not prepared to extend denazification very far beyond the highest echelon of wartime leaders, for doing so would have ensnared thousands of Vichy collaborators. Among the Allies, the French were the first to turn over the denazification process to German authorities in their occupation zone.

The Soviets were the only Allies who actively pursued an alternative to collective guilt. As their participation at Nuremberg demonstrated, the Soviets supported the imposition of guilt on high-ranking individuals. And, in the immediate aftermath of victory, Stalin was prepared to see ordinary Germans raped, pillaged, and slaughtered in an orgy of vengeance. But when it came time for an organized policy of denazification, the Soviets decided that the public could be redeemed through agrarian and industrial reform and the cultivation of Germany's internal antifascist forces. For a brief period, before Cold War exigencies and Stalin's extremism took over, the Soviet occupiers attempted political transformation.

An especially illuminating conversation on the subject of guilt is that of the Germans themselves. Some were, of course, unrepentant. Others took a granular approach, differentiating perpetrators, beneficiaries, bystanders, and victims. As I will suggest later in this book, we might instead think of all of these as survivors. At the very least, certain German intellectuals have tried to see Nazism as consistent with, not aberrational in, political modernity.

The German Debate

Germany's postwar discussion of responsibility was carried out in characteristically dialectical fashion. In the tradition of Hegel and Marx, who pit thesis against antithesis; Kant, who contrasted numina and phenomena; and Weber, who imagined a contest of technical rationality and value rationality, postwar German intellectuals argued from the distinction between culture and politics. Germany was itself dialectical: both *Kulturnation* and *Staatsnation*. It was a "cultural nation" unified by language, customs, and blood; and it was a "state nation" unified by political institutions and a political vision developed by a political class and an associated intelligentsia. Olick explains that, after the war, many on the left and the right defended the public by arguing that "Germany was not to be identified by its failed political institutions—which came and went, but by its *Volk* and *Kultur,*" which endured over time. This argument was itself a kind of German tradition, historically articulated by the dispossessed, censored, and outcast. "The distinction between power and culture with that between regime and Volk," Olick writes, was "drawn on by 'inner emigrants' and representatives of the 'other Germany,' be it one of exiles, members of various opposition circles, or 'ordinary patriots.'"[33]

Among those who adopted the kulturnation argument was Jaspers, in *The Question of German Guilt* (1946). As Jan-Werner Müller puts it, Jaspers "rejected his previous nationalism which he had adopted from his teacher Max Weber, denying that a liberal political identity and a nation-state framework could go together for the Germans." Instead Jaspers believed that German high culture would see the people through, without reference to any particular political form. Thus Germany did not need to be reeducated by the Allies; it needed to learn from what was best in itself. The outcome would be the kulturnation's acceptance of collective responsibility, although not, as the Americans would have it, collective guilt. He distinguished four kinds of guilt,

none of which could be imposed by the allies and collectively experienced in Germany. Criminal guilt was imposed on individuals in courts, and so could not be collective; political guilt belonged in theory to every citizen of the regime at fault, yet obviously could not be embraced by those who knew they were not in fact guilty of the regime's offenses; moral guilt was a private affair, which could only be assessed by the individual; and metaphysical guilt, incurred by those who caused a "rupture of a fabric of basic solidarity between all human beings," was judged by God alone. The kulturnation could not but reject such notions, but it could take collective responsibility and thereby maintain and achieve "social integration," even as the political nation was a thing of the past.[34] Andreas Huyssen considers Jaspers "the first to articulate German responsibility for Auschwitz in 1946 when the Holocaust was still very marginal in political debates."[35] Responsibility—not guilt.

Thomas Mann, the writer in exile who was influential both within Germany and among fellow expatriates, tried to straddle the bitter divide between those who left and those who stayed by suggesting that Germans think of their home as "a nation defined by a common culture transcending state borders, rather than a political community."[36] But he was not merely suggesting that Nazism was an aberration, imposed on the kulturnation by evil leaders. In a radio broadcast of January 16, 1945, he rejected the idea that there was some force within the society that had pressed its malice on an otherwise-innocent population. "There are not two Germanys, a bad one and a good one, but only one," he said. "Wicked Germany is merely good Germany gone astray, good Germany in misfortune, in guilt, in ruin." Yet this did not imply that the sources of Nazism lay in anything essentially German, which would imply collective guilt as the Americans understood it. Rather, he looked at what the Allies could not allow themselves to see: the lethality of the modern political order. "Let us not speak of guilt," he said. "That is a name for fatal concatenation of consequences of a tragic history, and if it be guilt, it is intermixed with a great deal of guilt belonging to the whole world."[37]

That the guilt was not exclusively German but would have to belong to the world—more specifically, the Western world—was a common point of view among German intellectuals of many political persuasions, no matter their thoughts on the distinction between culture and state power. These thinkers rejected both reeducation and collective guilt because they saw the German crisis—and National Socialism in particular—as the outcome of

larger forces like nihilism, secularization, mass society, and the telos of history. In the words of Carl Jung, the psychologist, "The moment we so-called innocent Europeans cross the frontiers of our own continent we are made to feel something of the collective guilt that weighs upon it, despite our good conscience." Friedrich Meinecke pointed to "the general decline of the West," and Martin Heidegger blamed "Western humanism." Helmuth Plessner pointed to "historical" factors—Germany's path to the Third Reich was established centuries earlier, owing to what he counted as Germany's late start in state-building.[38]

Where the German right and left diverged tended to be less on matters of substance than presentation. Ruth Benedict, the anthropologist who during the war had worked for the US Office of War Information, argued that Germany was a guilt culture, in which individuals gauged moral right and wrong on the basis of an inner conscience, whereas Japan was a shame culture, in which moral determinations were products of external sanction. But many Germans thought both tendencies were evident in their country, distinguishing the left from the right. "Rather than wanting to debate guilt in public," Olick writes, "right-wing intellectuals preferred a stance of 'shame' and silence."[39]

In the years immediately after the war, German historians tended to focus on the same group as had the Allies at Nuremberg: perpetrators. Volker Berghahn notes that scholars first investigated "the organizers of the Holocaust in the higher and middle echelons of the German bureaucracy, the SS, and the Wehrmacht." Later researchers expanded the scope of their inquiries, turning to ordinary Germans as bystanders to, and beneficiaries of, the annihilation of European Jewry. Of particular interest among beneficiaries were German titans of industry.

The relation between capital and Hitler was the subject of much discussion and debate. Were business leaders invested ideologically in the Nazi cause, or were they simply doing what businesses do: trying to make profits by whatever means the law allows? In some ways, however, this was the wrong question. Businesses could benefit from, and therefore choose to support, Hitler's program even if they did not agree with Nazi ideology. For instance, need one also have been a racist to be an anticommunist? Hitler maintained that the course of world history was determined not by class struggle but race struggle, a position that benefited industrialists fearful of

union activity. Berghahn writes that Hitler's economic ideas "revolve[d] around the problem of the provision of food and the establishment of a territorial empire in the east, secure against any enemy blockade and built on the ruin of the 'Jewish-Bolshevik' Soviet Union." Many business leaders believed, with Hitler, that the future belonged to those with empires, as possessed by the British, the Americans, and the Japanese. When Hitler announced that Germany would have to be prepared for a war with the sea powers, many in big business Nazified enthusiastically, and only some reluctantly.[40]

Surely the leaders of all these businesses were culpable, to a greater or lesser degree. But the Allied denazification process mostly let them off the hook, confusing deeply the story of German guilt the Allies sought to tell at Nuremberg. In the American zone, just three trials involved leading industrial firms. One was Krupp, the family-operated business empire that had been manufacturing steel since the early nineteenth century and which, by the First World War, was Europe's leading supplier of guns and munitions. During World War II Krupp owned and managed 138 concentration camps throughout Europe. The company used slave labor to build factories and provide Hitler with money and weapons. Alfried Krupp, the family patriarch, leader of the business, and avowed Nazi, served just three years in prison and, upon release, had his fortune restored to him.[41]

One of the other big businesses whose directors were tried was the chemical trust IG Farben, whose buildings were famously preserved amid Allied bombing. Farben's directors were likely not supporters of Nazism but were certainly among its main beneficiaries. Peter Hayes's important 1987 study, *Industry and Ideology,* provides detailed analysis of the relations between the company and the regime. During Hitler's rule, "most" of Farben's executives "futilely dissented from his worst excesses: aryanization, autarchy, aggression and forced labor." At the same time, these men

> presided over the firm most widely credited, then and since, with carving out a lucrative and murderous place for itself. Farben's products became ubiquitous and essential. It made not only the synthetic rubber on which most Nazi vehicles rode and the fuel-from-coal that powered many of them, but also the gas that murdered more than a million people at Auschwitz. . . . Nearly 50 percent of IG Farben's

> 330,000-person workforce had come to consist of conscript or slave laborers among whom were some of the perhaps 30,000 inmates of Auschwitz who eventually died in the company's new factory and mines near the camp.[42]

Although the Farben defendants were not, like Alfred Krupp, ideological Nazis, some received harsher punishments. Many, however, were subject to mere slaps on the wrist. They faced five charges, most concretely for using slave labor. But the court "allowed the defendants the benefit of the defense of 'necessity'" except in the case of Auschwitz, next to which Farben had constructed a plant with the clear intent to exploit inmates.[43] Of the twenty-three executives tried, thirteen were found guilty on one or another count and were sentenced to prison terms ranging from one and a half to eight years, less time served. Ten were acquitted of all charges.[44]

The American Debate

There were disagreements from the outset among the Allies and within US leadership on how to deal with Nazism after victory. At the Tehran Conference of the "Big Three" in 1943, Stalin suggested shooting 50,000 senior German officers, though many thought he was joking. Churchill claimed to be repelled by the idea but went on to present his own version of summary justice, claiming that "Hitler and his gang had forfeited any right to legal procedure" and so should be summarily shot.

But Henry Stimson, the US secretary of war, wanted a trial with due process. Supreme Court Justice Robert Jackson, who would also serve as the chief US prosecutor at Nuremberg, summed up Stimson's appeal: "You must put no man on trial under forms of a judicial proceeding if you are not willing to see him freed if not proven guilty . . . the world yields no respect for courts that are organized merely to convict."[45] As it turned out, the world had little respect for the Nuremberg rulings—at least, not for many decades after they were delivered. But Jackson and Stimson won the White House's confidence.

Stimson's chief opponent in the US government was Henry Morgenthau, the secretary of the treasury and a good friend of President Roosevelt's. Morgenthau's vision of a hard peace included Germany's total deindustrialization and the division into small provinces, so that the resulting polities would

be downgraded to purely agrarian states incapable of a military resurgence. By contrast, most of the State Department and the Department of War, including Stimson preferred firm but flexible policies that would neutralize the Nazi danger while allowing Germany to get back on her feet. Morgenthau and Stimson did, however, agree that Germans were to understand themselves as a defeated nation at the mercy of the Allies. The victors would decide how Germany should be restructured, which meant imposing democratic structures without consulting Germans on how they should operate.

A third point of view argued that the restructuring of Germany should be led by Germans themselves. Important exponents of this idea included Franz Neumann and Herbert Marcuse. Both would go on to influential careers as political theorists, but between 1943 and 1945 they worked in the US Office of Strategic Services, the predecessor to the CIA. Neumann's *Behemoth: The Structure and Practice of National Socialism,* published in 1942 and expanded in 1944, was one of the earliest and most influential studies of national socialism. According to Peter Hayes, Neumann argued that "Hitler's regime was a chaotic, lawless and amorphous monster" whose "policies expressed sometimes overlapping and sometimes contending drives of the four symbiotic but separate power centers (the Nazi party, the German state bureaucracy, the armed forces and big business) that composed it."[46] As a result, Olick writes, "no mere regime decapitation followed by a superimposition of democratic structures would solve the German problem." The problem was not just one of elected officials, and "the social foundations for such a [democratic] system did not yet exist."[47] Neumann and Marcuse therefore called not for deindustrializing, reeducating, or imposing new governance but for comprehensive reorganization of German society from within. They wanted to socialize German heavy industry, not to dismantle it, and they wanted the Allies to embrace the antifascist opposition, both inside Germany and in exile, and help it reform Germany.

Of these three positions—Morgenthau's, Stimson's, and Neumann and Marcuse's—Morgenthau's seemed to have the upper hand at first. In 1943 Roosevelt signed on to his friend's "scathing memorandum" in response to the War Department's newly released "Basic Handbook for Military Government of Germany," which envisioned the Allied forces rebuilding the German police and civil state, the central bureaucracy, and German industry. Roosevelt included an addendum to Morgenthau's memo complaining, "This

so-called 'Handbook' is pretty bad. . . . It gives me the impression that Germany is to be restored as much as The Netherlands or Belgium." Roosevelt made clear that he favored just the sort of hard peace Morgenthau had in mind:

> It is of the utmost importance that every person in Germany should realize that this time Germany is a defeated nation. I do not want them to starve to death, but, as an example, if they need food to keep body and soul together beyond what they have, they should be fed three times a day with soup from Army soup kitchens. The fact that they are a defeated nation, collectively and individually, must be so impressed upon them that they will hesitate to start any new war.[48]

According to Tony Judt, Roosevelt, Churchill, and Stalin all agreed with Morgenthau that "Germany deserved to be overrun totally and administratively divided into three zones of occupation, each governed by one of the Allied Powers." And much like Morgenthau, Stalin recommended "dismembering the Reich [and] destroying German industries." Although some of Morgenthau's more extreme recommendations, such as wrecking German mines and factories, were quietly dropped, the country was divided and its redevelopment placed entirely under Allied control. The Allied Control Council's March 1946 plan for output levels of the postwar German economy placed severe restrictions on industrial production, in particular on the manufacture of steel.[49]

But ultimately it was Stimson and his supporters who won out, as the United States adopted a redevelopment plan that would seek German renewal, not perpetual debasement and summary justice. The decisive factor, the one that tipped the balance for Roosevelt and then Truman, was the realization that America needed Germany as an ally in the emerging Cold War. Most of prewar Germany's best agricultural land was under Soviet control or had been transferred to Poland. And as the occupation set in, West Germany rapidly filled with impoverished refugees from the East. If Germany was not allowed to stand on its own feet, Stimson argued, the Allies in the West would have to bear the cost of feeding a growing population. Also relevant was the political muscle of big corporations—among them Du Pont, Ford, and General Motors—with direct investments and corporate links in

Germany. They looked forward to renewed collaboration and so had an interest in the revival of German industry and industrialists. In addition, US public opinion came to see the debate as a struggle between two radically opposed tendencies: in Olick's words, "a noble democratic vision" represented by Stimson, and "a desire for vengeance," represented by Morgenthau.[50] Stimson's future orientation was appealing in this time of convulsive change, while Morgenthau was seen as settling old scores, a project that would only embitter the German people and deplete the American treasury.

But even Stimson's project led to a great deal of bitterness in Germany. Had the Neumann-Marcuse approach been adopted, the result might have been different, allowing an opportunity for Germans to imagine a new kind of politics inspired by a diverse array of antifascists, supported but not supervised by the Allies. Instead, amid the blooming red scare, American policymakers came to see the anti-Nazi resistance as radical and contaminated by communism. Neumann's work was not totally discarded by the occupiers, though. His guidance concerning the Nazi regime influenced the initial US goals for postwar Germany, the "four Ds," each directed at one of the colluding groups he had highlighted: denazification, democratization (including the recruitment and training of civil servants), demilitarization, and decartelization.[51]

However, the effort to denazify was undercut both by its onerousness in practice and the hypocrisy of the occupiers, forcing the United States to backtrack after just a few years and allow the restoration of countless Nazis to civic life. By the time it was over, denazification had undeniably failed. As we will see later in this chapter, German public opinion remained supportive of Nazi goals, and the West German state embraced the Israeli colonial project as an extended phase of the Final Solution, ensuring that the Jewish question would never arise in Europe again. There would be no political reckoning, only individual punishment and the restoration of nationalism.

The Denazification Policies

The policy of denazification was worked out against the experience of 1918. One of the major mistakes of the Versailles Treaty, the Allies believed, was the failure to disarm Germany and convince Germans of their responsibility

for the war. After Versailles, the size of the army had been drastically reduced, but that just left the "deadly bacillus" of German authoritarianism and militarism to recover, for neither had been stamped out among the Germans themselves.[52] Looking back on 1918, the Allies were determined that this time would be different. There would be no negotiations, only unconditional surrender. The idea of unconditional surrender had originated with a subcommittee in the State Department and was presented by Roosevelt to the British allies at a conference in Morocco in 1943. From then on, unconditional surrender was an undisputed Allied position.[53] Denazification, from the American point of view, would continue this project of surrender. The stated goal of denazification included fostering political change, but in practice the policy sought to impose guilt on the Germans. This time the Allies would not just neutralize German military means but also the will to fight again.

So determined were the Allies that Germany—and only Germany—should accept total responsibility for the war, that Austria was exempted from accountability, despite the fact that Austrians were as gung ho about Nazism as their German counterparts. In both countries, about 10 percent of the population were official party members, and there were still 536,000 registered Nazis in Austria at the end of the war. A total of 1.2 million Austrians, from a population of just under 7 million, had served in German units during the war. Judt pointed out that "Austrians had been disproportionately represented in the SS and in concentration camp administrations. Austrian public life and high culture were saturated with Nazi sympathizers—45 out of 117 members of the Vienna Philharmonic Orchestra were Nazis (whereas the Berlin Philharmonic had just 8 Nazi Party members out of 110 musicians)." Yet, under an October 1943 Allied agreement negotiated in Moscow, Austria was officially and astonishingly declared Hitler's "first victim," and Germans were warned that they would be held responsible for war crimes. Austria was thus treated as just another Nazi-occupied country, liberated rather than defeated. True, there were a lot of local fascists and collaborators to identify and punish, but collective guilt was not considered. The allies investigated 130,000 Austrians for war crimes, tried 23,000, convicted 13,600, sentenced 43 to death, and carried out 30 executions. The 70,000 civil servants who had served the Nazi state in Austria were merely dismissed. All that happened in just a year. In the fall of 1946, the Allies turned over denazification to the Austrian government.[54]

To be defeated rather than liberated meant something else entirely. General Dwight Eisenhower proclaimed to the German population in 1944 that they had been conquered, and they would pay:

> The Allied Forces serving under my Command have now entered Germany. We come as conquerors. . . . In the area of Germany occupied by the forces under my command, we shall obliterate Nazism and German Militarism. We shall overthrow the Nazi rule, dissolve the Nazi Party and abolish the cruel, oppressive and discriminatory laws and institutions which the Party has created. We shall eradicate that German Militarism which has so often disrupted the peace of the world. Military and Party leaders, the Gestapo and others suspected of crimes and atrocities, will be tried, and, if guilty, punished as they deserve.[55]

With victory in sight, in April 1945 the Joint Chiefs of Staff in Washington issued a comprehensive set of instructions to Eisenhower. The message of the directive was unmistakable. First, "It should be brought home to the Germans that Germany's ruthless warfare and the fanatical Nazi resistance have destroyed the German economy and made chaos and suffering inevitable and that the Germans cannot escape responsibility for what they have brought upon themselves." Second, "Germany will not be occupied for the purpose of liberation but as a defeated enemy nation. Your aim is not oppression but to occupy Germany for the purpose of realizing certain important Allied objectives. In the conduct of your occupation and administration you should be just but firm and aloof. You will strongly discourage fraternization with the German officials and population." Third, "The principal Allied objective is to prevent Germany from ever again becoming a threat to the peace of the world. Essential steps in the accomplishment of this objective are the elimination of Nazism and militarism in all their forms, the immediate apprehension of war criminals for punishment, the industrial disarmament and demilitarization of Germany, with continuing control over Germany's capacity to make war, and the preparation for an eventual reconstruction of German political life on a democratic basis."[56]

This political goal was hardly so lofty as it seemed, though. Germany could, and would, be reconstructed, and elections would be held. But

denazification failed to impress guilt; it only fostered resentment. And democracy as the Allies understood it did not mean a repudiation of nationalism.

The Western Zones: From Zeal to Retreat

Planning for denazification in the Western occupied zones solidified in late 1945 and the denazification process took off in early 1946. The Americans, British, and French removed Nazi Party members from positions of power and influence and undermined the legal standing and social influence of organizations associated with Nazism. But while Western leaders promised large-scale social and political transformation, in practice denazification focused on establishing individual responsibility and purging Nazi influence from German media.

When the war in Europe ended, there were 8 million Nazi Party members in Germany.[57] Many more enrolled in Nazi-related organizations—some 25 million in the German Labor Front; 17 million in the National Socialist People's Welfare organization; and yet more in the League of German Women, the Hitler Youth, the Doctors' League, and other groups. Historian Frederick Taylor estimates that between the party and organizations aligned with it, the Nazi state involved as many as 45 million Germans. And even that number does not include all of the enablers and beneficiaries of Nazism, such as industrialists who did not join the party or its related organizations but produced weapons or used slave labor. Large landowners—especially the Junkers, the Prussian landed nobility—also benefited without establishing formal connections to the Nazi Party.[58]

Isolating individually every responsible German and punishing them should therefore have been so challenging as to be unthinkable, even for the large, well-organized, technologically sophisticated, and energetic US occupation force. In the fall of 1945 Eisenhower estimated that the denazification process would take fifty years.[59] But the Americans were game, and they were helped by an almost-miraculous event. In April 1945, while the war in Europe was coming to a close, a German anti-Nazi turned over a nearly complete dossier of Nazi Party members to the Allies. He had rescued it from destruction as American troops advanced on Munich.[60]

The next step was to disaggregate these materials, separating nominal party members from those more engaged in Nazi activities. The Allies created five categories: major offenders, offenders, lesser offenders, followers,

and exonerated persons. To figure out how to classify individual Germans, the Allies asked them to fill out *Fragebogen* (questionnaires) about their pasts and political activities. In total, 16 million Fragebogen were filled out in the three Western-occupied zones. Although the German population was highest in the British zone, most of the completed responses came from the American zone, where Germans were told they had to submit their forms or face denial of ration cards. On the basis of the Fragebogen, US authorities determined that 3.5 million Germans—about a quarter of the population of the zone and roughly half the adult population—were "chargeable cases," slated to be interviewed by denazification tribunals. Those tribunals, established in March 1946, were handled directly by Germans but with Allied oversight.[61]

Most of those punished lost their jobs. In the most serious of these cases, removal was mandatory. Then came discretionary removal with an adverse recommendation against future employment, followed by discretionary removal with a positive recommendation. Those counted as non-Nazi and anti-Nazi of course faced no repercussions. This huge and complicated process resulted in the dismissal of 374,000 certified Nazis from their posts. They were to be permitted to do only "simple work." This group was exclusive of detainees. At the end of 1945, the Americans held 90,000 of those considered especially dangerous. They were kept in civilian internment camps, awaiting processing. Another 25,000 considered even more dangerous, including many PoWs, were held in separate custody.

Some in the US Army suggested that all those identified as Nazis be penalized. But this proposal was rejected on grounds that it would aggravate the postwar economic crisis as well as political and social strife. As early as May 1946, General Lucius Clay, who oversaw the American Zone, began to consider "largescale amnesties" for party members who had joined out of convenience rather than conviction. The Americans decided that all Germans "who had joined before 30 January 1933 (around 1.5 million) would be reckoned as hard-core Nazis," while "many, if not most, of the post-1937 members" would be classified as *Muss-Nazis*—"must-Nazis," who had been pressed to join the party in order to keep their jobs or gain promotions. The muss-Nazis would be amnestied, as would disabled Nazis and "small-fry" Nazis, who had modest annual incomes or property. After amnesties and other reductions, just 930,000 chargeable cases were left.[62] Within a few years, nearly all public officials dismissed by the Americans were reemployed, and all but

a handful of those detained in labor camps were set free by 1950. Having set out with missionary fervor, the Americans ended up settling for a more modest objective. In Frederick Taylor's dismissive phrase, the mission was reduced to no more than "crowd control."[63]

Compared to the bureaucratic nightmare of screening millions of individual Germans for their Nazi past, denazifying media and culture was easy. On May 13, 1946, the Americans ordered more than 30,000 books, ranging from school textbooks to poetry, banned for contributing to Nazism or militarism. Millions of volumes were confiscated and destroyed, and the possession of any book on the list was made a punishable offense. Though the authorities heralded this as a step toward democratization, the hypocrisy was glaring. *Time* magazine cited a representative from the Allied Control Council's Military Directorate saying that the order was in principle no different from Nazi book burnings.[64] Germans might be forgiven for thinking that the Americans were mostly interested in trying to stamp out criticism of their occupation; in one notable case a literary magazine was reportedly shut down after revealing that costs of the US occupation were being charged to the German Treasury.[65] Other apparent motives of the cultural policy included trophy hunting and financial gain. For instance, works of art "related or dedicated to the perpetuation of German militarism or Nazism" were taken into custody, and while some were destroyed, thousands were shipped to the United States. Some of the works are innocuous; for instance, "an oil painting depicting a couple of middle-aged women talking in a sunlit street in a small town" was taken to the Army Center of Military History in Washington, DC.[66]

The grating hypocrisies of the culture policy only mounted with Operation Paperclip. Under the justification of national security, the Americans and British overcame their aversion to even major Nazi activities and effectively pillaged thousands of Nazi scientists. Paperclip, organized by the Joint Chiefs of Staff, trained nearly three thousand American and British specialists (so-called T-Forces) whose job was effectively to kidnap top German scientists and technologists, although many were only too happy to leave the sinking ship of the Nazi state. Beginning in late 1944, the commandos targeted about nine thousand Nazis for extraction. In the judgment of Tom Bower, who has studied its work in detail, "the Operation was an almost complete success." The considerable loot included not just people but also materials from "Nazi

Germany's finest scientific establishment," such as "the seventy laboratories of the Hermann Goering Aeronautical Research Institute and its revolutionary wind tunnels." These were "plundered and shared out between the British and the Americans." Paperclip was officially a "denial and exploitation program," meaning "exploitation by the Western powers of Germany's wartime scientific program and its denial to the Russians." In contrast to Paperclip, Bower writes, "the operation to hunt down the murderers of nearly twelve million people did not even boast a codename, it had no trained staff, no headquarters, no plans and no priority."[67]

Among the by-no-means-unwilling emigrants to the United States were active Nazis like Arthur Rudolph, the engineer who ran Hitler's V-2 rocket program, an operation built on slave labor. Rudolph was directly responsible for abuse of the slave laborers at his facility, resulting in a horrendously high mortality rate. Initially designated a "100 percent dangerous Nazi type" and recommended for internment, Rudolph was not the only serious perpetrator the US recruited, even as it was asserting the moral high ground. Paperclip understandably caused consternation among some in the United States who knew about it. In particular, the State Department's "Morgenthau boys"—so-called because they supported Morgenthau's desire for strict implementation of JCS 1067—were opposed. These officials were determined "to refuse the men residence until they had been properly processed," even if this would mean "sending them back to Germany." They "refused to issue entry paperwork and fought a stubborn battle of attrition with parts of the military." Paperclip director Bosquet Wev was unapologetic: "Nazism should no longer be a serious consideration from the point of view of national security when the far greater threat of communism is now jeopardizing the entire world," he explained. Only in 1947 was the impasse overcome, after General George Marshall, the newly appointed secretary of state, ordered that national security would take priority over denazification.[68]

While the British joined the Americans in effecting and benefiting from Operation Paperclip, they took a different approach to the wider program of denazification. The British zone was more populous than the American, making person-by-person identification an even more daunting task.[69] To avoid a quagmire, the British turned to blanket amnesties from the start, ruling that only those applying for "official" positions which confer "responsibility" needed to fill out the Fragebogen. As early as October 1945, the British

decided "that 50 percent of the German Legal Civil Service could be staffed by 'nominal' Nazis." Keeping Nazis out of the legal system entirely would have been impossible; "90 percent of German lawyers had been members of the Nazi Party." Soon, fresh law-school graduates who could prove they were no more than nominal Nazis were allowed to join the service regardless of the 50-percent threshold.[70] T. H. Marshall, a sociologist and advisor to the Foreign Office, justified retaining lesser Nazi bureaucrats on the grounds that "only senior civil servants were policy makers; the role of mid-echelon personnel was solely administrative and such functionaries would presumably follow orders provided by any legitimate source of power." Biddiscombe notes that there was a purge in higher education resulting "in the dismissal of approximately one-third of all professors," but "their colleagues kept open their chairs so that as the severity of denazification diminished the castaways could resume their posts."[71]

The French model was more like that of the British than the American, though for different reasons. Whereas the British cut corners in order to overcome the scale of person-by-person denazification, the French were careful to avoid ensnaring their own. France was the only occupying power that had itself been totally occupied by the Nazis, and as such was home to many collaborators, in addition to a courageous resistance. The French accent was accordingly on de-Prussianization more than denazification: their object was to undo the unification and centralization of Germany in order to permanently eradicate German military and economic power. The very notion of denazification risked a political definition of the project and thus its extension beyond Germany into France. The initial French postwar plan demanded that Germany be broken up, but the Americans insisted the French desist as a condition for American aid.[72]

The French did not even use the term denazification, preferring to speak of *épuration* (purification). When it came to the German civil service, "almost all French officers—Right, Left, and centre—agreed that the character of a potential German administrator or manager should count more than mere membership of NSDAP," Biddiscombe writes. The French therefore did not establish any blanket policies. "They decided that only after thorough examination of such character should the authorities make relevant decisions about retension, dismissal or arrest."[73] The French were less discerning when it came to teachers. Recognizing that the education system had been strongly

Nazified, the French began by removing three-quarters of all teachers from their jobs. They soon found that the schools could not run without them, though, so the teachers were rehired subject to easy dismissal.[74] Three years after the end of the war, some 133,000 inhabitants of the French zone were classified as more serious than fellow travelers, but only 18,000 were classified in a way that brought automatic penalties. Just thirteen Germans were labeled as major offenders, as compared to 1,654 in the American zone.[75]

In all three of the Western zones, early zeal was quickly replaced by retreat. The program that began in 1946 was discredited within five years, both within Germany and among the Allies. Among the Allies, criticism often originated on the political right, as the red scare set in. An early such critic was General George S. Patton, who was installed as military governor of Bavaria in 1945. "What we are doing," he wrote to his wife, "is to utterly destroy the only semi-modern state in Europe so that Russia can swallow the whole." The Germans—even hard-core Nazis—were needed for the impending war against what Patton called "Mongol Savages."[76]

For their part, Germans had many grievances about denazification in practice. Because the Allies demanded both collective guilt and individual punishment, they wound up pursuing "small Nazis" in a manner that seemed to result in excessive punishment. And the effort to hold the general public responsible for Nazi terror was powerfully alienating. As soon as the concentration camps were liberated, German civilians were forced to visit the camps to observe conditions there, bury rotting corpses, and exhume mass graves. Civilians, themselves desperate in the aftermath of war, were also made to turn over goods to former concentration camp inmates. The occupiers distributed propaganda showing concentration camp victims with text such as "YOU ARE GUILTY OF THIS!" and "These atrocities: your fault!"[77]

Undoubtedly, many Germans were guilty of atrocities, and it can hardly be denied that Nazis had penetrated every sector of society. But from the standpoint of most Germans, the urgent need was not criminal justice but rebuilding. Whatever success the Allies had in removing Nazis from civic functions only made that task of rebuilding more difficult, as capable administrators were jailed or otherwise prevented from working. Meanwhile those citizens who were at worst guilty of going along to get along, felt assaulted without justification in their hour of greatest need. That sense was only heightened by the accumulating contradictions of Allied policies.

Such resentments might have been mitigated had Germans been allowed some agency in denazification. Recognition that many Germans opposed Nazism and so made enormous sacrifices might have enabled partnership rather than friction. And it would have created the possibility of true transformation. The Allies, themselves driven by the nationalist imagination, were not in a position to fundamentally change German society and foster in it a new politics.

The parties who might have been able to participate in denazification were Germany's homegrown antifascists, including the internal opposition and exiles who worked to thwart Hitler. More than a million Germans were sent to concentration camps for opposing Nazi rule, and more than 40,000 were killed for their resistance.[78] But the Allies refused to work with the surviving resistance on the suspicion that antifascist groups harbored communists and fellow travelers. For instance, when it entered the already-liberated city of Wuppertal, the US army disbanded the antifascist municipal council and police. The military government "didn't want any 'bolsheviks' thinking they could take over now that the Nazis had been kicked out."[79] The Allied position infuriated the German left. Olick writes, "the German Left . . . argued strongly that Allied re-education programs blocked an indigenous German reckoning with the Nazi past."[80]

US and British military authorities also lost potential antifascist allies by undermining labor unions. From the perspective of unions, denazification required the affirmation of workers' rights that had been stripped under Hitler—in particular, their right to organize. Yet US and British occupation authorities banned all union organizing and political activity. Trade unions were not allowed to negotiate wages, working conditions, or working hours. Workers' Councils (*Betriebsräte*), with their origin in a more radical prewar political tradition than the trade unions, were dissolved.[81] In a 1946 report for the Office of Strategic Services, Marcuse captured the political ramifications. "The trade-unionists assert that the prevailing tendency toward centralization of economic life under government control calls for corresponding centralization of the trade-union movement. They argue that this becomes increasingly imperative as the reactionary forces of business leadership became more active. Lack of integration, it is claimed, would seriously weaken the effectiveness of labor's resistance to these forces." Marcuse went on to observe that "the restrictions which Anglo-American policy implies are consid-

ered tantamount to an atomization of labor, which in turn weakens the position of the democratic forces in their struggle against entrenched reactionary interests in big industry."[82]

Some in the higher reaches of the US government realized that imposed denazification would achieve little and wanted local partners to take the lead. Vice President Henry Wallace, influenced by the writing of leftist German emigres, "hoped that Germans would mete out justice to their own 'Nazi overlords', negating the need for denazification from abroad." Among those who might have carried out that mission were leaders of the Social Democratic Party (SPD) who had been chased into exile. For example, the SPD politician Willie Brandt had an expansive sense that "not only Nazi party leaders and Gestapo terrorists" were guilty, "but also Junkers, big industrialists, generals, bureaucrats and professors who were involved and who unleashed terror and war."[83] Real change could have emerged from that perspective.

The Soviet Zone: Promise Squandered

There was an alternative to collective guilt and sweeping individual criminalization. Glimpses of that alternative could be discerned in initiatives taken in the Soviet sector, where the occupiers promoted socialization of industry and large-scale landholdings and emphasized internal political mobilization, at least for a time.

In the early postwar period, it seemed that the Soviets would implement the hardest peace of all. Stalin, as we have seen, supported the most extreme formulation of the Morgenthau plan, and it is not hard to imagine why. The Soviet experience of the war had been far worse than that of the Western powers. Soviet troops "had seen their own land devastated," Frederick Taylor writes. "They were living witnesses of the fact that at least twenty-five million of their compatriots of all ages and both sexes had died in battle, or by massacre, and often by deliberate starvation—all in an aggressive German war of choice executed by Hitler's forces with scant regard for even the most basic, minimally humanizing rules of conflict."[84] Not surprisingly, Soviet troops entering German territory were often driven by a spirit of revenge and took to looting, pillage, and rape.

By May 1945, however, top Soviet officials had decided to ease up. They did not impose total control over their zone in the manner of the Western Allies. Instead there was talk of a distinctive "German road to socialism." That

month, Stalin told German communist leaders "that the need of the hour was an anti-fascist parliamentary regime and that the time for the 'Sovietisation' of Germany was not yet ripe." A US officer "ruefully noted that there were no 'collective guilt' posters in the Soviet zone." Biddiscombe notes that the Soviets exculpated the small Nazis, which "became the source of considerable conflict with the Americans."[85]

The organizing principles of early Soviet occupation and denazification differed dramatically from those in the Western zones. Certainly, there were hard-peace supporters in the Soviet Union, such as the prolific writer Ilya Ehrenburg. But, in Biddiscombe's telling, two other schools of thought eventually held sway. One saddled responsibility with the Junkers, "an archaic militarist elite" that "had survived into the modern period." Leninist in fervor and formulation, this school called for nationalization of industry and rapid land reform. Another group championed a "popular front" strategy, calling for the mobilization inside the Soviet zone of a broad antifascist coalition.[86]

Land reform and nationalization of industry were radical avenues toward socioeconomic change. As they moved into Prussia, the Soviets expelled, arrested, or interned Junkers and other large landowners. Their properties were seized and redistributed to small farmers. Meanwhile factories were nationalized or broken down and moved to Soviet territory as reparations.[87] In addition to Junkers, "fascists and war criminals" saw their property and businesses declared forfeit. On October 30, 1945, Soviet military authorities ordered the requisition of the entire productive property of Nazi activists, armaments manufacturers, war criminals, and financiers in Saxony. A few days later, another order authorized the immediate expropriation of the former Nazi Party itself along with its affiliated organizations. A June 1946 plebiscite organized by German communists in the Soviet zone overwhelmingly approved the nationalization of around a thousand larger businesses or branches of businesses together employing more than a hundred thousand workers in Saxony alone. The vote was supported by 76 percent of the electorate.[88] At no point were Germans in the Western zones asked to vote on policy under occupation.

Alongside radical socioeconomic reform, the Soviets promoted political change by turning to the Germans themselves. Although the Soviets did not hesitate to imprison and otherwise punish Nazi leaders, "ordinary members of the party and so-called 'fellow travelers' were to be rehabilitated." Whereas

JCS 1067 "called not only for the prosecution of the leaders of national Socialism, but for a widespread purge of complicit individuals from public life," denazification in the Soviet zone called for the "rehabilitation" of ordinary members of the Nazi party and fellow travelers, according to Olick. He cites a minor former Nazi Party member, who hailed the approach at an assembly of former Nazis in support of the Socialist Union Party (SED): "Long live the SED, big friend of the small Nazis."[89]

One object of the Soviet political program was to encourage German anti-Nazis to organize and thereby transform occupation into liberation. The military government identified anti-Nazis and helped them organize political parties. The Soviets also encouraged their participation in local governments. In July 1945 the Soviets became the first of the Allies to install state *(Länder)* governments. Local administrations were put "in the hands of seventy German communist emigrants from Moscow" and "some three hundred former German POWs" who had "attended antifascist schools" in the USSR.[90]

The Soviets were also the first of the Allied occupying powers to allow the formation of postwar political parties. The Communist Party was officially refounded in Russian-controlled Berlin a little more than a month after the end of the war. It was followed rapidly by the restored SPD, then the conservative and religious Christian Democratic Union, and the anticommunist and antifascist Liberal Democratic Party of Germany. Later, these would either be disbanded, or absorbed into the Communist Party, renamed the Socialist Unity Party.

The contrast with the Western zones in the early period could not have been sharper. While the Western Allies treated Germans of any kind—Nazi or not—with distrust, the Soviets established German administration at the local level. The decision to do so perhaps reflected a magical thinking—Soviet leaders, including Stalin, argued that German workers had been terrorized into submission by Nazi forces but had never been won over by Nazi ideology. Matters were, of course, never so simple. Walter Ulbricht, the Weimar-era communist who would go on to lead the German Democratic Republic, conceded just six weeks after Germany's defeat in the war, "The tragedy of the German people consists in the fact that they obeyed a band of criminals. . . . The German working class and the productive parts of the population failed before history."[91] The Soviets would have shown still greater boldness had

they pursued their radical effort without deluding themselves about the innocence of the German worker.

This relative idyll did not last long. Democratization demanded that all antifascist forces be free to organize and stand in elections, but the Soviets quickly came to see risks in the sheer diversity of forces that took advantage of these freedoms. Noncommunist antifascists and communists who dissented from the Soviet party line, such as Germans inspired by the example of Rosa Luxemburg, presented a challenge to Soviet control of the zone. Stalin's tolerance for free and therefore potentially pro-Western thought in the zone only decreased as the Cold War set in with the introduction of the Marshall Plan in June 1947 and its gradual implementation in 1948 and 1949. At the same time, the Soviet leadership read developments elsewhere in the Eastern Bloc—especially Yugoslavia—as a warning signal. There was a growing call to rein in "sectarian" tendencies. When the Yugoslav Party was expelled from the Cominform in June 1948, SED members like Anton Ackerman who called for a German road to socialism were marginalized.[92]

The years that followed were marked by the imperative to maintain order in the midst of postwar tumult. Particularly concerning was the westward flow of refugees. Between 1949 and 1961, about two million Germans left the East, cutting its population by about one-ninth.[93] The key institution for maintaining order in the face of East Germany's many troubles was its police force, the Stasi. The first German institution created in the Soviet-occupied zone, the Stasi eventually penetrated every pore of German society. It was in turn penetrated by former Nazis, and not just small Nazis.

The final blow for political reform in the East came on June 17, 1953, when the East German government turned to the Soviet armed forces to crush a popular uprising. Bertolt Brecht, the great German dramatist and poet, memorialized the moment when it became clear that a new day would not be dawning after all:

> After the uprising of the 17th of June
> The Secretary of the Writers Union
> Had leaflets distributed in the Stalinallee
> Stating that the people
> Had forfeited the confidence of the government
> And could win it back only

By redoubled efforts.
Would it not be easier
In that case for the government
To dissolve the people
And elect another?[94]

The End of Denazification

First the French, then the British, and finally the Americans in March 1946 turned over the responsibility for denazification to Germans, retaining direct control over only a small number of cases.[95] A German minister of denazification was appointed for each zone, and on April 1, 1946, a special law established 545 civilian tribunals under German administration *(Spruchkammern)*. On day one, the tribunals had 900,000 cases. Technically these tribunals were under the oversight of the military governments, but their administrators were allowed a lot of freedom.

The aim of denazification was changed from punishment to rehabilitation. Even if someone was guilty according to formal criteria, the tribunal could, when determining sentencing, consider mitigating factors.[96] While any German who had "contributed to the development or support of National Socialism or militarism" could be "called to account," a finding of guilt could be overridden on the basis of a "just consideration of his individual responsibility and his actual conduct, taken as a whole." Frederick Taylor suggests that this was a license to acquit.[97] Corruption spread through the system, as denazification certificates were bought and sold on the black market. And those found guilty were often required to pay fines in Reichsmarks, which had become nearly worthless, meaning they escaped punishment.[98]

In early 1947, the Allies had held 90,000 Nazis in detention in West Germany; another 1.9 million were forbidden to work as anything but manual laborers. Denouncing "victors' justice," the denazification minister in Bavaria, Anton Pfeiffer, presided over a system that reinstated 75 percent of officials the Americans had dismissed and reclassified 60 percent of senior Nazis in order to commute their punishments. Among secondary school teachers in Bavaria who were fired by 1946, half returned to work within two years. It got so bad that in October US authorities warned Bavaria's premier, Wilhelm

Hoegner, to report improper behavior by the tribunals.[99] According to an American report, by 1949, 85 percent of civil servants in Hesse who had been removed were back at their jobs. In May 1949, at the time the West German state and constitution were coming into being, between 30 and 60 percent of officials in the Bavarian government were ex-Nazis. That same year the newly established Federal Republic ended all investigations into the past behavior of civil servants and army officers. In August 1950 a quarter of all departmental heads in the Bonn ministries were ex-Nazis. The Bundestag, the lower house of parliament in the Federal Republic, declared denazification complete on December 15, 1950, and the following year a blanket amnesty was established in the form of the *Entnazifizierungsschlussgesetz* law ending denazification. By 1953 the proportion of ex-Nazis in the central government civil service reached 60 percent. In the Foreign Ministry in 1952 the proportion was two-thirds.[100]

Under Chancellor Konrad Adenauer, West Germany enacted amnesty laws affecting about 792,176 people. Judt estimated that, by 1951, 94 percent of judges and prosecutors, 77 percent of finance ministry employees, and 60 percent of civil servants in the regional agricultural ministry were former Nazis. In addition, 43 percent of the newly constituted German diplomatic corps were former SS men and another 17 percent had served in the SD or Gestapo.[101]

Perhaps the greatest condemnation of denazification lies not in the fact that so many Nazis once deemed removable were restored to their posts but in German public opinion. Throughout the years 1945 to 1949, 60 percent of West Germans—a population totaling more than 50 million—thought that "Nazism was a good idea, badly applied." In November 1946, a survey found that 37 percent of Germans in the American zone thought "the extermination of the Jews and Poles and other non-Aryans was necessary for the security of the Germans." Another survey, from 1952, confirmed that nothing had changed: 37 percent of West Germans believed it was "better" for Germany to have no Jews in its territory. A poll taken a year earlier found that only 5 percent of West Germans felt guilty about the fate of the Jews.[102]

It should come as no surprise, then, that Adenauer faced a great deal of opposition in establishing compensation for the victims of Nazi rule *(Wiedergutmachung)*. But he was able to win enough support in the Bundestag by arguing that the payment of reparations established the *success* of denazifi-

cation. It was time to move on to the victims, because the culprits had been prosecuted.[103] Even more significant was that those compensated were not fellow Germans or even Europeans but residents of a foreign state: Israel. What better evidence could there be that the Final Solution had worked? The Jews were gone, the handful of Germans responsible had paid for their crimes, and in just a few short years the country was reestablished as a responsible, even admired, participant in the global order. In the decades since, Germans have continued paying reparations to Israel, in absolution for their own violent nationalist project and in support of another.

3

SETTLERS AND NATIVES IN APARTHEID SOUTH AFRICA

In a 1998 lecture in South Africa, I asked the following question: When does a settler become a native? The answer, I believed then and believe now, is never. The native, I argued, is a creation of the settler state. The native is the settler's invented other: the settler claimed not only to be defined by history but to be its maker, at the same time stigmatizing the native as an unthinking captive of unchanging custom and a product of geography. My conclusion was that settler and native are joined; neither can exist in isolation. Should you destroy one, the other would cease to exist.

In the course of the struggle against apartheid, South Africans did something remarkable: they tried, with incomplete success, to destroy the settler and the native by reconfiguring both as survivors. They did so by adopting a response to extreme violence that defied the logic of Nuremberg—the logic of separating perpetrators from victims, punishing the perpetrators, and creating separate spheres in which the two could live without harming each other in an ongoing cycle of violence. By thinking of extreme violence as a political rather than criminal act, South Africans were able to shift focus from individual transgressions of law to the issues that drove the violence and the needs of the people who survived it. Instead of going to court, they sat around the conference table. Rather than turn to a trial to produce truth and punish offenders, they negotiated reforms to make the political system more inclusive, recognizing that perpetrators as well had to be brought into the political fold.

Above all, South Africans came to recognize that political identities are not permanent or natural. Activists overcame differences of race imposed on them—differences marked as African, Coloured, Indian, and white—to join in a single cause of breaking down apartheid. Afrikaners, once champions of apartheid, became part of the movement against it. These groups had been formed under colonialism as distinct and often rivalrous, their interests said to be naturally divergent. Because of the racial difference imputed to them, they were subject to different laws and granted different opportunities to participate in the political community, or sometimes no opportunity at all. But in response to apartheid, these people learned to think anew their political relation to each other: not as others or rivals but as equals in law.

In other words, South Africa attempted to decolonize, by breaking down the colonial distinction between settlers and natives and inviting them to participate in the same political community, with settlers reconfigured as immigrants. This attempt was partial. Colonial authorities created, and both colonial and apartheid authorities exploited, two kinds of distinction between settlers and natives: racial distinction and tribal distinction. The struggle against apartheid, and the new South Africa that followed, have made inroads against the politicization of race. Yet today tribe remains a supposed African tradition. Thus settler and native identities have been dismantled in some respects and retained in others.

The South African case diverges instructively from that of the United States. The two countries have similar colonial histories, but only one has attempted to decolonize. Both are federations of colonized territories; the United States formed from the union of the British colonies during the revolution, South Africa in the early twentieth century from the union of the Cape Colony, Natal, the Transvaal, and other British dominions, some of which previously had been under Dutch or Boer control. The great majority of the territory circumscribed by each federation was set aside for settlers.

What defined settlers in both countries was not the color of their skin, although in most settler colonies, the upper echelons of the power structure were and remain overwhelmingly occupied by white-skinned people. (An exception is Liberia.) The settler also was not defined by language, culture, religion, gender, or socioeconomic status, however these are conceived; nor by length of residency, immigration status, or even citizenship status. There were British settlers in South Africa, as well as Afrikaners; white European

settlers in America, some who came involuntarily, as indentured servants, as well as enslaved and free blacks. What defined the settler was the law to which she was subject. Call it civil law. Equal subjection to civil law does not mean equality of subjects; settlers were not and are not treated equally. The law may be discriminatory: it may be designed in ways that make it more useful to certain individuals than to others and more useful to certain communities than to others. But all of these individuals and communities are equally subject to the civil law.

Within the borders of each federation were and remain inhabitants subject to another kind of law: customary law. The people governed by it are members of native tribes, so called because the civil law groups them that way. If this sounds circular, it is: natives are not natives because of anything essential to them but because they were created as natives in law by settlers. Like civil law, customary law is unequal. It can offer its native enforcers capricious and tyrannical authority over other natives.

But customary law, in both America and South Africa, is in no sense traditional. It is not a practice predating colonization. Customary law, like civil law, is created by settlers. The particular practices and norms associated with customary law are sometimes inspired by those of an era preceding colonialism, but customary law's authority over natives, and the authority of natives to wield it, derives from statutes of the civil law. Those who write the civil law ultimately determine what the customary law is, while the natives themselves serve as customary law's custodians, implementing it within the tribal territory. Together, the authors and enforcers of law determine, say, who gets to be a tribal member, which land the member may own or use, what religion the member may practice, how the member is to dress and groom himself, or whether the member is at liberty or detained. In this way, settlers ensure that the natives are civilized according to their standards. As the British colonial secretary in South Africa put it in 1849, customary law would hold so long as it was not "repugnant to the general principles of humanity, recognized throughout the whole civilized world."[1] This proclamation underlined the fact that every colonial power held itself to be the representative of the civilized world and the guardian of general principles of humanity.

In the domain of civil law, the US and South African settler states subjugated residents racially. In the domain of customary law, both settler states

subjugated residents tribally. These regimes of racial and tribal control overlapped, but they were not and are not reducible to each other. The racial regime embedded in civil law enjoined both the privileged racial community and the deprived racial community to participate in an order in which the privileged benefited from the labor of the deprived. The tribal regime embedded in customary law enjoined only natives. In South Africa, customary law applied to all natives, but only natives considered indigenous within particular tribal homelands had customary rights. Other natives, deemed immigrants within these tribal homelands, were denied the protections of customary law, including customary rights to land. In the United States, too, natives considered nonindigenous within a particular reservation are denied membership and therefore customary rights. Thus tribal—customary—law has itself been made discriminatory.

Customary and civil law and their divergent jurisdictions constituted the backbone of the colonial systems in the United States and South Africa. That system is retained in the United States today, largely without changes. In South Africa, it was altered dramatically by the introduction of apartheid in the late 1940s. From the standpoint of the white-dominated state, apartheid was necessitated by the breakdown of the dual system of tribal and racial control amid industrialization. With the economy booming, Africans were moving into cities for work. And when they arrived, some of them organized into unions demanding better pay and treatment.

The presence of African agitators in urban South Africa—and the threat they posed to the economic interests of whites—was a crisis in need of solution. Apartheid was that solution: an effort artificially to retribalize millions of natives by forcibly settling them in homelands, renamed Bantustans, which would be administered under the tightened fist of native authorities. Africans could return to cities as migrant laborers, but they would be denied the right to reside there. If the market economy detribalized labor, forcing it out of villages into industry, apartheid's political solution was to retribalize that labor by sending it "home."

Apartheid, too, sparked unrest and eventually crisis. But this time the crisis had a productive resolution: the Convention for a Democratic South Africa (CODESA), the negotiations to end apartheid carried out between 1990 and 1994. It is CODESA, in particular, that rejected the Nuremberg model. The goal was never to single out perpetrators—to name and shame, in the

parlance of the contemporary, Nuremberg-inspired human rights regime. CODESA's goal was to create a new political system in which all members of the preceding regime—both enemies and supporters of apartheid—would be included.

The creation of a new political system did not happen in Europe after World War II. The victims and the perpetrators were separated by means of ethnic cleansing and the establishment of the state of Israel. The post-conflict German state was built by outsiders, while the internal resistance to the Nazis was denied participation. In South Africa, internal resistance movements forced the issue of apartheid's injustice, necessitating the settlement that ended apartheid. In critical ways, that settlement reflected the key transformation wrought by the resistance. The Black Consciousness Movement, labor organizers, and student groups opposed to apartheid overwrote the political identification associated with race. They encouraged Africans, Coloureds, Indians, and whites to see themselves as capable of inhabiting the same political community. They showed that political identity is mutable, not inborn; that it is a product of history. The state that followed apartheid bore this out by uniting South Africans under a single government and law—albeit with many concessions to whites, intended to keep them at the negotiating table.

It was, however, not the internal resistance from anti-apartheid groups that led the negotiations. That task fell to representatives of more mainstream organizations, such as the African National Congress (ANC), headed by Nelson Mandela. In the 1960s the ANC and others initially engaged in a militant "liberation movement" modeled on those of other decolonizing African states such as Mozambique, Angola, and Algeria. But efforts at armed liberation in South Africa resulted in crackdowns on militant leaders like Mandela, who were imprisoned or expatriated. In prison and exile, armed liberators lost connection with the very constituencies whose challenges they were committed to addressing. More like diplomats, they won the favor of international politicians and boycott movements and gained prestige.

Perhaps it was through these international engagements that they learned to be neoliberal—to reduce the work of political systems to the work of individuals, as Nuremberg had. The result was the most famous but least constructive mechanism of the post-apartheid transition: truth and reconciliation. Whereas CODESA responded to apartheid by imagining a new political

community in which enemies became adversaries, the Truth and Reconciliation Commission (TRC) sought to pin blame on individual perpetrators and provide restitution to individual victims. Formed in 1995, the TRC transformed the political violence of apartheid into criminal violence, per the Nuremberg-inspired human rights regime. The results were perverse. The TRC ignored millions of black political prisoners and victims of ethnic cleansing, displaced from their homes into Bantustans. The commission cataloged just 20,000 cases of victimization. In the meantime, the TRC absolved apartheid's white constituency by putting all responsibility on individual perpetrators.

The TRC's narrative of apartheid tells South Africans to ignore their history. It says that violence comes down to people's personal choices—that it is not a matter of how the state functions or a product of the ways that political constituencies think about the issues that matter to them. This narrative helps to maintain racial privilege even in a South Africa with formal racial equality: whites, ignorant of their complicity as beneficiaries of apartheid, continue to function as a social elite. The result is growing tension over a political system that provides for universal franchise but cannot supply social justice.

The concessions made to whites during the negotiations to end apartheid—concessions enshrined in the national constitution and in laws governing local administration—ensure that the problem of social justice will not be solved any time soon. But it is important to realize that, in exchange for those concessions, something critical was achieved. The crisis of apartheid might have been resolved with mass bloodshed, leading either to new forms of legal subjugation or to political and spatial separation. Both outcomes would likely have fostered more violence, in an ongoing cycle. Instead South Africa now has competing political constituencies working to achieve their goals under the aegis of a system seen as legitimate by the participants. This is possible because, in spite of the TRC, enough South Africans have been willing to rethink political identity. They have come to recognize that the racial political identities of the past were not timeless but rather created by political processes. As such they could be dismantled by political processes as well.

South Africans have thus felled one pillar of the settler-versus-native distinction in their country: race as political identity. This is the key divergence from the US situation. The United States, too, has partially deracialized, but

in the US condition, this does not constitute decolonization, for racialization in the United States does not distinguish settler from native. In the United States, the determinants of the native-versus-settler distinction are more firmly rooted today than ever before—so deep in the marrow of law and society that they are invisible. In South Africa, half of those determinants were made visible and were contested.

The other pillar of the settler-versus-native distinction, tribe, persists in the architecture of the South African state, as it does in the United States. In South Africa, tribe has been naturalized, presumed to be part of a timeless native—that is, African—culture. In the former Bantustans, the regime of customary law remains substantially unreformed. In rural South Africa, violence continues among Africans who define themselves as tribally distinct. Africans are still denied rights under the customary regime, should they live in the "wrong" tribal homeland. In urban South Africa, Africans and other persons of color seen as tribal strangers, and thus intruders, are periodically the target of what is called *xenophobic* violence. South Africa's story tells us much about how a society can go about decolonizing. But it also speaks to the enormous challenge of that worthy project.

Apartheid's Colonial Prehistory

Apartheid was the culmination of a half-century-long contest among settlers, Boer and British, over how to govern natives. Both sides agreed that political democracy would define the character of settler political society, and that natives would be excluded from it. But there was a long debate on the native question: How to impose a durable peace on the natives?

The options had already been laid out in the United States: one accented race, the other tribe. Race defined the position of enslaved Africans, who collectively occupied the lowest rung of a national racial hierarchy. Blacks constituted a single racial group governed by the same law as their oppressors—a law with discrimination built into it. Indians, by contrast, were organized into legally distinct tribes and placed outside the national hierarchy. Once herded onto reservations, they were subjugated directly by the central state (the Congress and the Bureau of Indian Affairs) but also indirectly, through customary law—an official version of what were said to be their own institu-

tions, flattened and extended across reservations. In South Africa the tribal option was identified with the Natal Colony and the race option with the Cape Colony.

Tribe, the Natal Model

The colony of Natal was annexed by Britain in 1843. It was immediately clear to the settlers that the predominantly Zulu natives were, as they say, restive. A colonial Locations Commission, established in 1846 and tasked to "demarcate African reserves," described the alarming state of affairs. "The natives' own laws are superseded; the restraints which they furnish are removed. The government of their own chiefs is at an end; and, although it is a fact that British rule and law have been substituted in their stead, it is not less true that they are almost as inoperate as if they had not been proclaimed, from a want of the necessary representatives and agents to carry them out." The commission concluded, "The danger of such a state of things scarcely needs our pointing out." The commission recommended corralling natives into separate locations and administering each under a "system of justice" that "should conform as much to their own law as is compatible within the principle of ours." Roughly one hundred thousand natives were brought together in ten separate locations under this scheme. The result was a dual segregation, both territorial—with natives geographically separated—and institutional, with colonists in Natal subject to civil law and natives to customary law.[2]

The native agents administering customary law would be called chiefs. Their powers were formalized through statutes of 1849, 1878, and 1891.[3] These were draconian laws by any standard. The tribal chief was a local despot who could requisition tribesmen for any number of purposes, including "defense, or to suppress disorder or rebellion, or as laborers for public works, or for the general needs of the colony." The tribal chief was in turn appointed—and removable—by the supreme chief, who was not a native but the lieutenant governor of the colony. The nomenclature of "supreme chief" suggested that his powers were a continuation of native tradition, but in fact they exceeded those of any precolonial despot. He could forcibly move any "tribe, portion thereof," or individual to any part of the colony. He could "amalgamate" or "divide" tribes. He had "absolute power" to call upon all "natives" to supply labor. The supreme chief possessed powers to make rules by fiat and to settle

conflicts. He had the "authority to punish by fine or imprisonment or both." He stood above any law: "The Supreme Chief is not subject to the Supreme Court, or to any other court of law" for any action "done either personally or in Council."

The regime of absolute control reorganized relations within Zulu society, establishing a rigid patriarchy in which the native head man of each kraal, or village, exercised total authority over minors and women within his domain. By law he was the "absolute owner of all property belonging to his kraal," and it was his duty to "settle all disputes" within. All residents of a kraal were "minors in law," except for married men, widowers, and adult men "not related to the kraal head." Unless exempted by civil legal authorities, women were "always considered minors and without independent power." They could "neither inherit nor bequeath." All income was controlled by the head of the kraal, who was given powers to disinherit any minor who may disobey him. Kraal heads also had police powers, ranking as "constables within the precincts of their own kraals and . . . authorized to arrest summarily any person therein." Kraal heads were also given powers to "inflict corporal punishment upon inmates of their kraals" for "any just cause." The code went on to specify the type of salute natives must give and the manner in which they must hail each category of official, from the white supreme chief to the native headman. Thus were the "general principles of humanity, recognized throughout the whole civilized world" imposed.

Native governance in Natal was the essence of colonial absolutism: rule by decree, without judicial or parliamentary restraint. That approach continued after South Africa became independent. The South Africa Act of 1909, the law that was the basis of union, vested control over native affairs in the governor-general, not in Parliament, ensuring that natives would continue to live under a distinct legal system that amounted to a dictatorship in which all power flowed from a single official.

Race, the Cape Model

While the natives of Natal were herded into locations where they were governed indirectly by customary law, the natives of the Cape Colony were ruled directly by the colonizer under a single legal order based on racial hierarchy. When the English took charge of the Cape from the Dutch in the early nineteenth century, the territory included white settlers and two colonized groups, indigenous Khoikhoi and imported Malay slaves.

The Cape swelled as the English conquered the Xhosa people, who inhabited the eastern part of the territory, in the course of a century of conflicts inscribed in colonial history texts as the Kaffir Wars of 1779–1879. In the face of this prolonged armed resistance, the masters of the Cape were determined to uproot all native institutions. The colonists saw the tribe as signifying both a territorial parameter of defense and an ideological anchor of the native struggle for autonomy. Thus, what worked for the colonizer in Natal did not in the Cape. In the Natal colony chiefs were empowered (albeit, under ultimate colonial supervision); in the Cape colony, chiefs were smashed in an effort to erode the military capacity of the tribes and stem their rebellious ways.

For about three decades in the mid-1800s, this goal dominated native policy in the Cape. Yet tribalism proved hard to kill. In the scattered Cape reserves that punctuated the space between one settler farm and another, there flourished small parcels of land where "tribal courts and tribal law continued to operate under makeshift arrangements."[4] In some places, integration under the civil law was realized, but elsewhere it was a fiction. The point was driven home in 1871, when the Cape annexed Basutoland and refused to assimilate natives into the colonial legal system. When the Sotho petitioned for the parliamentary franchise in 1872, the colonial governor's response was revealing. He warned the Sotho that, if they joined the central legal order, "Colonial law would have to supersede Sotho law, the unoccupied land would be appropriated and sold, and whites be allowed to acquire land and settle in Basutoland."[5]

Various advisors shared the view that indirect rule was best. The Cape Native Laws and Customs Commission of 1880–1883 warned the government against "excessive interference in the affairs of recently conquered communities." From across the Natal border, the British colonial official Theophilus Shepstone counseled that, "the main object of keeping natives under their own law is to ensure control of them." To drive the point home, he reminded the commission that Natal's African population "has never taken up arms against us, while your people have; and that, in my opinion, alters the position of things very much."[6] Shepstone, and increasingly Cape authorities, understood that a rebellious peasantry cannot be ruled through an authority both externally imposed and externally administered. Some form of indirect rule would be needed.

The shifting realities of the Cape political economy also progressively undermined the notion of a single civil law based on racial hierarchy. What

changed was the relative political strength of agricultural and mining interests. As mining expanded, so did the political power of mining corporations, whose labor needs differed from those of farmers. Settler farmers wanted to break up tribes so as to release labor that could be housed, absorbed, and controlled on the farms. Mining companies, by contrast, wanted to maintain tribal reserves, which housed laborers when they weren't needed and released them for the seasonal work on which the mining industry relied.[7]

The miners' demands won out over the course of the twentieth century and ultimately served as a precursor to the apartheid system. In 1936 the Native Trust and Land Act doubled the allocation of land to peasant communities, and the area was cordoned off from private possession, whether by white settlers or native proprietors. The natives were not, however, able to possess land under the civil system of freeholding and leasing; rather, their land tenure was based on customary law. The idea was to maintain a pipeline of migrant labor. By shielding landholding from the disintegrative forces of the market, customary law ensured the continued reproduction of the peasant family supported by remittances from the migrant father. The wife and children cultivated the family farm, on which future generations of adult laborers were reared and to which the adult or aging male laborer returned when no longer needed at his place of employment. When the 1955 Tomlinson Commission recommended that freehold tenure be granted to the African population in the homelands on the condition that it be "adequately used" in the interest of "development," the government rejected the proposal because doing so would have undermined the migrant-labor system.[8] In the 1950s and 1960s, under apartheid, this labor system expanded. Large numbers of Africans working in manufacturing were made permanent residents of the homelands, to which they would return when not needed in factories.[9]

Transition to Apartheid

Among colonial and then South African authorities, the realization gradually dawned that race and tribe ought to be seen as complementary, not exclusive, methods of native control. Over the late nineteenth and early twentieth centuries, each method revealed itself to be a kind of solution to the other's deficits. To consolidate racial rule required anchoring in a tribal mode

of control: by defining every native as member of a particular tribe, subject to regulation under its own customary law, it would be possible to divide natives into a number of tribes, each a minority on its own, and thereby contain all within the parameters of separate tribal institutions. This in turn would preserve white superiority in the central state.

Defining the social status of the colonized by reference to race had two important disadvantages. First, it homogenized those colonized into a racially oppressed majority. Second, it was difficult to legitimate this mode of control because it was unmoored from any historical memory. Tribal rule at least could pay lip service to historical custom. Racism, then, tended to accentuate the colonial context of rule rather than assuage it. Its thrust was not to divide and rule but to unite. Tribalism had none of these disadvantages. Tribal identification and administration would fragment the native majority into several minorities, said to be both natural and traditional.

As we have seen, settlers did fear that tribe could become a focal point of solidarity. Where they were cowed militarily, that solidarity might not take the form of rebellion, but it could take the form of demands for representation. So settlers learned how to foster division within tribes. To this end, they became militant advocates of civilization. Just as US settlers picked up cudgels on behalf of former slaves and full-blood Indians in Oklahoma, to wage a fight against the Indian elite in the name of civilization, so did South African settlers embrace a civilizing mission that would emancipate ordinary tribesmen from the tyranny of chiefs and tribeswomen from slavery. "The wives of a man are practically his slaves," Natal Governor Benjamin Pine lamented, "and the more a man has the richer he is." His moral outrage was tinged with realpolitik. "How can an Englishman with one pair of hands compete with a native man with five to twenty slave wives?" he asked. The Kaffir Commission of 1852–1853 drove the point home, arguing that if "the Kaffirs were rapidly becoming rich and independent," this was "evidence of the increasing means of sensual indulgence available to the males." There followed the moralizing conclusion: "Their prosperity would be welcome if it were the fruit of men's regular and honest industry, but it flowed in fact from polygamy and female slavery." And so the commission made its most "enlightened" recommendations: that polygamy and *lobolo* (bridewealth, the practice of a groom and his family paying his bride's family) be prohibited by law.[10]

In cases where land and labor were firmly pushed into settler-controlled markets—where tribal autonomy had been compromised—settler opinion became concerned with the need for tribal stability. Loosed from age-old tribal bonds, the laborer, the professional, the trader, and the intellectual, like the industrious half-bloods of the Five Civilized Tribes in the United States, came to symbolize a threat instead of the promise of civilization. These civilized natives demanded equal civil status and treatment regardless of racial identity. The tribal customs that yesterday were seen as cementing the bonds of resistance now appeared in a new light. As H. J. Simons notes, "Traditional leaders, the diviners, herbalists and chiefs, had lost ground to the new elite. Whites regretted the erosion of tribal discipline and the decay of customs that formerly kept young people in check."[11]

To understand how tribalism, once seen as the focal point of native resistance, came to be understood as an efficient mode of native control, we need to place the changing terms of the debate over racial and tribal control in the context of a shifting social and political landscape.

The Crisis of Native Control

The turn to tribe followed the realization that racial segregation alone was insufficient to prevent racial mixing. The Cape pioneered the segregation of urban Africans in "locations" in 1903, following the passage of the 1902 Native Reserve Location Act, one in Ndabeni (Cape Town) and the other in New Brighton (Port Elizabeth). The Transvaal followed suit that same year, as did Natal in 1904. But formal segregation did not succeed in keeping people apart. The 1922 Stallard Commission deplored "miscegenation" in urban areas, where blacks and poor whites lived "cheek by jowl" in squalid shantytowns. The commission spelled out a new urban policy in words that have since been chiseled in the annals of South African history: "The Native should only be allowed to enter urban areas, which are essentially the white man's creation, when he is willing to enter and to minister to the needs of the white man, and should depart therefore when he ceases so to minister."[12]

Segregation also was failing in rural areas. The 1920 Native Affairs Act set up separate local governance councils for blacks, called Bunga. This led to concern within the Native Affairs Department (NAD) about the wisdom of constituting trans-tribal representative institutions that would disintegrate tribal bonds. For instance, nearly the entire native population of the Transkei

region was included in the Transkei Bunga by 1923, alarming the NAD. Department staff worried that such a move would "tend to produce a bond of interest among the black vis a vis the white."[13] Enthusiasm for councils waned, no new councils were established between 1920 and 1926, and legislation in 1926 substantially reduced the powers of councils.[14] By the end of the 1920s, the wind had changed direction.

Leading settlers saw clearly the connection between "miscegenation" in Cape shantytowns and rural trans-tribal bonds. In his 1929 Rhodes Lecture at Oxford, the military general and statesman Jan Smuts was unequivocal on the issue: at the root of "the colour problem" in South Africa, he argued, were "urbanized or detribalized natives."[15] A solution to this problem was the 1927 Native Administration Act. The law designated the governor general the supreme chief of all natives, whether they were located in tribal homelands or elsewhere. Everyone designated native, then, would be subject to customary law, even if they lived in a city also inhabited by settlers subject to civil law. The supreme chief was to rule by decree, subject to neither parliamentary nor judicial restraint. He was given the power to amend the 1891 Native Code by proclamation. Not only could he divide or amalgamate tribes, as in the 1891 code, but he was also given powers to "constitute a new tribe." He could "create and define pass areas within which natives may be required to carry passes" and "prescribe regulations for the control and prohibition of the movement of natives into, within or from any such areas." To give teeth to these powers, the supreme chief could appoint a (white) native commissioner, his assistant, or a chief—in other words, the entire Native Administration. He could confer power over civil and criminal jurisdiction to lesser chiefs. For the first time, chiefs and headmen were empowered to establish courts on the basis of authority given by government warrant.[16]

The extremity of the supreme chief's powers reflected the depth of settler fears as blacks mobilized around political demands cutting across tribal boundaries. A key focal point of mobilization was the fast-expanding Industrial and Commercial Workers' Union of Africa (ICU). The ICU was a general union encompassing everyone from peasants to petty entrepreneurs, but its core was migrant workers. At a time when opposition usually took the form of formal petitions to the authorities, the ICU was marked by "its militant call for open defiance of pass laws, a minimum wage and equality of opportunity."[17] The ICU's reach was considerable. In 1920 it organized a work

stoppage that involved forty thousand African mine workers. At the height of its popularity in 1927–1929, ICU had between a hundred thousand and two hundred and fifty thousand members, according to various estimates. The ICU helped to establish a tradition of black worker resistance—that is, of racial solidarity unconcerned with tribe. As one member put it, "Although the initials [ICU] stood for a fancy title, to us it meant basically: when you ill-treat the African people, I See You; if you kick them off the pavements and say they must go together with the cars and the ox-carts, I See You. . . . When you kick my brother, I See You."[18]

The ICU did not survive the decade, but the Native Administration Act held sway over South Africa, substantially unchanged, for the next sixty-four years, until the implementation of the Interim Constitution of South Africa in 1994. It is no wonder the law was received in Parliament with a degree of enthusiasm that General J. B. M. Hertzog, the minister of native affairs, found "gratifying to the point of being almost an embarrassment." The focus of that enthusiasm was the law's incitement clause, which made it a crime to act "with intent to promote any feeling of hostility between Natives and Europeans." Such a law would undercut any effort to mobilize natives *as natives*. At most, they would press for tribal interests. As Simons has argued, "The 'incitement' clause sharpened the realization that tribalism might be a bulwark against radical movements."[19]

In the 1940s the crisis of native control exploded with great intensity in urban areas. One of the most visible and influential revolts was the chain of bus boycotts in the township of Alexandra, outside Johannesburg. The boycotts were triggered by a one-cent increase in the fare from Alexandra to Johannesberg, from five cents to six. But the grievances were wide-ranging, focusing on needlessly lengthy routing, overcrowding on buses, lack of shelter at terminals, and rude transit staff who routinely failed to observe schedules. Commutes could last as long as four hours. During the first boycott, in 1941, as many as fifteen thousand people walked daily to and from central Johannesburg, turning the commute into a march. The strike committee—making its case through the Alexandra Health Committee, the township's unofficial government—argued that commuters were living on "sub-subsistence" wages and could not afford to pay anything at all for bus fares, much less higher fares for such poor service. When fares reverted to five cents, workers resumed commuting by bus. Further boycotts were organized in subsequent

years, making transit activism a legendary phenomenon in the South African liberation movement.[20]

Whereas commuter boycotts were sustained by township-based workers, migrant laborers resisted through squatting. While the municipal segregation policy was forcing Africans out of city slums and into "locations," migrant workers were moving into urban areas to fill the void. Thus, even with the segregation system in place, the urban African population doubled between 1939 and 1952.[21] The result was an epidemic of squatting. A growing stratum of urban Africans had access to jobs but not to housing.[22] Others simply could not afford the available housing, given their meager earnings, and migrant workers' families could not gain access to the hostels set aside for the workers only. Squatting was always illegal, which meant that even those who resorted to squatting out of economic necessity were criminalized and found themselves involved in political action.

The August 1946 miners' strikes were the most dramatic links in this chain of events. Between sixty and one hundred thousand migrant laborers stopped work, bringing at least seventeen mines to "a virtual standstill."[23] The strikes were centered on compounds, tightly controlled worker hostels inhabited exclusively by male migrant laborers while at their jobsites. The strikes were countered by massive shows of force. Compounds were sealed off under armed guard as 1,600 police were called in. Twelve miners were killed and more than a thousand injured. The strikes lasted just five days, but they proved to be "a milestone in South Africa's social and political development."[24] Labor uprisings were essential to the crisis that the state solved with apartheid, and the legacy of 1940s labor action helped to inspire the movement that eventually brought the state to the negotiating table in the 1990s.

In response to the transit boycotts, squatting, miners' uprisings, and other unrest, the state appointed two commissions to study the urban situation. The first, the Native Laws Commission of 1946, headed by Henry Allan Fagan, saw African urbanization as inevitable. Africans were increasingly dependent on wage labor, the commission noted, "because the reserves could not support a growing population." It was therefore appropriate to allow more Africans to move into the cities. They were going to come anyway, and allowing entry would help to stabilize the labor force. The Fagan report also noted "emerging class divisions within the urban African population" and suggested that these could be exploited. Black urbanites would of course be subject to

residential segregation and a new, national pass system; the existing system applied only in certain areas. The second commission, headed by the National Party's Peter Sauer, was appointed to contest the Fagan report. The Sauer Commission of 1947 agreed on the need for a national pass system but on little else. This commission called for reversing the trend toward African urbanization by preventing further entry and by "removing the surplus population from towns."[25]

Although the commissions appeared in some ways at odds, they were in fact articulating the two prongs of what would soon become apartheid. The Sauer Commission described apartheid's political program, focused on tribalizing Africans by settling them permanently in homelands, far from the towns and cities. The Fagan Commission described apartheid's economic logic, which focused on bringing the resettled African men back into the cities as migrant laborers subject to racial control and life under supervision in compounds. When the National Party came to power in 1948, it set about establishing policies to implement the recommendations of the two commissions. In the resulting seesaw of compromises, the economic strategy was modified to allow a permanent African working class in cities, but their political voice still would be silenced beyond the context of tribal reserves. The denial of the franchise unleashed another tide of urban protest.

The challenge for the post-1948 government was to put this genie back in the bottle. The solution was the policy that became apartheid, which sought to rein in unrest by forcing urban Africans into tribal confines. The theory was that they would be better contained by traditional authorities—that is, the chiefs—backed up by the might of the settler state. In 1951 South Africa's leaders moved decisively to subordinate race to tribe in the formulation of native policy by implementing the Bantu Authorities Act, a comprehensive program for the restoration of fully autonomous tribal authorities.

Apartheid Solidifies

Apartheid's focus on tribe marked a decisive shift in native control. While blacks were moving from tribe to race as the locus of oppositional politics, the state responded by going in the opposite direction, reinvesting in tribe as the antidote to black militancy. The logic is simple enough; it had played out before, as we have seen. When racial solidarity posed a threat, authorities

turned to tribal institutions in order to foment division. But apartheid brought new techniques to this endeavor.

To understand just what the new apartheid system did, it helps to compare it to the system it replaced. That system is known in South African historiography as segregation. Under segregation, the rural areas were administered by the Native Affairs Department (NAD), while Africans in cities were subject to municipal authorities, with some input from the NAD. This made for dramatic differences in the control of rural and urban Africans. In rural places, the NAD, with the aid of chiefs and headmen, supervised all aspects of life, from the allocation of land to the right of movement, resolution of disputes, and household affairs. The NAD could relocate or reconstitute entire communities. Any official employed by the department could by law exercise the powers of the supreme chief. In contrast to this centralized despotism, cities were subject to rules set by municipal authorities, which would individually regulate the entry, residence, and employment of Africans. In practice, this made for an uncoordinated framework. Some municipal authorities were strident in shutting down African employment, but others were open to pressures from local employers seeking access to cheap labor.

Beginning in the 1950s, Apartheid essentially inverted the NAD's relationship to urban and rural Africans, as part of the effort to tribalize them. Africans considered unproductive were flushed out from white farms, "black spots" in rural areas, and urban townships and shanties and resettled on reserves. On reserves they would be governed not by the NAD but under a decentralized form of native administration, whose focal point was no longer an agency of the central government but rather the chieftaincy. The Bantu Authorities Act and the Bantu Laws Amendment Act of 1952 beefed up the powers of chiefs and gave them authority to levy and collect taxes to finance their costs. By contrast, in urban areas the NAD emerged full-blown, replacing decentralized municipal controls with its own centralized administration. Every aspect of local administration, except health, was brought under NAD authority for urban Africans. Urban whites, of course, continued to live under civil law. Apartheid therefore combined decentralized despotism (indirect rule) in the rural reserves with centralized despotism (direct rule) in urban townships.[26]

Through these twin policies—on the one hand, removal to Bantustans under indirect rule; on the other, direct rule in cities—the South African

government reversed the trend of African urbanization without depriving urban industry of labor. The grand design of urban removal, as Tom Lodge puts it, was "to restructure the industrial workforce into one composed principally of migrant labour," thereby ensuring economic output while undercutting African organizing.[27] By 1990 half of South Africa's black population lived in the Bantustans.[28] A large slice of the black population was the victim of forced removals between 1960 and 1985: an estimated 3.5 million people, more than 10 percent of the South African population. Bantustans, mainly KwaZulu, also incorporated neighboring townships, bringing another 327,000 blacks under their control. Nearly two-thirds of the country's African townships declined in size over the l960s, as their residents were removed or annexed.

The South African Moment

By the South African moment, I refer to the period in the 1970s and 1980s when political initiative shifted from apartheid authorities to anti-apartheid forces. Facing three combined pressures—forced removals, which dramatically increased the insecurity of urban communities; Bantu education, which subjected black students to substandard education; and influx control, which regimented migrant labor into prisonlike conditions—the urban African population responded with resistance far stronger and more durable than that of the postwar revolt to which apartheid was the response. Over the course of decades, anti-apartheid forces shifted from spontaneous, dramatic acts of confrontation to sustained organization, leading to a decisive change in the very idea of what resistance could be and fostering the crisis that eventually forced the breakdown of the apartheid system.

The South African moment that I detail below unfolded in three phases. The first was the turn from resisting within the terms set by apartheid governance to redefining these terms. Second was a shift from demanding an end to apartheid to providing an alternative to apartheid. Third was a shift from representing the oppressed black majority to representing the whole people.

The early anti-apartheid activism of the 1950s took for granted apartheid's political framework. Specifically, apartheid divided the population into four

groups—Africans, Indians, Coloureds, and whites—and activists sorted themselves accordingly. Africans joined the longstanding African National Congress (ANC) and Indians the Natal Indian Congress, organized by Mohandas Gandhi in 1894. Coloureds took part in the Coloured People's Congress. Whites established the Congress of Democrats in the early 1950s to represent their opposition to apartheid. These racially demarcated resistance groups sometimes worked together under the aegis of the Congress Alliance, whose high point was the ringing declaration of 1955 known as the Freedom Charter: "South Africa belongs to all those who live in it." But this declaration was made by elites who mostly segregated themselves. Decades would pass before they formally joined under the same organizational structures. It was, for example, only in 1987 that the ANC admitted Indians and Coloureds into its National Executive Committee. The mode of governance introduced by colonialism and perfected by apartheid had been so effectively naturalized that even resistors replicated it.

After 1960, if not before, this method of activism based on declarations and petitions seemed both quaint and backward. That was the year of the Sharpeville massacre. On March 21, some 7,000 Africans gathered outside the police station in Sharpeville, a black township fifty miles south of Johannesburg, to protest apartheid. The police were notified ahead of time but attempted anyway to disperse the peaceful crowd. In the resulting scuffle, a police officer was knocked over, and soon the police were shooting. Dozens of Africans were killed and scores more wounded. Many were shot in the back. The state then shut down protests and banned anti-apartheid organizations, including the Pan Africanist Congress, which had organized the Sharpeville protest, and the ANC.

The ANC did not go away, though. It turned to armed struggle, as would the faithful to a messiah. The ANC established a new militant organization known as Umkhonto wa Sizwe—the Spear of the Nation—in 1961. At its helm was Nelson Mandela. Mandela and fellow militants were dazzled by the success of Vietnamese communists against all odds. Closer to home, they looked to Algeria and Angola and Mozambique for inspiration. Mandela visited selected independent African countries, looking for training opportunities and financial assistance. He recalled the experience in his book *Long Walk to Freedom* (1994). A highlight of the trip was Algeria, in Mandela's words "the closest model to our own." But that is where the resemblance ended. The

decades that followed would record a sharp difference in both the nature of the struggle and its outcome in the two countries: faced with the reality of an independent Algeria, a million *pied-noirs* would leave for France. In South Africa, however, most settlers would stay, becoming part of the post-apartheid political community. From Algeria, Mandela went to Senegal. He returned to South Africa, where he was arrested in 1962, prosecuted, and jailed for twenty-seven years.

The results of the armed struggle were by and large negative, although, in indirect ways, far-reaching. Many militants were barricaded in jail; others fled to avoid prison. The black population was left leaderless, immobilized and pacified, as capital took command: the 1960s were a time of rapid economic development, when huge amounts of foreign investment moved into South Africa. Meanwhile, the exiles traded their fatigues for suits and ties. While liberation movements dissipated at home, their former leaders became professional revolutionaries operating on a global scale. At a safe distance from both apartheid's terror machine and the discipline of internal struggle, they fostered a growing international anti-apartheid lobby. As their movements developed in sophistication and gained international contacts and legitimacy, they came to resemble proto-state structures waiting in the wings for the opportunity to govern. Their chance would come in the late 1980s and early 1990s, after other activists had emerged and brought about the crisis that forced the end of apartheid.

Students and Workers Bring Apartheid to its Knees

Over the two decades that followed Mandela's trial, there was a sea change in South African politics. The most important force for this change was not the armed struggle, nor exile politics, nor the international boycott movement. That force was provided by student activists of all colors and by migrant and township labor.

Students and workers crafted a vision that exploded the narrow confines into which each had been slotted by the architects of apartheid. Standing outside the strictures of workaday routines, students were free to think beyond their specific stations in life. They recall the late nineteenth-century Russian middle-class intellectuals who merged with "the people." Migrant workers, straddling the urban and the rural, moved between the lash of customary law and the disciplinary hold of civil law, and for that same reason were not

fully controlled by either. These groups rejuvenated popular protest and shattered the silence of the 1960s. Despite the obvious differences among them, they made common cause during important actions such as the Durban strikes of 1973. Together they moved the locus of struggle from exiled professional revolutionaries and imprisoned fighters to the popular strata in South Africa's communities—they brought the struggle back home. They also replaced an aborted guerilla movement with nonviolent agitation, to enormous effect. By acting peacefully, they maintained the moral high ground and distinguished themselves from an obviously violent system of oppression. Although they did not end apartheid on their own, they created the social and political paralysis that forced South Africa's white rulers to capitulate and, in 1990, open negotiations. The student and worker uprising marked a shift not only in South Africa but in the whole paradigm of liberation struggle, preceding the intifada that shook occupied Palestine in the 1980s and Eastern Europe's largely nonviolent revolutions of that same decade.

Student initiatives were instrumental in breaking down color lines. Nonwhite students had earlier joined the liberal wing of the white student movement, the National Union of South African Students (NUSAS), looking for an effective channel of organization before they came together under the banner of blackness. This was the work of the Black Consciousness Movement, led by Steve Biko. Biko was one of the African students who had joined NUSAS. But he and others chafed at the paternalism and hegemony of the group's white organizers and struck out on their own. They founded the South African Students' Organization, a group open only to blacks. While this may have seemed like a reinvestment in apartheid, it was anything but. By "blacks," Biko and others promoting Black Consciousness meant African, Indian, and Coloured students. Black Consciousness was a historic rupture with the mindset of apartheid. Black, Biko argued, is not a color; if you are oppressed, you are black.[29]

Both the white and black wings of the anti-apartheid student movement reached out to mobilize wider sections of society against apartheid. Students involved in Black Consciousness focused on black townships and made critical contributions to community-based protest. White students, shut out of black-consciousness organizations and the black townships where they organized, were like prophets outcast, searching for a constituency. They found it in migrant worker hostels and the township fringes. Radical white students

played a catalytic role in the development of independent unions that did much to nurture the crisis that brought down apartheid, as I discuss below.

Militant black and white students had more in common than they realized. None was keen to join externally based organizations or to court state repression by proclaiming allegiance to an outlawed group. None heeded the argument, then fashionable in "liberation circles," that anything short of armed or underground struggle, anything smacking of agitation for reforms or open organizational work, was tantamount to a recognition of the apartheid state and capitulation to it. They wanted to make change, not to be confined to jails.

Their key partners in this effort, the migrant workers, seemed to knit the disparate strands of South Africa into one piece. Their meandering lives—from Bantustan homes to miserable hostels and work environments—brought them in contact with people from all over and with apartheid's rural and urban dimensions alike. But, seeing all they had, they did not turn to armed struggle, even as it was registering its most spectacular gains with the collapse of Portuguese colonialism in Mozambique and Angola. Instead, they went on strike. In December 1971 thousands of Ovambo contract workers struck in Walvis Bay and Windhoek, two cities in Namibia, which was then a South African protectorate. They struck in order to protest the suffering caused by the migrant-labor system that was so instrumental to apartheid. In the following month, their protest grew into a general strike involving some twenty thousand migrant workers.

The Durban strikes followed in 1973. They began on January 9, 1973, when employees at the Coronation Brick and Tile Works struck for better wages. They marched to a nearby stadium shouting "Filumunti ufilusadikiza"—"Man is dead but his spirit still lives." The strike spread quickly. The next day, workers at A. J. Keeper Transport Company also struck for better pay. The brick and tile employees got their wage hike, but the transport workers didn't. Still, more strikes followed. Management called in police, and workers were dismissed, but many were reinstated a week or so later with a wage increase. A wave-like pattern developed: workers of one factory would go on strike and resume work once their demands were met, and then the strike would spread to workers of another company. There would be hardly any bargaining: demands would be announced and strikes declared at the same mass meeting.

The wave seemed unstoppable, reaching industrial complexes in Pinetown, New Germany, Jacobs, Mobeni, and elsewhere. When the strikes spread to over 7,000 workers at South Africa's largest textile employer—the British-owned Fame Group of Companies, notorious for its low wages and miserable working conditions—there was no stopping the momentum. By the end of March, close to 100,000 workers had struck; according to David Hemson, "more black workers were involved in strike action than in the previous twelve years after Sharpeville."[30]

The strike movement was like a magnet that attracted hitherto-dispersed migrant workers—African, Coloured, and Indian—into a collective effort that eventually took the form of independent unions. The strikers' primary grievance was the deprivation foisted on them by apartheid economics. Migrants had to somehow manage on the job in urban areas while also remitting a portion of their earnings to their families in the reserves—all while collecting poverty wages. At the time of the Durban strike, 70 percent of African workers in South Africa had a monthly income below the subsistence level; this was true of the industrial workers, too, even though they possessed valuable skills. The slogans used by the protesting workers reflected this stark reality. *Sifunamali,* they cried, *asinamali*. *Mali* is money, which they didn't have; they were, Ari Sitas writes, "on the brink of starvation."[31]

The force with which these workers broke onto the political scene in 1973 made them the focus of organizing initiatives from various quarters. The first of these were well-established groups such as the ANC and the Communist Party–linked South African Congress of Trade Unions (SACTU). Many of the veteran worker leaders who approached the strikers on behalf of the ANC and SACTU had just been released from political imprisonment.[32] Another cadre hoping to organize the strikers were young university-based intellectuals. These white student radicals came from the Wages Commission of NUSAS, which formed in May 1972, just a few months before the Durban protests began. In the words of one of its founders, the Wages Commission "brought together white students who were increasingly critical of the dominant liberal opposition because they believed it was ineffective and focused on race rather than class exploitation."[33] The students lacked ties to black industrial workers, but they were able to forge those ties with the assistance of "black organizers from the old SACTU unions who gave them access to black workers."[34] The activists earned workers' trust by providing

services—"handling . . . menial but very important complaints, pay slips, Workmen's compensation." They established organizations to assist workers in industrial zones, like the General Factory Workers' Benefit Fund in Durban, the Western Province Workers' Advice Bureau in Cape Town, and the Industrial Aid Society in Johannesburg.[35]

The white-led student initiative, in particular the Benefit Fund, accelerated unionization that followed the Durban strikes. The Metal and Allied Workers Union formed in April 1973 in Pietermaritzburg, with Alpheus Mthethwa, an employee of the Benefit Fund, as its secretary.[36] A few months later, the National Union of Textile Workers was established in Durban, with members of the Benefit Fund once again playing a key organizing role. As more unions were formed, they put members of the Benefit Fund executive committee on their own boards and recruited organizers from Benefit Fund ranks. The Trade Union Advisory and Coordinating Council—formed in October to help direct the course of unionization and the shape the unions—had Benefit Fund veterans among its members. In 1979 industrial unions started banding together under the Federation of South African Trade Unions (FOSATU). Within two years, FOSATU counted ninety-five thousand members in 387 organized factories spread across Natal, the Transvaal, and the Cape.

Durban was but one center of black unionization. East London, on the southeast coast, was a burgeoning hub of community unions, which believed it was impossible to separate workers' factory demands from the problems they faced in townships. Their demands went beyond the workplace to include grievances related to housing, transportation, and education. Community unions took a further political stand by boycotting the official registration process to which unions were subject and aligning themselves with the exile liberation movements. By contrast, the Durban-based industrial unions stayed clear of political alignment. Cape Town–based general unions shared the boycott stance of the community unions but joined industrial unions in nonalignment. By the late 1970s, these various unions would join in a solidarity that the government struggled to oppose.

White-led worker-services organizations had no official role in governance of FOSATU unions, but they were nonetheless influential. In particular, they brought to the federation and its unions historical lessons that kept them focused on the needs of the workers themselves rather than on large-scale political movements. Critics frequently accused the activists of "academic

Marxism" and "workerism," and they in turn charged their critics with a populist orientation that failed to draw relevant lessons from the past.[37] Central to that history were the Industrial and Commercial Workers' Union of Africa (ICU) of the 1920s and SACTU. ICU, the activists believed, was so focused on leadership that it lost sight of the shop floor and "failed in its efforts to gain recognized trade union status in South Africa."[38] SACTU was more successful in organizing, but it linked factory-based economic struggles with broad political struggles. This was a blessing and a curse. Its "pound-a-day" campaign for a living wage received massive backing from workers in the Johannesburg, Vereeniging, and Port Elizabeth areas and from the ANC. But SACTU's association with the ANC led to its repression in the post-Sharpeville period, and eventually to the imprisonment and exile of its leaders.

A full-time organizer from the early 1980s recalled, "The intellectuals said, don't go the route of SACTU, of being dominated by the nationalist movement which used it as a recruiting ground and denied it independence."[39] This, in essence, was how the workerist tendency formulated its critique of political unionism. The focus on concrete gains at the shop level appealed to migrant workers who were focused on immediate struggles for better pay. And the aversion to linking up with community struggles also made sense to migrants, given their tenuous connections to townships.

Eventually FOSATU did, however, make peace with political unionism—a move that proved important in the post-apartheid transition. In 1985 FOSATU agreed to dissolve so that its unions could merge into a new, larger federation: the Congress of South African Trade Unions, which allied with the ANC and the South African Communist Party. Many of FOSATU's white activists then joined the Communist Party and later the ANC. When the time came for a negotiated end to apartheid, they provided effective channels of communication to the white population and served as role models. If one prong of the anti-apartheid struggle involved mobilizing a population that had come to understand itself as black, the other prong involved educating a population that had always been sure it was white. White activists challenged apartheid's claim that there could be no white security without a white monopoly of power. Indeed, they suggested that the reverse may be true: that whites could be more secure if they gave up their monopoly and the strife it caused. Imperceptibly, the shift of white radicals from workerist organizing to public outreach set in motion the realization of a nonracial future.

As for black mobilization, another key episode was the Soweto uprising of 1976. Soweto was a coming of age for black community organizing. On June 16, nearly 20,000 black students gathered in the Johannesburg township of Soweto. Many of the students were high schoolers organized by the South African Students Movement, which was heavily influenced by SASO and the Black Consciousness Movement. The students joined together to protest Bantu education—in particular, a new law requiring that classes be held in Afrikaans. As they marched peacefully through the township, they were confronted by heavily armed police, who opened fire first with teargas and then bullets. The youth had no more than stones to throw at their assailants. Hundreds of protesters were killed.

The organizers and marchers inspired a generation of community-based resistance. Everyday people in the townships were radicalized and unleashed more protests. As they did so, they found their way inside the South African prison system, including the prison at Robben Island where Nelson Mandela had been locked up for years. Mandela learned from his wife, Winnie, "that there was a rising class of discontented youths who were militant and Africanist in orientation. She said they were changing the nature of the struggle and that I should be aware of them." Mandela wrote a revealing account of prison encounters with Soweto youth:

> The isolation section was filled with young men who had been arrested in the aftermath of the uprising. . . . These young men were a different breed of prisoner from those we had seen before. They were brave, hostile, and aggressive; they would not take orders, and shouted 'Amandla!' [Power!] at every opportunity. Their instinct was to confront rather than cooperate. The authorities did not know how to handle them, and they turned the island upside down.
>
> Shortly after their arrival on the island, the commanding officer came to me and asked me as a favor to address the young men. He wanted me to tell them to restrain themselves, to recognize the fact that they were in prison and to accept the discipline of prison life. I told him that I was not prepared to do that. Under the circumstances they would have regarded me as a collaborator of the oppressor.
>
> These fellows refused to conform to even basic prison regulations. One day I was at the head office conferring with the commanding

officer. As I was walking out with the major, we came upon a young prisoner being interviewed by a prison official. The young man, who was no more than eighteen, was wearing his prison cap in the presence of senior officers, a violation of regulations. Nor did he stand up when the major entered the room, another violation.

The major looked at him and said, 'Please take off your cap.' The prisoner ignored him. Then in an irritated tone, the major said, 'Take off your cap.' The prisoner turned and looked at the major and said, 'what for?'

I could hardly believe what I had just heard. It was a revolutionary question; what for? The major also seemed taken aback, but managed a reply. 'It is against regulations,' he said. The young prisoner responded, 'Why do you have this regulation? What is the purpose of it?' This questioning on the part of the prisoner was too much for the major, and he stomped out of the room, saying, 'Mandela, you talk to him.' But I would not intervene on his behalf, and simply bowed in the direction of the prisoner to let him know that I was on his side.[40]

By the mid-1980s, the townships had become ungovernable. The insurrection involved a loosely organized coalition of community and work-based organizations with the United Democratic Front (UDF) at the helm. The UDF brought together local groups all over the country to engage in peaceful protests of various forms: work stoppages, student protests, rent strikes. It cooperated with COSATU and other nonracial organizations. Above all it was a focal point for a popular movement that was, in any case, very much under way. It is this popular mobilization that forced the regime to look for a negotiating partner and come to some agreement on the twin issues of majority rule and minority rights.

A Negotiated Settlement

On February 2, 1990, State President F. W. de Klerk opened a new session of parliament with the announcement that apartheid was over. In doing so, he made official what had become clear on the ground, thanks to the uprisings of the previous two decades. Whatever the supporters and beneficiaries of apartheid might have wished, the system was no longer functional. Once a

pillar of South African society, apartheid had become the central focus of what was in effect an insurgent war. To sustain apartheid risked national destruction.

The end of one period was the beginning of another: that of negotiation. But when negotiations began in May, they sidestepped the organizational architecture of the uprising. Like the colonial authorities who allied with customary authorities at the outset of indirect rule, the South African government turned to partners said to be the legitimate leaders of black South Africa, even though they were marginal to the internal anti-apartheid movement that had actually forced the change that was now afoot.

This time, the negotiating partner would be the ANC-in-exile, and one of its jailed leaders: Mandela. Mandela was released from prison a week after de Clerk's speech, but his role as the leader of the anti-apartheid negotiators was established earlier. Inside the prison, there was every attempt to isolate him from other activists, especially those associated with the urban uprising—militants who might imbue in him the lessons of black consciousness and the hope of a nonracial society. His wife Winnie was likely among those who had adopted the new philosophies and methods so threatening to the apartheid system. Unlike Nelson, who had been in jail for the entire duration of the urban uprising, Winnie was very much a product of that uprising, adopting its daring and confrontational attitude. Nelson and the ANC—which began discarding apartheid's racial distinctions only a few years before his release—were no longer at the political cutting edge. Indeed, their methods had been repudiated. Their legitimacy came from international approval and Nelson Mandela's celebrity as a political prisoner, not from their leadership.

Mandela wrote of his first meeting with the government's "secret working group" in May 1988 "at a posh officers' club" within Pollsmoor Prison. The working group's primary question was, "How would the ANC protect the rights of the white minority?" The following year in March, Mandela sent a memorandum to State President P. W. Botha regarding, among other things, the minority question. "Two political issues will have to be addressed," Mandela wrote. "Firstly, the demand for majority rule in a unitary state; secondly, the concern of white South Africa over this demand, as well as the insistence of whites on structural guarantees that majority rule will not mean domination of the white minority by blacks. The most crucial tasks which

will face the government and the ANC will be to reconcile these two positions."[41] Upon his release in 1990, Mandela brought up the issue at his first press conference:

> I wanted to impress upon the reporters the critical role of whites in any new dispensation. I have tried never to lose sight of this. We did not want to destroy the country before we freed it, and to drive the whites away would devastate the nation. I said there was a middle ground between white fears and black hope, and we in the ANC would find it. 'Whites are fellow South Africans,' I said, 'and we want them to feel safe and to know that we appreciate the contribution that they have made towards the development of this country.' Any man or woman who abandons apartheid will be embraced in our struggle for a democratic, non-racial South Africa.[42]

It is striking that Mandela had the same the notion of majority and minority as did the apartheid government: both accepted the racialized notion of a black majority and a white minority. Even though Mandela wrote and spoke of "a democratic, non-racial South Africa," he had yet to formulate the notion of a democratic, nonracial citizenship. Even so, his politics had clearly evolved. Once he had admired Algeria and Mozambique, where the postcolonial leadership had been uncompromising in its demand for "justice" and which most settlers had fled rather than become citizens of the new state. Now he worried that "to drive the whites away would devastate the nation."

What had changed? When was Mandela's moment of epiphany? Had he come to see Mozambique as Aimé Cesaire had experienced Haiti in the 1940s—a warning against letting justice turn into revenge—and thus determined to avoid such an outcome in South Africa? If states like Mozambique highlighted the possibility of justice turning into revenge, Mandela's radical critics would later charge that the post-apartheid transition had not been vengeful enough: reconciliation seemingly turned into an embrace of evil. Specifically, these critics argued that Mandela erred in focusing exclusively on the question of political equality while ignoring extreme social inequality.

But to believe that apartheid could simply give way to social equality was to ignore the critical tensions of the South African moment. The consolida-

tion of the anti-apartheid movement had fostered a crisis, not a victory. The option in the early 1990s was to keep fighting, to keep breaking down the state and pitting enemies against each other, or else to reach out and achieve some compromise whereby enemies might live together as political adversaries. The success of the anti-apartheid movement had been based on such compromises, whereby whites accepted that they would not be in charge and blacks accepted that whites had something to offer—that their participation meant not capitulation to apartheid but rather resistance to it.

Thabo Mbeki, who in 1999 succeeded Mandela as president of the Republic of South Africa, made a notable speech, "I am an African," clarifying that the truly radical move was the creation of a new and inclusive political order, which is what he meant by "reconciliation." The speech marked the adoption of the new constitution on May 8, 1996, and took on the question of whether yesterday's settlers would be accepted as citizens of the new South Africa. Or would they be flushed out of the colony to make way for a racially cleansed independent country? Mbeki's answer was unequivocal:

> I am formed of the migrants who left Europe to find a new home on our native land. Whatever their own actions, they remain still part of me. . . . I am the grandchild who lays fresh flowers on the Boer graves at St. Helena and the Bahamas, who sees in the mind's eye and suffers the suffering of a simple peasant folk: death, concentration camps, destroyed homesteads, a dream in ruins . . . I am an African.[43]

The concentration camps Mbeki referred to were built by the British to house Boer prisoners during the Second Boer War, when the British conquered their fellow whites and took their colonies. Mbeki was announcing a transformative revision of history, in which it was not only Africans who were colonized—by the British and the Boers—but also the Boers. He was challenging South Africans to reimagine political identity, to see that political identity could be reimagined because it is a product of histories, not nature. If whites, too, could be colonized Africans, then they could be citizens of the postcolonial state.

This did not entail blindness to the stark problem of social inequality. In another speech two years later, titled "Two Nations" and given at the opening of the National Assembly debate on reconciliation and nation-building, Mbeki

spoke to "the difficult but inevitable challenges posed by white class privilege." Some on the left welcomed the speech for addressing so much unfinished business; others dismissed it as a rhetorical gesture that had come too late. But this view unrealistically assumes that more could have been done earlier. And it is not at all clear that the most hardline anti-apartheid activists had something better to offer. The Pan Africanist Congress rejected compromise under the slogan "one settler, one bullet."

The fact is that apartheid and the trappings of white privilege were popular among white South Africans. To steamroll it all at once and right away would have required a political movement much stronger than the one anti-apartheid forces had built. The National Party, the party of apartheid, had come to power in the whites-only House of Assembly through elections in 1948 and was returned to power in every election thereafter for the next forty-plus years. As the anti-apartheid movement gained momentum in the 1970s, the National Party gained in public support. What is more, the process leading to the dissolution of political and juridical apartheid involved a whites-only referendum. It was essential that a majority of the white population authorize its government to negotiate with representatives of the black majority.

An uncompromising push for social justice may well have swung the white referendum in the direction of the rejectionists, who were gaining power as apartheid came to a close. The pro-apartheid Conservative Party gained seats at the National Party's expense in the late 1980s, emerging as the official opposition. There was a real risk that organizations like Afrikaner Weerstandsbeweging, a separatist white-supremacist outfit, would sway hearts and minds. Even liberal intellectuals stoked the fears of whites. For instance, the journalist Rian Malan's 1990 book *My Traitor's Heart,* won big sales numbers and widespread admiration with a detailed investigation of what the pro-apartheid press called black-on-black violence.[44] The descendent of a former South African state president who considers himself a liberal, Malan wrestled with his family's contributions to apartheid even as he narrated the story of the Hammerman: a big Zulu who wielded a heavy hammer with which he smashed the skulls of his black victims, for gains which were often puny. If they can do this to their own, Malan was asking, what will they do to us, given half a chance?

Yet white fear did not carry the day. Why? Because important sections of the liberation movement had learned to think in holistic terms. They told

anyone who would listen—and these numbers grew over time—that the struggle was against not settlers but settler power. Without a state legally underwriting settler privileges, settlers would be ordinary immigrants. This was the heart of the South African moment: redefining the enemy as not settlers but the settler state, not whites but white power. By doing so, South Africa's liberation movements eased whites into the idea of a nonracial democracy.

Compromise at CODESA

The post-apartheid compromise, whereby enemies who had been dedicated to each other's elimination came to accept a shared political life, was hammered out in the Convention for a Democratic South Africa (CODESA). The process began in December 1991 at Kempton Park, near Johannesburg.

CODESA was beset by tension from the start, as each side tried and failed to muster consensus within its ranks. Constituencies that rejected compromise had to be continually cowed and brought into the fold. Thus, when the Conservative Party won a by-election in Potchefstroom after CODESA had begun, the National Party government called for a whites-only referendum in March 1992 in the hope of establishing its mandate to negotiate on behalf of whites—a mandate it won. The ANC responded to the referendum by asserting its leadership of the black majority, called for "rolling mass action" in May and a mass strike on June 12. To the extent that blacks followed these calls for action, they would help to establish the ANC's authority to serve as their negotiating representative. The ANC-aligned COSATU led yet another stayaway on August 3, and the ANC followed with a march on Ciskei on September 7. The ANC faced considerable opposition in establishing its leadership and winning support for its position. The June 12 strike led to a massacre in the township of Boipatong, which, according to a criminal inquiry, was carried out by the Inkatha Freedom Party, an ANC rival and the tribal authority in Zululand. The ANC maintained that such a crime could not have been carried out without the complicity of South African Police.

The initial negotiations were carried out between the ANC and the National Party, which agreed in September 1992 to a set of binding principles known as the Record of Understanding. Other parties were brought in on March 5, 1993.[45] At first the parties moved sluggishly, but that changed after Chris Hani, the general secretary of the Communist Party, was assassinated

by a far-rightist on April 10. The Communist Party had been allied with the ANC, and Hani, a former militant, was seen as a source of legitimacy for the negotiations by those who might otherwise have considered CODESA's goals too moderate. As it turned out, Hani's killing probably strengthened the ANC's hand. Mandela delivered a moving oration at Hani's funeral, addressing a crowd of many tens of thousands and, indeed, the country as a whole. The day before the funeral, police said they were not sure they could manage the crowds, but the National Union of Mineworkers said they could—and they did. It was a powerful display of Mandela's leadership and of black solidarity around the ANC.

Moving with urgency in the wake of Hani's killing, the negotiators agreed on June 1 that elections would be held ten months later, on April 27, 1994. To push things along, the parties set aside controversial constitutional questions and formed technical committees to prevent and break deadlocks in the negotiations. Agreement on key issues required only what was called "sufficient consensus"—that is, the consent of the principals: the ANC and the National Party—often forged outside the formal discussion. The principals also agreed that the interim constitution they negotiated would be durable, even though other parties and the voters never got to weigh in. The negotiations emphasized outcome over process; indeed, the process was tailored to assure a preconceived outcome. The installation of so much power in the ANC and National Party was acknowledged by many as a blatant curb on majority rule. But there is another way to think of it, too: as subordinating the majority-minority frame to a larger quest in the name of the general interest.

Anti-apartheid forces made other concessions, beyond allowing for something other than strict majority. Importantly, they affirmed that the results of CODESA would be a reform of the apartheid state, not a revolution leading to its destruction and displacement by another. The apartheid state machinery—the old bureaucracy, police, military, and the intelligence services—would be retained in the context of power-sharing. This also meant that the legality of apartheid would be respected, even as the system was replaced. Another major concession was to implement a process that allowed the possibility of amnesty for perpetrators who disclosed honestly the atrocities they had committed under apartheid. This would be carried out through a commission on truth and reconciliation, the work of which has, in many quarters, become wrongly synonymous with the end of apartheid.

CODESA produced a new government that in many ways entrenched white privilege. One of the key mechanisms for this entrenchment is the constitution, which guarantees protection of private property as a fundamental human right. But this protection is not for all. It excludes those whose lands were appropriated after the passage of the 1913 Land Act, which, of course, incorporates those dispossessed after the introduction of apartheid in 1948. A statute in the legal code provides for the restoration of lost land to the majority population, but because this is extraconstitutional law, it usually loses out to constitutional protections when native and settler property rights are in conflict. The constitution does allow for expropriation in the "public interest" but with equitable compensation, ensuring that settler claims to ownership are generally respected.

Another entrenchment of white privilege is the national law governing local administration. Two political forces in particular, white settlers and native authorities in Bantustans, gained from some of the first rules implemented by the new state. They joined forces in the course of the CODESA negotiations. For native authorities, the prizes were Act 3 of 1994, which gave constitutional recognition to the Zulu monarchy, and Schedule 6, which recognized "indigenous and customary law." The big win for white settlers, in addition to constitutional protection for property rights, was the Local Government Transition Act of 1993, which installed consociational government. While the national and provincial governments were majoritarian—comprising representatives chosen through proportional election—local governing bodies would distribute seats to particular social constituencies, even if doing so allowed a minority veto.

Within local governing bodies, the operative principle was the "ward limitation system." It stipulated that only 40 percent of seats on a local council would be elected proportionally. The remaining 60 percent would be elected from ward-based constituencies with the added proviso that no more than half the seats be drawn from historically black areas. This provision guaranteed whites 30 percent of seats, which was enough to stymie major financial decisions: another section of the law required local authorities to muster a two-thirds majority to pass its budget. Yet another section required that the executive committee of a local government be composed in proportion to party representation on the local government council and that all decisions be made by at least a two-thirds majority. The combined effect of these pro-

visions was to empower local councilors representing whites. Another measure of the local-government law had the effect of entrenching the white-supremacist Conservative Party in town councils in the former Transvaal province. Finally, Clause 17 of the law placed practically insurmountable legal obstacles in the way of any popular project to redistribute income through taxation. The clause requires that local government levy uniform taxes across their jurisdiction. This prevents local governments from taxing white areas so as to spend more in black areas.

The post-apartheid transition involved serious compromises, undoubtedly, and they have set back the quest for social justice. But something important was gained in return. The real quid pro quo was not amnesty for guilty pleas—as in the process of truth and reconciliation—but the dismantling of juridical apartheid and the introduction of majority-rule electoral politics at the national and provincial levels in exchange for concessions to white economic privilege.

Surviving Extreme Violence

As a model for solving intractable conflicts, South Africa is an argument for moving from the best to the second best alternative: from a zero-sum victory on the battlefield or in the courtroom to a negotiated political reform. CODESA was thus the polar opposite of Nuremberg.

I suggest we think of CODESA less as an alternative to Nuremberg than as a response to a different set of circumstances. To do so is to acknowledge that Nuremberg cannot be turned into a universally applicable formula, as contemporary human rights discourse insists. The conditions that were obtained in apartheid South Africa were different from those that led to Nuremberg in at least two ways. First, whereas Nuremberg followed a military victory, the challenge in South Africa was to halt a conflict that was ongoing—to convince sworn enemies that neither could win. This could not be done by prioritizing criminal justice and threatening to take the leadership on either side—the apartheid state or the anti-apartheid movement—to court. Such a threat would have exacerbated the conflict rather than accelerating its closure. Second, whereas Nuremberg was informed by the logic of ethnic cleansing—that is, the logic of physical and political separation between yesterday's victims and perpetrators—there was never serious thought of creating an Israel for victims of apartheid in South Africa. Some fearful Afrikaners

did unsuccessfully propose creating an autonomous community to defend themselves, but this only strengthens my point: South Africans affirmatively rejected separation. It was clear that victims and perpetrators, blacks and whites, would have to live in the same country.

This led to legitimation on both sides of the conflict. Once-banned liberation organizations—the ANC, Pan Africanist Congress, and the Communist Party—were legalized. Meanwhile anti-apartheid activists accepted that members of the apartheid regime, such as the National Party and right-wing networks such as the Afrikaner Broederbond, would take part in the post-apartheid political landscape. There would be no more banning of disfavored opinions: every constituency, whether it favored and benefited from apartheid or instead hated and sabotaged the apartheid regime, would be able to participate. Full citizenship would not depend on identity as black or white, native or settler, regime supporter or anti-apartheid agitator. That is what it means for enemies to lay down their weapons and commit to reasoning with and persuading each other in public forums.

Whereas Nuremberg was backward looking, preoccupied with justice as punishment, CODESA sought a balance between the past and the future. There was an acknowledged place for redress, but the priority lay in creating a foundation for a future state that would include all South Africans in the political community. This is the difference between victims' justice and survivors' justice. Everyone who lived through apartheid—victims, perpetrators, bystanders, and beneficiaries—was a survivor.

Truth, Reconciliation, and Amnesty for Beneficiaries

If CODESA highlights a logic different from that of Nuremberg, inviting us to respond to political violence with political rather than criminal solutions, then the Truth and Reconciliation Commission (TRC) reinscribes Nuremberg. The TRC shared with the Nuremberg tribunal an understanding of justice as individualized. Although Nuremberg prioritized prosecution and the TRC reconciliation, both had a neoliberal orientation, locating guilt in the individual rather than the forces wielding state power.

The TRC, established in 1995, was guided by the dictum that perpetrators who acknowledge the past—that is, the truth—be forgiven their crimes. It is

said that the TRC created a precedent: immunity from prosecution (some would say impunity) in return for honest confession. In a few words: forgive, but do not forget. The TRC has so thoroughly outstripped CODESA in the imagination of the global public that it is now widely assumed that this exchange was the heart of the post-apartheid transition. Of course, this was not the case. The key to the post-apartheid transition was not an exchange of amnesty for truth but of amnesty for reform—the dismantling of juridical apartheid and the introduction of majoritarian politics.

Indeed, not only was the TRC's quid pro quo far from the prime mover of post-apartheid reforms, but in many ways the TRC has set back the efforts that otherwise characterized CODESA. This is in large part because, in reality, the quid pro quo that occurred is not the one most of us have in mind. The TRC did not provide amnesty for perpetrators in exchange for guilty pleas. Rather it provided amnesty for apartheid's supporters and beneficiaries: the great mass of South African whites. They voted for the National Party, called on authorities to enforce racist laws, gained from underpaid black labor, and occupied the land and homes from which blacks were ejected. Nothing was expected in exchange, for this was an amnesty by omission.

As Adam Sitze has argued brilliantly, the amnesty that apartheid's perpetrators enjoyed actually predates the TRC. This can be hard to recognize if we join the global transitional-justice industry in packaging the TRC alongside denazification and South America's blanket post-atrocity amnesties. But in fact, the TRC merely restated the system of indemnities that had been put in place *during* apartheid. Amnesty was not transitional at all; it was continuous with apartheid itself. Following the Sharpeville massacre of 1960 and the suppression of the Soweto uprising in 1976, the South African parliament "passed extremely wide indemnity acts that protected not only South African police officers but also a large number of state officials from prosecution for the civil and criminal wrongs they inflicted," Sitze writes. These amnesties were both retrospective and prospective. As a result, members of the South African Defence Force (SADF) "were already indemnified in advance for any illegal acts they might commit in honest and good faith service to the public good" as defined by the apartheid state. This protection from prosecution was "widened even more by the indemnity acts passed by the South African Parliament in 1990 and 1992." Thanks to the various indemnity provisions, the TRC's power was "decreased or even nullified."

As Sitze puts it bluntly, "it is unclear why any state official, member of the SADF or officer of the South African Police would feel obliged to run the risk of trading truth for amnesty when he or she was already expressly protected from prosecution by prior indemnity legislation." Indeed, individual SADF members did not even participate in the TRC hearings. Instead "the South African Defence Force chose to coordinate its contributions to the Truth and Reconciliation Commission by way of a centralized 'Nodal Point,' a single point, through which all information was meant to pass."

The outcome of the TC was perverse. Between 1990 and 1994 alone, an estimated 13,000 to 21,000 South Africans were indemnified, whereas the TRC identified only 7,094 individuals as perpetrators. This is not only a gross undercount of perpetrators, but, as Sitze explains, "the majority" of those condemned "were, in concrete terms, drawn from the ranks of liberation movements."[46] The guilt established by the TRC was therefore the guilt of apartheid's opponents, not of backers of the state who carried out atrocities in its name. And by highlighting amnesty for perpetrators in exchange for full disclosure, the TRC concealed the constituency that supported apartheid as a political project. Neither the political project nor its constituency—the beneficiaries of apartheid—was examined by the commission. They could not have been, because the TRC, like Nuremberg, considered only individuals.

The TRC's omission of beneficiaries from among those deemed responsible for apartheid is hugely consequential, because the TRC's narrative of apartheid is also the nation's and the world's. In contrast to CODESA, which was organized as a negotiation process behind closed doors, the TRC was designed as a public and civic educational process. The TRC was free to define its own agenda within the framework of the legislation that created it, and it used this freedom both to craft a semiofficial narrative of apartheid and to communicate this narrative to the public through its daily access to primetime media.

The amnesty for beneficiaries of apartheid was a product of hairsplitting legalisms crafted by the commission's three committees: the Amnesty, Human Rights, and Reparations committees. Only the decisions of the Amnesty Committee carried the force of law—although, as we have seen, this force effectively applied only to liberation-movement perpetrators, as other laws already indemnified whites. But all three worked together in devising the legal categories that spared apartheid's political constituency.[47]

The TRC made two key decisions with respect to defining the legal category of victims. First, the TRC determined that victims had to be individuals. Africans as a whole could not be victims, nor could particular communities, groups of employees, cohorts of students, and so on. To reach this determination was to ignore precisely what was distinctive about apartheid: that it was a system based on group oppression. Second, the TRC defined the suffering of these victims narrowly, focusing on violations of their "bodily integrity." This distinction, too, was problematic in a context where the vast majority of the population suffered economic dispossession. The violence of apartheid did not target bodily integrity so much as land, labor, and livelihoods.

Just as victims were in reality defined and targeted as racialized groups and not as individuals, perpetrators were part of a racialized power and did not for the most part function as individuals. Yet the TRC insisted that perpetrators too be understood in individual terms. And because the TRC was bound to respect the legitimacy of apartheid law, agents of apartheid could not be deemed to have committed crimes simply because they followed orders. As a result, individual state agents were exempt even if they implemented measures that directly affected the vast majority of the oppressed population—measures such as the forced removal of millions from land gazetted as "white areas" or pass laws that tracked the movement of all Africans with a view to instrumentalizing their labor. Coercion was deemed the work of apartheid authorities, beyond scrutiny, and not the initiative of individual operatives.

The TRC's focus on individuals and their bodies joined with an astonishingly limited notion of the political to insulate from condemnation policies that apartheid supporters wanted and benefited from. Consider how the TRC understood "gross human rights violations." According to the law creating the TRC, these amount to "the killing, abduction, torture or severe ill-treatment of any person" when "advised, planned, directed, commanded or ordered by any person acting with a political motive."[48] It would hardly seem controversial to assume that this definition covers the effects of the 1959 Promotion of Bantu Self-Government Act, which provided for the ethnic cleansing of 87 percent of the country. The Surplus People Project estimated that some 3.5 million people were moved forcibly by South African authorities between 1960 and 1982 in an effort to create ethnic homelands, an estimate the commission accepted. The commission also acknowledged that the

process involved "collective expulsions, forced migration, bulldozing, gutting or seizure of homes, the mandatory carrying of passes, forced removals into rural ghettos and increased poverty and desperation."[49] Yet, while the commission called this "an assault on the rights and dignity of millions of South Africans," it also decided that it could not acknowledge these violations, or seek out their perpetrators, because they "may not have been 'gross' as defined by the Act."[50]

There are two reasons the TRC reached this conclusion. These could not be considered acts of severe ill-treatment because they were effected against groups and so could not be said to violate the bodily integrity of individuals. And forced removal was apparently not a political act because its harm was economic. The law creating the commission, and its interpretation by the commission, maintained familiar distinctions between the realm of the political and that of the economic, that of the state and that of the market—the state the source of oppressive practices that directly deny rights and the market the source of inequalities that indirectly limit the means to exercise these rights. But this is too clever by half. Practices such as coerced labor and forced removals are neither just economic nor just political; they are always both. In these cases political power directly intervenes in the sphere of economic relations. Like slavery, coerced labor and forced removals require the direct and continued use of force. Rather than an outcome of "the dull compulsion of market forces," to use Marx's formulation, coerced labor and forced removal are extra-economic—practices that breach the familiar distinction between the political and the economic. They are forms of coercion, effected by definable agents, which violate the civil rights of the victims.

If the commission was overly invested in the incongruities resulting from an indefensibly high barrier between politics and markets, it also relied heavily on highly questionable distinctions between political and nonpolitical motives. Somehow it was not self-evident that pass laws, the backbone of a legal regime that effectively curtailed black South Africans' freedom of movement and therefore freedom to seek work in the job market, were instituted and enforced for political reasons. Thus arrests under pass laws were not deemed political. The TRC acknowledged that, "from the early sixties, the pass laws were the primary instrument used by the state to arrest and charge its political opponents," and the commission accepted that "the treatment of pass

law offenders could well be interpreted as a human rights violation." But it still refused to include the category of pass law prisoners in its hearings on political imprisonment. The commission said they were common law prisoners, not "political prisoners." This despite the fact that the law they broke was obviously political in nature—a law designed not to ensure say, fair dealing or public order, but to cut off the rights of blacks and effect the removal policy. According to estimates that the TRC itself cited, by 1972 over a million people were administratively ordered to leave urban areas under pass laws. The motivation behind the criminalization of blacks who resisted administrative transgressions against basic human rights was not political, according to the commission.[51]

The commission also used legal fiat, rather than excessively fine-grained distinctions, to spare the politics of apartheid from censure. The notorious farm prison system was a direct outgrowth of the pass system. Because blacks frequently failed to produce passes, the number of arrests grew and with it the financial burden on the state. The Department of Native Affairs proposed a solution in 1954, "a scheme, the object of which is to induce unemployed natives roaming about the streets in the various urban areas to accept employment outside such urban areas." According to this scheme, when blacks failed to produce a pass, they "were not taken to court but to labor bureaux where they would be induced or forced to volunteer."[52] They were told that if they "volunteered" for farm labor, charges against them would be dropped. The result of this policy, the commission noted, was that "arrests for failure to produce a pass became a rich source of labor for the farms" that came "cheap."

But the category of farm prisoners did not feature in the prison hearings. Why not? It is not that the commission understood these, as well, to be common law prisoners. Rather, the commission claimed that "nobody came forward to give evidence."[53] "Nobody" here presumably refers to the victims of the farm labor system; it could not possibly refer to its institutional managers, since the commission had the legal authority to subpoena reluctant and even unwilling witnesses—authority it exercised in other instances. In this case, the commission must have deliberately turned a blind eye, thereby skirting the question of whether farm prisoners were political prisoners and the inevitable follow-up question of whether the pass system was a tool of political oppression.

Perhaps the most blatant exclusion from prison hearings was that of prisoners detained without trial. Here again, the commission simply chose to change the subject. Detention without trial was commonplace under apartheid. The Human Rights Committee estimated the number detained without trial between 1960 and 1990 at some 80,000. And these detainees were not just imprisoned; they were also brutalized. In the words of the Human Rights Committee, "There can be little doubt that the security police regard their ability to torture detainees with total impunity as the cornerstone of the detention system."[54] Among the most notorious instances of extrajudicial imprisonment and torture was the murder in prison of Steve Biko. The commission acknowledged Biko's detention and killing—he was beaten to death by security agents—constituted gross violations of human rights, but it did not acknowledge other similar cases. The commission gave no legal reasons for excluding the category of extrajudicial detainees from the prison hearings. "There were practical rather than legal reasons for excluding detention from the prison hearings," it offered.[55]

The commission did not exclude political violations targeting and performed by groups because it was ignorant of these violations. Anyone familiar with the contents of the TRC's five-volume report will testify that it is a rich source of information on apartheid's constant politically motivated violations of black people's human rights. This information was gathered by a capable research staff comprising mainly historians and social scientists. The evidence they accumulated, however, had to be filtered through categories legislated by politicians and then interpreted by commissioners, who were mostly religious leaders and psychologists. As a group, they were determined that both the confession and the reprieve had to be individual to be meaningful.

In the end, the commission came up with three truly bizarre conclusions. The first was a list of more than 20,000 individuals acknowledged as victims of gross violations of human rights. The TRC recommended that only these—not the millions of victims of the pass law system, forced removals, and forced labor—receive reparations from the post-apartheid state. Second, the commission compiled a time series of violations that occurred during the period of its mandate, which began with the Sharpeville massacre in 1960 and closed with the first democratic elections in 1994. "Most violations," the commission concluded, "took place in the period after the unbanning of political

parties (1990–1994)" and were the result of conflict between anti-apartheid groups, especially the ANC and the Inkatha Freedom Party (IFP) in Natal.[56] This was a ludicrous finding, utterly divorced from the reality of apartheid. Finally, the Commission compiled a list of perpetrator organizations, which scandalously identified the IFP as the worst offender and the ANC as the third worst. The South African Police (SAP) took second place and the South African Defence Forces trailed in fourth.[57]

How could the commission arrive at such counterintuitive conclusions? As mentioned above the commission saw itself as working within the framework of the agreement reached at CODESA, which respected the legality of apartheid. Thus the commission did not question the legitimacy of apartheid legislation that indemnified state operatives. In essence, by honoring the indemnifications that unfailingly followed on the heels of each human rights catastrophe under apartheid, the TRC became itself an indemnifying body. It was left with no work other than to extend the indemnification process begun under apartheid to those in the liberation movements alleged to have committed human rights violations. The TRC thus inscribed South Africa's liberation fighters as no better or worse than the agents of apartheid.

Although the TRC spoke to the country and the world, it addressed its work to just a tiny minority of South Africans, perpetrators and their victims, the former state operatives and the latter political activists. The TRC ignored lived apartheid, which would have made sense of the experience of the vast majority of South Africans: whites who, no matter their political views, got to hold good jobs, earn good money, go to good schools, speak their minds, travel when and where they wished, vote their conscience, and benefit from due process rights; and blacks, who got none of these things. By setting aside the quotidian violence and violations of apartheid, the TRC not only omitted many bad actors but also apartheid's political agenda, which was effected every day in every dimension of life. The TRC focused on violence as excess, not as norm. Only acts of individuals that went beyond the terror and deprivation legalized by apartheid were considered; never the violence organized by the state in the interest of beneficiaries. Because it ignored so much, the TRC was unable to achieve even that which Nuremberg did: compiling a comprehensive record of the atrocities committed by the regime in power.

The TRC should therefore be seen as a special court within the framework of apartheid law. It held individuals accountable for violence that infringed apartheid law but did not hold individuals, state agencies, or constituencies to account for violence that was enabled by apartheid law. In doing so, it upheld both apartheid laws themselves and apartheid as an expression of the rule of law. The white majority that supported apartheid was thus left not only indemnified by the TRC. It was vindicated.

Is Apartheid Over?

In South Africa today there is little angst about the results of the TRC. The focus is on the deficits of CODESA, specifically its failure to achieve a more socially just country. I have a mixed response to this critique. If the demand is that the end of apartheid should have delivered social justice, then it ignores the political context of the transition. The political prerequisite for attaining social justice would have been a revolution, but this was not attainable given the balance of forces. There was instead a stalemate between forces supporting and opposing apartheid, which was broken through a compromise agreement.

If instead the demand is that social justice should have figured prominently on the agenda for a post-apartheid South Africa, then the critique is rightly placed. There was a lot more to achieve after the transition. CODESA maintained the integrity of property accumulated by whites during the apartheid era, while the TRC defended that choice by describing apartheid not as a system in which a racialized power disenfranchised and dispossessed a racialized majority, but as a set of human rights violations carried out by a tiny minority of individual perpetrators.

Some, such as Robert Meister, respond to this situation by arguing that the transition therefore abandoned the hope of apartheid's opponents. His claim is that the transition, masked in the language of human rights, was a counterrevolutionary reaction to the growth and consolidation of anti-apartheid forces, whose effect has been to preserve and entrench apartheid's benefits to whites, even in the absence of an official apartheid policy.[58] This is a powerful critique. After all, because the TRC absolved apartheid's beneficiaries, it left the vast majority of white South Africans with no reason to

believe they have a responsibility toward those less fortunate. Had the TRC instead educated whites, it might have brought home the moral and the political necessity of social justice. It might have shown that the political reform that had brought an end to juridical apartheid was unlikely to hold in the absence of social reform aimed at equal welfare and equal opportunity.

Meister is right about what the transition did not accomplish, but he misses its successes. The achievement of the anti-apartheid struggle was to create a new political order. To hold it responsible for failing to create a new social order is to fail to understand the movement and its limits. I do not deny that the beneficiaries of apartheid made away with ill-gotten gains. But this was not the whole story, and I would argue that there was no practical possibility of holding the beneficiaries accountable. Education of white beneficiaries was possible, and amnesty for them was unnecessary. But legal accountability for all beneficiaries was never a practical option.

My basic objection to arguments like Meister's is that what happened in South Africa should be seen not as a social revolution stymied but as the most far-reaching and far-sighted transition to political independence in the colonial world. A social revolution might have delivered something that looks like justice, but at the cost of fostering a political community that included all who survived colonialism. Social revolution would have antagonized a large proportion of the survivors. The result would not have been justice after all, but either continuing civil war or ethnic cleansing. Specifically, in South Africa the social revolution would have produced either white retrenchment or white ejection.

If we focus too much on the missed opportunity for social justice, then we will blind ourselves to the revolution that did take place—the political revolution. To grasp this, we need to move from the language of social justice that Meister employs, to the language of decolonization. The anti-apartheid struggle is a radical attempt to imagine a postcolonial political community that is neither a return to the imagined precolonial nation nor a continuation of the colonial condition (as in Sudan, described in the next chapter). Rather, the post-apartheid political community attempts to recognize and reckon with the changes wrought by colonialism.

I do not say this because I believe that a focus on social justice is unwarranted—only that it should not preclude recognition of the transition's

extraordinary political accomplishment. It seems to me that the inability to achieve social justice reflects not so much the failure of South African radicalism as the realities of political alignment during the CODESA negotiations. After popular, internal resistance movements fostered the stalemate—that is, after their members put themselves on the line in a violent conflict with a militarily superior enemy—the ANC swooped in and joined the National Party to forge a new neoliberal coalition, which had a stunting effect. Indeed, the coalition was narrower even than that. CODESA's "sufficient consensus" approach enabled an effective alliance between the external wing of the ANC and the reformist wing of the National Party—that is, a meeting in the middle. In marginalizing the forces identified with the internal opposition, sufficient consensus created the conditions for a double closure—both constitutional and narrative—that sidelined social justice.

If the transition has truly and unequivocally failed in any respect, it is in terms of detribalization. The transition succeeded in reforming the central state, organized around race as a political identity. But it did not reform the local state organized around tribe as a political identity. As we have seen the alliance of settlers and customary authorities scored key victories at CODESA, with recognition of the Zulu monarchy and of "indigenous and customary law" and the implementation of the Local Government Transition Act of 1993. This alliance also gained from the entrenchment of private property in the post-apartheid constitution—an entrenchment that presumes tribal identity. Under the post-apartheid system, land rights within the former Bantustans are inherited from colonial customary law, which allows only members of the political community to own property. That means adult men, but not youth, women, and "strangers"—anyone, including Africans, considered non-indigenous.[59] Though the constitution abolished Bantustans as a political structure, it sanctioned customary law—the same law apartheid incorporated. Any African, man or woman, has the right to own land outside the former Bantustans; maintaining customary law within those spaces legitimizes tribe as a category of identity, even as the identity category of race has been significantly undermined.

It is no surprise, then, that the extreme violence of the post-apartheid era has had tribal rather than racial targets. Acts of xenophobic violence in South Africa have been recurrent since 1994, starting with attacks against undocumented African migrants in Alexandra township. May 2008 saw a larger out-

break of the same, in the province of Gauteng and then in Durban and Cape Town. After Zulu King Goodwill Zwelithini's March 21, 2015, declaration that foreigners should go back to their home countries because they were enriching themselves at the expense of ordinary South Africans, thousands were evicted, and dozens were killed in the process.[60]

Another sense in which apartheid appears still with us is that two key groups of beneficiaries—white farmers and native authorities—have seemingly gone from strength to strength. Native authorities in the homelands have not only survived apartheid; they now reinforce resistance to land reform, which benefits both white farmers and large proprietors in the homelands. As I write, that resistance is the subject of a parliamentary initiative to amend the constitution so as to clear the ground for a meaningful land reform.

In sum, there is much to be said for critiques of the post-apartheid transition. It omitted social justice. And it failed to address fully half the political architecture of apartheid: tribal political identity. This political identity, created and politicized by settlers and maintained under apartheid, has only been deepened since the transition. There has been no attempt to historicize tribe; instead it has been made to seem a natural part of African lives.

But if the South African moment did not challenge tribal political identity, it did challenge racial identity and in doing so showed that political identities are not permanent. Biko could weld previously walled identities—African, Coloured, Indian—into a single coalition: black. Afrikaners could transform from junior partners in implementing apartheid to members of the coalition to dismantle it. Thus the anti-apartheid movement could embrace that partnership when it redefined its political enemy from whites to white power, from a government of whites to a form of the state that reproduces white privilege.

One of the TRC's Afrikaner commissioners, Wynand Malan, captured well the promise of a collective commitment to revising political identity. Malan was the only official dissenter on the commission, the lone signatory to its minority report. Malan called for a shift from the plane of morality to that of history. Punishing individuals would never change the political community, he argued. Changing the political community was an epistemic project that boiled down to rethinking and retelling history, "yet Paul, in his letters to the Ephesians and Colossians, is uncritical of the institution and discusses

the duties of slaves and their masters." The meanings of political institutions and identities change. "Given a different international balance of power colonialism too might have been found a crime against humanity."[61] Driven by this historical sensibility, Malan called on South Africans to craft a narrative of the past that would provide a foundation for national reconciliation: "If we can reframe our history to include both perpetrators and victims as victims of the ultimate perpetrator—namely the conflict of the past—we will have fully achieved unity and reconciliation."[62]

Malan could see that the transition did not fully achieve this fuller unity. The focus on perpetrators and victims had undermined the possibility. The stalemate the anti-apartheid movement created might have been broken by bloodshed and retrenchment to racial camps. Instead it produced a negotiated settlement—no doubt flawed—that attempted a political solution to the violence of apartheid. Enemies may not have become friends, but they did become political adversaries who could shape a common future in a single polity. They did not create a new state in which to separate foe from foe. They pledged to live together. Their next step is to recognize that both are survivors of history. That is the key to reconciliation.

The Human Rights Movement and the End of Legal and Political Apartheid

The post-apartheid transition serves as a critique of Nuremberg and the contemporary human rights movement. It offers an alternative logic for societies in the throes of civil war and mass violence.

The question posed at Nuremberg was not "why did it happen?" but "who did it?" When the challenge is to discern the crime and apply punishment, the state and the constituencies it serves winds up absolved. State orders are shelved, for they cannot release officials from their individual responsibility. Above all, this responsibility is said to be ethical, not political—the fault of persons rather than political systems. Inasmuch as it individualizes our understanding of mass violence and responsibility for it, Nuremberg should be considered a founding moment of a neoliberal understanding of mass violence. The TRC continued what Nuremberg started. State orders were, in

this case, explicitly omitted as matters of interest. To be individually culpable, one had to do even worse than state orders allowed.

Victims' justice after Nuremberg took a very particular form: state creation. Specifically, the creation of homogeneous ethnic states in Eastern Europe and in Israel. This followed from the Allies' nationalist political logic: winners and losers, victims and perpetrators, could not live in a single state. They had to be physically separated into different political communities. So the Allies redrew boundaries and transferred millions across borders. Perpetrators would remain in Germany and victims would depart for another homeland. The ultimate expression of this logic was the creation of Israel as a separate state for survivors of the Holocaust.

The contemporary human rights movement is permeated with this logic. It is now axiomatic that victim's justice is the only morally acceptable and politically viable response to mass violence. Nuremberg is the model for the International Criminal Court, held up as the tribunal authorized to judge every incident of mass violence, every crime against humanity. Human rights groups have turned the Nuremberg method into a universal one, formalized into a succession of rote, clearly defined steps: catalog atrocities, identify victims and perpetrators, name and shame the perpetrators, and demand that they be held criminally accountable. The field reports of Human Rights Watch and organizations inspired by it contain perhaps a two-page pro-forma introduction to the history and context of the human rights abuses cataloged; the focus is on the catalog, the naming and shaming, the demand for criminalization. Indeed, history is a distraction from establishing the human rights method as the solution to all political violence.

Yet history makes clear that Nuremberg is precisely the wrong model for the contemporary post-conflict scenario—to say nothing of Nuremberg's failure in its own time to instantiate a rule-of-law-based global order. The logic of Nuremberg flowed from the context of interstate war. One side emerged victorious, and the losers were put on trial. This framework ill fits the context of a civil war. Victims and perpetrators in civil wars often trade places in ongoing cycles of violence. No one is wholly innocent or guilty. Each side has a narrative of victimhood that demonizes the other and excludes it from participation in the new political order. When applied to civil wars, the logic of Nuremberg drives the parties away from a renegotiated union and toward

separation. The enemies remain enemies, resulting in permanent division into separate political communities. The South African transition defied this logic, as it should have. Apartheid was not a war between states; it was a civil war. The foundation of the response was not criminal trials but rather political negotiations. These negotiations provide raw material for a critique of the universal claims of the human rights paradigm.

The rush for courtroom solutions is the result of a double failure: analytical and political. Analytically, it confuses political violence with criminal violence. Politically, the focus on perpetrators comes at the expense of attention to the issues that drove the violence. The outcome is likely to be more violence rather than less. Why so? Because political violence requires more than just criminal agency; it needs a political constituency. More than just perpetrators, it needs supporters. That constituency is mobilized and maintained around the issues inspiring violence, not around the persons of the perpetrators. Reducing political violence to criminal violence leaves the issues unaddressed and the supporters of the violence unchastened. The TRC, the dimension of the post-apartheid transition most reminiscent of Nuremberg and itself celebrated as a touchstone of the human rights movement, exemplifies this double failure. When violence is criminalized, its nonperpetrator beneficiaries—the political constituency—get off scot free. The impact on the renegotiated union is palpable. Large percentages of white South Africans do not see the debt they owe, for they believe that they were not at fault. It is a situation little different from postwar Europe, where person-by-person denazification meant that every sin had been atoned and the homogeneous German state could move on.

The solution is to displace the narrative of victim and perpetrator with that of the survivor. A survivor narrative is issue-driven. Atrocities no longer appear as so many stand-alone acts but as events comprising a history of politically motivated violence. What is more, to acknowledge that victim and perpetrator occupy the same place on the other side of the violence—or that they may have traded places—is to accept that neither can be marked as a permanent identity. The South African experience proves political identities are historical, not essential to those identified.

The logic of the South African transition was the opposite of that of victor's and victims' justice, which are two sides of the same coin. The post-apartheid political system was informed by the assumption that yesterday's

victims and yesterday's perpetrators have no choice but to live in the same state and that they have the capacity to do so because their political identities can change—in particular, that they have the capacity to forge the new identity of the survivor. In this sense, a survivor is not simply a victim of the catastrophe who did not die. A survivor is anyone who experienced the catastrophe. All must be born again, politically.

This is an important legacy of post-apartheid South Africa: the argument that political rebirth is possible. South Africa's political rebirth has been partial; racial identity has been depoliticized, even as tribal identity has remained an obstacle to political equality. But even partial rebirth is something. It reflects a willingness to reimagine the political. South Africa challenges us to think of political violence—civil war in particular—as potentially foundational to the creation of an inclusive political order. The response to political violence in South Africa was not separation—it was not ethnic cleansing, as in North America and Europe. It was a reframing of political identity so that formerly opposed identities could live together in the new political community. This is the heart of decolonizing the political. The point is not to avenge the dead but to give the living a second chance.

4

SUDAN

Colonialism, Independence, and Secession

Today there are two Sudans: the Republic of Sudan, with its capital at Khartoum, and the Republic of South Sudan, with its capital at Juba. The division is a remnant of civil war, the South having obtained independence in 2011. Within South Sudan, armed conflict continues, for the new state is itself comprised of warring ethnic groups. In December 2013, members of the Dinka and Nuer tribes set on each other. Twenty thousand people died in just three days.

If we do not know enough of the history of Sudan, this will sound like a familiar story of ancient hatreds exploding in violent Africa. But what happened in South Sudan only looked like that. In fact, the Dinka and Nuer were not fighting some endless feud; they had not been at each other's throats before the introduction of the colonial order. Rather, they were fighting over control of the brand-new state. They sought the spoils of rule, which they understood to be the province of ethnicity. Whoever rules—which means whoever has enough guns and money to maintain a loyal fighting force—can funnel cash, real estate, jobs, business opportunities, contracts, and protection to his own ethnic group. That is how things work in South Sudan, thanks to colonial modernity. After the British took over in the early twentieth century, they politicized ethnic boundaries, reconstituting cultural difference as tribal difference. The inheritors of this colonial mentality govern as the British did, not as their ancestors did.

The territory of what is now Sudan and South Sudan has been home to impressive human diversity for at least half a millennium, but only for the

past hundred years or so has this diversity been a source of conflict. That is due to the logic of indirect colonial rule. Beginning just after the turn of the twentieth century, and with increased urgency and concentration in the 1920s, British colonial authorities tribalized Sudan, erecting legal and physical barriers between groups that previously intermingled in spite of their cultural differences. The British hemmed groups into borders that had not formerly existed and installed over them a system of chiefly rule invented by colonial administrators. All this was done in order to prevent the colonized from developing solidarities beyond the tribal.

Colonial authorities did not have to tell Sudan's various peoples that they were different from each other—the people already knew that. They practiced different religions, spoke different languages, tended different crops and animals, and had different ideas about how to structure communities. They dressed, ate, married, and died differently. Rather, what the British did was invest these differences with political meaning. The British turned differences of culture into boundaries of authority and decided what power that authority would possess.

This project took advantage of two broad kinds of diversity: linguistic and ethnic. Linguistic difference separated Arabs from others; ethnic diversity separated cultural groups. The big divide—between Arabs and Africans—was an invention of the colonizer. Steeped in European racial ideology, it was plain to the British that Sudan was home to Arabs and Africans; one could tell just by looking. What is more, the Arabs lived in the North and the Africans in the South, roughly speaking. This, the British understood, was why the North was more developed than the South: it was home to a civilized people, a superior race. British colonial rule, then, declared the North Arab and the South African. In the North, the Arabs would inhabit the center of power, at Khartoum. The South would have no center of power, for it would be powerless under colonization. Instead, it would be further subdivided into hundreds of territories, each said to be the homeplace *(dar)* of a tribe. Each tribe would be under the local dictatorship of one of their own members, who would be empowered by the colonizer.

Thus those deemed Africans were pitted against each other, while those deemed Arabs were pitted against those deemed African, and vice versa. This is where the British system in Sudan diverges from that of colonizers in the United States and South Africa. All three cases involved indirect rule over natives, effected through native authority operating on the basis of customary

law. But in the Sudanese case, unlike the American and South African, the settler against whom the native was opposed was not the colonizer; the British did not attempt settlement of the territory. Instead the settler was the Arabic speaker in the North, whom the British understood to be an immigrant presence. In the British narrative, the Arabs had arrived en masse hundreds of years earlier, bringing with them Islam, Arabic language and culture, and centralized political organization—the trappings of civilization. In this story, with the arrival of Arab settlers, native Africans were displaced southward.

Settler-colonialism requires no actual settler, just a group defined as settler and another defined as native. Arabs internalized this colonial modality, maintaining it after independence. Influential thinkers and politicians understanding themselves to be Arab sought to define Sudan as an Arab nation, with Africans as an inferior caste that would forever be marginalized from political power. Arab nationalists cherished the North-South distinction no less than the British had. Arab nationalists looked to a gloried past to supply their own sense of superiority. Until the British arrived, Sudan had been ruled by fellow Muslim groups: the two sultanates, Funj in the East and Dar Fur in the West, plundered the areas to the south for slaves. The sultanates then fell under Ottoman rule. The political North consolidated in the 1880s, when groups from several regions united under the banner of al-Mahdi, an Islamic messianic figure who opposed Ottoman rule as a religious and political imposition. The Mahdists not only defeated the creaking Ottoman Empire, they also beat back the British in 1885. Postcolonial Arab nationalists looked to al-Mahdi as a founder of the nation, one in a long line dating back to those earliest migrants said to have brought the high Arabic culture to Sudan.

This is a false history. The North was inhabited not by the descendants of Arab immigrants but by diverse peoples, some of whom—in particular, those in power and those involved in transnational networks of exchange—had taken on the Arabic language and customs associated with peoples who spoke it. In the South, too, some spoke Arabic, practiced Islam, and were as much imbued by Arabic culture as others in the North. But this was irrelevant to British, whose racial logic was as universal as it was infallible; they knew what they saw, and they knew how to use it to keep colonized people separated and at each other's throats rather than their own. The North-South divide seeped into the consciousness of the so-called Arabs and so-called Africans, until it came to seem the natural order of things.

With the South further weakened and divided, locals there grew resentful of British control and of Northern privilege. After World War II, when British colonial rule ended, these resentments carried over into a contest of opposing nationalisms. Arab nationalists in the North sought to exclude Southern parties from negotiations over the post-independence polity, while Southerners mobilized for armed struggle with the goal of seceding and forming an independent state. The first phase of armed conflict between the North and South began in 1955, intensified in 1963, and ended in 1972. All the while, Arab-dominated governments held sway in Khartoum. The first phase of the civil war reinforced the colonizer's logic: the only way to safety and prosperity was through the nation-state, which meant separation along ethnic lines. The ethnic violence wrought by colonial rule would be solved through ethnic cleansing—the African and the Arab, each to himself.

But the second phase was different. In 1983, after the Arab-dominated but largely secular government allied with Islamists, Southern parties coalesced under the radical vision of John Garang and his Sudanese People's Liberation Army (SPLA). Unlike the earlier Southern rebels, Garang sought not independence but equality within political union. He argued for a state without a nation—a state that was home to all its citizens, not to a national majority of Arabs or Muslims or Africans, with all others in the polity living at their sufferance. Garang's call for a "New Sudan" won support in the North and South and across the ethnic groups of the South. Garang, who was Dinka, had many Nuer partners, as well as Dinka opponents. His was not a tribal movement. But Garang was a fallible leader whose rhetoric about inclusion did not extend to his own movement. The SPLA itself remained undemocratic, providing few avenues for those beyond its inner circle to make their voices heard. The movement thus became internally divided. Unsurprisingly, the rivalries within the SPLA tended to follow lines of territorial-ethnic competition held over from colonial rule.

This colonial inheritance produced two major fault lines. First, there was the ideological contest between constituencies desiring a New Sudan and constituencies desiring secession—constituencies seeking a nonnational state and constituencies with a colonial mentality. The SPLA tried to unify these camps, but instead it was swallowed by secessionists. The Western-brokered 2005 Comprehensive Peace Agreement that ended the war between the SPLA and Khartoum also established that in 2011 there would be an independence

referendum, and the pro-secession side won. The second fault line was over who would command the South: Dinka or Nuer. The two groups had joined forces against the British in the 1920s and against Khartoum throughout the second half of the twentieth century. Members of each group stood together on both sides of the divide between secession and the New Sudan. But they also had been enculturated in the idea of tribal loyalty. Despite their history of cooperation, Dinka and Nuer broke into open warfare in 1991 and again in 2013, which is where I began this capsule history. Colonialism made ethnic violence thinkable because colonialism made ethnicity an important contour of public life: after colonization, power in the South really was distributed along ethnic lines. To oust the other was to take charge of the polity and its riches—oil, agricultural land, and the sympathy and financial support of the international community that helped to shepherd South Sudan into existence and hold it up during those first shaky years.

How, then, should we understand the extreme violence of 2013? We might say it reflected the breakdown of the rule of law, in which case the remedy would be to restore order, reassert the prior rule, and administer justice on behalf of victims. Or we might say that the violence testifies to the collapse of the political system—indeed, the collapse of the political system *by design*. The British created Sudanese tribalism precisely to foster infighting and thereby prevent solidarity against themselves. An independent South Sudan was the British colonial dream turned into a living nightmare.

The breakdown of the infant political system in South Sudan is an argument for rethinking that system, not restoring it through the assertion of its laws. But restoration is what happened. Under the influence of international parties, principally the United Nations and the so-called Troika of the United States, Britain, and Norway, which brokered the 2005 agreement and pushed for secession, South Sudan became the paradox it is today: an independent state under colonial governance. Then, after 2013, the colonial structure of the state was reinforced by the arrival of truth and reconciliation. International NGOs isolated perpetrators, demanded their testimony, named and shamed. The legalistic, human rights–driven process reformed nothing; it reinvested in South Sudan's colonial inheritance. South Sudan's ethnic enemies kept fighting, leading to many thousands more deaths.

Today South Sudan is ruled by the same corrupt and violent figures who pressed for secession and oversaw mass murder in 2013—secession and murder

based on the tribal distinctions the British invented. The 2020 peace agreement restores order built on these tribal distinctions, with the organs of the state distributed among the six major ethnic groups. The leaders of these groups have been temporarily placated by the gift of government ministries, which they use to benefit themselves and distribute patronage to "their" people, who live out their days confined to supposed ethnic homelands. The restoration of law and order in South Sudan—mediated by Sudan in the north and by Uganda, and reached under pressure from the United States and United Nations—solidified the South's colonized status.

Across Sudan and South Sudan, rethinking the political means eliminating the settler-native, North-South, Arab-African distinction. It means eliminating the idea that Africans, being natives, naturally belong to tribes that govern themselves in their inviolable territorial domains. It does not mean eliminating cultural difference. It means depoliticizing the diversity that has always been there.

The Colonial Backstory

The political history of contemporary Sudan begins with the establishment of two polities: the Sultanate of Funj, with its capital at Sinnar, founded in 1504, and the Sultanate of Dar Fur, with its capital at El Fasher, in 1650. Both orders formed around the institutions of Islam and slavery.

The spread of Islam was closely associated with Arabic culture, which provided crucial resources for state formation, commerce, and the exchange of ideas. As an administrative language, written Arabic enabled communication among state functionaries, helping to knit its parts into a cohesive whole. Islam also offered membership in a wider regional community and, with that membership, access to networks of trade and education.[1] As the religion of the centralized court, Islam invested the state and the position of the ruler with theological significance.[2]

This was, however, a nominal investment in religion for purposes of maintaining power. Neither sultanate was governed by Islamic principles. Rather, Islam was an independent source of authority and loyalty, with which the state had an interest in maintaining good relations. The locus of this authority was the Sufi brotherhood *(tariqa)*. On land granted by the sultans, religious

migrants built the educational institutions that later developed into Sufi orders. The focus was spiritual—the training of Islamic teachers and holy men known as *fuqara*—not temporal.[3] The brotherhoods refrained from involvement in civil matters; indeed, they reinforced the state through their dependence on it for land rights and tax exemptions. The result was a quasi-secular development of parallel institutions: the sultanate—a centralized civil authority with a religious patina—and the brotherhoods.[4]

In spite of claims by the British, later repeated by Arab nationalists, Islam in Sudan was not the product of a singular Arab influence from across the Red Sea. That influence came also from West and North Africa. Similarly, the Sufi tradition was not just an external import; its functions, symbols, and styles very much resembled those of spirit mediums and diviners who continue to practice in areas of Nilotic Sudan and in much of Africa south of the Sahara. The difference was that, unlike spirit mediums or diviners, Sufi tariqa knew no tribal limits, geographical boundaries, or political frontiers. Their followers often journeyed for weeks in order to visit their shaykhs. Religious orders were of immense value in promoting a sense of fraternity and integration among the peoples of the Sudanic belt.[5]

Alongside Islam, a second building block of politics and society during the sultanates was slavery. All evidence points to slavery developing as a local institution in Northern Sudan, alongside the centralized power in the two Sultanates, rather than being introduced by Arabs from the outside. In Funj and Dar Fur alike, slaves were mostly taken from the South, and they were critical to the sultans' control. Some slaves served in high positions, as military commanders and administrators, providing a counterweight to ambitious noblemen. Other slaves functioned as lower-level soldiers or bureaucrats, concubines, domestics, guards, and attendants at court. They were organized in a complex hierarchy paralleling and overlapping that of the society at large. The top layer of the slave hierarchy typically comprised eunuchs, of which there were said to be more than a thousand. The Sultan could empower a eunuch, secure in the knowledge that he could not use that power to build a family dynasty, which might challenge the royal line. Some eunuchs had been castrated as punishment for criminality, others because of illness. Still others did it to themselves—they were strivers, aspiring to the ranks of the elite. Ambition undoubtedly motivated the most accomplished slave in Dar Fur's

history, Muhammad Kurra, ex-officio governor of Eastern Dar Fur under Muhammed Tayrab.[6]

For centuries this system of administrative centralization, quasi-secularism, slavery, and repression of internal competitors maintained the sultanates of Dar Fur and Funj. But the sultans finally met their match in the Ottoman Empire. In the second decade of the nineteenth century a Turko-Egyptian force occupied large sections of Northern Sudan, colonizing the region for the first time in its known history. The colonial regime was known as the Turkiyya. It laid the boundaries of what would become contemporary Sudan. The Turkiyya made every effort to displace the preexisting social structure, building new cities and crushing the old elites. To fund this effort and deprive potential competitors of resources, the Turkiyya initiated a brutal system of exploitative taxation. It built a new capital, Khartoum, which stood in deliberately sharp contrast to those preexisting—particularly Omdurman, its sister city on the west bank of the Nile. Whereas Khartoum was a colonial implant attempting to mimic European cities, ancient Omdurman reflected the cosmopolitanism of the earlier kingdoms. A British provincial governor in Sudan wrote in the early 1900s:

> Omdurman was as African as Khartoum was European. . . . Nowhere except perhaps in Mecca is so large a number of different races congregated in so small a space as in Omdurman. Indians, Armenians, Turks, Greeks, Syrians, Persians and strangers from the Middle East; Europeans from many countries; Fallata and other pilgrims from the West Coast of Africa; fuzzy-wuzzies, Arabs, Nilotics, Nubas, Negroes, Bararians, and all the medley of races and tribesmen that compose the modern Sudan are to be seen in the crowded streets.[7]

In the 1880s, with Ottoman power waning, the British entered North Africa looking to take over. Sudanese seeking to dispatch colonizers of every stripe turned to the surviving institutions of authority under the sultanates: the fuqara and their brotherhoods. The result was a revolt led by a holy man, born Muhammad Ahmad ibn Abdellah but known to history as al-Mahdi, a title meaning "redeemer of Islam," which Muhammad Ahmad adopted in 1881. Al-Mahdi's goal was to build a purified Islamic state in the wake of

ejected overlords. The religious vision was central to the unification of multiethnic Sudanese, much as religion brought together other disparate anticolonial forces elsewhere in late nineteenth and early twentieth-century Africa. As John Iliffe explains, the Maji Maji rebellion against German colonizers in Tanganyika (part of modern-day Tanzania) was centered on "the prophet, proclaiming a new religious order to supersede the old, a new loyalty to transcend old loyalties of tribe and kinship." German observers were terrified by the prophet, the *maji,* and his movement. It bore the signs of an effective political transformation.[8] Islam provided the ideological glue for the movement led by Muhammad ibn Ali al-Sanusi in Libya as well. Both al-Sanusi and al-Mahdi promised to sweep away foreign despotism and, with it, the form of Islam patronized by colonial rulers.[9]

The Mahdiyya, the movement behind al-Mahdi, was arguably the most impressive of the anti-imperialist uprisings in the region. For the first time, *balad al bahar* (riverain Sudan) and *balad al Gharib* (Western Sudan) were united under a single power. The Mahdiyya brought together three different groups fighting under three flags. Members of the Baggara ethnicity, from Kordofan and Darfur in the west, marched under the black flag. The Kinana and Dighaim marched under the green flag. Under the red flag, Al-Mahdi's clansmen, the Ashraf, joined the people of Jezira and points north. As it grew in numbers and confidence, the Mahdist movement went on the offensive. In January 1883 the Mahdists laid siege to the town of Obeid and defeated an Ottoman Egyptian garrison of over six thousand men. By mid-November, the Mahdists effectively controlled the South, West, and North of Sudan, with the exception of Khartoum. But that came in time. In early 1884, with the British holed up in Khartoum, the Mahdists began a siege that lasted 320 days. Charles Gordon—the British governor-general and an imperial hero revered in England and British settler-colonies—died in the process. Al Mahdi himself died shortly after the victory, of typhus. But the Mahdist state solidified.[10]

The fall of Khartoum to Mahdist forces reverberated across England, Turkey, and other centers of power in Europe. The London *Times* of February 6, 1885, noted, "The shock caused by the news of the fall of Khartoum has no parallel in the experience of the present generation." A British government publication, the *Daily News,* agreed: "Seldom in the memory of living man has news been received of such a disaster in England."[11] Fourteen

years later, a young Winston Churchill paid uncharacteristic and grudging tribute to the Mahdi:

> There are many Christians who reverence the faith of Islam and yet regard the Mahdi merely as a commonplace religious imposter whom force of circumstances elevated to notoriety. In a certain sense, this may be true. But I know not how a genuine may be distinguished from a spurious Prophet, except by the measure of his success. The triumphs of the Mahdi were in his lifetime far greater than those of the founder of the Mohammedan faith; and the chief difference between orthodox Mohammedanism and Mahdism was that the original impulse was opposed only by decaying systems of government and society and the recent movement only came in contact with civilization and the machinery of science. Recognizing this . . . I believe that if in future years prosperity should come to the peoples of the Upper Nile, and learning and happiness follow in its train, then the first Arab historian who shall investigate the early annals of that new nation will not forget, foremost among the heroes of his race, to write the name of Mohammed Ahmed.[12]

The Mahdist state lasted from 1885 to 1898. British forces led by General Horatio Kitchener entered Sudan in 1896 and, two years later, defeated the Mahdist state at Omdurman. Consumed by vengeance, he desecrated the tomb of al-Mahdi and ordered the remains brought out from the bowels of the earth, the head severed from the body, and the body thrown in the Nile so it may never be recovered. Kitchener kept the head as a trophy, fashioning it into an ink pot for his writing table. It was testimony that, in death as in life, the anticolonial liberator held the gaze of the great general of empire.

The Mahdiyya was a revolutionary movement that undermined the political form of the tribe—the very form that later colonizers and Sudanese nationalists would take for granted as part of the nature of native Sudanese. The Mahdiyya led to an all-round assault on chiefly power: Al-Mahdi's call for jihad broke the chiefs from below, while the highly centralized Mahdist state opposed every shaykh who might oppose its authority of the state. Notably, the revolution spread via the influence of Sufism, crossing boundaries of cultural difference that would also be naturalized in the form of tribe.

But while the revolution of the Mahdiyya shows the lie inherent in claims of timeless Sudanese tribalism, it also provided resources for the British counterrevolution and later Sudanese nationalism. By bringing together disparate Northern groups under the banner of Islam, the Mahdiyya created the preconditions for the North-South divide that would drive so much later politics under colonialism and postcolonialism. The Mahdiyya also seeded the rise of Islamist politics. Meanwhile the core of the counterrevolution was to reorganize state and society by *retribalizing* it through ethnic cleansing. The purpose was straightforward: to assure political division in Sudan and thereby prevent the consolidation of anticolonial liberation movements.

Creating Settler and Native

The invention of the settler-native distinction in Sudan was a product of both force and intellect. Law, backed by the threat and realization of punishment, was a key component. But so was history. Stories about the past—stories based in truths, suppositions, ideology, and realpolitik—were marshaled to create and cement the novel identities of African native and Arab settler.

The North-South line was based in a kind of truth: there really was a more "developed" North, a vestige of hundreds of years of political evolution under the sultanates, Ottoman rule, and Mahdism. If one were to divide the territory between "primitive" and "civilized" peoples, the North-South line the British picked would be the natural place to draw the boundary. Albeit, history does not by any means imply that Northerners were in some sense superior, as evidenced by their stronger states: the Funj Sultanate was founded by Shilluk immigrants from points south. Furthermore, the assertion that the peoples to the north were Arabs, and those to the south Africans, was a consequence of the European racial imagination. Another historical truth the British exploited was that of cultural, or ethnic, difference. The reclassification of cultural difference as racial difference justified the subdivision of those deemed African into geographically segregated and separately governed tribal units.

The purpose of all this identification and division, the British explained, was to preserve colonial rule. That they worked so hard in this effort reflects the difficulty of the challenge they faced. The Mahdist victory and subsequent

thirteen years of resistance demonstrated the emancipatory potential of Sudanese unity. Unity, therefore, had to be prevented along every possible vector. In particular, Islam seemed threatening as a locus of multiethnic mobilization. To prevent religious cohesion, Arabs, understood as uniformly and immutably Muslim, could not be allowed to mix with Africans, conceived as Pagan and therefore suggestible when confronted by a supposedly more advanced religion such as Islam or Christianity. Colonial authorities unleashed the pastoral mercies of Christian missionaries on Southern tribal homelands. Missionaries worked hand in glove with native authorities to oversee the Africans. Of course, some of those Africans were Muslim, even though the British racial worldview considered that combination nonsensical.

As elsewhere, the creation of settler and native was a process of asserting the existence of opposed races and separating them geographically, legally, and politically. As elsewhere, the key technology of separation was tribalization: the territorial bounding of cultural difference, the assertion of homogeneity within each territory, and the subjection of its residents to distinct regimes of authority said to befit their race, tribe, and level of civilization. The continuity with indirect rule in other circumstances is striking. That said, the specific resources brought to bear in the manufacture of tribe were local—necessarily so. The colonizer everywhere uses the affordances of the colonized region in order to create a system of domination suited to its peculiarities. In Sudan, local differences salient to the British were processed into a set of political identities according to the universal ideology of colonial modernity, which held that Arabs and Africans were separate races and that Africans were primitive and Pagan. As authors and disciples of colonial modernity, the British believed firmly that they were unearthing the truth of Sudan—the way in which Sudan had always expressed the deep truth of race, intrinsic and indelible human superiority and inferiority, on whose basis the people would be defined and ruled.

Colonial Narrative: Making the Arab

The project of undercutting multiethnic mobilization in Sudan was multifaceted and decades in the making, finally solidifying in the 1920s. Over the course of these years, the British learned the stories the Sudanese told themselves about themselves—stories based in family genealogies going back

centuries. Then the British discarded these stories as false and overwrote them with what they understood to be the truth of racial division between Arabs and Africans. This new truth stuck in the minds of post-independence intellectuals, whose race-based nationalisms justified the civil wars of the later twentieth and twenty-first centuries that finally produced the national split between Sudan and South Sudan.

The key question the British faced when they wrote their history of Sudan was as follows: Who is an Arab? If Sudan was a land of Arabs and Africans, then colonial administrators had to figure who counted in which group. The colonial administrator chiefly responsible for this project was Harold MacMichael. His 1922 *History of the Arabs in the Sudan* collects his many findings and assumptions into an official narrative, which became a key historiographical foundation of colonial demography and the demographically targeted colonial legal regime.

Among MacMichael's critical assumptions was that Sudan was home to three "main ethnic elements," which he called the Negro, the Hamitic Berber, and the Arab. In this story, the Negro is the native—"the most ancient" race on the territory—but has been pushed to the South, "partly due to the continuous pressure exerted by the Arabs in north Africa upon the Berber races, compelling them to move southwards and encroach upon the lands of the darker races, a process which began at least as early as the seventh century A.D. and affected every state from the Atlantic to the Nile in a greater or less degree."[13] "As early as the seventh century A.D." is no arbitrary date, for it signals the beginning of Islam. The dating of African development to this period reflects the so-called Hamitic hypothesis of Eurocentric anthropologists, who claimed that all state-building in precolonial Africa was the work of outsiders known collectively as Hamites. In Ethiopia, these outsiders were Semites, specifically; in Rwanda and Burundi, they were Tutsi; and in Sudan, they were Arabs. (Although present in MacMichael's history, the Hamitic Berbers were marginal in the administration of the colony.)

In other words, while Negros were said to have been present in the territory of colonial Sudan from time immemorial, Arabs were immigrants. Such migration-centric histories assumed that receiving societies were internally static and that all meaningful change came from outside. MacMichael elaborated this theory of migration on the basis of genealogical claims from Northern Sudanese groups who identified as Arab. He traced his genealog-

ical story from the Funj sultans, who claimed direct descendance from the Umayyad dynasty of the Prophet Mohammad himself.[14] The story of the Funj origins was recorded colorfully by the Jewish adventurer David Reubeni, who visited Sudan in 1522–1523. Reubeni spent ten months as a guest of the sultan, during which he, too, posed as a descendent of the Prophet and was greatly honored at court. He and the sultan reassured each other in their respective claims of lineage. Reubeni recalled that the sultan was in the habit of asking him, "What is it you desire of me, my lord, son of our Prophet?" To which Reubeni would answer, "I love you and I give you my blessing . . . and the blessings of the Prophet Muhammad . . . and in another year I hope you shall come to us in the city of Mecca, the place of the forgiveness of sins."[15]

The claim to Umayyad origins speaks to the purpose of the genealogies MacMichael was investigating. If they were not accurate records of ancestry, genealogical claims did indicate both a preferred family history—the sort of history that secured prestige, honor, and membership in a network of influence—and the power to get others to acknowledge that preference. Another genealogy MacMichael recorded, compiled in 1853 by Ahmed bin Isma'il al-Azhari of the Bidariyya tribe, went back to al-Abbas, the uncle of the Prophet, and "Adnan, from whom all Arabs are said to have descended."[16]

MacMichael elaborated a speculative theory of Arab migration on the basis of this sort of genealogy, although he was at the same time deeply skeptical of it. He was not interested in whether genealogical claims were useful but whether they stood up to scrutiny. This approach was widely shared by colonial anthropologists. Ian Cunnison, writing in the 1970s, laughed off the claim of the Humr of Darfur and Kordofan, who believed they were a mere ten or eleven generations removed from the family of the Prophet. In contrast, the Juhayna of the Nile Valley made a more sophisticated claim to be some twenty-eight generations removed from the Prophet's family, in a direct lineage. But Cunnison knew he should not believe the Juhayna, either. "Historically a genealogy is, purely and simply, a falsification of the record," he wrote.[17]

In writing off the particulars of Arab genealogies, MacMichael sought to maintain the spirit of them—the story of long-ago migration that made every Arab the descendent of some singular founder. But in doing so he also flattened the real-life multiplicity of Arabness. In effect, MacMichael

was collapsing that diversity into the unity necessitated by colonial racial ideology. By contrast, the view from below provided by actual claimants to Arab identity confirms that there is not a single history of Arabs in Sudan. Riverain Arabs are settled peoples with territorial, village-based organizations, while the Arabs of Darfur and Kordofan are nomadic, and their identity is based more on group affiliation than on mutual habitation of territory. Many riverain Arabs perceive nomadic Arabs as uncivilized country bumpkins rather than as members of a common community. *Arab* is thus a political identity, claimed by many peoples who understand themselves to be culturally different from each other. But, for MacMichael, this understanding of Arabness made no sense. Colonial racial ideology insisted that Arabs in Sudan were a single group without variance, and that this whole group was superior to the native Negros. The civilized Arabs could not harbor uncivilized elements, even if individual Arabs felt certain this was the case.

This flattening of Arabs into a unitary elite shaped the subjectivity of the colonized, and carried into the Arab nationalist movements of postcolonial Sudan. Contemporary writing about the history of Sudan—most importantly that of Yusuf Fadl Hasan, considered the founder of nationalist historiography in Sudan—attests to this.[18] Hasan's account of the history of the Sudanic peoples begins not with the ancient Pharaohs of Egypt or with the sultans of Funj and Darfur but with the Arab victory over the Byzantines in Syria and Egypt in the seventh century. From there it turns to a version of the conventional history of Sudan as a natively African place Arabized through migration from Arab Egypt. His is the "wise stranger" thesis: here it is not even the concocted fact of mass southward migration that Arabized Sudan but rather the arrival of influential individuals and their gifted followers (all Arabs) carrying extraordinary ideas and practices.

Hasan assumes a kind of top-down miracle performed by the wise stranger, who marries into a leading insider family and goes on to found the state, whether Funj or Dar Fur. But history isn't made of miracles. It is made of processes. Focus on the wise stranger tends to substitute for an analysis of the process of state formation. That history is far more complicated and shows that Arabic culture was not a product of Arab migration so much as the spread of the Arabic language by non-Arab powers. Meanwhile actual Arab migrants frequently assimilated into Northern Sudanese societies. Where Arabic culture flourished, it did so through its association with non-

Arab states that adopted Arabic as a lingua franca. Such states offered rich soil for charismatic traveling Arabs; those migrants did not have to work any special magic. Arabic culture was already in Sudan when they arrived and was disassociated from Arab ethnic identities.

The Arabic language did spread to Sudan from Egypt, but as Hasan himself shows, the carriers of the language were refugees, not wise men or conquerors bringing civilization. There were conquerors, but they were Mamluks—the caste of Turkic warrior slaves who became kings and emirs—not Arabs. In 1250 the Mamluks established a sultanate with its capital in Cairo. Far from adopting Arab identity, Mamluks placed Arabs in a lower social caste, and many Mamluks did not speak Arabic. Mamluks sold Arabs as slaves and forced Arab nomads out of their home ranges. More and more emigrated southward in search of greener pastures. The Mamluk state followed the runaways into the Northern Sudanese polities of Nubia and Beja, mounting an invasion in 1276. The Arabs who arrived in Nubia did not bring their ways with them. They *de-Arabized:* they not only learned farming techniques from Nubian farmers but also adopted the Nubian language. The Beja, too, absorbed "small bands of Arab immigrants who settled amongst them and [who] in time adopted the Bejawi language and customs." At the same time the Bejawi language incorporated elements of Arabic.[19]

In time, however, Arabic became the language of the state in Nubia and Beja—specifically, of the ruling Sultanates of Funj and Dar Fur. This was how Arabic spread: through its status as a lingua franca and thus a fit language of administration, law, and commerce and through the growth of Islam. Where migrants were not linked to power, migration led to acculturation. Without a direct association with power, there would have been no Arabization. At the same time, the power did not have to be Arab, as the cases of Funj and Dar Fur attest.

Funj, in particular, has been key to revisionist criticisms of the Arabization-as-migration story. In that story there is a sharp discontinuity between the histories of Nubia and Funj, with Nubia identified as Christian and Mediterranean and Funj as Arab and Islamic, owing to mass migration. The countertheory stresses the element of continuity. One of its proponents, Jay Spaulding, points out that little empirical evidence suggests mass Arab immigration into Sudan and argues that, instead, early Funj reflected a kind of Nubian

Renaissance, as the sultanate inherited many of its institutional arrangements from earlier Christian monarchies. The Funj dynasty did claim Arab ancestry, but this was a power move, a historical assertion enhancing their authority in a nominally Muslim kingdom, not an expression of how individual Funj rulers identified in their own time. Spaulding argues that the shift toward Arab identity was a product of internal developments, not migrations by either large numbers or wise strangers. These changes did not come with the Funj founding in 1504—linked, again, to Shilluk migrants from the South—much less with the arrival of clutches of Arab refugees in the thirteenth century. Instead, Spaulding puts the historical rupture in 1762, when *Hamaj,* warlords representing a new Arab-identified middle class, took power.

The growth of an Arab-identified middle class went hand in hand with the adoption of Arabic as the language of commerce. The merchants were a multilingual and cosmopolitan class. By the late seventeenth or early eighteenth century, the new city of Dongola was home to traders who spoke Italian, Turkish, and Arabic. The king, too, was a merchant, probably the biggest. Sinnar, his capital, opened "to the outside world between 1650 and 1750." This "increased the exposure of Nubian Muslims to the cultures of neighboring lands." The "community of foreigners in the capital hailed from Egypt, Ethiopia, Dar Fur, Libya, Morocco, West Africa, the Hijaz, the Yemen, India, Syria, Palestine, Turkey, Armenia, Greece, Yugoslavia, Italy, France, Germany and Portugal."[20]

But while the king grew richer, the rise of the merchant class threatened the king's power base among the traditional nobility. The new cities were beyond the realm of these authorities. As traditional powers faltered, holy men rose in their place, with the support of the merchants. For, while traditional powers stood for the supremacy of an older ethnic custom, the fuqara championed the rule of religious custom—sharia—which supported the enforcement of contracts and therefore encouraged commerce. The transition ended in 1762 when the merchant-backed warlords deposed the king and installed a regent in his place.

This historical narrative clarifies a significant point: Arab identity was multiple and could arise locally as well as from cross-border exchanges. The new middle class self-identified as Arab for reasons that made sense given their

ambitions and their place in the polity. In riverain Sudan, to call oneself an Arab was to associate oneself with power. But elsewhere in the region, Arabs were not identified with power. West African migrants, the Fellata, began arriving in the eleventh century, intermarried with Baggara Arabs, and became Arabs of another sort, with no claim to lineage or power. Funj slaves, no less than merchants, became Arabs. Throughout Sudan, Arabs had different historical experiences; some were slaves and some owned them. These various meanings of Arabness were born more of local assertions than global migrations.

This multiplicity was erased under the terms of race and civilization imposed by the colonizer, the better to define the colonized people as natives and settlers and thereby govern them. As the case of intellectuals like Hasan shows, the erasure was compelling. But it was not through history alone that the British defined, ruled, and bequeathed a racial and tribal way of thinking on the people of Sudan. History also informed the census, which informed the mechanisms of rule.

Colonial Demography: Making the Tribe

In 1929, seven years after he wrote the *History of the Arabs in the Sudan,* MacMichael distributed a paper called "Tribes of the Sudan." Meant "to provide a frame for the purpose of the Population Census," it announced an intention to gather "tribal information" in order to understand "tribal differences."[21] But the idea was not simply to understand existing differences among the people. It was to categorize them and use these categories to govern them. This is how tribe, once synonymous with the cultural category of ethnicity, became an administrative identity as well. Every person was asked to identify their tribe, and the census taker would write down their answer, with no questions asked. What happened next, though, was beyond reach of the person interviewed. The census authority inserted the tribe into two other categories: "groups of tribes" and "races."[22]

Racially, a tribe could be counted as Arab or as a subset of any of four races considered native: Hamitic, Nilotic, Negroid, and Other Negroid "Westerners," referring to Negros in western regions of Sudan, such as Darfur. (The reclassification of Hamites as natives served the British conviction that Arabs, and only Arabs, were settlers in Sudan.) The two Negro races were

further subdivided into groups of tribes, but Arabs received no such treatment. That Arabs were a single race, undivided by tribe, while natives were assigned to diverse racial categories subdivided by group, was not incidental. Such a breakdown served the purpose of distinguishing the Arab immigrant from the native. The mark of a settler race was that it was not tied to any locality within the colonized territory and thus not grouped with any of the local races or differentiated according to locations; it was always and everywhere itself. Thus in Darfur, for example, all Arab residents were counted simply as Arabs, while non-Arab residents could be grouped as French Equatorials or Nigerians and were considered Other Negroid "Westerners"—that is, locals.

The notion of the Arab employed in the census was disconnected from the cultural component of Arabness, principally language. This meant that even though the majority of the colonized population spoke Arabic at home, only a minority were defined in the census as Arab. For example, the 1953 census recorded only 38.9 percent of the Sudanese population as Arab, even though 51.4 percent of the population spoke Arabic at home. Similarly, 28.2 percent of the Darfuri population were defined as Arabs, even though 54.6 percent of the total spoke Arabic at home. And while only 44.2 percent spoke non-Arabic languages at home, the census classified a whopping 65.3 percent of the Darfuri population as Other Negroid "Westerners." By preferencing race over culture, the census constructed a non-Arab majority in Darfur.

Under the colonial regime, a strange thing happened to Sudanese tribes: though tribe was supposed to be the natural, timeless basis of governing the natural, timeless native, the number of tribes increased. When the census was first organized in 1929, the section on "background and method" spoke of 450 tribes, but when it was taken in 1954–1955, the census recorded "about 570 tribes in Sudan" classified into 57 "groups of tribes." What happened was that colonial officials created new administrative divisions, and it was these, not any native practice, that constituted the tribes. When residents were asked to name their tribe, they named their native authority. Residents deemed native understood that it was through tribe and tribe alone that they could legitimately organize to make demands from the colonial state, and so it is perfectly understandable that tribe became a politically meaningful category to the people themselves.

Colonial Law: Creating Race and Tribe

The results of the census were used to determine who would be governed locally and who by the central state—who would be subject to customary law under native authority and who would be subject to civil law. Civil law was for civilized nonnative races. Natives were governed under religious law or customary law, which were considered tribal. As described below, the British preferred customary law, as it served to undermine religion as a vector of cross-cultural solidarity.

The institution of native authority in the Sudan colony followed a pattern broadly familiar from the US and South African cases. First, using the census, the colonizer identified each ethnic group with its particular territory, which was deemed an exclusive homeland of that ethnic group. Second, each homeland was placed under the administration of a colonially appointed or approved tribal authority. Third, that authority was given the right to administer land allotments exclusively to those identified as indigenous to the homeland and to adjudicate internal conflicts. The law of the homeland was thereby rendered customary because administered by tribal members. The same measures made indigenous-only land-use rights customary, too, which gave locals a stake in the native identities that had been created for them. Finally, the power of the native authority was unhinged from accountability to the community, which was also said to be a matter of custom: according to the colonizer, chiefly authority was by nature absolute, for natives did not know or understand things like democracy or the rule of law, only timeless custom and the rule of dictators claiming to enforce it. If challenged, the dictator could call on the force of the colonial state for backup. Of course, native authority was not actually total—it was subordinate to that of the colonial power. Only the British could hold native authority to account.

The bifurcation of civil and customary law, and the construction of native authority, took place against the backdrop of anticolonial revolt in the 1920s. Fearful of Mahdist sentiment among Northerners, British power had staffed the colonial army with troops recruited from the South. But after Egyptian nationalists in Cairo assassinated the governor-general of Sudan in 1921, the Southern troops took up the Egyptians' rebellious sentiment and carried out an uprising against British officers. The revolt was put down mercilessly, and Southern troops were withdrawn from the Sudanese army.

Among the best-known rebellions was that of the White Flag League. The league's agitation reached a high point in August 1924. Military cadets paraded through the streets of Khartoum openly expressing nationalistic demands.[23]

The rebellion signaled to the British that a firmer grip was needed on the South, as South Sudanese were clearly susceptible to nationalist influences percolating from Egypt. Once again, MacMichael took the lead, circulating a policy framework in a paper titled "Indirect Rule for Pagan Communities."[24] By way of warning, he quoted Sir Percy Girouard's *Report on East Africa for 1909–1910:*

> If we allow the tribal authority to be ignored or broken, it will mean that we, who numerically form a small minority in the country, shall be obliged to deal with a rabble, with thousands of persons in a savage or semi-savage state, all acting on their own impulses, and making themselves a danger to society generally. There could only be one end to such a policy, and that would be eventual conflict with the rebels.[25]

By "tribal authority," Girouard meant the precolonial governing institutions of the tribes, as he understood them. It was axiomatic to the British that customary law was actually customary, not their own invention. Thus MacMichael also cited the late lieutenant-governor of the Northern Provinces of Nigeria, C. L. Temple, to the effect that the only way to avoid catastrophe was to set up "the government of natives through their own institutions."

MacMichael had no illusion that backing chiefly power would have its disadvantages, for chiefs had a "predilection for tyranny." But the colonizer would have to put up with such difficulties for the sake of order. After all, MacMichael explained, "The native prefers to submit to a few abuses at the hands of his own Chief than to be pestered with rules and regulations and view-points of alien origin." Backing ethnic—that is, secular—leaders also had the benefit of marginalizing religious ones. "The religious leaders in this country will always . . . carry much weight," MacMichael wrote, so "I think it is essential to develop the power of the secular chiefs as such, by way of counterweight to them."[26] Compared to a religious leader, a tribal chief was also easier to control. His authority could be bounded to a jurisdiction,

whereas religion was universal and therefore a religious leader's authority might cross tribal boundaries and foster multiethnic solidarity.

In a 1928 memo, MacMichael further spelled out why North-South division was a political necessity if the British were to maintain control:

> The spread of Arabic among the negroes of the South means the spread of Arab thought, Arab culture, Arab religion . . . the path . . . would carry those that took it into grave dangers. The most serious of these is the automatic extension of the zone in which Islamic fanaticism is endemic to an equally large and far more populous area where at present it is not so. . . . To encourage the spread of Arabic in the South would be to sprinkle gunpowder in the neighborhood of a powder magazine, or to sow weeds because they grow more quickly than corn.

MacMichael appreciated that there might be short-term benefits to working with Arabs to develop the economy of the South. But, in the long run, it was best to atomize the peoples by installing systems of governance that would keep them apart, and this would be facilitated by the system of ethnic control:

> A series of self-contained racial units will be developed with structure and organization based on the solid rock of indigenous traditions and beliefs, the daily life of the family and the individual will be regulated by customs which are natural to them, the sense of tribal pride and independence will grow, and in the process a solid barrier will be created against the insidious political intrigue which must in the ordinary course of events increasingly beset our path in the North.[27]

All this theory was implemented through what was known as the Southern policy, designed to seal each tribal administrative unit from the other, and the South from the North, so that previously mobile pastoral peoples stayed put and Northern Arab influences were kept out of the tribal homelands.[28] Sir John Maffey, the governor-general from 1927 to 1933, explained the purpose of the policy in bold terms: "In this manner the country will be parceled

out into nicely balanced compartments, protective of glands against the septic germs which will inevitably be passed on from the Khartoum of the future. Failing this armour we shall be involved in a losing fight throughout the length and breadth of the land."[29]

The South, then, was run by native authorities subject to the oversight of British administrators. This despotism was augmented by missionary societies, each assigned its own religious fiefdom. These authorities together undertook a policy of ethnic cleansing, to ensure minimum Arab influence. As Christian missionaries were given exclusive charge of educational and social policy, English replaced Arabic as the official language. The practice of Arabic culture was discouraged, as residents were induced to use names deemed appropriate for their own ethnic group and to don clothing clearly not Arab or Islamic. Sunday replaced Friday as the official day of rest; Islamic proselytization was banned and Christian proselytization facilitated. Northern traders were weeded out of the South, and Greek and Syrian Christian traders were brought in to replace them.[30] Ethnic cleansing was further enabled by Closed Districts and Passport and Permits Ordinances of 1922, which criminalized movement between the South and the North. All emigration from the South to the North was declared illegal, with transgressors subject to jail or a fine, and people were required to obtain passes in order to move into and out of the South.

Henceforth the Northern elite would be Muslim and the Southern Christian. North and South were run as two different countries meant to have separate and contrasting destinies. When Sudan obtained independence as one country in 1956, the stage was set for decades of conflict.

Building Nation and State after Independence

The colonial imprint on Sudan has been evident in post-independence contests over political power, contests that played out in palace coups and civil wars. The principals in these conflicts have included popular minorities, such as Arab nationalists, communists, and socialists. As minorities, they sought to impose reform from above, for democracy would mean mobilizing the majority and therefore empowering opponents. Instead, these political forces turned to the nation. A successful campaign to equate the nation with their

own political constituencies would obviate the need for a popular majority as they made top-down reforms.

Who, then, constituted the nation? We can read the political history of Sudan since independence as a series of attempts to answer this question. The first nationalist vision to hold sway after independence was Arabism, under General Ibrahim Abboud, who took power in 1958. Inspired in part by the British narrative of Arab supremacy, Arab nationalists tried to foist the culture and language of the Northern majority onto the whole of the country, in the process alienating the South in particular. This was followed by a more pragmatic turn under the regime of Colonel Jaafar Nimeiry. Like Abboud's, Nimeiry's base of support was narrow—largely urban and professional. But, unlike Abboud, Nimeiry focused on negotiation with a range of forces, first the Southern armed movement and the communists, in the process initiating socialist-leaning economic policies and governance reforms. Later he allied with Islamists, leading to a reversal of key political reforms.

Unlike Arabs and socialists who were minorities in Sudan, Muslims constituted a majority. Islamists therefore saw themselves not as imposing an ideology on the majority but as refashioning the state in the image of a majority devoted to Muslim traditions. Political Islam has been a dominant presence in the Khartoum government since the late 1980s—under the rule of Omar Al Bashir and his chief ideologue, Hassan Al Turabi—but it has not been alone in claiming the Sudanese majority. Another response to top-down nationalism is Africanism, which claims that the Sudanese nation is not Arab or Muslim but African. This claim is broadly akin to that of the Islamists in that both identities—Islamic and African—can reasonably be said to encompass the majority of the public.

But while Islamists and Africanists both claim to represent the majority, neither has thought through the contradictions of their positions. As the tension between Islamist and Africanist projects shows, there is no self-evident and permanent Sudanese majority to be arrived at through simple arithmetic. Sudanese have multiple identities—religious, linguistic, regional, and so on—making for several overlapping majorities. Which of these identities will be politicized and equated with the nation? Historically, the answer to that question has been determined through bloodshed.

Indeed, the second phase of the Sudanese Civil War, between 1983 and 2005, was in important respects a battle over this question, although it did

not start out that way. At first, the war was waged between the Islamist central government—first under Nimeiry, then under Bashir and Turabi—and the Sudan People's Liberation Army (SPLA) under Garang's leadership. Garang was not an Africanist but rather a Sudanist. He promoted a unified, secular, and multiethnic Sudanese state, not a state created to reflect, serve, and glorify one of its constituencies—whether majority or minority—at the expense of others. But Garang's vision was never to triumph. Instead, the SPLA factionalized along lines of ethnicity, ideology, and personality. By the time Garang died in a helicopter crash in 2005, his movement for unity was riven with fault lines. Groups calling themselves variants of the SPLA demanded separation—an independent South Sudan, for Africans. Indeed, for Africans of particular tribes.

Of the major Sudanese nationalist movements, Garang's was the only one that tried to answer the question of the minority. Arabists and Africanists were stuck on that question: How could a state designed in the image of the majority claim the legitimate right to govern all the peoples of Sudan, including its minorities? Though these movements used the term "democracy," their definition of majority and minority was cultural—that is, pre-political, and therefore permanent, unperturbed by the democratic will. Ultimately Garang's project also foundered on the shoals of democracy. Sudanism did not have a minority problem, but Garang had a democracy problem, which alienated other SPLA leaders seeking their own places in the sun. With no one to take up Garang's mantle, his vision of a nonnational Sudan accommodating diversity died with him, clearing the way for ethnic cleansing by means of secession.

From Arabism to Islamism

By the time the British relaxed the Southern policy in the late 1940s in favor of integration with Northern parts of the country, major structural inequalities were visible. Northern elites inherited the colonial state, while Southern elites—products of the Christianizing mission—felt cut off from access to that state. In response, Southern political parties collected under the banner of the Umma Party in October 1954 to demand a federal status that would allow autonomy for the South. But the Democratic Unionist Party (DUP), its base mainly in the Northern and Eastern regions, was firmly opposed, scuttling any possibility of change. With the Southern po-

litical class paralyzed, action came from Southern units in the army. In 1955 soldiers in the Southern town of Torit mutinied, their revolt ushering in the first phase of the civil war that eventually produced the separate state of South Sudan.

Sudan officially became independent in 1956. Two years later, General Abboud led a coup and took power in Khartoum. The junta essentially inverted Britain's Southern policy by obviating the North-South boundary and using state power to assimilate the South into Northern practices. The new regime called for "a single language and a single religion for a single country." Arabic became the official language in government offices and schools, and Friday replaced Sunday as the official public holiday. Churches were tolerated, but in 1961 Christians were barred from holding religious gatherings outside of them. All foreign missionaries were expelled the following year. State funds were advanced to build mosques and Islamic schools, and chiefs were pressed to convert to Islam.

In 1964, when the junta invited public demonstrations of support for its Southern policy, the public responded—with protests against the war and the junta. That year's October Revolution brought down Abboud's government. A caretaker coalition of leftist parties took over and, in March 1965, held a conference of all parties: Northern and Southern, even exiles. But when the conference failed, the left coalition fell apart. The traditional parties—DUP and Umma—returned to power, and the war resumed.

This regime was in turn overthrown by a second military coup in 1969, led by Colonel Nimeiry. Like Abboud, Nimeiry opposed the DUP and Umma, the "sectarian" parties that sought continued division of North and South. Also like Abboud, Nimeiry won support from a base of urbanites with "modernist" sensibilities. But Nimeiry took a more conciliatory approach than Abboud had. Rather than achieve nonsectarianism by making everyone Arab, he was willing to negotiate with the Southern rebels to achieve a federal status within the Sudanese whole. The Nimeiry regime can be credited with two efforts: ending the first phase of the civil war, and attempting to fundamentally reform the local government system inherited from colonial times. Neither peace nor reform proved sustainable, however. The trouble was that, although Nimeiry was trying to implement popular changes, his was still a military regime. Autocracy is a delicate balancing act, requiring the support of other power centers, which themselves seek power and may

have incommensurable agendas. Nimeiry found it impossible to keep friends on his side, not least because sectarian interests remained so powerful.

These complications were a feature of Nimeiry's relationship with the Communist Party. Both camps agreed that the civil war should be ended through peaceful reforms, but they disagreed on the reforms to be implemented. While Nimeiry supported limited autonomy for the South, the Communist Party rejected political change while calling for a program of Southern economic development. Southern rebel leaders, however, refused to sacrifice autonomy on the altar of development. The Communists responded by calling for a continuation of the war, a demand that ended the alliance with Nimeiry and his officers.

Freed from the Communist Party's ideological straight jacket, the Nimeiry regime was able to negotiate the Addis Ababa Agreement, halting the civil war in 1972. The regime also explored alternative political reforms, including regionalization—a carefully crafted structure of Southern autonomy, in the context of a single national system. The irony was that, while reforms went ahead in the South, nothing similar occurred in the North: there was neither decentralization nor democratization, both of which reflected broad-based demands in Northern political circles. In time, the regime gained popularity in the South, while the North, including the riverain center, seethed with discontent. The result was a curious alliance between Nimeiry and the former Southern rebels. A time came when Nimeiry's presidential guard comprised mainly soldiers from the South.

In 1983 Nimeiry made a last-ditch effort to broaden his Northern support by allying with Islamists. To that end, he imposed sharia and thereby vitiated the 1972 compact. It was the death knell of nonsectarianism, but nationalism was still very much on the table. Nimeiry and his new allies, the National Islamic Front (NIF), remained committed to a single nation-state. What changed were the contents of the nation: no longer all Sudanese Arabs or all Sudanese but rather all Sudanese Muslims.

The NIF was in many ways a fitting partner for Nimeiry—there was more than just a passing resemblance between the Islamists and his erstwhile Communist Party allies. Both parties proclaimed a universal truth said to be free of parochial attachments, whether of locality, ethnicity, or sect. The NIF and the Communists competed to organize the same urban constituencies: educated youth and women, professionals, and salaried workers. They agitated

openly, but neither believed they could come to power through a democratic struggle. Both therefore pursued a clandestine and conspiratorial politics, particularly within the army, alongside their popular appeals.

Thus, after Nimeiry was deposed in 1985 and his regime replaced with an elected government, the NIF went to work on a coup of its own. In 1989, under the leadership of Hassan Al Turabi, the NIF backed General Omar Al Bashir's overthrow of the elected leadership. Al Bashir and the NIF, like Nimeiry and the Communists, saw their actions as politically transformational. The coup was no mere power grab, Bashir and his allies assured, it was a "revolution of national salvation." Soon, the new government was using emergency laws to dissolve political parties and trade unions so as to rule by decree.[31]

From here, Turabi became arguably the most powerful force in Sudanese politics, even though Bashir nominally was in charge, and even though neither Bashir nor Turabi ever secured a popular democratic mandate. What set Turabi apart was not what he achieved—although his opportunism and skill in centralizing power did result in many accomplishments—but what he said. His Islamist political vision was galvanizing. Turabi's volcanic impact on Sudanese politics derived from the distinction he drew between the universalism of Islamic principles and the parochialism of Arabic cultural practices, and the need to free the former from the latter. He was thus able to win over non-Arab Muslims, particularly in the western part of the country. Turabi's Islamism was a powerful unifying force in a Muslim-majority country where Arabs were a statutory minority. Islam was a more reasonable foundation for the making of a Sudanese nation: at last nationalism could be a majority project.

Africanism and Sudanism

Africanism has deep intellectual and political roots in all parts of Sudan. For instance, Africanism influenced debates within the Sudanese Union Society, a literary society formed in the 1920s, which split over whether to dedicate a collection of religious poems to "a noble Arabic nation" or "a noble Sudanese nation." The split led to the formation of the White Flag League in 1923, and its message carried forward across the evolution of Sudanese nationalisms. Thus in the 1970s Nuba intellectuals, for example, began to speak of Nuba as an "African" area, marginalized under the rule of an "Arabist"

central government. Africanism has always been a critique of both colonial rule and Arabism.

Over time Africanism spun off a more multicultural commitment to *Sudanism*. Both Africanism and Sudanism found expression in Northern Sudan in the 1960s, often drawing inspiration from the historical example of Sinnar. The visual artist Zein al-'Abdin coined the term *Sudanawiyya* (Sudanism): "This is our destiny of Africanism or of Africanized Arabism," he wrote. "Sudanawiyya exists in our consciousness as an unclear area that we have not yet explored." The poet al-Nur 'Osman Bubakar coined the metaphor "Jungle and Desert" in the early 1960s to refer to a polity combining the South (jungle) and North (desert). Another poet, 'Abd al-Hai, described in his masterpiece *al-'Awda ila Sinnar* ("The Return to Sinnar") the moment "when a new identity emerges out of the fusion of Arabic-Islamic and indigenous elements." That moment, the rise of Sinnar, brings together jungle, desert, and the heritage of Nubia to create "a new tongue, history and homeland."[32]

Africanism was militarized by Southern peoples struggling for a seat at the post-independence table. The Torit mutineers of 1955 were dissatisfied with numerous indignities perpetrated by the Northern-dominated Khartoum government, including, just then, the prosecution of a Southern member of the national assembly. Other mutinies followed, and for the next eight years, small armed groups skirmished with the army.

The insurrection coalesced into an organized uprising in 1963, with the founding of Anyanya, a Southern multiethnic army bringing together members of the Dinka, Nuer, and other groups. Anyanya was novel not only in uniting tribalized Africans of varying faiths and traditions but also in articulating a separatist position. Anyanya was not content with a seat at the table. Its goal was either autonomy or independence. The conflict between Anyanya and Khartoum went on for almost a decade. In 1972, under the Addis Ababa Agreement, the rebels put down their guns in exchange for promises of autonomy.

Tensions hardly dissolved, though, and the South remained a hotbed of more-or-less organized armed activity. In 1983, when Nimeiry allied with the Islamists and imposed sharia on the South, opposition against Khartoum quickly intensified, kicked off by a mutiny in the city of Bor. But this oppo-

sition, led by the SPLA, would be different than the last—radically so. The SPLA, like Anyanya, mobilized beyond ethnic boundaries, but it also broke the North-South border, reaching out to residents in the Nuba Hills, in Southern Kordofan and the Southern Blue Nile. Many of the peoples the SPLA organized were non-Arab—Nuba, Beja, and Fur, for example—but, as the late Mansour Khalid, Nimeiry's foreign minister at the time of the Addis Ababa Agreement and an early SPLA member, put it, this reflected not a rejection of Arabs but an effort to mobilize "the marginalized regions of the country." An Arab and devout Muslim who rejected political Islam in favor of Garang's Sudanist message, Khalid made clear that the SPLA "began as an all-embracing national movement, open to all Sudanese." It was clear to Khalid that Garang's SPLA was no threat to Arabs, for what the SPLA was challenging was "not Arabism as a cultural identity but as a political supremacy based on racial heredity." Although some considered the SPLA's championing of dispossessed Africans as evidence of a racist anti-Arab ideology, Khalid believed "the ethnic diversity advocated by the [SPLA] is nothing but respect for cultural specificities rather than the perpetuation of ethnicity as a source of dissension."[33]

Garang won over the likes of Khalid through his inspiring advocacy of a New Sudan that, in theory, would accommodate the diversity of the country in a single political community of equal citizens. At the historic Koka Dam conference in March 1986—a preliminary dialogue between the SPLA and the National Alliance for National Salvation, a Northern coalition that also opposed the government—Garang laid out his objective. He did not focus on Southern problems and Southern solutions. "Our major problem," he said, "is that the Sudan has been looking for its soul, for its true identity." This search implicated the whole of Sudan, not a particular race or tribe. The Sudanese, he went on, proved unable to find that identity "because they do not look inside the Sudan, they look outside." Thus "some take refuge in Arabism, and failing in this, they find refuge in Islam as a uniting factor. Others get frustrated as they failed to discover how they can become Arabs when their creator thought otherwise. And they take refuge in separation."

Garang's critique of Arabism did not, however, imply a critique of those identifying as Arabs, the Arabic language, or Arabic culture. The problem was Arabism as a political project equating the Sudanese nation with Arab

identity. As far as Garang was concerned, the New Sudan was home to Africans, Arabs, and others but did not belong to any of them. As he put it:

> We are a product of historical development. Arabic (though I am poor in it—I should learn it fast) must be the national language in a New Sudan, and therefore we must learn it. Arabic cannot be said to be the language of the Arabs. No, it is the language of the Sudan. English is the language of the Americans, but that country is America, not England. Spanish is the language of Argentina, Bolivia, Cuba, and they are those countries, not Spain. Therefore I take Arabic on scientific grounds as the language of the Sudan and I must learn it. . . . We are serious about the formation of a New Sudan, a new civilization that will contribute to the Arab world and to the African world and to the human civilization. Civilization is nobody's property. Cross-fertilization of civilization has happened historically and we are not going to separate whose civilization this and this is, it may be inseparable.[34]

What was lacking, then, was a common political identity that could accommodate all of Sudan's cultural diversity. As Garang told an audience in August 1989,

> I believe that the central question, the basic problem of the Sudan is that since independence in 1956, the various regimes that have come and gone in Khartoum . . . have failed to provide a commonality, a paradigm, a basis for the Sudan as a state; that is, there has been no conscious evolution of that common Sudanese identity and destiny to which we all pay undivided allegiance, irrespective of our backgrounds, irrespective of our tribes, irrespective of race, irrespective of religious belief.[35]

Garang was especially at odds with other Southern leaders over the issue of power sharing. Many Africanists sought to improve the lot of Southerners through decentralization—the devolution of power to each ethnic group. But Garang understood that power sharing would only deepen tensions by reifying the sense of ethnic boundaries and encouraging people to look out for

themselves rather than a wider body politic. What was needed was not separate spheres but instead a single state and government in which all could participate. "The method which we have chosen in order to achieve the objective of a united Sudan is to struggle to restructure power in the center so that questions as to 'what does John Garang want' do not arise, so that questions as to 'what does the South want' do not arise," he explained.

> I totally disagree with this concept of sharing power, for [power] is not something in a *siniya* [food tray]. I use the words restructuring of political power in Khartoum rather than power sharing because the latter brings to mind immediately the question, 'Who is sharing power with whom?' And the answer is usually North and South, Arabs and Africans, Christians and Muslims. It has the connotation of the old paradigm.[36]

When Garang spoke of the old paradigm, he had in mind the nationalist imagination bequeathed by the colonizer. Arabists built a political project on the foundation of a minority cultural identity; Islamists and Africanists built theirs on the foundation of majority cultural identities. Garang's quest for political unity was based not on the valorization of any one cultural identity, majority or minority, but on respect for cultural diversity.

Garang was not just a political theorist; he was also a political strategist. The lesson he took from the first phase of the civil war was that the demand for an independent South Sudan had enabled Khartoum to rally the rest of the country against the South. He therefore concluded that the SPLA needed to formulate an all-Sudan objective so as to mobilize disgruntled forces throughout the country into a single front and thereby isolate the power in Khartoum politically. Events would affirm the wisdom in this approach. The SPLA earned some of its strongest support in the border areas just across the North-South boundary (Southern Kordofan, Blue Nile, Nuba Mountains) and in the western part of the country, in Darfur. The border areas were so moved by the unity idea that—despite having no love lost for Khartoum—their residents voted against South Sudanese independence in 2011. Independence, they believed, betrayed the common struggle for a New Sudan.

Garang himself arguably betrayed that quest, and certainly his movement failed. As I explore below, the SPLA splintered, and Garang sabotaged

himself with deeds that defied his words. But those words were inspiring nonetheless. In July 2005, three weeks before he died, Garang arrived in Khartoum to take office as first vice president of Sudan. Earlier that year, the second phase of the civil war had officially ended with the signing of the Comprehensive Peace Agreement, and now Garang was being given an opportunity to leave his mark on the government. The crowd that gathered to welcome him numbered more than a million people and cut across all conventional political divisions: North-South, Muslim-Christian, Arab-African. It had the hint of something new.

Ethnic Mobilization and Conflict after 1983

Whatever the good intentions of Garang and the early SPLA, the movement after 1983 devolved into infighting. Much of that infighting was contoured by tribe, as various ethnic groups sought greater voice in the movement and opportunities to set an eventual postwar agenda. Two issues figured prominently in these struggles: the demand for ethnic power sharing in the new state to follow the war and disagreement over whether to seek South Sudanese independence or else countrywide reforms that would accommodate the interests of South Sudanese rebels.

It is easy to make the mistake of believing that these internal conflicts reflect timeless tribal enmities. This is a function in part of colonial anthropology. Scholars such as Edward Evans-Pritchard depicted South Sudan as a land inhabited by an array of nomadic "tribal" groups, mainly Nuer and Dinka, relations between whom were said to be marked by endless cycles of violence precipitated by competition over water and pasture. Not only were the Nuer and Dinka resource rivals, but the Nuer were communistic and opposed all authority, while the Dinka, reassuringly, believed that people were "not as equal as sticks in a match box."[37]

Evans-Pritchard was wrong, of course. He was wrong about the Nuer—they may not have listened to centralized authorities, like government-appointed chiefs, but they followed their own leaders, among them spearmen and rain-makers. And he was incorrect in thinking that the Nuer and Dinka had been always at odds. Anthropologists are not historians. The history of the region suggests a more complicated story. Every step forward in the recent history of the region has been marked by a coming together of Dinka and Nuer in a common cause. The anti-British White Flag League

was founded by Ali Abd al-Lateef, a Dinka, and Abdel Fadil El Maz, a Nuer. Collaboration between two former army officers, Kerubino Kuanyin Bol, a Dinka, and William Nyuon Bany, a Nuer, led to the 1983 Bor mutiny and the founding of the SPLA.

But if tribalism in Sudan was neither timeless nor rigid, it was nonetheless a reality thanks to colonial governance. And that reality was hard to shake. The experience of the SPLA shows how inherited colonial structures limited political agency in the South long after the colonizer departed, even as certain political agents sought in turn to overcome and transgress these structural constraints. At the same time, leaders of the movement have broken away over personal ambitions. These many tensions have erupted repeatedly, leading to schisms.

The first schism unfolded in the early stages of the founding of the SPLA over the key issue of the direction of the struggle. Should the SPLA strive for an independent South Sudan, in line with pre-1972 objectives, or should it pursue the New Sudan—a single, reformed political union? In this case, the disagreement was not tribalized; each side drew support from across ethnic boundaries. Garang and fellow Dinka Kuanyin were joined by Nyuon, a Nuer, in calling for a New Sudan. Meanwhile Samuel Gai Tut, a Nuer, teamed up with Akuot Atem, a Dinka, in seeking Southern independence.

The second split came in 1991 when Lam Akol and Riek Machar—senior SPLA commanders in, respectively, the Upper Nile and in Nasir, along the Ethiopian border—broke away from the movement. They wanted Garang out, claiming that he had tied the SPLA too closely to the government of Mengistu Haile Mariam in Ethiopia in exchange for Ethiopian support. They further accused Garang of forestalling internal reform by refusing to democratize the SPLA. Finally, these rebels within the SPLA sought an independent South, not a new Sudan. They were unsuccessful in pulling the SPLA as a whole toward their position, so they formed a splinter faction, SPLA-Nasir, under Machar's leadership.

What came next was a massacre in Bor, in which forces under the command of Machar, a Nuer, killed about 2,000 Dinka civilians. More than any other single event, the 1991 massacre has shaped the collective psyche of the present generation of South Sudanese, persuading them that Dinka and Nuer are indeed blood rivals. It is noteworthy that this source of national trauma does not originate from the struggle against Khartoum but from the failure

to handle conflicts within SPLA. The tensions of 1991 were never resolved; that resolution has merely been deferred. Broad-based before the Bor massacre, SPLA-Nasir narrowed into a more-or-less exclusively Nuer interest group afterward.

In 1993 the Nasir faction renamed itself SPLA-United, and the following year it was reborn as the South Sudan Independence Movement—a group whose goal was directly at odds with Garang's. In a further mark of factional discord, Akol was kicked out. Then, in 1997, Machar's faction seemingly abandoned its radicalism by signing the Khartoum Peace Agreement with the Sudanese government. Other rebel groups—including the Equatorial Defense Force, Akol's faction, and another SPLA faction under Kuanyin—joined in signing the agreement. The collaboration was good for Khartoum, enabling the Sudan government to pump oil from Southern fields, but the agreement broke down in 2001. Machar and some of his forces returned to the SPLA, while others stayed behind in Khartoum, where, led by Paulino Matieb and other generals, they formed the South Sudan Defence Forces (SSDF), an organization that grew formidable under the patronage of the Sudanese army.

The SSDF integrated into the SPLA in 2006, after Garang's death and the official conclusion of the civil war. The integration presented a major challenge to the integrity of the SPLA. Like the SPLA, the SSDF was an umbrella military organization. The two groups were also comparable in size. And, after all, the SSDF had encompassed many rebels who had broken away from the SPLA. Yet the merger—it was referred to as a "reconciliation"—was accomplished under the leadership of Salva Kiir, Garang's successor as both first vice president and the head of the SPLA. Reconciliation was something of a charade, since it brought about new sources of discord. Now under the SPLA umbrella was a majority Nuer army with a mainly Dinka officer corps. And no one really knew what the purpose of reconciliation was, as the reintegrated SPLA had no clear political strategy. The question still stood: Was the goal a new Sudan or an independent South Sudan? Under these circumstances, there was no common political program to unite various factions, and the SPLA devolved into a coalition of ethnic militias, each loyal to its own leaders.

The absence of a common political program reflected not only Garang's death—the great unifying figure was gone—but also his personal shortcom-

ings. Above all, Garang was unable to subordinate his ambitions to the struggle for the new Sudan. So long as internal reform of the SPLA was delayed in the interest of keeping his hold on power, every difference, whether ideological or personal, led to fracturing and the spilling of more blood. Each bloodletting was resolved through precisely the sort of strategy that Garang knew would miscarry: power-sharing. Dissenters within the SPLA gained positions and resources, but this only exacerbated divisions. Internal rivals learned that the route to power was through schism; the party's governance structures allowed no other avenue. The failure to build political consensus led to a failure to build an institutional culture that would filter and manage differences among leaders. This contaminated the SPLA's political institutions and, above all, its men at arms.

In essence, Garang managed to articulate a popular idea about political union but not to follow through on it. This was the stuff of at least partial success. So long as the call for a new Sudan continued to generate support in different parts of the country, Khartoum's ability to wage a full-scale military campaign was restrained. That kept the rebels afloat long enough to start making demands—demands that would be written into Comprehensive Peace Agreement that Garang helped to negotiate in January 2005.

The agreement called for increased Southern autonomy under a new, interim constitution and established that a referendum on independence would take place in 2011. Pro-secession forces would have six years to convince a majority of Sudanese, Northern and Southern, that the South should be independent and to build the fundamentals of the new state that would emerge. Why did Garang accept a peace plan that allowed the possibility of independence? Perhaps he believed that when the time for a vote came, his side would prevail. As the charismatic figurehead of the unity movement, he might have moved the public in the direction of the New Sudan. But there were other reasons, too. As I detail below, the Comprehensive Peace Agreement reflected the interests of its Western brokers as much as it did those of any Sudanese party. Garang and other Sudanese negotiators were under pressure to do what the Western powers wanted—above all, to assist them in the post-9/11 war on terror—lest wealthy foreigners withhold badly needed political and economic support.

Garang never got a chance to press his own case during the six-year transition. Many believe that the possibility of a new Sudan died with him, and

the birth of an independent South Sudan became an outcome foretold. But it takes more than independence to make a state. What emerged from the 2011 referendum was a shambles, a dominion of rival SPLA factions operating as tribal authorities. It is hardly shocking that this volatile brew exploded quickly into extreme violence. Nor is it shocking that, in the aftermath, nothing changed politically. As we will see, in the wake of the massacres of 2013, political change was not even considered. Instead NGOs turned to their rote procedures of naming and shaming, of transitional justice—of redoing Nuremberg yet again.

South Sudan: A False State

South Sudan is widely regarded as a failed state, and it is not hard to see why. In December 2013, not three years after the referendum that made South Sudan independent, the new polity descended into horrifying violence. In just three days, militias slaughtered an estimated 20,000 civilians in the capital of Juba.[38]

The killings were carried out along ethnic lines, beginning with Dinka militias going house to house in Nuer residential areas. The political objective was to cleanse Juba of its Nuer population and polarize the country's 11 million inhabitants along ethnic lines. Previously, South Sudan had seen ethnic violence, as in 1991. But the political crisis was not primarily contoured along ethnic lines. Rather, splinter groups in the SPLA had jockeyed for power and competed over the question of autonomy or the New Sudan. By 2013, however, the violence was definitively tribal. As a displaced person in a UN compound told the African Union Commission that investigated the violence in 2014, "They put a knife into what bound us, turned the crisis from political to ethnic."[39] Dinka militias also targeted Nuer politicians. On December 16, tanks pounded the home of the erstwhile vice president, Riek Machar, killing more than a dozen of his guards, though not Machar himself. Overpowered, Nuer soldiers fled the city.

Nuer communities outside Juba responded to the killings with a rebellion. Calling themselves the White Army—a reference to the ash from burned cow dung with which young Nuer smear their bodies—some 50,000 armed Nuer youth converged on the city of Bentiu and ransacked it. From there they

marched on Juba. The White Army was motivated by a deep sense of grievance over the massacres and by the promise of plunder. Its contingents left a trail of carnage in the towns and villages they swept through. When the government faction later retook these towns, there was further destruction, perpetuating a cycle of revenge. Rape became a regular occurrence in battle zones. Mothers taught their daughters how to survive.

The Western press was at a loss to explain what had happened. How had the cherished hope of self-determination so rapidly deteriorated? The fallback explanation was tribalism. Militias loyal to a Dinka-led government had massacred Nuer, and now the government was facing a Nuer-led rebellion. This was all that needed to be said. This view evoked the conventional wisdom that Africans are quick at learning the arts of war but genetically resistant to those of peace. The claim of tribalism is simply more convenient, more digestible to ignorant Western audiences than is the truth, which would implicate the powers that politicized Dinka and Nuer identity and later, in 2005 and after, ensured that South Sudan would be born in chaos.

A clue to the source of the violence lies in the tanks that rumbled onto Machar's property and killed his guards. They were government tanks, under the flag of the SPLA. Yet Machar was himself an SPLA politician, and his guards were SPLA soldiers. Although the violence of December 2013 and after broke along ethnic lines, it originated not in ancient hatreds but rather power struggles within the SPLA—power struggles ordained by the Comprehensive Peace Agreement (CPA) developed in 2005 under the oversight of Western powers and intensified in the years leading to the 2011 independence referendum.

It is wrong to think of South Sudan as a failed state, for the simple reason that, ten years after independence, South Sudan is not and has never been a state. South Sudan has a nominal government and has never had an election. Salva Kiir, the internationally recognized president, was never elected to his office, not even in the sort of sham process that routinely passes for democratic practice in South Sudan. There is no bureaucracy or judiciary, no state army. There are militias whose forces wear SPLA uniforms but who are loyal to their paymasters, not to the state.

The post-referendum South is an internationally recognized boundary inside of which assorted leaders hold power that stems from their capacity to distribute patronage—a capacity enabled by the outside powers that insist

South Sudan is a state. The CPA turned over South Sudan—and the wealth provided by Africa's second-largest oil reserves—to the generals of the Southern militias, whether they fought for or against Khartoum in the civil war. Each ministry was allocated to a different general, who filled it with his men and sometimes women. One can hardly conceive of a better way to avoid the hard work of reforming the state inherited from colonialism—a newly minted minister will do what he can to retain his power, after all. The creation of South Sudan therefore became an opportunity merely to affirm the colonial structure, as each tribe took native administration to its logical conclusion by laying claim to its own district within the context of the so-called state.

In other words, the situation in supposedly independent South Sudan is essentially a continuation of indirect rule. The territory is dominated by chiefs—armed men, whose authority is legitimated by foreign writ rather than internal consent. The chiefs rule despotically, through graft and violence, and can maintain control as long as the right foreign powers are happy—happiness that the chiefs guarantee through oil production and alliance in the war on terror. The notion that there is a self-governing state of South Sudan is a juridical fiction.

The Comprehensive Peace Agreement and the Failure of Transition

The CPA of 2005 was negotiated between the SPLA and the Khartoum government and brokered by the Troika of the United States, the United Kingdom, and Norway. It was premised on the assumption that all—and only—those with the capacity to wage war had the right to determine the terms of the peace. Both the talks and the agreement included every group with a fighting force, but every nonmilitarized party in Sudan and in the territory that in 2011 became South Sudan was marginalized. The international NGO community, prominent media personalities such as George Clooney, and activists like John Prendergast cheered from the grandstands, as civilians were excluded from the life-changing negotiations.

The negotiations and transition were a constant parade of bias. The SPLA, protected by the global acknowledgement of its status as a victim, was coddled and absolved of responsibility for its own violent missteps, the assumption being that a victim can do no wrong. Whereas the ruling party in the North was rightly and roundly criticized for election fraud in 2010, criticism

was muted when the SPLA perpetrated its own fraud in elections in the South that same year. When the 2011 referendum on self-determination returned a 99.8 percent "yes" vote in the South, the "international community" lauded the result. After all, it was what the Troika wanted. This was a foretaste of how electoral politics were likely to operate with the ruling party doubling as the army and backed by international patrons whose interests in South Sudan had nothing to do with its people.

The CPA perpetuated the worst legacies of the liberation war, including the SPLA's refusal to countenance internal reform. The CPA endorsed the power of the SPLA—the power of the gun—at the expense of the political class, civic associations, and the civilian population. That meant that, if a new state were formed, it would be in the hands of an unaccountable clique whose only experience was in armed struggle. When that state was born, with Kiir at its head, the new regime only needed the support of foreign leaders and activists. As Lam Akol, who became a leading opposition politician in the South, explained using another acronym for the SPLA, the "CPA gave SPLM the power it could not have got by political means. It made it possible for SPLM to entrench itself in the agreement. They gave themselves all the power and marginalized everyone else. The state became the SPLM and the SPLM became the state." (SPLM refers to the Sudan People's Liberation Movement, a term used interchangeably with SPLA but emphasizing its political rather than military activities.)

Before the referendum, the SPLA had been open to negotiations with other Southern parties, whose cooperation and support it would need during the process leading to independence. The last such talks were held at the All-South Sudan Political Parties Conference in October 2010. The conference agreed that, should the referendum pass, a transitional government of national unity would be composed of all political parties and headed by Kiir. The parties also agreed to hold a constitutional conference and then an election for South Sudan's president. But after the referendum, the SPLA dispensed with the nuisance of opposition parties; it hardly needed them, given that it could count on firm support from the Troika and other foreign players. "Following the referendum," Akol explained, "the SPLM Political Bureau met and said they have an electoral mandate and will rule until 2015." There would be no presidential election. The SPLA also reneged on the promised constitutional conference. Both moves served to solidify the interim

regime into a permanent one. "The consensus built in 2010 was shattered," Akol said.

Akol went on to contrast 2005, the year the CPA was signed and the transition began, with 1972, the year the first civil war ended with the signing of the Addis Ababa Agreement: "The agreement in 1972 was negotiated by a party . . . which did not carve out for itself all the power. We had a vibrant but plural power even though there was a single party in Khartoum. But SPLM got power through an agreement, not through elections. After excluding everyone else, they began to exclude themselves."[40] He was referring to the factionalizing of the SPLA, whereby the army and ruling party turned on itself and thereby fostered the crisis that exploded in 2013.

A Chaos of Feuding Militias

Dissension was built into the structure of the SPLA. It was not a state army; it never had been. As rebel forces, SPLA units mobilized for individual operations and then disbanded. As the armed forces of South Sudan, the SPLA grew more formal at the top, with command structure and training procedures. But it otherwise remained a loose agglomeration of tribal militias: men with guns and officers with their own ideas. Central command did not even have a complete roster of soldiers. On the eve of the violence, the SPLA was said to comprise roughly 240,000 soldiers, including handicapped and retired fighters who remained on the payroll. But no one knows the true number. The SPLA knew who its commanders were—there were reportedly 700 generals in the revealingly top-heavy force, about three times as many generals as in the US Army, which comprises 1.3 million soldiers—and those commanders had their own rosters of soldiers. But central command did not have access to this information. Juba sent money and orders to commanders in the field, and it was the commanders who decided what to do with the money—and the orders. They were the paymasters, which means soldiers' loyalties stopped with them. If their orders defied those of central command, the soldiers knew which to follow.

The SPLA also was not especially discerning in absorbing militias. Instead it tried to coopt competitors for short-term gain, resulting in the introduction into its ranks of the sort of charlatans and self-aggrandizers who are prepared to be coopted. For instance, after a schoolteacher named David Yau Yau lost a 2010 election for a state assembly seat and charged the SPLA with

fraud, he assembled a militia and led a secession movement—only to then cut a deal whereby the SPLA would absorb his militia while he remained its commander. This tinpot leader of men used their lives and those of civilians to extort a cushy gig. As General Kuol Manyang Juuk, who also served as minister of defense, admitted, "Most of these militias are illiterate, led by illiterate major-generals. Even today, we have not integrated them." He compared trying to organize the army to "dealing with NGOs in South Sudan, all with their own leadership, each sponsored by a different country."[41]

It wasn't just charlatans the SPLA welcomed. It was also insubordinates and enemies. Peter Biar Ajak, an advisor to Kiir, noted that, during the transition between the CPA and independence, "Several warlords rebelled continually . . . , leaving and rejoining the S.P.L.A., which reinforced their own power with their loyalists, rather than the army's authority."[42] And with the violence of December looming, General James Hoth Mai, chief of army intelligence, noted that within the SPLA were "different factions of militias that were fighting alongside the Sudan government"—Southerners who were until recently at war with the men ensconced in central command. "We did not build a national army," he concluded.[43]

The factional breakdown ran straight to the top. High-ranking politicians such as Akol had personal armies under the SPLA umbrella. Even the presidential guard was a many-tendrilled institution. "There were those who guard the president," Kuol explained in 2014. "Riek had a personal force. Paulino Matieb, deputy commander in chief of SPLA, had his own guards from his own area, Unity State. They too were part of the presidential guard." Kuol understood what it meant to mistake armed men for an army. It meant that South Sudan was "not a state and yet it will have the powers of a state."[44] Powers including the capacity to carry out extreme violence.

The donor community, failing utterly to understand what was happening in South Sudan, tried to solve this problem through one of its one-size-fits-all strategies: disarmament, demobilization, and reintegration. DDR is a routine feature of UN Peacekeeping Operations in post–civil war situations. In South Sudan the two-year UN program targeted 90,000 ex-combatants at a cost of US $55 million. By 2012 just 12,000 soldiers had agreed to leave their posts and turn over their weapons. The failure of DDR is no mystery: the lowest-ranking soldier in the SPLA received about $140 a month, whereas most civilians lived on about $1 a day, if not less. Soldiers were not about to

sign up for poverty. And those who did sign up were not going to stay out of the army long. "You give him money under DDR; when the money is finished, he will go back to the bush," Hoth said.

Hoth also noted the proliferation of small arms despite DDR. "You cannot demobilize someone who has a gun," he pointed out, and guns were everywhere.[45] Soldiers "stayed in their own housing with their own guns," Kuol explained. "The militias before the war, neither absorbed nor known, also had guns. Soldiers were relieved from the army but [were] still with their guns."[46] Speaking to the African Union's investigative commission, an unnamed civilian testified, "We are all insecure: society is infested with small arms."[47] Armed men used their weapons to terrorize civilians. Taban Romano, a legal aid attorney with the South Sudan Law Society, told the AU Commission that "people go for revenge killings because the justice system is very weak, [so they feel they] must take the law into their own hands." He noted that soldiers were turning on the public, stuffing civilians into ad hoc prisons. "A lot of detention centers have been created for civilians," he said.[48] To the unnamed witness, it was clear that the army was there not to protect the people but rather to secure the ambitions of its commanders:

> I am asking myself: do we need an army? The army has turned its guns against us—why have innocent young men turned these guns against innocent civilians? Because to be a politician you have to be a general, to be a general is also to be a businessman. The most important thing is security. We will need to involve demilitarization of the population. But rearming is going on. New groups of people are coming into the army. When was this recruitment done? Why?

A Colony Restored

Tribalism—the politicization of ethnicity—was not the only vestige of colonialism retained in South Sudan. In the course of the transition from the CPA to the 2011 independence referendum, and in the years since, South Sudan became a dependency of foreign powers. These included states, whose interest was primarily in South Sudan's oil deposits and in securing assistance in the war on terror, and international organizations such as the United Nations.

The United Nations Mission in South Sudan (UNMISS), the peacekeeping mission established by the UN Security Council in July 2011, was supposed to assist Juba in developing the bases of a democratic, multiethnic state. Instead the UN's functionaries tried to do the state's work for it, while South Sudan's ministries carried on as tribal fiefdoms. The UN called out this "corruption," never acknowledging that, far from corruption, tribal despotism reflects the correct functioning of administrative institutions under the logic of colonial modernity. The UN operators slotted easily into this logic, taking on a role similar to that previously occupied by the British colonial administration. While the UN did not deploy disciplinary violence as the British had, it did become the operator of the central state, while the ministers of South Sudan took on the role of native authorities. From their perches in the so-called government, the ministers and their ground-level aides used oil money and their armies to control tribal homelands. The UN had its own money, from donors, and ran a number of statewide projects on its own, as an authority separate from the central state and having minimal contact with its ministers and local functionaries. In effect the UN oversaw implementation of the CPA and various development efforts while giving its blessing to the ministers to go their merry way. True, it was a grudging blessing. While the British happily relied on native authority, the UN called it corruption, even while facilitating it.

Just how did this system work? As a participant in Caucus of Women, a South Sudanese NGO, explained in testimony to the AU Commission, "Employment in the ministry, from the director general to the cleaner, is for only one tribe. When a minister is appointed, his first question is how many people from his tribe are there in the ministry. If he thinks them not enough, then some others are dismissed without due process and tribespersons are appointed." Better trained and more experienced cadre were available, but they were denied employment on grounds ranging from not having participated in "the struggle," to having worked in "the North," to "speaking Arabic but not English."[49] As for the skilled bureaucrats who managed to hold onto their jobs, they were simply ignored. The editor of the South Sudanese newspaper *Citizen* told the AU Commission, "There were lots of [trained] people attached to each ministry for the past eight years. But there is no political will to implement what has been recommended."[50]

The resulting gaps in technical capacity were filled by donor-driven international NGOs and other international organizations. But that is all they did. Never did UNMISS even attempt to fulfill its grander mission, which Hilde Johnson, the director of the effort, described as "state-building and nation-building." Nation-building, of course, had already been achieved under colonialism and through its intellectual inheritance. As for state-building, the program Johnson administered was designed to foster the opposite: dependency. The money came from donors and was placed in the Capacity Building Trust Fund, a mechanism operated by UNICEF and administered by an international accounting firm. The South Sudanese government had no control over the money. "I argued that NGOs and UN agencies had to be major beneficiaries of the Multi Donor Trust Fund and help to implement programs 'on contract' from the government," Johnson explained. "Such an agreement could facilitate continuation of UN and NGO programs in the South, with no gaps, at the same time ensuring government leadership and ownership."[51]

The trouble is that, in fact, the UN and other NGOs kept the leadership and ownership for themselves. "International donors," presidential advisor Peter Ajak wrote in the *New York Times,* "deployed legions of foreign technical assistants who, eager to showcase immediate results, ended up doing everything themselves, transferring little know-how to South Sudanese civil servants."[52] Hiruy Amanuel, an Ethiopian who served as director of the Political Department of UNMISS, remarked on how UN paternalism and South Sudanese dependence fed one another: "The internationals resist government attempts to take control and yet complain that the government leaves everything for them to do."[53] When the AU Commission asked Johnson what went wrong—why South Sudan had fallen apart on the UN's watch—she laid the blame elsewhere: "The CPA avoided questions to do with intra-South Sudanese tensions."[54] This is not wrong, exactly, but a lot is missing. Pointing to intra-South Sudanese tensions is a way of ignoring the international community's failure to live up to its promise of assisting South Sudan in state-building, while conveniently omitting the role of foreign actors in fostering said tensions, including through the CPA itself.

And so corruption—or more precisely, native authority—was allowed to run rampant. Oil, which is the backbone of the South Sudanese economy,

accounting for over 90 percent of its export income, is an easy source of graft. Haile Menkerios, another Ethiopian and former UN special representative to Sudan and South Sudan, told the AU Commission, "Oil revenue for Sudan as a whole was $50–60 billion from 2005 of which 50 percent came to South Sudan. There is nothing to show for it." He noted that oil sold on the spot market—that is, oil purchased with cash for immediate delivery to the buyer—is especially likely to serve corrupt interests. "None of the spot market money got into the bank," he said. "It is divided between individuals."[55]

The question for the donors and international organizations is why they continued to pretend, under these circumstances, that South Sudan was any kind of state, even one in the making. While NGOs lauded the heroes of the SPLA, they were circumventing formal procedures in order to line their own pockets—and everyone knew it. In June 2012 President Kiir accused seventy-five top public officials of collectively stealing $4.5 billion in oil money, although the former minister of finance thought the number was exaggerated.[56] Among those accused were ministers who were later detained. In a 2014 interview with the AU Commission, four of these ministers shot back, calling Kiir "the leading corrupt person." They pointed out that "all contracts for roads in Juba town over the past four years were awarded to his own company"—a firm called Hyatt, unrelated to the international hotelier. He began, according to these ministers, by giving Hyatt "a contract of $238 million without the parliament or the ministry or anyone being involved." When Elijah Malok Aleng, the deputy governor of the bank of South Sudan, "objected and blocked" payment of the contract, President Kiir wrote to President Bashir, as the South was not yet independent and its central bank remained under Khartoum's control. Kiir accused Malok himself of public theft and demanded his arrest. "Kiir then made a standing order in the [unspecified] ministry that money to the Hyatt company should be deducted every month from the oil money."[57] The World Bank also accused Kiir and other high-ranking figures of corruption. According to Luk Jo, a former minister of justice, the World Bank's forensic audit of grain sales found that "over 290 companies . . . received millions of dollars without any delivery," and "those who were overpaid" included "the president's own family," along with "business people from his region." In addition, army leaders, ministers, and members of parliament were accused of involvement.[58]

The SPLA under Kiir was an essentially corrupt enterprise. Speaking to the AU commission, former South African President Thabo Mbeki gave an example of what he had learned of SPLA operations.

> George Athor . . . had been quarter master general of SPLA. He got all monies to pay salaries. Salva said he got reports from soldiers they don't get paid. Salva instituted an inquiry, which found Athor stealing money, paying ghost soldiers, but not paying real soldiers. When Salva decided to take disciplinary action, the leadership of SPLA sent a big delegation to say you cannot take action; if you do SPLA will split. Leave it alone. Salva left it alone.[59]

In other words, the SPLA was parceling out the fabric of the state itself. Its agents did so for their own immediate gain; the higher-ups let it happen so that the SPLA would not collapse and, in doing so, undermine their own benefits; and the UN and the donors celebrated the higher-ups as the legitimate rulers of a legitimate state. Outside supporters griped about corruption while empowering the corrupt party. "The fish rots from the head down," as a saying, popular in the region, goes.

It is no wonder that South Sudan descended into chaos. Everyone in control was committed to perpetuating the colonial nightmare, because doing so served their agendas. For the SPLA, tribal government and tribal mentalities were a source of authority and a route to wealth. Meanwhile, the international community perpetuated colonial paternalism both through its programs and through its false beliefs. The self-exculpating notion that tribe was in the marrow of Sudan became the West's excuse for its ignorance. Refusing to understand what colonialism had done to Sudan, the international community upheld the very people—the SPLA—who had the most to gain from weaponizing tribal identity.

Some Parallels: Rwanda and Eritrea

The eruption of tribally organized violence in South Sudan in 2013 is widely considered the most devastating instance of extreme violence in postcolonial Africa, with the exception of the 1994 Rwandan Genocide. At the same time, the secession and independence of South Sudan is one of only two cases of "self-determination" in postcolonial Africa, the other being Eritrean inde-

pendence. What lessons can we draw from the comparison between, on the one hand, Rwanda and South Sudan, and on the other, South Sudan and Eritrea?

Rwanda is a metaphor for political violence in Africa. As such, it was a wakeup call, the instigator of a major shift in thinking. The generation that grew up before the Rwandan genocide thought of violence in Fanonist terms—as the midwife of revolution, social change, and progress. On this view, the revolution supplied political independence, which was itself the end of political struggle and the beginning of a social struggle destined to be won. As long as there was independence, social justice would be achieved. Violence was thus either revolutionary or counterrevolutionary: either it was the violence of those trying to usher in social justice or the violence of those determined to prevent it. No third possibility existed. But Rwanda demonstrated otherwise. The violence of the genocide was not that of the poor against the rich, or of the powerless against the powerful. Instead the poor slaughtered each other, and the rich devoured fellow rich. Both victims and perpetrators understood the violence in ethnic or racial—not class—terms.

There are instructive parallels in these cases. In Rwanda, Belgian colonizers had classified the population into two opposed groups, Tutsi and Hutu (with a third residual group, the Twa), even though the majority of the population was "mixed." Similarly, in Sudan, colonial historiography characterized one group of locals—a portion of those speaking Arabic at home—as Arabs and the rest as Africans. In Rwanda the colonial power set up the minority Tutsi as managers of a state that contained a Hutu majority, while in Sudan the colonial power deputized the Arab minority to run a state with an African majority. The 1959 revolution in Rwanda, with tacit support from the departing colonial power, declared itself a "Hutu Revolution," much as the leaders of post-1956 Sudan saw themselves as the builders of an Arab nation-state. The 1994 "liberation" of Rwanda, with active participation from the Ugandan Army and tacit support from the United States, turned the tables, placing the Tutsi-dominated Rwanda Patriotic Army in charge. Likewise the SPLA fought for decades to create a new political order and, with support from afar, took up power in the aftermath of violence.

The response of the global human rights community was similarly blinkered in each case. Many who wrote about the genocide in Rwanda treated the violence as a "senseless" expression of ethnic hatreds, a cultural phenomenon

born of timeless tribal enmities. Writers such as Philip Gourevitch and Samantha Power exceptionalized Rwanda's violence as a form of "radical evil." They failed to join the likes of Hannah Arendt and Sven Lindqvist in recognizing that extreme violence has a history. Arendt and Lindqvist historicized the violence of the Holocaust; they showed it to be nonexceptional, an outcome decades, even centuries, in the making.[60] Rwanda was not so different. Nor was Sudan, yet the likes of Hilde Johnson could, with a straight face, blame ethnic violence in South Sudan on the CPA's failure to address "intra-South Sudanese tensions"—as though the UN were not involved in implementing the colonial native administration that fostered these tensions in the first place, and as though the Western-brokered CPA did not itself perpetuate tribalism by practically ensuring the permanent, legal division of North and South through secession.

Southern independence points to another constructive comparison, a contrast rather than a parallel. In the aftermath of genocide, Rwanda followed the Nuremberg model by criminalizing perpetrators, but it also bucked that model by maintaining state unity—something that didn't happen in Sudan. In Rwanda, Hutu were equated with perpetrators and Tutsi with victims, even though both sides spilled copious blood—but they were not separated in two different political communities. Hutu were marginalized in the subsequent political process, and the new power ruled in the name of survivors, which meant Tutsi. This was a consequence of the community-level reconciliation process, known as Gacaca, in which alleged perpetrators were forgiven in return for speaking the truth—that is, for implicating others who would not come forward voluntarily, so that they might be dealt with by the law.

In Sudan, of course, the Troika called for the creation of a separate state for victims—that is, for ethnic cleansing. South Sudan is the outcome. Ethnic cleansing occurred in the multiphase civil war, as the South was more and more Africanized, and after the CPA was signed, as SPLA tribal chiefs solidified their authority within the homelands. In return for cooperating in the division of the country, amnesty was conferred on the leadership on both sides of the new border. There was no public acknowledgement of the violence of the multiphase civil war, whether perpetrated by the ruling party in the North or by the party about to take over in the South. The CPA, the for-

eign powers, and the NGOs all sanctioned the ethnic cleaning that created South Sudan.

The comparison between Rwanda and Sudan shows that the colonial narrative affected the settler-native divide in each case but without leading to the same outcomes: there was a single-country solution in Rwanda and a two-country solution in Sudan. Would the continued leadership of Garang in Sudan have made for a different outcome? The difference between the outcomes in Rwanda and Sudan, a unified Rwanda and a divided Sudan, suggests that the situation in South Sudan could have turned out differently had the balance of political forces been different.

The comparison between South Sudan and Eritrea also sheds light on the violent wages of Sudan's status as an epistemologically, if not legally, colonized territory. Eritrea broke away from Ethiopia following its 1991 military victory over the regime of Mengistu Haile Mariam. In 1993, Eritrea became independent, the culmination of a thirty-year struggle. External interests were decidedly absent, as the end of the Cold War reduced foreign interference. With the Soviet Union limping and then collapsed, the United States shed its fear that local independence was merely a Trojan Horse for a superpower rival.

In Sudan the situation was very different. What encouraged the Sudanese government to engage in talks was not defeat at the hands of the SPLA or other Southern fighters but rather the international situation. The United States had chosen as early as 1997 to back the SPLA against Khartoum, and with the onset of the war on terror in 2001, this decision assumed greater significance. The Islamist government in Khartoum understandably felt threatened by the United States, following US aggressions in Afghanistan and Iraq. It was imperative to stay on America's good side, lest Sudan come next. "There is no doubt," Johnson wrote in her 2011 book, "that September 11th was a factor in bringing the Sudanese government to the negotiating table in a serious way."[61]

Once they were at the table, both sides—the Khartoum leadership and many in the SPLA—found good-enough reasons to sign on to the rushed and shoddy CPA. Islamists were convinced not only that they had to do the Troika's bidding but also that, with the predominantly non-Muslim South out of the picture, their grip on the North would be that much more secure.

Meanwhile, Africanists in the South, including Kiir and Machar, saw opportunity in the terms the Troika was pressing. Africanists thought that their fate would be sealed in a New Sudan, as in the old, should they continue to be a political minority. They wanted the referendum. Had the debate been purely internal to Sudan, with only Khartoum and Garang's camp at the table, there might have been no referendum. It is for this reason that many suspect Garang's death was not accidental—that those who stood to gain from independence arranged the fatal helicopter crash to ensure that, instead of a New Sudan, there would be two Sudans: founded on a colonial worldview, shepherded into existence by outside powers, and structured to benefit both those powers and the heirs of customary law and native administration.

Victim's Justice and Decolonization in Sudan

The massacres of 2013 precipitated years of fighting. To date, several hundred thousand people have died and millions have been displaced. Early in 2014, the African Union began looking into what was going on in South Sudan. By the time the AU set up its Commission of Inquiry on South Sudan, the rebellion was in full swing. Ceasefires had come and gone. There was much evidence and testimony to consider.

The findings of the five-member commission are contained in two reports. Four members agreed to sign the majority report. The lone dissenter was myself; I authored the minority report. Two questions divided me from the rest of the commission. The first concerned the scope of accountability: Would the possibility of accountability be restricted to South Sudanese, or would anyone who was in the country at the time potentially be held accountable? The relevant noncitizens were primarily members of the United Nations. A UN force of 7,000 had been introduced into South Sudan on the day of independence in 2011 and remained there through the fighting. The second question was whether the violence would be conceptualized as political or criminal—whether trials would take priority over reform.

On the first issue, I argued that, if there was to be accountability, it could not spare UN forces and their leaders. UNMISS was charged with a "responsibility to protect" the civilian population. Yet all this force did when the violence began was open the doors of UN compounds to civilians who man-

aged to run through its gates. When it came to those outside the gates, the UN force stood by as a passive witness to their slaughter. Why, I wondered, should the nationalities of these forces matter in the face of questions of legal accountability? If UNMISS's goal was to build a state, and if the rule of law is essential to that project, then how can individual UN agents be legally immune from the consequences of their actions? The claim seemed to be that these agents' citizenship—and their status of employment—put the rule of law in abeyance. I could not abide this contradiction, given the UN's preaching about the necessity of state-building. Nor does the hypocrisy end there. How, I wondered, could the International Criminal Court demand that African leaders be responsible for ending a "culture of impunity" when the UN itself was unwilling to hold its own leadership and functionaries accountable for what the AU Commission called "crimes against humanity"?

The testimony we heard clarifies UNMISS's status as a bystander. Among those who took refuge in the UN compound was a Nuer member of parliament, who told us his story. This parliamentarian explained that his family had been targeted the day the violence began. Men wearing army uniforms came to his area asking residents to identify Nuer homes. A neighbor pointed out his house, and when his young son went to open the gate, he was killed by the soldiers. "We ran out of the house and then into the neighbor's house, and then to the UNMISS compound." The man had been living at the compound ever since. "I have not been to my house yet," he said. Speaking to us within the Parliament building, he said, "I come here to work in the daytime and go to the UNMISS compound to spend the night."[62] In effect, the UN's internally displaced persons camp became a haven for members of the governing class. Should the UN and its employees be applauded for saving this politician's life, or should they rather be held responsible for not using the 7,000 troops at their disposal to stop the killing of civilians outside the gate?

On the matter of how to conceptualize and respond to the violence, I could not sign onto the majority report, which called for another Nuremberg. The language of the majority was that of transitional justice, an all-too-simplistic procedure in which violence is identified with individual perpetrators rather than political institutions. Indeed, transitional justice seeks to resuscitate previously existing political institutions, the precise opposite of the needed reform. Transitional justice normalizes violence by calling it criminal, while

giving the political system the opportunity to justify and empower itself by meting out punishment to individual wrongdoers.

Some of the victims, at least, had a different view. Isaah Dow, a church leader, told the commission, "You can go back to 1821 when Ismail Pasha first came to South Sudan," a reference to the Ottoman-Egyptian leadership that overthrew the sultanates. "There have been lots of atrocities since then. There was the history of the slave trade and colonialism. Then there was the war of liberation. But there has been no accountability. We are all children of war."[63]

To think of accountability in a broad way, as Isaah Dow does, is to acknowledge that, more than a breakdown of law and order, the violence unleashed in South Sudan in December 2013 signaled the contradictions of the political order coming home to roost. Why, then, uphold that order by pretending that it could secure justice? It is in this broad sense that we can link the failure of transitional justice with the failure of denazification. In Sudan as in Germany, the creation of a different political order would have made possible an institutional environment capable of nurturing democratic forces in the larger society.

Reinvesting in the system was not the only option in South Sudan. Postgenocide Rwanda followed the Nuremberg model but complemented it with a commitment to the integrity of Rwanda as a single political community. Rather than further fracturing the political community along ethnic lines, Rwandans looked to reform it—they sought to detribalize, though without seeking to democratize. In Sudan, however, the international community called for a solution, the CPA, that led to ethnic cleansing and separation, and when more violence occurred, the answer was transitional justice, whereby victim's justice is the only and final step. Two societies, each shaped by colonial modernity, but only one attempt to detribalize and therefore decolonize, however partially.

Indeed, when an autonomous South Sudan began to organize its local government after 2005, it doubled down on the British colonial policy of politicized ethnicity. Rather than form a democratic government structure on the basis of equal political participation, South Sudan created ethnically demarcated districts in which the "nonindigenous" minority would be denied customary rights. In turn, each minority demanded its own ethnic homeland. Take the example of the Murle district in Jonglei, the largest and the most densely populated of the ten states in South Sudan. With a surface area of

123,000 square kilometers, Jonglei is home to six ethnic groups: Nuer, Dinka, Anyuak, Murle, Kachipo, and Jieh, all peoples with long histories of mobility within the territory. Is it any wonder that, as ethnic districts formed here, defining majorities with customary rights to resources from which minorities were excluded, conflict would arise? That the excluded would organize around demands for their own little homelands where they would be deemed the indigenous majorities? Now Yau Yau's militia rules the Murle in Jonglei—not because Murle have always hated Dinka who have always hated Nuer, but because South Sudan has yet to decolonize its political structure.

In such a context, decolonization begins with the end of tribal self-determination, which itself begins with a shift in political imagination. South Sudanese have learned to believe that diversity means tribal difference. They have been taught that that tribes are just not cultural (ethnic) groups, whose members have migrated over time, but rather permanently separated territorially defined entities, each bound to an immortal homeland governed and reproduced through administrative power. In order to decolonize, South Sudanese must learn to stop imagining themselves as natives of homelands, with rights determined by their indigeneity. They must instead learn to see themselves as equal citizens with equal rights.

Tribal self-determination is the logical endpoint of colonization. Decolonization is political equality under democratic decision-making. It means finally overthrowing the British, overthrowing the CPA, overthrowing the idea of nation and replacing it with the idea of the state without the nation. The state governed by all of its residents, each of whom speaks with a voice no more or less valued than that of any other.

5

THE ISRAEL / PALESTINE QUESTION

In the wake of the Second World War, partition on the basis of ethnic cleansing has been the favored solution to perceived problems of ethnic conflict. South Africa's one-state response to apartheid was the exception, cutting against the grain of Allied logic in postwar Europe and the partitions of Cyprus, the Indian subcontinent, and Sudan.

South Africa offers an especially illumining comparison when considering the case of Israel / Palestine. The South African moment challenged the assumption that cultural difference must translate into political difference, cultural identity into political identity. By contrast, the purpose of Zionism is precisely to make this translation: to make the experience of being Jewish—historically a matter of religious practice, upbringing, and lineage—into an experience of nationhood and to tie this nation to a state. A central tenet of political modernity as it emerged from Europe is that the state exists to protect and further the interests of the nation; in Israel, the state exists to protect and further the interests the Jewish nation, which constitutes Israel's permanent majority identity.

Zionism arguably is the most perfected expression of European political modernity in a colonial context. Zionism is both a product of the oppression of Jews under European modernity and a zealous enactment of European modernity under colonial conditions. Nationalism made the European Jew an impossible presence in Europe, yet, steeped in the same ideology that denied them dignity and equality in Europe, Zionists decided that Jews' only option was a state of their own, so they went elsewhere to build it. When they did, they became the oppressor, for in the nation-state, one can be only

the oppressor or the oppressed, the majority or the minority, the nation or the other.

Throughout its history, Zionism has struggled to come to terms with its colonial self. The Israeli state, since its founding, has professed to be neutral with respect to differences of religion, ethnicity, and nation, claiming to guarantee the civil rights of everyone in the state territory. As a secular, democratic state based in the rule of law, Israel enjoins itself to protect all citizens equally. These are, after all, inheritances of the European state model Israel's founders self-consciously emulated. Yet Israel is also a Jewish state, which, in practice, means that it is neither democratic nor secular nor protective of the equal rights of its inhabitants. Non-Jewish citizens in Israel are second-class citizens in law, officially denied state services and marked for dispossession.

That is what it is to be a non-Jew in the Jewish national homeland. Tzipi Livni, a prominent Israeli liberal politician, puts it this way: "I would like to see the State of Israel be a home for Arab Israelis, but it cannot be their national home."[1] Israel proper, excluding the West Bank and Gaza, is indeed home to Palestinians, almost 2 million of them. But because Israel is not their national home, they do not exercise sovereignty in it. Law assures that they lack the ability to influence state action or petition the state to secure their interests. While any Jew is automatically a citizen of Israel, non-Jews with longstanding ties to the land face huge hurdles to obtaining citizenship. While the state, in league with quasi-public institutions such as the Jewish National Fund and the Jewish Agency, assures that Jews have access to land on which to build and farm, non-Jews have had their land confiscated, are barred from developing their cities, and are routine victims of home demolitions carried out by the Israeli security apparatus. Palestinian Israelis are surveilled by Israeli security agents in their schools and communities, barred from participating in the armed forces, and barred from collecting numerous state benefits that accrue to such service. Palestinian Israelis can vote and run for office, but on highly constrained terms. Merely expressing the desire for equal rights can result in prohibition from running, and anyone in office who questions Israel's favoritism toward Jews can be removed from their position.

Israel's laws reflect the ongoing pursuit of Zionization, whereby the state is made and remade to serve the Jewish nation to the exclusion of others.

But Zionization is more than a matter of law. As a nation-state project, it also involves the collapse of state and society into a single entity. To be a Zionist is not just to believe that Israel should be the Jewish national home; it is to equate the Jewish people with the state of Israel. From this perspective, protecting the rights of Jews the world over to practice their religion (or choose not to), own and make use of property, and generally follow their aspirations in freedom and security requires the existence of a state that is itself Jewish. Preserving Jewish society means preserving the Jewish state. This is the subject of the first section of the chapter.

As in other nation-states, the fostering of the nation is both a legal and social endeavor, for the protected society does not simply exist in nature. It must be created in the image of the nation, which means that its diversity must be eliminated. Non-Jews must be expunged and nonconformist Jews made to conform, so that all people there reflect the Jewish ideal imagined by the national majority. I call this process Judaization and describe it in section two.

The expunging of non-Jews has taken the form of ethnic cleansing, dispossession, segregation, fragmentation, apartheid, and denial of identity. During the 1948 war of independence, Jewish soldiers actively drove out non-Jewish Palestinians from their communities. Some 750,000 were exiled, and tens of thousands of others were displaced internally. All lost their lands and homes, which were "redeemed" by their new Jewish owners. Meanwhile, those non-Jewish Palestinians who remained in Israel were concentrated into zones of military occupation for two decades. In the years since, their towns and homes have been declared illegal, so that they have no recourse when the state confiscates or destroys them. Palestinian citizens of Israel are framed as an internal enemy. Their legal deprivation and immiseration are intended to complete the task begun in 1948.

If Israel is to be a state for Jews only, it must answer the question of who is a Jew. Its answer cannot avoid flattening the diversity of world Jewry into the Jewry sanctioned by the nation. This is the other side of Judaization: eliminating not only non-Jews but also unacceptable forms of Jewishness. The acceptable form is associated with Ashkenazim, who trace their lineage to Yiddish-speaking parts of Europe. Ashkenazim were the founders of the state, who embraced the role of civilizers who bring other Jews into line with the national ideal. In particular, Ashkenazim have sought to civilize *Mizrahim,*

Arab Jews. Arab Jews present a special challenge to Zionism, for Zionism presumes that Arab and Jewish identity are both incompatible and indelibly hostile toward one another—otherwise there would be no need of a Jewish state in historic Palestine. What happens, then, when the Arab is also a Jew? What happens is that the Arab Jew becomes the object of modernity's civilizing mission. Mizrahim have been de-Arabized through the suppression of the Arabic language and associated culture in Israel. Over time, Mizrahim have responded to Judaization almost exactly as intended, as many have embraced a strand of hard-core religious Judaism devoted to the expansion of Israel through settlement. Colonized by Ashkenazim, they have outdone their civilizer, dispensing with his secularism and emerging as the tip of Israel's spear.

The collapse of state and society and attendant projects of Zionization and Judaization were not historical necessities. Jewish people can and do live in freedom and security in states having no Jewish character, states where they are able to exercise sovereignty by taking effective roles in democratic politics. Recognizing this, large numbers of Jews have left Israel for non-Zionist states that do not uphold Jewish privilege. Indeed, there could have been Jewish society in Palestine without a Jewish state. There *was* Jewish society in Palestine in the absence of a Jewish state—in the absence even of an effort to build such a state. This is where the chapter begins, with the Jews who lived in Ottoman Palestine and migrated to it in order to live out their spiritual undertaking in the Holy Land.

Jews who made pilgrimage to Palestine were not settlers. They were immigrants. They chose to become members of a preexisting local political community, not to establish their own. This is the key to distinguishing Zionism from earlier Jewish presence in Palestine. Immigrants are unarmed; settlers come armed with both weapons and a nationalist agenda. Immigrants come in search of a homeland, not a state; for settlers, there can be no homeland without a state. For the immigrant, the homeland can be shared; for the settler, the state must be a nation-state, a preserve of the nation in which all others are at most tolerated guests.

We must keep this settler-immigrant distinction at the heart of our thinking, for doing otherwise perpetuates two serious intellectual errors. The first error claims that religion was irrelevant to Zionism, a claim predicated on drawing sharp distinctions between enduring religious Jewish presence

in Palestine and more recent secular presence. Another error, the flipside of the first, essentializes Zionists as Jews, rendering opposition to their project antisemitic. The first error makes Zionism and Zionization incoherent; the second makes it seem as though the conflict in Israel / Palestine is between Jews and those who hate them, rather than between settlers and the community they dispossessed.

It is not the case that religion was irrelevant to Zionists. Although Israel's Zionist founders were frequently atheists, and although their desire for a nation-state was inspired by modernity rather than millenarianism, their notion of the political community was fundamentally religious. They imagined an ingathering of Jews in the biblical Eretz Israel—the land of Israel. This biblical narrative has repercussions for the settler-native dynamic. In Israel, the non-Jew ceases to be a genuine native, no matter how long she and her ancestors have been in the territory. The genuine native is instead the Jew who left the homeland or was forced out of it, even if millennia ago. In the Zionist worldview, Palestinians are Canaanites who never left home; they are squatters, not natives. With the return of the native, the squatter must get out of the way to make room.

It is thus not the immigration of Jews to Palestine that unleashed an antagonistic dialectic between Jews and non-Jews there but rather the presumption among Jews that they had exclusive rights to the land. Before there was a state Zionists established a Jewish national identity in Palestine buttressed by exclusively Jewish institutions, setting off tensions with locals. After the establishment of the state, that antagonism deepened in the course of Israel's further settlement. Zionists saw the UN agreement to partition the homeland as creating a temporary disconnect between Eretz Israel and the State of Israel, a disconnect to be overcome through further taking of territory and through the Judaization of the society within all the territory claimed by Israel.

Section three of the chapter turns to a particular element of Judaization and Zionization: the de-Arabizing of the Mizrahim and their instrumentalization for the purposes of settlement. Mizrahim have today become essential to the military machine and civil administration in the Occupied Territories. I show how official Zionism's effort to Judaize Mizrahim both undermined Zionism's secular heritage—thereby giving sanction to extremist religious

tendencies in both the Mizrahi and other communities—and heightened the sense of a Palestinian national consciousness by injecting religiosity into settlement and injecting settlers into the Occupied Territories.

The post-1967 occupation brought Israeli Jews into close contact with Palestinians. At the same time, Palestinians in Israel were gaining new opportunities to participate in Israel's civic life. Victory in 1967 and the expansion of settlements in the West Bank increased Israel's confidence, fostering greater openness to the integration of Palestinian citizens. After two decades of captivity under a military regime, Israeli Palestinians began to struggle for individual equality. When they joined with occupied Palestinians in the First and Second Intifadas, this struggle gave way to an effort for group recognition: Palestinian nationhood. This marked a shift in the Palestinian liberation movement. Instead of armed struggle, the First and Second Intifadas and subsequent Palestinian mobilization in Israel and the Occupied Territories has been geared primarily toward political change. The goal has been to undo the Jewish state and replace it with a "state of all its citizens."

The chapter closes with a discussion of possible futures they point to. The possibility of a two-state solution ended with the Oslo Accords of the mid-1990s, at which representatives of the Palestinians gave away sovereignty over their desired future state to Israel. This resulted in growing interest in a range of one-state possibilities, including binationalism, an idea that predates the formation of the state.

Instead of these ideas, I point to de-Zionization, which would sever the state from the nation. The heart of de-Zionization is the realization of Israel as a state for all its citizens. I look to the South African moment as a model for de-Zionization. In South Africa, racial identities were depoliticized so that there would no longer be a permanent national majority alongside a permanent minority. De-Zionization would involve the depoliticization of Jewish and Palestinian identity, so that Israel may be a rights-protecting democracy rather than the servant of a permanent national majority. This eventuality, should it ever come, is not close. Israeli settlers retain the initiative in their effort to maintain the permanent national majority. For now, change in Israel depends on the slow work of changing perspectives and building associations in line with these—an epistemic revolution, in which Jewish Israelis rethink their political identity as historical rather than natural.

Zionization: The Making of a Settler State

At the core of political Zionism is the effort to build not just a Jewish religious community in the Holy Land but a Jewish *state*. This is an essential distinction, whose erasure gets to the heart of the matter: the conflation of society with state is the foundation of the nation-state and its program of rule by the permanent national majority. The nation-state is a state whose laws determine which residents are included in the national majority and whose laws and institutions prioritize the interests of that majority. The nation-state may call itself a democracy, as Israel does, but the majority is not actually determined through political contestation. Rather, the majority is defined pre-politically, as it is the nation itself.

In Israel the contours of the national majority are simultaneously obvious and elusive. On the one hand, the national majority are Jews. On the other hand, who is a Jew? Is a Jew any person who professes to hold beliefs and undertake practices that conform with Jewish theology and religious law (halacha)? Is "Jew" an ethnic label, fit according to lineage and culture? Does it define a political grouping, which coheres around a history of exile in the Diaspora? Implicit in these questions is a further question: Who decides—state institutions applying civil laws or rabbis applying halacha?

A Jewish society, as opposed to a Jewish state, does not have to worry about these questions, for it is not in the business of making citizens or distributing public benefits. The Jewish character of a society comes from the identification and practices of its members. The Jewish character of a state comes from its laws and its policies, and it is here that the questions, ambiguities, and contradictions mount.

Israel, as a state, is practically founded on these ambiguities and contradictions. Israel is a sovereign state with no defined borders. It claims to be guided by universalistic legal principles and the rule of law, but it has no constitution, and its laws are explicitly discriminatory. It is neither a secular state nor a theocracy. It is a home to all Jews, yet its Jews are arranged hierarchically. Ashkenazim constitute the "civilized" political and economic elite, while others—Sephardim, the descendants of Iberian Jews; Ethiopian Jews; emigres from the former Soviet Union; and Mizrahim, or Arab Jews—are cast down.

The Zionizing project began in the early twentieth century, several decades before the founding of the state of Israel. It was a combined effort of European Jews, largely secular, and a powerful patron: the British Empire. These Jews did not choose to settle in Palestine because doing so fulfilled a spiritual yearning for the Holy Land. Other Jews did feel this yearning, and so immigrated to Palestine in order to found and join religious communities that coexisted with non-Jewish communities.

Political Zionists, by contrast, came to Palestine to build a state. They did so because the Jewish question made life in Europe untenable, and because, as converts to political modernity, they understood that the only solution to the problem of their minoritization in Europe's nation-states was a nation-state of their own, elsewhere.

Three Aliyot

The first wave of organized Jewish immigration to Palestine began in 1882. According to Baruch Kimmerling, the aim of the migrants was to establish "religious moral communities in the 'Land of Israel' and to 'worship the Lord' while working the land." They described their relocation to Palestine as aliyah (pl. *aliyot*), a term referring to pilgrimage to the Temple of the Israelites. These "very devout, modern Orthodox Jews," many from Russia and Romania, were "relatively wealthy, family-oriented, apolitical." Most made sure that they came with three professionals: "a rabbi, a ritual circumciser, and an agronomist." Even before building houses and establishing farms, "they erected a synagogue and a ritual bath (mikvah) for the community."[2]

The immigrants of the first aliyah blended into a multireligious society comprising Muslims, Christians, and the Jews of what is known as the Old Yishuv.[3] These communities built their lives first under Ottoman authority and then British. The best estimate of the population of Palestine on the eve of British colonization, just before the First World War is about 720,000. Between 60,000 and 85,000 of these were Jewish. Reflecting their spiritual commitment to the region, the great majority lived in the four "holy cities" of Jerusalem, Hebron, Safed, and Tiberias, with 25,000 to 30,000 in Jerusalem alone.[4]

For Jews motivated by religious feeling, Palestine was a home, but it did not have to be *their* home. They were prepared to share it with others and

leave political leadership to the empires of the day. Living under the rule of the Ottomans and the British was an acceptable option, as long as they had the freedom to practice their faith. Their successors, the second aliyah, saw matters differently. For them, aliyah referred not to pilgrimage but to "the realm of citizenship and national identity."[5] The members of the second aliyah were "driven by a commitment more political than religious." They tended to be younger and less family oriented. They were driven "secular-nationalist-socialist" ideals, which contrasted with "the religious Judaism of their parents' generation."[6]

The second aliyah began after the turn of the century and reached its peak between 1919 and 1923. These dates are not incidental: they mark the first years of British rule in Palestine. Before the First World War, Jewish nationalists had made overtures to the Ottoman sultan but were rebuffed. During and after the war, they found an ally in British imperialism. European powers looked to patronize embryonic national movements in the non-Western world, at least when it suited their strategic interests. The British saw the Zionist movement as a vehicle for destabilizing Ottoman power in the Middle East, the better to swoop in and grab possessions there. It was in the same spirit that the British cultivated the 1916 revolt against Ottoman rule by Sharif Husayn Ibn 'Ali, the hereditary ruler of Mecca. Sir Henry McMahon, the British high commissioner in Egypt, promised Husayn that Britain would support Arab independence, even as the British and French were generating separate plans for the territory promised to the Arabs, per the Sykes-Picot Agreement reached earlier that year. Likewise, the British claimed to be the protectors of the Druze in Palestine, another group they hoped to turn against Ottoman rule.[7]

Britain's alignment was with political, not religious, Zionism. (From here, I shall use "Zionism" as a shorthand for "political Zionism," as it is the latter that, for all intents and purposes, has taken the reins in Palestine since the second aliyah.) This alignment was expressed most influentially in the Balfour Declaration of 1917, which announced that "His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people and will use their best endeavours to facilitate the achievement of this object." With the Balfour Declaration, the British cast their lot not with Ottoman imperial subjects generally but with Jews in Palestine specifically. "Nothing shall be done which shall prejudice the civil and religious rights of

existing non-Jewish communities in Palestine," the declaration read, pointedly referencing Palestinian Muslims and Christians as a "non-Jewish" residue and limiting their legitimate rights to those "civil and religious"—not political.

In the wake of the declaration, Britain supported the Zionist project with zeal. In 1918 the government encouraged the Zionist Commission, led by Chaim Weizmann, to travel to Palestine and lay the groundwork for establishing a Jewish national home. Among other things, the commission recommended establishing a militia to protect Jewish settlers, to which the British agreed. In July 1920 the British government appointed Sir Robert Samuel, a declared Zionist, high commissioner of Palestine. In 1922 the Balfour Declaration became the basis of the League of Nations Mandate for Palestine, which recognized British authority over the territory. The language of the Mandate indicated that British authorities would cooperate with Zionists in achieving "the establishment of the Jewish national home and the interests of the Jewish population in Palestine" and pledged that the mandatory administration "shall facilitate Jewish immigration . . . and shall encourage . . . close settlement by Jews on the land."[8]

Britain implemented three critical measures to secure these ends.[9] First, it enacted the Immigration Ordinance, which aimed to encourage Jewish immigration. Second, it enacted the Land Ordinance, which favored Jewish acquisition of land while limiting Arab property holding. Finally, Jewish-owned companies were granted "concessions" over state and natural resources in Palestine. "These measures supported a sharp increase in the Jewish population of Mandate Palestine, from less than 10 percent in 1920 to nearly 20 percent in 1922 and close to 33 percent in 1947."[10] The ordinances held until the Arab Revolt of 1936–1939, after which the British placed restrictions on Jewish immigration and land acquisition.[11]

The second aliyah created specifically Jewish institutions, which grew in capability under British protection. Their "separatist mode of pure settlement stood on two legs": the Jewish National Fund, which looked to "redeem" land by placing it in Jewish hands, and the Histadrut, an agricultural workers' union open only to Jews. The underlying principle was the valorization of "pure Jewish labor," meaning the creation of a nationally—racially—segregated labor market that would insulate Jewish workers from competition with Arab peasants, whose labor came cheaper. (Around that same

time, Boers in South Africa were creating a similarly segregated labor market to insulate whites from cheaper black labor.) The same Zionists were responsible for huge growth in the kibbutzim, the exclusively Jewish communal agricultural settlements. In time Histadrut became an all-encompassing labor union with its own health care funds, schools, bank, publishing house, newspapers and periodicals, and even canteens for laborers and for the unemployed. All of these developments were for the exclusive benefit of Jews, the better to promote settlers' nationalist goals.[12]

As the number of Jewish settlements increased, conflicts with Arabs arose. The issue was not that Arabs felt animus toward Jews or saw Jews as invaders in what was properly an Arab territory. As Rashid Khalidi has shown in his study of the origins of Palestinian nationalism, struggles between Arab peasants and Jewish settlers long preceded those between the Palestinian nationalist intelligentsia and the settler movement.[13] What Palestinian Arabs resented were Jews who sought to exercise sovereignty, through their exclusive national institutions and, relatedly, through their policies with respect to land. Unlike previous landlords, who had been content to gather rent from tenants who worked the soil, Jewish settlers cleared out the tenants and took direct possession. This generated grievances, for the Arab peasants did not recognize eviction as among the rights of a landlord. The first serious clashes, leading to the death of two Arabs and two Jews in April 1909, led to the formation of the first Jewish militia in Palestine.[14] Jewish militias reveled in a cult of militarism and self-sacrifice. One of the later militia groups, Lehi, summed up this zeal under the slogan "only death will release us from the ranks."[15]

If the second aliyah created the foundations of a separate nationhood, the third (1923–30) began in earnest the project of joining nation to state. Whereas earlier Zionists such as Weizmann had counted on the British and other international players to one day ensure a Jewish state, third aliyah took up that project on its own on the basis of yet more Jewish immigration, labor, and militancy. One of the key institutions of this period was the Jewish Agency, founded in 1929 under the aegis of the World Zionist Organization, which aggressively pursued settlement by encouraging Jewish immigration and establishing towns to house the settlers.

Perhaps the agency's most able and inspiring leader was David Ben-Gurion. Under Ben-Gurion's leadership, the agency built a proto-state; its structures and its people would go on to found the state and serve as its functionaries. Ben-Gurion himself declared Israel's independence and became its first prime

minister. Ben-Gurion was the front person for the largest Zionist tendency in Israel during the second aliyah: labor Zionism. Labor Zionism was baked into the Jewish Agency, Histadrut, and other Jewish national institutions that became pillars of the state. Labor Zionists developed one of Israel's formative contradictions—the notion of a hypernationalist, Jewish, and collectivist state that somehow was also committed to universal liberty. As Ben-Gurion put it in 1935,

> I belong to the Zionist wing that believes in the necessity of power and maximum, unconditional national authority. National authority over labor, national authority over property, even national authority over life—under conditions of human liberty and the value of human life. Everything must be subjected to the authority of the nation. This national authority is called socialism and my comrades and I are ready to accept national authority. . . . This is the goal of the Jewish state in which the Jewish people will control the interests of the individual.[16]

What labor Zionists would not openly admit was that socialism, "conditions of human liberty and the value of human life" were for Jews alone. Other Zionists were less coy. Revisionist Zionism, under the leadership of Vladimir Jabotinsky, was consciously nonsocialist and nonliberal, placing Zionism squarely within the traditions of modern secular racism and settler colonialism. In 1925 Jabotinsky founded the Revisionist Party (Hatzohar) with the goal of building an apartheid state. European race theory was at the center of his platform. As he wrote in the 1913 essay "On Race":

> It does not matter whether 'pure' races exist or not; what matters is that ethnic communities are distinguished from each other by their racial appearance, and it is in this sense that the term 'race' acquires a most definite and scientific meaning. . . . A nation's substance, the alpha and omega of the uniqueness of its character—this is embodied in the specific physical quality, in the component of its racial composition.

Jabotinsky liked to say the quiet part out loud. For example, he overtly compared the Zionist enterprise in Palestine to the white settler quest in colonial

Kenya, in the context of demanding that the British Mandatory government respect his right to organize his settler militia, Irgun. "We said [to the government]: 'Remember that we have children and wives; legalize our self-defense as you are doing in Kenya.' In Kenya until recently every European was obliged to train for the Settlers Defense Force. Why should the Jews in Palestine be forced to prepare for self-defense underhand, as though committing a legal offense?"[17]

Jabotinsky further admitted that natives could not possibly reconcile themselves to the settler political project, and that this project would be carried out through violence.

> Any native people—it's all the same whether they are civilized or savage—view their country as their national home, of which they will always be the complete masters. They will not voluntarily allow, not even a new master, but even a new partner. And so it is for the Arabs. . . . Culturally they are 500 years behind us, spiritually they do not have our endurance or our strength of will, but this exhausts all of the internal differences. . . . They look upon Palestine with the same instinctive love and true fervor that any Aztec looked upon his Mexico or any Sioux looked upon his prairie. . . . Zionist colonization, even the most restricted, must either be terminated or carried out in defiance of the will of the native population. This colonization can, therefore, continue and develop only under the protection of a force independent of the local population—an iron wall which the native population cannot break through.

Zionist "colonization," Jabontinsky concluded, "is self-explanatory and what it implies is fully understood by every sensible Jew and Arab. There can be only one purpose in colonization. For the country's Arabs, that purpose is essentially unacceptable. This is a natural reaction and nothing will change it."[18]

Jabotinsky was hardly alone in recognizing that settlement was a necessarily violent enterprise. Labor Zionists recognized this, too, even as Ben-Gurion spoke of the value of human life. Moshe Dayan, an Israeli general who joined Ben-Gurion's Mapai Party served as one of his cabinet ministers, explained that to be a settler was to be armed.

> We are a generation of settlers, yet without a helmet or a gun barrel we will be unable to plant a tree or build a house. Let us not be afraid to perceive the enmity that consumes the lives of hundreds of thousands of Arabs around us. Let us not avert our gaze, for it will weaken our hands. This is the fate of our generation. The only choice we have is to be armed, strong and resolute or else our sword will fall from our hands and the thread of our lives will be severed.[19]

The nakedly political and nationalist objectives of the third aliyah accelerated the development of Palestinian nationalism. Clashes became unavoidable, and matters came to a head in the mid-1930s. The Arab Revolt of 1936–1939 began with a six-month-long general strike. Khalidi describes it as "the longest anticolonial strike of its kind until that point in history, and perhaps the longest ever." In September 1937, strikes gave way to armed revolt. According to the British military commander in Palestine, "British forces lost control of much of the countryside to armed bands and were briefly forced to withdraw from several of the major cities." Civil administration was, "for all practical purposes, non-existent." The revolt was suppressed, but not before sowing seeds of doubts in British imperial circles. "The British began to question their long-standing commitment to Zionism," Khalidi writes.[20]

In the wake of the violence, Britain's Peel Commission recommended that the land be partitioned, precipitating yet more Arab revolt as well as settler resentment. Among Zionists, it was becoming clear that the British conception of a Jewish national home entailed sharing the holy land, which was not at all what settlers had in mind. They came to see theirs as one of "two rival nationalisms" in Palestine, as Isaac Deutscher put it; they felt sandwiched between the colonial power on one side and natives on the other. In this they were much like English and other European settlers in North America and Boers in South Africa. They understood themselves as a beleaguered group, chafing against the yoke and itching for the nation-state that was their due.[21]

The Second World War provided the chance Zionists were waiting for. As British troops were removed to Europe, the field was left to settler militias, who gained in strength. By December 1947, they were powerful enough to begin driving Arabs from the land. The strength of the settlers reflected both ideology and numbers. A self-selected and politically committed group, the settler population was organized from the outset as a fighting machine. And

while it constituted only about a third of the total population of Palestine in the late 1940s, it "had about a 1.5 to 1 advantage over the Palestinian population in the decisive age group of 20 to 45-year-old men."[22] The result is known in contemporary Palestinian discourse as *Naqba*—the Catastrophe. As Lila Abu-Lughod and Ahmad H. Sa'di put it, "A society disintegrated, a people dispersed, and a complex and historically changing but taken for granted communal life was ended violently."[23]

Immigrants or Settlers?

Standard Israeli accounts of Jewish migration to Palestine blur the distinction between the immigrant and the settler by pretending that the Yishuv has always been Zionist. This narrative involves two conflations. First, it conflates the first aliyah with the Old Yishuv.[24] Second, the narrative conflates the spiritual goals of the first aliyah with the political goals of the second and third. The Old Yishuv was native, the first aliyah were immigrants, and the second and third were settlers.

The likes of Jabotinsky, Ben-Gurion, and Dayan were blind to the difference between themselves and non-settler Jewish immigrants. They assumed that to be a Jewish immigrant in Palestine was to be a Zionist. Unlike the Jews of the first aliyah, they did not consider the possibility that a political community in the territory of Palestine could accommodate non-Zionist Jews. Nor did it seem possible that a Jew in Palestine could be anything but a Zionist.

It was on the basis of such thinking that the Holocaust emerged as a critical opportunity to consolidate the Zionist effort. In the wake of the Holocaust, it might have been enough simply to protect Jews—to ensure that refugees would have homes, be cared for, and enjoy rights. But for Zionists, it was not enough to save and preserve Jewish lives: there had to be a Jewish state, and Holocaust survivors could provide the numerical superiority necessary to realize it. Thus Zionists targeted European Jews in crisis for immigration to Palestine, even though these Jews may have preferred to go elsewhere. Zionists worked hard to prevent postwar Jewish immigration to places other than Palestine, in particular by undercutting US efforts to coordinate a joint Western plan to establish quotas for the admission of refugees to European countries. Zionists argued that Palestine had to be a sanctuary for the Jews, and Europeans, at least, were only too happy to comply

with this demand. Doing so meant that the crime of genocide would be paid for by Palestinian Arabs—people far away, who bore no responsibility. In the words of the philosopher Gil Anidjar, Europe, with the aid and encouragement of Zionists, "exported" the Jewish question to Palestine. European refugees accounted for more than half of the Jewish population in Palestine in 1948.[25]

The notion of a Jewish state would have been unusual to these refugees. To accept this vision demanded a radical shift in Jewish imagination of the self. Jews who survived the Holocaust were part of a globally disbursed spiritual community fashioned by exile. They had already refused the idea that theirs was a secular nationality attached to a homeland, for this idea had been introduced in Europe in the late nineteenth century by Theodor Herzl and other founders of the Zionist movement.

It is widely accepted among Zionists that the Jewish state was necessitated by the Holocaust, yet this claim makes sense only if we accept settler rather than immigrant logic. While the immigrant joins an existing society, the settler is unable to differentiate society from state. From the standpoint of an immigrant—and, indeed, a native—Palestine could have been a refuge for Holocaust survivors in the absence of Zionism; there could have been a Jewish society, a Jewish population, there, without a Jewish state. As the Palestinian-Israeli legal theorist Raef Zreik puts it, "Despite the persuasiveness of necessity, however, Palestinian liberals could [argue] . . . there is a difference between saving the life of Jews and having a Jewish state."[26]

There was a strand of pre-1948 Zionism that thought in a way compatible with this Palestinian liberalism. This was reformist Zionism.[27] This tendency is strongly identified with German Jewish intellectuals, among them some of the most prominent Jewish thinkers of the twentieth century: Judah Magnes, Gershom Scholem, Martin Buber, Hans Kohn, Hugo Bergmann, Ernst Simon, and Hannah Arendt. Magnes was the founding chancellor of Hebrew University, established in 1925. The following year he and others established a small organization called Brit Shalom (Covenant of Peace) calling for "the establishment of a binational state in Palestine, based on equal rights and partnership of Jews and Arabs." These reformists were unquestionably Zionist, in the sense that they thought of Jews as having a distinctive political identity. But they opposed the idea that the state of the Jewish nation would also be a Jewish state. It would be, instead, binational—both Jewish and Arab.

Such a concept was unthinkable to the labor and revisionist Zionists who built the state.

The (restrained) idealism of Brit Shalom crashed on the shoals of demographic reality. They could not persuade fellow nationalists that Jews, who were only 20 percent of the population of Palestine when Brit Shalom was founded, would be able to assure their interests in a binational state. What was to prevent them being overrun by Arabs? Brit Shalom tried to argue that Jews would become the majority, but that was a tough sell under conditions of equality. As we have seen, other Zionists realized that becoming a majority would require force that Brit Shalom was unwilling to use.[28]

The reformists were therefore politically paralyzed, unable to define a way forward. But while they had little impact in practice, their thought remains a rich source of reflection. In one sense, it can be seen as a more promising Zionism that has been lost. But from another angle, reformist Zionism only crystallizes the problems inherent in nationalism. Even Brit Shalom was unable to think of the Jew as an immigrant. Why were the second and third aliyot, to say nothing of post-Holocaust Jews, unable to consider the idea that Jews could be immigrants rather than settlers? That they could live in a state that was not a national home? No one contemplated the state without a nation. After the first aliya, the Jewish immigrant to Palestine was definitely dead, replaced with the settler.

Jews as Natives: Citizenship and the Law of Return

In the Zionist vision, it is not only essential that there be a Jewish home, but it must also be in Israel, a place where Jews can be "returning natives." "Unlike colonial powers," the Israeli legal scholar Ruth Gavison writes, "the Jews were a people in exile, foreigners wherever they went; they were everywhere a minority, and in some places persecuted relentlessly; and they had never possessed national sovereignty over any land but the land of Israel."[29] This formulation is true as far as it goes—Israeli Jews may be considered returning natives, even if their return comes after two millennia. But if Jews are returning natives, Palestinians are natives who never left, who can trace their link to the land for the same two millennia, if not longer.

When thinking of Jews as returning natives, the most illuminating parallel is with the freed Africans in the United States who left to establish a home

and sovereignty in Liberia. Like Jews in Palestine, they claimed to be returning. Like Zionists who sought to create a Jewish state in the national home, they refused to share the national home with the natives who had never left. Both returning groups, Africans and Jews, combined the historical discourse of the returning native with a civilizational discourse that valorized the period of exile (diaspora) as a time that had civilized the native who left—so that the returning native could civilize both the land and the native who had stayed behind.

Jewish indigeneity in Israel is embodied in the Law of Return, which the Knesset passed unanimously in 1950. Under the Law of Return, any Jew is entitled to citizenship upon entering the territory. The person in question need never have set foot there previously; he is effectively native from birth by virtue of being a Jew. In contrast, a Palestinian Arab, even one born in Israel of ancestors who never left the territory, is not considered indigenous. To be counted as citizens, Arabs have to meet legal requirements set out in the Entry into Israel Law of 1952. According to the law, they must have been residents of Mandate Palestine and registered as such by March 1, 1952. They must also have been in Israel during the first years of statehood—that is, they must have been residents "in Israel, or in an area which became Israeli territory after the establishment of the state, from the day of the establishment of the state to the day of the coming into force of this law, or entered Israel lawfully during that period."[30]

Not surprisingly, many were not registered. These Arabs, though residents in the territory that became Israel, were later called "present absentees," a category that sealed their fate: the state expropriated their property, particularly their land.[31] Their status passed on to their children. These present absentees, or internal refugees, constituted about 20 percent of the Arab population in post-1948 Israel. They finally were granted citizenship in 1980. Even among those who were registered, many could not prove continuous presence for four years. Only 40 percent of Palestinians remaining in Israel were granted citizenship immediately in 1952. The purpose of withholding citizenship, clearly, was to encourage these Arabs to leave Israel voluntarily.[32] As with American Indians given US citizenship in the 1920s, Palestinians could not acquire citizenship by descent; they could only do so by naturalization.

In a 1950 statement to the Knesset, Ben-Gurion laid out the rationale underlying the Law of Return and other laws governing Israeli nationality:

> The Law of Return and the Citizenship Law placed before you have a mutual relation and a common ideological source which stems from the historical uniqueness of the state of Israel. . . . This is not a Jewish state merely because Jews are the majority of its population, it is a state for Jews everywhere, and for every Jew who wants it. . . . The Law of Return . . . embodies a central purpose of our state, the purpose of the ingathering of the exiles. This law states that it is not this state which grants Jews from abroad the right to settle in it, but that this right is inherent by virtue of one's being a Jew, if one wishes to settle in the country.
>
> In the state of Israel Jews do not have privileges denied to non-Jewish citizens. The state of Israel is based on the full equality of rights and duties of all its citizens. This principle too is stated in the Declaration of Independence: 'The state of Israel will uphold the full social and political equality of all its citizens without distinction of religion, race or sex.' But it is not the state which grants the Diaspora Jews the right to return. This right preceded the state of Israel, and it was this right which built the state of Israel.

As the speech drew to a close, Ben-Gurion put a fine point on the philosophy underlying the law. "The Law of Return has nothing to do with immigration laws," he said. "It is the law of perpetuity of Jewish history."[33]

The Law of Return, and the Jewish nativity it presumes, became the key to large-scale Jewish immigration following the establishment of the state of Israel. In particular, it facilitated the immigration of non-European Jews. The immigration of Ashkenazi Jews proved disappointing before the end of the Second World War. So Zionists turned to Arab Jews as a "reservoir" for immigration in the early 1940s. Later, Israel officially classified this group as Mizrahim. Prominent Arab Jewish scholars such as Ella Shohat and Yehouda Shenhav now define the Mizrahim as Jews from Islamic countries, and not just as Arab Jews.[34]

Shenhav recounts Ben-Gurion's remarks to a meeting of experts and Jewish leaders in 1942, outlining a plan to bring a million Jews to Palestine, mainly

from Muslim countries: "Our Zionist policy must now pay special attention to the Jewish population groups in the Arab countries," Ben-Gurion said.

> If there are Diasporas that it is our obligation to eliminate with the greatest possible urgency by bringing these Jews to the homeland, it is the Arab diasporas: Yemen, Iraq, Syria, Egypt and North Africa as well as the Jews of Persia and Turkey. What European Jewry is now experiencing obliges us to be especially anxious about the fate of the diasporas in the Middle East. Those Jewish groups are the hostages of Zionism. . . . the paths of immigration from Europe are desolate now. . . . It is a mark of great failure by Zionism that we have not yet eliminated the Yemen exile [i.e., the diaspora]. If we do not eliminate the Iraq exile by Zionist means, there is a danger that it will be eliminated by Hitlerite means.

The notion that these Jews were unsafe in Arab lands involved a degree of invention. Historically, Mizrahim testified both to the pluralism of their predominantly Muslim societies of origin and to the rich legacy in those societies of Jewish cultural and religious life. Under Ottoman rule, they had been considered dhimmi, a protected minority, and had flourished no less than other groups. In the 1920s, after Ottoman rule, Jews continued to occupy high state positions in Iraq and Egypt. Jews in the Arab diaspora were much better off than those in the European, as suggested by the Zionist appeal to relocate Iraqi Jews. That appeal followed the *farhud,* a pogrom in June 1941. That was indeed a tragic, bloody affair in which "160 Jews and an unknown number of Muslims were murdered." But it also was "the only event of its kind in the history of Iraqi Jewry." There was little possibility of Iraqi Jews being subject to "Hiterlite means," either. Shenhav, himself an Iraqi Jew, points out that the farhud "was confined exclusively to Baghdad and did not spread to other cities," and while the perpetrators were Iraqi, the British, who were then invading Baghdad, enabled the pogrom through inaction. "Pro-Nazi prime minister Rashid Ali al-Kilani had fled the country" before the British arrived. "For reasons that are unclear," Shenhav writes, "the British delayed their entry into the city by 48 hours," the period during which the pogrom began. It proceeded for two days, during which, "according to some testimonies, [the British] made no effort to calm the surging passions in the

city and prevent the clash between Jews and Muslims."[35] None of this is to suggest that Arab Iraqis were not responsible for killing Jews in Baghdad, but the notion that Iraqi Jews were on the precipice of elimination by Nazis is very much overblown. At worst they would be subject to British colonial control, as Ben-Gurion and his fellow Jews in Palestine were at the time.

In any case, some 700,000 Mizrahim, mostly from former Ottoman territories, immigrated to Israel between the years 1948 and 1951, doubling its Jewish population. The Mizrahim left Yemen in 1949, Iraq in 1950–1951, and Egypt in 1956. In 2006 the Mizrahim were said to comprise "some 45 percent" of the Israeli population and a majority of Israeli Jews.[36]

The final large wave of immigration enabled by the Law of Return came in the late 1980s, as Jews poured out of the collapsing Soviet Union. To corral them, the Israeli government used a tried-and-true tactic: closing off avenues of immigration by pressing the United States to deny Soviet Jewish emigrants refugee status on grounds that they had the right to immigrate to Israel. Laurence Silberstein describes how the Israelis pushed the Joint Distribution Committee and the Hebrew Sheltering and Immigration Aid Society, two refugee-resettlement organizations that worked with the US State Department, "to cease helping Soviet Jewish immigrants in Europe so as to force them to emigrate to Israel."[37] Rather than expand the range of choices for Jews in the Diaspora, the Zionist leadership made the Law of Return into a narrow door, a compulsion to move to Israel. Annual immigration reached its peak in 1990, as 199,516 people, mostly Eastern European Jews, moved in. Between 1948 and 2011, the Law of Return, in concert with the Jewish Agency and other Zionist entities, facilitated the immigration of more than 3 million Jews to Israel.[38]

The presence in Israel of diverse cohorts of Jews has caused considerable internal tensions. There are longstanding frictions between Ashkenazim, who constitute the elite, and the Mizrahim, Sephardim, and Ethiopians. Although Mizrahim constitute the majority of Israeli Jews, their influence in politics historically was minimized. As I discuss later in this chapter, this has changed since 1967. Whereas Mizrahim were initially the despised targets of a civilizing mission that aimed to rid them of their Arabness—in a speech to senior army officers, Prime Minister Ben-Gurion spoke of Mizrahim with undisguised contempt, stating, "A good many of the immigrants are illiterate and show no signs of Jewish or human culture"—today they have proved their

worth to the state by becoming the tip of the spear of the settlement movement in the Occupied Territories.[39] Even so, Mizrahim continue to constitute a kind of underclass, subject to racist stereotyping and saddled with lower incomes and educational achievement than Ashkenazim. Today their facility with Arabic makes them useful, but in the past the state tried to prevent them speaking it or practicing other elements of Arabic culture. Such tensions lay bare the critical importance of the politicization of Jewish identity, which serves to unify otherwise-disparate peoples under the same nationalist outlook.

Jewish Democracy: Productive Contradictions

When we observe the Israeli government enthusiastically importing Jews, and then despising and civilizing them, we have a window into one of many productive contradictions inherent in Jewish statehood. A Jewish state committed to the protection of a Jewish national home can hardly reject Jews who wish to live there. Yet this is what the Israeli government did when it forced Mizrahim to become Jews in the manner of the official Judaism preferred by the state. The contradiction—welcoming Jews while loathing them, protecting Jews while eliminating their culture—turned out to be productive in that Mizrahim were perfectly placed to lead the Israeli settler incursion into the West Bank.

Another founding contradiction of Israel is that between secularity and theocracy. This conflict has been baked into the Zionist movement since early days. The initial political program of the World Zionist Organization, formulated at the First Zionist Congress at Basel in 1897, pledged "to establish a home for the Jewish people in Palestine" through "the organization and uniting of the whole of Jewry by means of appropriate institutions."[40] But it had little to say about the nature of those institutions. Ever since, Zionists have tussled over whether the Jewish national structure of Palestine and then Israel would have a secular or religious cast.

The terms of a formal compromise were worked out between Ben-Gurion, representing the proto-state, and a delegation of Orthodox Jews. They met on the eve of the June 1947 UN convention that drew up the partition plan. The parties decided that a future state would be committed to enforcing the sabbath as the legal day of rest and that in every state kitchen intended for Jews, the food would be kosher. It was also agreed that religious schools

would have full autonomy and that halacha would have jurisdiction over matters of personal status: there would be no civil marriage or divorce in Israel, and religious courts would have the sole authority to decide on these matters. Furthermore, the new state would incorporate Jewish symbols into its official iconography. At the same time, it was agreed that halacha would not provide the constitution of the Jewish state. The agreement gave two reasons for this decision: first, the UN would not accept the establishment of a fully theocratic state; second, it was necessary to ensure equal rights for non-Jewish citizens, which, in practice, has not occurred.[41]

As the historian Tom Segev puts it, the agreement was made "in order to prevent the house of Israel from splitting asunder."[42] Yet the terms of the compromise became the focus of ongoing controversy, as Israel has struggled to make sense of its peculiar position. Basic questions repeatedly emerge. Should the government have the authority to enact statutes that contradict laws contained in the Torah? Should government release secular Jews from obligations under Jewish law? After all, it releases observant Jews from state requirements. For instance, men enrolled in a yeshiva can be exempted from serving in the armed forces.[43] Issues of family law have been a particular struggle, with the Israeli Supreme Court carving out loopholes to enable civil marriages, outside the rabbinic orders, and civil courts enforcing rabbinic courts' judgments with respect to divorces, even on pain of imprisoning recalcitrant husbands.[44]

The bottom line is that Israel remains a quasi-religious state pledged to uphold an official Judaism. Like the tension between Ashkenazim and others, that between religious and secular Jews is kept in check by an overarching fissure: that between the colonizer calling itself indigenous and the subject population of Palestinian Arabs. And, likewise, the tug-of-war between secularism and official religion can be productive. Theology undergirds the state project; there would be no point to Israel's existence were it not a Jewish state. And the state harnesses the religious zeal of Mizrahim and Orthodox to continue expanding. Yet by maintaining formal secularism, Israel retains rhetorical cover for its constant claim to be "the only democracy in the Middle East" and is able to bring onboard a wider range of Jews, both as "returnees" and as supporters in the Diaspora.

Israel's quasi-religious character enables yet another productive contradiction: its failure, despite being a sovereign state, to draw fixed boundaries

that define the outer limits of its territory. That decision is biblically sanctioned, for reasons discussed below, but was taken for reasons of realpolitik. Drawing borders at the founding would have meant accepting restrictions on Israel's expansion. And by refusing to do so, the state perpetuated settler consciousness, for it left open the possibility of endless further colonization.

Segev quotes a conversation between Ben-Gurion and Pinhas Rosen, who was to become Israel's first minister of justice, amid the drafting of Israel's Declaration of Independence.

> *Rosen:* There is the question of the borders, and it cannot be ignored.
>
> *Ben-Gurion:* Anything is possible. If we decide here that there is to be no mention of borders, then we won't mention them. Nothing is a priori.
>
> *Rosen:* It is not a priori, but it is a legal issue.
>
> *Ben-Gurion:* The law is whatever the people determine it to be.[45]

Meir Vilner, the leader of the Communist Party in the new state and a signatory to the Declaration of Independence, proposed that Palestinian Arabs also be granted a right to an independent state, but his proposal was also defeated over territorial issues. To assert a Palestinian right to self-determination would mean accepting the borders offered by the UN plan.

Ben-Gurion could find support for his position in no small part because Eretz Israel, the land of Israel, is a space loosely conceived in holy texts. Indeed, it can stretch to accommodate whatever Israeli power can encircle. Baruch Kimmerling explains:

> The ideal of Eretz Israel is construed in terms of the biblical 'promise' of Yahweh to Moses, the legendary founding father of the nation, as running 'from the Euphrates River to the River of Egypt' (probably meaning a small river in the eastern part of the Sinai Peninsula but there are broader interpretations). Today, the boundaries of colonial British Palestine are the reference point. More pragmatically, however, the boundaries move according to political and military ability

> to hold them. As one central rabbinical figure, Rabbi Abraham Shapiro, put it, 'Everywhere the [Israel Defense Forces are] present is the Land of Israel; any place outside IDF rule is the land of the gentiles.'[46]

This biblical inheritance conceivably extends across the globe. The "posterity" of the Israelites referred to in Genesis includes all Arabs—Jewish, Christian, or Muslim—as they are the descendants of Ishmael, who was the son of Abraham by his concubine Hagar.[47]

Beyond the unwillingness to set borders, the settler society is further buttressed by the absence of a constitution, which would place limits on the activities of the state in the name of the nation. Properly, a state professing to protect equal rights should have some such limits, so that the political majority cannot use its power to deprive political opponents of rights. This choice, too, reflects Israel's expansive ambitions as a quasi-religious state claiming to be the homeland of a widespread international community. Meir David Levinstein—whose party, the United Religious Front, collected under one roof Israel's early religious parties—set out the argument against a constitution. "Only the written Bible and the Traditional Annotations have sovereign authority in Jewish life," he explained. "Therefore there is no room for any man-made constitution in Israel. . . . Israel's Bible is Israel's constitution." Not only that, but the Knesset was in no position to make a constitution, because it did not represent all the Jews: "What is the moral authority of the inhabitants of our state, who constitute only 7 percent of our nation, and what is the authority of this Knesset, elected by 5 percent of our nation, to legislate a constitution for the fatherland and the entire nation?" he asked. To establish a constitution would be costly from the standpoint of settlement, he argued. "A secular constitution will profoundly damage our state's glory in the diaspora. It will dampen the enthusiasm for the state and reduce the will to immigrate."[48] Israel today has an evolving set of basic laws, but opposition to a constitution won out.

In many ways, it is a refusal to answer hard questions about what Israel is—whether it is secular or theocratic, where its geographic boundaries are, whether or not it guarantees equal rights—that allows the national majority to avoid reckoning with its settler status, even though that status is obvious in the history of Israel's founding and in its nationality laws. Refusal helps to

sublimate settler status, rendering it an invisible foundation of the state and allowing settlement to continue even as Israel professes to be a rights-protecting democracy.

Who Is a Jew?

The most fundamental of Israel's unanswered questions is who is a Jew. It is a question that has bedeviled Israeli authorities since the Law of Return was passed in 1950. Is a Jew defined by religion or ethnicity? Are Jews members of a religious community or a nationality? Or both? In a sign that the identity is not a purely secular one, Prime Minister Ben-Gurion refused to leave these questions to the Knesset, instead consulting a religious body, the Forty-Five Sages of Israel, in October 1958. Thirty-seven responded and only three suggested separating religion and nationality.[49] Nevertheless, Minister of Internal Affairs Yisrael Bar-Yehuda advised a secular practice: a Jew is anyone who, within reason, declares herself a Jew. His successor, H. M. Shapiro, issued different guidelines in 1960: only a person who was born of a Jewish mother or converted to Judaism according to halacha could be registered as a Jew. Furthermore, no one could claim to be a Jew while professing a non-Jewish religion. Shapiro's definition made Jewish identity a matter of both heritage and religion, albeit excluding only other religious practices. One might, according to this system, be a Jew and atheist, as many Israelis are, but not, say, a Jew and a Christian.

This last guidance seemed tailored to address a practical case that had brought the issue to public attention in the mid-1950s. This was the application for return of Oswald Rufeisen. Rufeisen was born into a Jewish family but had converted to Catholicism in the course of surviving the Holocaust and become a friar. Rufeisen, however, insisted that he was a Jew by nationality, even if Catholic by religion, and therefore had a right to return. But the Israeli government refused to recognize him as a Jew, and the Supreme Court upheld this refusal, as religious authorities looked on wondering why a secular court had any say in the matter.

The Rufeisen case appeared to confirm that "Jew" is a religious identity, not a nationality. Zionism, it seemed, "had succeeded in creating a secular Jewish state only to discover that it was clinging to a definition of Jewishness based on religion."[50] Matters turned around in 1968 when one Benjamin Shalit petitioned to register his children as Jews. In *Shalit v. Minister of Interior* (1968),

the Supreme Court ruled in favor of Shalit and held that the registrar has no powers to overrule the bona fide declaration of persons as members of a given nation. In the majority opinion, Judge Zvi Berenson underlined a secular perspective: "The concept 'nationality' should be given a regular meaning appropriate to the spirit of the time and reflecting the opinion acceptable to the enlightened portion of residents of the country." He went on to explain: "There should not be injected into the concept of nationalism, which according to the recognition of most human beings is separate from religion, the strictures of the Jewish halakhah . . . the view of the halakhah on the issue of the nationality of a resident of the country cannot serve as the basis of a ruling of the civil courts in the state of Israel." The minority view was expressed by two judges. Judge Moshe Zilberg declared: "Jewish nationalism should not be detached from its religious foundations. Jewish religious belonging is necessary for Jewish nationalism. There is still no Israeli Jewish nationalism, and if it exists, it is not necessarily secular nationalism." Judge Shimon Agranat went a step further: "In the history of the Jewish people, the racial-national principle was joined with religious uniqueness, and between these two principles a connection was formed that cannot be broken."[51]

A statutory definition of the term "Jew" was introduced, under pressure from religious parties, following the verdict in *Shalit*. Consequently, a Jew was defined as either a person born to a Jewish mother or a person who converted and is not a member of another religion. The demand that conversion be "according to halacha" was dropped. Furthermore, the Law of Return was interpreted to include family members of Jews, including children, grandchildren, spouses, and spouses of children and grandchildren. As a result, the state of Israel now has two legal definitions of who is a Jew: the narrow definition provided by the halacha, which Israeli law enforces in the sphere of personal affairs, and the broad definition in the amended Law of Return. This means that there is always a group among Israeli citizens who are considered Jews by the Law of Return but not by the halacha. This is how it came to be that a quarter of the immigrants from the Soviet Union—labeled there as Jews—found themselves labeled non-Jews in Israel, in the sphere of private affairs.[52]

As the case of the Soviet Jews suggests, these questions of secular and religious identity have persisted throughout Israel's history unto the present,

arising anew as if to remind us of the spiraling absurdities of legal Jewishness. Thus there was the case of Abdallah Zeldin Alexander Tsiorulin, who emigrated from Russia to Israel in 1992 with his second wife. Though not himself a Jew, he was classified as one since he was married to a Jew and was granted Israeli citizenship as a returnee. But some years later he converted to Islam and took a Muslim name. Consequently, the Ministry of Interior changed his official nationality from Jew to Arab.[53]

Zionism cannot escape its inherent contradictions. And why should it? They are the foundation of the Jewish state. To resolve the tensions inherent in Zionism would be Israel's undoing. If we wish to make sense of how Israel can be a secular, democratic, rights-protecting Jewish state, we have to look to the ideological basis of Zionism, which is not Judaism but modernity. Everything Israel does and is makes sense when we allow that Zionism is an expression of an aggressively colonial modernity.

These various contradictions foster a space of legal ambiguity productive in all the ways mentioned. In this space, another project flourishes: Judaization. I have touched on it briefly but now turn to it in detail. Judaization is the making of a Jewish national majority within the state. To realize this goal requires the dissolution of the Arab element—its numerical reduction and the elimination of its political voice. The Zionist state enables this by rendering Arabs either second-class citizens, as in the Israeli Arabs, or extralegal, as in the Palestinians in the Occupied Territories and abroad.

Judaization: Ethnic Cleansing, Social Apartheid, and the Making of a Permanent Jewish Majority

In Israel, society had to be made Jewish. At the time of the independence, Jews lacked a clear numerical advantage in the territory. In 1947 no less than 45 percent of the population in the area designated for the Jewish state was Palestinian, according to the United Nations Special Committee on Palestine.[54] How could Jews institute and maintain their status as the national majority—that is, the nation patronized by the nation-state—if they constituted only half the population? This was a problem of economic and military power, but also political legitimacy. Critical international patrons could hardly agree that the Jewish state governed in the name of the people when

half of the people were not Jews. That contradiction might prove untenable at home as well.

Judaization, therefore, has been an ongoing project since the establishment of the state. It began with ethnic cleansing in 1947–1948, which reduced the Arab population of the territory that became Israel. It is generally accepted that about 750,000 Palestinians were displaced during the Naqba, although some put the figure higher.[55] For those who remained, the project continued with apartheid—the application to the national majority and minority of separate law, designed to empower the majority at the expense of the minority. Specifically, Arabs were subject to military authority, while the Jewish population lived under civil law. Although Arabs were spatially concentrated—both to make them more easily governable and to strip them of land that was then distributed to Jews—this distinction in legal regimes was not territorialized. The jurisdiction of military authority was *Arabs,* not the zones in which they were concentrated. This approach mirrors precisely that of US Indian law and South African apartheid.

Like South Africa under apartheid, Israel is constantly developing and tweaking its laws and policies to stanch and prevent crises of native control. In particular, Israel has repeatedly updated its land laws to maximize the dispossession of the non-Jewish population, including Palestinian Arabs and Bedouin. These legal inventions include "derecognition," whereby Palestinian-majority localities are made extralegal: because they are not recognized by the state, they cannot legally expand or upgrade infrastructure, constraining population and making life untenable. The state has also developed laws to minimize the political power that attends land ownership by fragmenting Palestinian communities. Strategic fragmentation ensures that, even where the majority of land is owned by Palestinians, the majority of seats on local governing councils are held by Jews. Israel has also used its education system, military, and quasi-public Jewish national institutions to isolate non-Jews socially and economically, empowering Jews and reducing the life prospects of Arabs and others deemed non-Jews.

This program has been enormously successful. By May 2016 the Jewish population of Israel was approximately 6.37 million (74.8 percent), while the Arab population was 1.77 million (20.8 percent). These figures include the Palestinians of East Jerusalem and the Syrian population of the Golan Heights, both of which are occupied territories.[56] Yet official Israeli discourse claims

that the percentage of the Palestinians in the population has increased from about 12 percent in 1948, after the war. The Israeli government asserts that the increase is a product of higher birth rates among the Palestinians than Jews, ignoring the possibility that the emigration rate among Jewish Israelis is higher than that among Palestinian Israelis.

As Prime Minister Benjamin Netanyahu explains, the threat of Palestinian presence—Arab, specifically—is existential from the standpoint of the Jewish State:

> We stated in the Declaration of Independence that Israel will be a Jewish and democratic state, and to make sure that the democracy does not cancel out the Jewish aspect, we must ensure a Jewish majority. Regarding our relations with the Arab minority. . . . If they integrate, fine, but their numbers will reach 35 or 40 percent, at which time the Jewish state is at an end. If their numbers fall, but relations are violent and poor, that will affect the democratic fabric. So we need a policy that balances the two needs, but that first of all ensures a Jewish majority in the country.[57]

Netanyahu was echoing Ben-Gurion, who had advised in 1947 that "only a state with at least 80 percent Jews is a viable and stable state."[58]

Netanyahu's comment is revealing in the way it collapses society and state. The demographic fear rests on the claim that a Jewish-majority society necessitates an institutionally and ideologically Jewish state. Gavison, the Hebrew University legal scholar, makes a similar point at the outset of her polemic "The Jews' Right to Statehood: A Defense." Too many people, she asserts, "ignore the legitimate existential needs of the Jewish state, such as the preservation of a Jewish majority within its borders and the development of a vibrant Jewish cultural life."

The refusal to distinguish between state and society is at the heart of the nation-state. Modernity—in Europe, its colonies, and its avatars, of which Israel is one—presumes that state and nation must be one. Zionization and Judaization operate in concert to achieve this goal. If we step outside the ideological boundaries of colonial modernity, however, we can see clearly that there need be no Jewish state in order to have a Jewish-majority society. A society with a Jewish majority, and a Jewish character, may be found in a

Jewish state, a binational state, or nonnational state. A characterologically Jewish society may even be found in a nation-state in which the nation is not Jewish. An example is the Orthodox Jewish communities of New York City and other parts of New York State. While Jews are members of the US settler population, the settler nation does not have a Jewish character. Even so, thoroughly Jewish societies exist within the United States. Gavison's argument would sound very different if it began not with "the existential needs of the Jewish state" but with those of the Jewish people. The existential needs of Jewish people clearly can be met in the absence of a Jewish state.

Gavison may be right in claiming that "a stable and sizable majority of [Israel's] citizens wants the state to be a Jewish one," an argument that seemingly smooths out the contradiction of a democratic and Jewish state.[59] But the unaddressed complication is that this "stable and sizable majority" was created through ethnic cleansing of non-Jewish Palestinians and the ongoing manufacture by the state of a Jewish demographic majority with a politicized Jewish identity. This identity is in no way inherent to being a Jew. Diaspora Jews do not choose it, and Jews who have left Israel actively reject it. Under other circumstances, Israel could have a Jewish social majority and a political majority comprising Jews and non-Jews. The apparently democratic desire for Jewish statehood is a product not of the uncoerced preference of Israel's residents but of European political modernism, as refracted through Judaization.

The Ethnic Cleansing of 1948

In 1948 there were 526 distinct Palestinian communities. Four years later 418 had either been destroyed or were left intact but appropriated for other uses. Some ruined locations were turned into forests; only the remains of holy places and historical buildings survived as tell-tale signs among the trees. Others were fenced off and turned into ranches. Infrastructure left standing might be resettled by Jews, perhaps absorbed into an urban neighborhood. Some of those left intact became "artist colonies, exhibits, museums and tourist attractions" (for example, Ein Houd, Caesarea, the old port of Safad, Ez-Zib, parts of Jaffa and Acre) or public parks (for example, Yalo, Imwas, Kabri, Lubia, Dallatheh, Qula, Muzeir'a). Hadeel Assali, a Palestinian anthropologist, writes of the Port of Jaffa, "where old Palestinian homes and buildings have been repurposed into trendy artist galleries": "The walkways around

the port have signs for tourists, explaining the history of the area while completely writing the Palestinians out of it. It is not a ghost town, but the Palestinians are certainly ghosts." Finally, a few intact communities were used to resettle Arabs who were displaced from their homes elsewhere inside the new state of Israel.[60]

Among the 750,000 or more Palestinians forced out of the Jewish-majority state were not only Arabs but also Druze and Bedouin. Lana Tatour writes, "The Bedouin were—like the larger Palestinian population—subjected to forced transfer and expulsion by Zionist forces. Until then, the Naqab [Negev] region had been home to between 75,000 and 90,000 Bedouin belonging to 95 tribes. In the aftermath of the 1948 War, only 11,000 Bedouin belonging to 19 tribes remained."[61] The partition plan called for a division of Palestine into two states: one with hardly any Jewish residents and one with a 55 percent Jewish majority. This was not good enough for the Zionists, who sought greater demographic superiority within their designated region and drove non-Jews out of their designated region as well.

Within Israeli Jewish society, this claim of premeditated ethnic cleansing is controversial. Although few would disagree that Palestinian Arabs left Israel in large numbers, many are satisfied with the view that ethnic cleansing was not the result of a strategy directed from Zionist central command—that it was, rather, an unconscious, even unintended, outcome of uncoordinated developments. These questions of intension have driven scholarship on 1948 for decades, with many early Israeli historians downplaying the violence.[62]

Later Israeli scholars, a group known as the New Historians, have been forthright about the violence of Israeli state-building. Their research details hundreds of cases of forced removal affecting thousands upon thousands of Palestinians. But the question of intention remains. Benny Morris, one of the most prominent New Historians, has argued that the Palestinian exodus was born of "compelling war conditions" rather than design. On this view, the expulsion of Palestinian civilians—and in some cases their massacre—was unavoidable given the facts of the unfolding 1948 conflict.[63]

Other historians, such as the Palestinian Nur Masalha, have taken a different approach. Masalha does not join others in seeking a blueprint for Israeli actions in 1948 and, having failed to locate it, conclude that ethnic cleansing was unintentional. Rather, he points out that expulsion was inherent

in the Zionist project. All along, Zionist leaders have responded to the native problem—or, if you will, the squatter problem—by presuming that it would not be solved through mutual accommodation but instead eliminated in service of Jewish dominion. The initial Zionist position on the native question was that Palestine was "a land without a people," which Masalha understands as a claim that the Palestinians were a premodern relic with no significant "civilization" who could thus be dealt with as if they did not exist. Winston Churchill, a supporter of Jewish statehood, enunciated a similar position when he compared the Palestinian Arabs to a "dog in the manger," opining that the Arabs had no greater right to the land than the dog "has the final right to the manger, even though he may have lain there for a very long time."[64]

The commitment to Arab elimination only increased as independence neared. Hannah Arendt noted that the 1944 Atlantic City Resolution of the American Jewish Conference, later adopted by the World Zionist Organization, left no room for Arab rights in Israel, whereas even two years earlier the Biltmore Conference—itself marking an uptick in Jewish exclusionism—had at least allowed the possibility of minority rights. "The Arabs were simply not mentioned in the resolution," Arendt pointed out.[65] That they had disappeared from Zionist planning suggests that they were intended to disappear from the Zionist state.

Masalha further observes that Zionists did not merely talk as though ethnic cleansing were inevitable; they also took up policies explicitly geared toward Arab expulsion. For instance, after the high point of the Palestinian resistance in 1936, the Jewish Agency set up a Population Transfer Committee. Following directives of the twentieth Zionist Council meeting in August 1937, the committee sought to bribe Arab countries to take the Palestinians. Preferred destinations included Iraq, the Syrian Desert, Saudi Arabia, and Jordan. The plans were seldom announced openly, for fear of antagonizing British public opinion, and were usually pushed through third parties: the Saudi plan through the British Orientalist Harry St. John Philby, the Jordan Plan through the 1937 Peel Commission, and the Iraq Plan through the 1945 US Hoover Plan. Transfer remained an official goal after Israel came into being. On May 28, 1948, two weeks after Israel declared its independence, Foreign Minister Moshe Sharett appointed a temporary Transfer Committee, which

worked to depopulate Palestinian communities. Ben-Gurion later promoted the committee to a permanent government body. In his diaries he referred to the Committee as "Va'adat 'Akirah Vegerush"—literally, the Committee for Uprooting and Expulsion.[66] It seems undeniable, therefore, that the ethnic cleansing of 1948 was carried out deliberately, if not with directed orders. Jewish soldiers did not have to be so ordered; they knew what they were fighting for, in light of decades of rhetoric and policy, which established and implemented an ideology they were taught to share.

Further evidence of intention lies in the concerted effort to prevent the refugees returning. Ilan Pappé, another New Historian, documents 286 Palestinian Arab villages destroyed by August 1948—regardless of whether they were hostile or friendly—whose populations were prevented from resettling in their homes after the war. Pappé has further adduced evidence that Ben-Gurion knew about and approved of ethnic cleansing and that he and a small group of aides oversaw the effort.[67] Again, Ben-Gurion's own words speak loudly. As he explained to aides in 1949, "Before the founding of the state, on the eve of its creation, our main interest was self-defense. . . . But now the issue at hand is conquest, not self-defense."[68]

The ethnic cleansing of Palestinians went on for months but was never completed. More than 150,000 either remained within the area of Israel or managed to return.[69] About half that number were present absentees, whose land and other property was expropriated.[70] From the perspective of the Zionist establishment, this residual Arab population was a fact to be lamented. Yitzhak Ben-Zvi, who would become Israel's second president, observed that "there are too many Arabs who remained in the country." Eliyahu Carmeli, a member of the Knesset (MK) declared, "I'm not willing to accept a single Arab and not only an Arab but any gentile. I want the state of Israel to be entirely Jewish." Yehiel Duvdevany, an MK from Ben-Gurion's Mapai party, added, "If there was any way of solving the problem by way of a transfer of the remaining 170,000 Arabs we should do so." (There is some dispute over just how many Arabs were in Israel after the violence of 1948.) Zeev Onn, another Mapai leader, commented, "The landscape is more beautiful—I enjoy it, especially when traveling between Haifa and Tel-Aviv, and there is no single Arab to be seen."[71] But where there were Arabs to be seen, something would have to be done. That something was apartheid.

Apartheid

The foundation of apartheid is separate rule of the national majority and minority. In Israel, this was achieved initially through military governance and special government departments. While Jewish citizens were governed by civil law and could appeal to the state on the basis of that law—including to legislators who represented them in the Knesset—non-Jews were governed by the decrees of military officials and bureaucrats. They could appeal to officers and agencies, but not to legislators.

This system lasted nearly two decades, from 1948 until 1966. Under this structure Palestinians within Israel were effectively captives of a military dictatorship, established on the basis of the 1945 Defence (Emergency) Regulations inherited from the British. The regulations included severe restriction on civil liberties, including freedom of movement. The First Knesset attempted to abolish the emergency laws, which some Israeli politicians correctly viewed as contradicting fundamental principles of democracy. But Prime Minister Ben-Gurion insisted that emergency powers be retained and enforced—with a twist. While the British enforced the regulations against Jews and non-Jews alike, in Israel, they would be applied only to non-Jewish Palestinians, whether residents or citizens.[72] These regulations therefore joined the nationality laws in creating two categories of citizen, each with a different quotient of rights.

Immediately after conquering a Palestinian community, Israel would use the emergency regulations to impose a curfew and travel-permit requirement on Palestinians there. The travel permit was the Israeli version of the American and South African pass systems. The result was to fracture Arab population concentrations into a number of security zones, the equivalent of homelands in other colonies. There were three such zones—northern, central, and southern—each commanded by an official appointed by the chief of staff of the military and accountable only to him. Each of the regional military governors was akin to an autocrat. The regulations authorized him to detain any person within his zone, deport residents, confiscate land and houses, and demolish "any house, structure or land." Of course, because the emergency defense laws were implemented only in relation to Palestinians, not Jews, they constrained only the former, while giving the Jews carte blanche to occupy the lands from which the Palestinians were denied access. Closing

Palestinian areas meant preventing Palestinians, both returning refugees and internally displaced persons, from reoccupying their homes. But Jews could move in and take them over. When Prime Minister Ben-Gurion justified the practice before the Knesset, he said the military government "came into existence to protect the right of Jewish settlement in all parts of the state."[73] Even when military rule formally ended in 1966, the Defence (Emergency) Regulations of 1945 remained in force.

The goals and methods of Israeli apartheid have shifted with changing realities on the ground. Initially the goal was to ensure Jewish land occupation. But as life settled into a postwar condition, the idea of transferring Palestinians from their land became harder to swallow. Population transfer looked like the sort of thing that happened during the Second World War and its immediate aftermath. The new policy, developed by the Mapai Party's Arab Affairs Committee in 1958, instead emphasized control and surveillance of Arabs in Israel.[74] Integration of the Palestinians as equal citizens was presumed to be impossible, but with sufficient security, their partial incorporation could be attempted. Alongside the military government, the Shin Bet (internal security service) and Matam (special police) were given charge of Palestinians' everyday lives.[75]

A critical area of surveillance and control is Arab education. Whereas every religious stream in the Jewish community is entitled to an autonomous educational system—Orthodox Jews can obtain state funding for religious schools of their own design, for instance—the curriculum in Arab schools is designed by the state Ministry of Education. The ministry also vets all teacher appointments in schools, a power it uses to reject Arab teachers. The ministry need not explain its reasoning. Final approval is in the hands of the deputy director for Arab education, who, for many years, was a Shin Bet agent. The Israeli government has never confirmed this, but in 2001 *Ha'aretz* reported that, for at least the previous ten years, the agent, "Yitzhak Cohen the Arab" had been running Arab education in Israel. *Ha'aretz* quoted a former senior Shin Bet official to the effect that the ministry "not only determined and interfered in the appointment of principals and teachers, it even determined who would be the janitors, do the maintenance, and clean the bathrooms in the Arab schools."[76] On top of this, the Palestinian minority has been denied permission to build a single university. In 2004 *Ha'aretz* reported that university admission rules have been revised to give greater weight to "interviews," so

that Israeli education authorities have more leeway to prevent heavy concentrations of Palestinian students in fields deemed sensitive from a security standpoint.[77]

Registration of Identity

An important tool of apartheid and Judaization generally is registration of nationality and religion. Every resident is required to register with the state, although, in some circumstances, residents may challenge the requirement. This registration both enforces state-sanctioned identities—ensuring, for instance, that Jews understand themselves to be members of the Jewish nation—and is used to direct public benefits. Only those registered as Jews are entitled to the benefits of apartheid, while apartheid's disadvantages accrue to those registered as Arabs.

The population registry is another carryover from empire. Under Ottoman rule, Palestine was governed according to the *millet* system, whereby the empire officially sanctioned religious identities and recognized their leaders. Each subject was then grouped under one or the other of the millets. The British Mandate maintained the legacy of the millet system under the Religious Communities (Organization) Ordinance of 1926. The high commissioner was authorized to issue regulations setting out how officially recognized religious communities were organized and could empower these communities to levy taxes on members of the community. The officially recognized religious community thus became a local government unit, with its leadership appointed by a state official. Unlike the millet system, however, participation was voluntary; religious communities were not required to obtain state recognition. The only Mandatory religious community interested in official recognition and associated powers was the Jewish community.[78] Just as the community was given a choice concerning official incorporation, under the Mandate the individual, too, could decide whether to submit to the jurisdiction of religious courts. When it came to family law, residents could choose whether to seek adjudication in civil or religious courts.

After 1948 this option was abolished by the Israeli state, thereby making it compulsory for every citizen and resident of Israel to be identified as a member of an officially acknowledged religious group. The currently oper-

ative law is Population Registry Law of 1965, which requires all residents to attest to their nationality and religion and all residents over the age of sixteen to carry the identity card indicating this information. The Population Registry Law does not define the term "nationality" or indicate which nationalities and religions the state recognizes, leaving it to state agencies and the courts to determine which nationalities are acceptable.

Over the years, Israeli residents have challenged the registration requirements. The Supreme Court ruled in 1969 and again in 1972 that the registrar may not register information against the will of the registrant, and that no one is obliged to register their nationality or religion and may choose to leave one or both of these items blank.[79] Still, registration of identity does occur, and it can be compulsory. The chief registration officer can apply to a court for a declaratory judgment regarding a person's religion or nationality so as to register these details. The Supreme Court also ruled in *Tamarin v. State of Israel* (1970) that the right not to have these details registered is not absolute.[80]

The identities available to registrants are defined by the state, not by the subjective decisions of individuals. In *Tamarin,* a Jew tried to register their nationality as Israeli, but the Supreme Court refused on the grounds that the registrar, not the registrants, gets to decide which nations exist. In Israel itself, Israeli is not a nationality—the Israeli nation is Jewish.[81] Nor may one register as a Palestinian, although one may register as an Arab. To register as an Arab Jew is unthinkable. No non-Jew may register herself as a Jew; to do so would be to illegally grasp an entitlement to rights and privileges that are denied non-Jewish citizens of Israel.

Not only does the state limit which identities residents may select, but it also has the exclusive power to add options to the list, a decision that comes with political ramifications. An illustrative example is the Druze community, which was recognized by neither the Ottomans nor the British. By recognizing the Druze in 1957, Israel legally differentiated them from Arabs, further isolating the Arabs. As a result, Druze also have access to advantages denied Arabs. For instance, unlike Arabs, Druze may join the armed forces, which enables access to public benefits and the esteem of the nation. In 2001 *Ha'aretz* reported that, of sixty-eight communities under construction in Israel, seven were meant for the Druze and none for Arabs.[82]

Spacial Control: Dispossession, Derecognition, and Separation

When the 1948 war ended, the state of Israel controlled an area covering approximately 5 million hectares, or 78 percent of British Mandate Palestine. But only about 13.5 percent of Israeli territory was under state or Jewish ownership.[83] The Jewish state had established sovereignty over the land, but Jewish people did not own it. The rupture between sovereignty and possession, and the use of sovereignty to establish possession, clarifies the relationship between the interconnected processes of Zionization of the state and Judaization of society. The state could be Zionized through law, and that law could be instrumentalized to effect dispossession, the goal of which was Judaization of the land and therefore society.

Dispossession of those expelled and internally displaced in 1948 began even as they were fleeing. The dispossession of the internally displaced was retroactively legalized by the Law of Absentee Property, enacted in 1950. The law effectively put the property of these "present absentees" on the auction block, as long as the buyers were Jews. Gabriel Piterberg explains:

> A thinly disguised official entity called 'The Custodian' was authorized to sell absentees' land . . . to the Development Agency, a government body created specifically to acquire it. This agency then sold it on to the Jewish National Fund. At the end of the chain, these lands were privately farmed out to Jews only (this was the procedural significance of the JNF), and gradually became de facto private property, while remaining de jure in the keeping of the state.[84]

There is no time limitation on the confiscation of absentee lands. Even today, decades after Israeli independence, Palestinian Arab citizens of Israel receive notices of confiscation. For instance, if a Palestinian landowner dies, and one of his or her heirs is a refugee, the law entitles the Custodian to claim that share. The failure to hand over absentee property to the Custodian is a criminal offence. By contrast, the Custodian is beyond accountability. As long as the Custodian disposes of property "in good faith," the transfer is valid, even if it is proved that the property was not absentee property. There has only been one successful attempt to challenge a transfer, in 1993.[85]

Besides individually owned land, the Israeli state also appropriated communal trust land, known in Arabic as waqf. The waqf in Ottoman and Mandate Palestine were well endowed, including not only mosques, graveyards, and holy sites, but also residential, agricultural, and commercial properties held for charitable purposes. It is estimated that waqf institutions owned up to 20 percent of the cultivated area of Mandate Palestine. As much as 85 percent of waqf property was transferred to the Custodian. Compensation paid for waqf property went to the Ministry of Religious Affairs, not to Israeli Muslim communities themselves. None of the other established religious communities in Israel—Jewish, Christian, Druze, and Bahai—had their lands confiscated.[86]

At the heart of expropriation was the refusal, by law, to recognize native land rights. In this, Israel again drew from the British Colonial playbook. The Mandate had developed a clever system for turning agricultural land into state-owned property. It did so effectively by inverting Ottoman law. Under Ottoman rule, any person who revived "dead" or "waste" land—whether they did so with or without official permission—immediately acquired the right to title over it. The British, however, decided that any person who acquired title in this way was in fact a trespasser. It did not matter how long he or she had been cultivating the land in question.

Alexandre Kedar, a legal scholar at Haifa University, has shown how Israel adapted this system in order to dispossess Palestinians and thereby create "Israeli Land"—that is, transfer land under Arab cultivation to the state of Israel, which would sell it to Jewish settlers. Of particular importance was the requirement that Palestinians claiming farmland prove ownership dating from Ottoman times. This exposed the vast majority of cultivators to dispossession since "only about 5 percent of the land in Palestine had been officially registered at the end of the Ottoman period." Any unregistered land automatically was turned over to the Israeli state on the grounds that it had no owner—that even longtime Arab cultivators were in fact trespassing.

When Arabs did claim registration, they found the process of proving ownership so badly stacked against them that 85 percent of their cases were decided in favor of the Israel Land Administration, the government agency responsible for managing land ownership. The legal work was done by the Israeli Supreme Court, interpreting and modifying Ottoman land law. The Ottomans recognized two kinds of cultivated land: *mewat* (dead or waste)

land, lying no more than a mile and a half outside a recognized village boundary, and *miri* land, which lay within a village itself. Any other land was not subject to ownership. When it came to mewat, the Israeli Supreme Court required claimants to prove—decades after the fact—that the land had been registered on Ottoman or British roles prior to April 18, 1921. The claimant then had to further prove that the land was under continuous cultivation after the date of registration. Only those who could show that they had continuously maintained crops during this entire period, known as the period of limitation, could prove they were owners rather than trespassers. By contrast, Ottoman law imposed no period of limitation on *mewat*. One had only to prove that one was working the land in order to claim title.

As onerous as the Israeli requirement was, the Supreme Court also made it virtually impossible to fulfill, even for those who had kept excellent records. Tax records showing that agricultural taxes had been paid were rejected as proof that land had been under cultivation. Instead the court demanded "objective" evidence showing that the landholder had cultivated at least 50 percent of the land in his possession, regardless of the nature of the soil or the crop planted. Kedar notes that the state regularly relied on British aerial photographs from 1945 "to prove with relative ease that landholders of a considerable number of parcels in the rocky, mountainous Galilee had not cultivated at least 50 percent of their land for the entire period of limitation." The Supreme Court also decided that land cultivated by nomads would in most cases be unclaimable. At the end of the nineteenth and the beginning of the twentieth century, nomads began moving into permanent dwellings, but the Ottoman state did not recognize their settlements as villages or towns, which meant that the lands they worked were neither mewat nor miri. Since these lands were not subject to ownership under Ottoman law, there was no process for claims under Israeli law, and the land was forthwith registered to the Israeli state and eventually sold to settlers.

As for miri—lands cultivated inside recognized locales—the Supreme Court again added hurdles above and beyond those of Ottoman law. Ottoman law established a ten-year period of limitation on miri, which meant that if a cultivator could demonstrate that he had been working the land for a ten-year period, the state would grant titles. In practice, it was not difficult to prove ownership on these terms, because Ottoman law had very lax rules about what constituted cultivation. Mandatory laws were a bit stricter but

still open for interpretation. The Israeli court, by contrast, applied its strict 50-percent continuous-cultivation threshold and retroactively extended the limitation period to fifteen and in some cases twenty years. The result was unsurprising: the state got most of the land, and claimants were declared trespassers on land their families' had worked for generations.[87]

Legal techniques developed to facilitate the appropriation of Arab land in Israel proper were used in the Occupied Territories after the 1967 War. During 1968–1979, the key justification for seizing "almost 47,000 dunams" (almost 12,000 acres) for building settlements "was that the settlements performed defense and military functions." This same justification was used following the Oslo Accords to "construct a network of bypass roads connecting the settlements with Israeli urban centers inside" the pre-1967 border. When the Supreme Court rejected this justification, the government declared the desired areas state land and thus subject to the earlier expropriation law. Between 1972 and 1992, Israel constructed 132 settlements housing 231,200 Israelis in the West Bank and East Jerusalem, and another 16 settlements housing 4,800 Israelis in Gaza.[88]

Israel also uses land law to fragment Palestinian populations where they form majorities.[89] The Judaization of the Galilee, for instance, involved forcibly appropriating land from Palestinian communities to build the new Jewish communities of Upper Nazareth and Karmiel. This effort, which began in the 1950s, was very much a military effort. In the 1970s, lookout settlements *(mitzpim)* were established in the region to protect state land from "unauthorized Arab agricultural, residential and grazing activity and to monitor illegal land use by Palestinian Arabs." In 1976, when additional land was targeted in the Galilee to make way for twenty new Jewish settlements and the expansion of existing Jewish cities, the Palestinian community established a Committee for the Defense of Arab Land. The Committee called a general strike and organized demonstrations on March 30 of that year; the state responded with deadly force, killing six Palestinians and wounding hundreds. That day is now annually commemorated by Palestinians as Land Day.[90]

As a strategy to fragment Palestinian communities into areas that can be encircled and prevented from growing, Judaization is reminiscent of the creation of reservations in the United States and Bantu homelands in apartheid South Africa. Though 72 percent of the population in the Galilee is Palestinian, 63 percent of the land is under the control of regional councils

with an Ashkenazi majority, which constitutes a mere 6 percent of the area's population. Another 21 percent of the land is under the control of Mizrahi-majority councils; Mizrahim comprise 22 percent of the population. Palestinian-majority regional councils are left to administer just 16 percent of the land.[91]

A further goal of fragmentation is to ensure a Jewish majority not just in the land of Israel as a whole but also in as many individual localities as possible. Thus, when he served as housing minister in the 1990s, Ariel Sharon devised a policy calling for the establishment of Jewish settlements as buffers between Palestinian communities to prevent them expanding and joining together into contiguous majority-Palestinian areas. The policy was implemented in various places, from Bedouin areas to the Gilboa mountains to the Seven Stars settlements that straddled the "Green Line" separating Israel and the West Bank.[92]

It is not just Arabs but also Bedouin who have been victims of Judaization. In the 1970s Bedouin constituted almost 90 percent of the population of the Naqab, or Negev, the arid south of Israel. Judaization in the Naqab aimed to concentrate Bedouin communities in seven residential areas so that remaining land could be transferred to Jewish settlers. The Bedouin were offered meager compensation—between 2 and 15 percent of what was offered to Jewish settlers evacuated from the Sinai. When almost half of the Bedouin refused, state authorities declared their fifty-eight villages "unrecognized."[93] This status made development in the villages far more difficult, in an effort to starve out the residents. Eventually large areas of historically Bedouin land were taken and designated for military uses. Two emergency orders issued in May 2001 targeted 72,000 dunams (about 17,800 acres) for military purposes. Construction of the new facilities began with demolition of Bedouin homes in five communities.[94] As Tatour explains, the logic of Bedouin dispossession is that they "are a nomadic population that has no right to the land. The narrative of nomadism has been central to the positioning of the Bedouin as outside of modernity and the liberal regime of property."[95]

Denying recognition has, in the past few decades, become a key technology of Judaization. In effect, the status places communities beyond the pale of legality. The 1965 Planning and Building Law created the scheme. The law concentrated planning authority in a government body, which used admin-

istrative powers to implement demolition and eviction orders and increased the severity of financial penalties on homeowners whose activities were barred by derecognition.[96] The government at the time recognized only 123 Palestinian villages, including the 108 that had survived the war, as well as those Bedouin areas the Israelis hoped to make concentration points for the population.[97] These communities could continue to develop, but unrecognized localities would be omitted from all planning, making any expansion of them illegal.

A 1981 amendment to the law added new levers of coercion, prohibiting the supply of electricity, water, and telephone lines to unlicensed buildings. Unrecognized villages were prohibited from building infrastructure, such as paved roads and sewage systems, and from constructing or repairing homes. Existing buildings were subject to demolition at any time.[98] When villagers continued to build illegally, the government turned to the demolition power. By 1998 courts had approved 12,000 demolition orders in the Galilee alone.[99] A local Arabic-language newspaper described how "demolitions are carried out ruthlessly, using a heavy police presence":

> 7 am Monday morning, special forces of the police arrived at the houses of Mamod Amon and Mahmon Taha without any prior notice and began the demolition. Amon was pinned to the ground by police forces until they finished their job. Amon and Taha are living in very bad conditions. Amon is the father of four children who are living in one small room. He tried very hard to get a building license, but was unsuccessful, so he decided to build a small house last May. . . . Khalil Assaf, attorney of both Taha and Amon, said: 'I was negotiating with the Israel Land Authority in order to convey title of the land to my clients when we were surprised with the demolition of the two houses, especially since the court was supposed to look into our request next November.'[100]

Israel has used denial of recognition to ensure stagnation in non-Jewish communities. The only significant improvement in government services to unrecognized communities since the passage of the 1965 Planning and Building Law came in 1992, when the International Water Tribunal upheld a Palestinian NGO's claim that failure to supply water to unrecognized villages

was discriminatory. The Israeli government then agreed to route water to each unrecognized community. There has also been occasional extension of recognition. Nine formerly unrecognized villages were recognized between December 1994 and September 1998.[101]

A final dimension of spatial Judaization is the physical separation of Jewish and Arab localities. Most prominently, there is the wall that now separates Israeli settlers from Palestinian Arabs in the Occupied Territories. But there are walls in Israel proper, too. The phenomenon developed after Prime Minister Sharon introduced the idea of the wall in the West Bank: Jewish communities began to demand walls of their own to keep neighboring Israeli Arabs away. One wall was built in May 2003—a gigantic line of dirt, six meters high and one kilometer long, separating Jisr az-Zarqa, one of the poorest Arab villages in Israel, from Caesarea, one of the country's wealthiest Jewish neighborhoods. The wall was justified as an anti-noise measure. The builder said residents of Caesarea were getting annoyed by the Muslim call to prayer, loud music, gunshots, and fireworks. Jisr az-Zarqa residents contended that the real reason was racism: they "do not want to see us because we are Arabs." A few months later, in July, the municipality of Lydda began the process of building another wall, four meters high and one and a half kilometers long, to separate Pardes Snir, a Palestinian Arab neighborhood in the municipality, from the Jewish town of Nir Tzvi. This wall, too, was justified as a means to limit noise pollution.[102]

Jewish National Institutions

Though the Old Testament was said to be the inspiration for Judaization, it could provide no more than a justificatory language. What drove Judaization was law and Jewish national institutions with authority over access to state-owned land and public services—access denied to Palestinian citizens of Israel, and to Palestinians in the Occupied Territories. The secular rationale underlying this state of affairs is simple: the Jewish state must give preferential treatment to Jews.

A key institutional player is the Jewish National Fund (JNF), established in 1901 to acquire land for Jewish settlement in Palestine. The JNF made its first purchases in 1910 and grew from there. The JNF claimed that to purchase land from non-Jews was to "redeem" it and that, once redeemed, the land could never be passed on to non-Jews. The fund also decried the use of "Arab

labor" on such land. As early as 1930, a British official noted that "the result of the purchase of land by the Jewish National Fund has been that land has been extra-territorialised. It ceases to be land from which the Arab can gain any advantage either now or at any time in the future."[103]

The JNF does not deny charges of discrimination; it embraces them. Facing such charges in 2004, the organization responded that it was not required to treat all citizens of Israel equally. "The JNF does not have an allegiance to the Israeli public," it explained. "Its allegiance is to the Jewish people—in the exile and in Israel." Indeed, "Handing over the land to all citizens of the state for their use directly contradicts the purposes of the JNF. . . . The JNF, as a private owner and trustee of the Jewish people, is not required to treat all citizens of the state equally when it allocates land."[104]

Other key, long-standing institutions include the World Zionist Organization (WZO) and Jewish Agency (JA), which in 1952 were made jointly responsible for "settlement projects in the state," per Knesset legislation. The executives of the WZO and JA are officially accorded a status on par with that of members of the government: the chairs of the organizations rank "immediately after the members of the cabinet," and the status of other organization leaders is "equal to that of members of the Knesset."[105] The deepening involvement of the WZO and JA in settlement activity in the Occupied Territories after the 1967 War raised questions of legality domestically and abroad, as the organizations have tax-exempt status in countries of the Diaspora. The organizations were reconstituted in 1971 with a clear division of labor between the JA, a tax-exempt body responsible for activities within Israel, and the WZO, a political body responsible for activities in the Diaspora. The JA now is "responsible for developing the infrastructure in new rural settlements," and it "finances a whole range of development works, including public buildings . . . and such basic services as sewage and water systems and connection to the national water supply and electricity grid." Given that Arab citizens of Israel are excluded from the settlement process, it is not a surprise that "no new Arab agricultural settlements have been established in Israel since independence" and "basic services in Arab villages lag far behind those in all new rural settlements. . . . Most Arab villages still have no proper sewage disposal facilities."[106]

How should we understand these institutions? They systematically confer legally sanctioned privilege on Jews and just as systematically discriminate

against non-Jews. If they are public organizations, they should be required to conform to the principles of Israeli administrative law, which include commitments to equality and nondiscrimination. If they are private organizations, then they are not bound by antidiscrimination commitments—yet they cannot be private, for they do not pay taxes. The preferential legal treatment they enjoy also is unavailable to private organizations.[107] Here is how Ben-Gurion described the WZO while proposing the 1952 law:

> The Law as proposed before you is not an ordinary law, rather it is one of the central laws, characterizing this state, as a state designed to serve as an instrument and an anvil in the redemption of Israel. The Law therefore incorporates stipulations of principle, that . . . endow the World Zionist Organization with sovereign rights [*Zekhuyot Mamlakhtiyot*] inside the State of Israel with the aim to settle and develop the country, absorb Jewish immigrants from their dispersion, and coordinate the activities of institutions and organizations active in these areas inside the State of Israel.[108]

Neither public nor private, but sovereign. It is a remarkable notion, speaking to the legal inventiveness underlying Judaization, and the creativity possible in the absence of constraint.

Another key Jewish institution is the military. The military—and the culture of militarism—are deep in the marrow of Israel, for settlers come armed. As early as 1907, Zionists of the second aliyah had secretly formed a militia, Bar-Giora. Named for a legendary hero of the Jewish revolt against the Romans, the militia operated under the slogan, "In fire and blood Judea fell; in fire and blood Judea will rise."[109] Its object was to guard Jewish settlements, and it became the nucleus of the military power necessary to conquer the land. The legacy of Bar-Giora continues today. In the absence of a peaceful solution to the Palestinian question, Israel has become a state and a society perpetually in preparation for war. The military does not dominate civilian institutions, yet Israel is a militaristic society in that a military ethos permeates civilian life. There are, of course, sites of resistance to this pervasive militarism, such as the Hebrew University nuclear physicists who refused to participate in a nuclear weapons–development program in

the mid-1950s. The state found other collaborators, mainly from Tel Aviv University.[110]

If one source of militarism is the continuing dynamic of settler and native—the native is the shadow who never leaves the settler's side—the other is the founding trauma of the Holocaust. The state memorializes that trauma daily and hourly lest its lessons escape the mind of any Jew, Israeli or not. What are these lessons? Norman Finkelstein, the American Jewish critic of Zionism, looks to the words of Micheal Wolffsohn, a staunch German-Jewish supporter of Israel and a professor at the University of German Armed Forces. In the course of defending Israel's use of torture against people it deems terrorists, Wolffsohn explained that the lesson of the Holocaust for Jews is "never again to be a victim," which, in Finkelstein's words, "signifies that any means is legitimate in the name of self-defense." In other words, "While the Holocaust forbids Germans (and everyone else) from being perpetrators, it entitles Jews to do as they please."[111] Militarism in Israel has been rationalized as creating a "normal Jew," but in fact it is a powerful obstacle to normalization.

Arabs are excluded from participation in the army, which becomes a covert justification for discrimination, since many benefits in Israel are available only to those who have served. For example, under the Grants to Soldiers and Their Families Regulations of 1970, soldiers with three or more children are paid higher allowances than persons with the same number of children who are neither soldiers nor family members of soldiers. Similarly, according to guidelines established by the Ministry of Construction and Housing and administered by the banks, couples in which at least one partner has served are entitled to home mortgages equal to as much as 150 percent of those available to couples in which neither partner has served. Financial assistance for the purchase of apartments or houses in areas marked for new development—assistance that may cover as much as 95 percent of the cost—is only available to "a person who has served, or whose father, mother, brother, sister, son or daughter has served, in the Israel Defense Forces, police or prison service." Former service members have special access to subsidies for university education.[112] Because nearly every secular Israeli Jew serves—a substantial percentage of Orthodox do not—these benefits are commonly awarded, at least to Jews.

Occupation as Judaization

In 1967 Israel took over the West Bank, Gaza Strip, Sinai, and Golan Heights in the course of what is known to Zionists as the Six-Day War.[113] This term is deeply misleading. The kinetic military actions of 1967 might have peaked over the course of a handful of days, but they are continuous with those of 1948 and of the Jewish militias of the Yishuv. The political project was the same: to take territory claimed as the biblical inheritance of Jews and install in it a Jewish state and society. Thus the Golan Heights was ethnically cleansed of its Palestinian Arab population and annexed to Israel in 1981. In Sinai that project proved unfeasible for diplomatic reasons, and the region was returned to Egypt in 1982. In Gaza, thus far, Palestinian Arab nationalists have successfully resisted Judaization, forcing Israel to withdraw its civil administration in 2005. The Israeli military continues to exercise control over Gaza, saturating its perimeter with soldiers, checkpoints, and barbed wire; scrupulously regulating flows of people, goods, and life necessitates across the border; and periodically attacking both militants and unarmed civilians within.

This leaves the West Bank still under occupation and active Jewish settlement. Unlike Gaza, the interior of the West Bank is full of Jewish Israeli settlers and soldiers. Driving their presence is Judaization—of Jews: specifically Mizrahim and other fundamentalists. The Arab Jew the Ashkenazi both coveted and despised was Judaized—civilized—and now does his bidding. Ashkenazi paternalism created within Israeli society a new settlement force comprising Jews who for decades have been colonized inside Israel's borders.

Mizrahim are the Jews who were de-Arabized. Judaizing Israeli society meant not only expelling Palestinian Arabs, Muslims, and Christians; turning over their property to Jews; and relegating the Palestinian Arab remnant to second-class status. Jews too—Mizrahim—had to be de-Arabized in order to realize the Zionist vision of a Jewish society protected, uplifted, and aggrandized by a Jewish state. The effort to Judaize Mizrahim—to expunge the Arab-Jew whose existence challenges Zionism by demonstrating the possibility of pluralism—took the form of an aggressive and explicitly racist civilizing mission carried out by the Ashkenazi elite. On the other side of it, Mizrahim have emerged as some of Israel's most radical Zionists. Seeking to protect themselves from Ashkenazi state violence and demonstrate their worthiness

as Jews, large numbers of Mizrahim have adopted a religious Zionist tendency that presses Jewish settlement in the West Bank.

Religious settlers in the West Bank seek to resolve one of the ironies of 1948: the state of Israel was established not in the heartland of biblical Israel but on its periphery. The Judea and Samaria of biblical imagination, containing the holy cities of Jerusalem and Hebron, were left out of Israel. A largely secular settler movement could accept such an outcome, leaving the fuller settlement of the Holy Land to a later day. But religious Zionists are less patient. They are at the center of the contemporary settler movement.

Creating a Mizrahi and Religious Settler Force

As Arab Jews, Mizrahim posed a challenge to the Zionist worldview of the Ashkenazi establishment. Rather than reinforce the binary division between Jew and Arab, they occupied a middle ground impossible in the Zionist racial imagination: a people culturally Arab and religiously Jewish. Furthermore, Mizrahim upset the narrative of Jewish victimhood in the Diaspora essential to the justification of Zionist ideology. As noted above, Mizrahim were a protected minority in Ottoman lands and had a history of thriving there. This is not to say life was always easy, but the Jewish question was undoubtedly a more serious problem in Europe than in the areas where the Mizrahim lived.

In light of the threat they posed to the very nature of the new state and society, the Mizrahim faced open hostility from the moment they arrived in Israel, hostility expressed in civilizational terms. Speaking before a Knesset committee, Ben-Gurion called Moroccan Jews "savages." In an article titled "The Glory of Israel," he lamented that "the divine presence has disappeared from the Oriental Jewish ethnic groups" and praised European Jews for having "led our people in both quantitative and qualitative terms." Golda Meir wondered, "Shall we be able to elevate these immigrants to a suitable level of civilization?" Karl Frankenstein, a professor of education at Hebrew University, wrote, "We have to recognize the primitive mentality of many of the immigrants from backward countries," and he compared the behavior of non-Ashkenazi immigrants to "the primitive expression of children, the retarded or the mentally disturbed." Ashkenazi racism extended beyond Mizrahim. Kalman Katznelson's 1964 book *The Ashkenazi Revolution* asserted "the

essential, irreversible genetic inferiority of the Sephardim" and warned "against mixed marriage as tainting the Ashkenazi race." He called for Ashkenazim to protect their interests against a burgeoning Sephardi majority."[114]

The same arguments that European Christians brought against Jews in the eighteenth century were turned by Ashkenazim against "Oriental Jews," understood as both Sephardim and Mizrahim. They were seen as people who existed "outside history," and the aim was to bring them into it. Israeli theorist Amnon Raz-Krakotzkin writes, "To represent Jewish history as a European nationalism," as mainstream Zionists did, "one had to accept the triumphalist narrative of Western progress, which ignored the oppression of the Jews, among others, and was based on the negation and rejection of all that was defined as 'noncivilized' or, in other words, non-European."[115]

Zionist elites were determined to civilize Mizrahim through an official campaign of de-Arabization. As the Israeli diplomat and politician Abba Eban put it, "The object should be to infuse" Sephardim and Mizrahim "with an Occidental spirit rather than to allow them to drag us into an unnatural Orientalism."[116] This civilizing mission involved Hebrew-only education, depriving Mizrahim of "any connection to their mother tongue," Noam Chomsky and Ilan Pappé write. More generally, Mizrahim were encouraged to "proactively" show "how unArab they were by daily expressing their self-hate . . . for everything that is Arab."[117] The authorities went to truly scandalous extremes, such as stealing newborns from Mizrahi parents and placing the infants in the hands of adoptive Ashkenazi parents:

> Doctors, nurses and social workers, most of them on the state payroll, . . . were involved in providing Yemeni babies for adoption by Ashkenazi parents, largely in Israel and the United States, while telling the biological parents that the babies had died. The conspiracy was extensive enough to include the systematic issuance of fraudulent death certificates for the adopted babies and at times even fake burial sites for the babies who presumably had died—although the parents were never presented with a proof—a body. . . . Over several decades, Mizrahi demands for investigation were silenced, while information was hidden and manipulated by government bureaus. The act of kidnapping was not simply a result of financial interests to increase the state's revenues, it was also a result of a deeply in-

> grained belief in the inferiority of Jews from Arab and Muslim countries, seen as careless breeders possessing little sense of responsibility towards their own children.[118]

Today organized Mizrahi voices can be found challenging Zionist ideology and arguing for better treatment. The range of Mizrahi perspectives varies, from uneasy accommodation to sharp critique. Keshet, a "fledgling two-year-old movement of [Mizrahi] intellectuals" has an "ambiguous" attitude to the Zionist state. To their left are the Black Panthers, a group of Mizrahi youth from the "Musrara quarter of Jerusalem, [who] launched highly visible protests to object to the 'social gap' between Mizrahim and Ashkenazim in Israel."

Yet Mizrahim have also gravitated to the right, joining the Likud party and the religious party Shas, which "draws on mostly lower-class Mizrahi voters and boasts an impressive grassroots alternative Mizrahi education system that stretches from day care centers to yeshivas," Pnina Motzafi-Haller writes. The sharp turn to the right in Israeli politics in the past twenty-plus years cannot be understood without reference to this Mizrahi tendency. As one commentator puts it, "All the doors were slammed in the face of the Mizrahim. Only the synagogue door was left ajar."[119] Raef Zreik has astutely observed of this development, "The colonial attitude was practiced against the Mizrahi Jew. In cultural terms, they were treated even worse than Palestinians. That created an anger against the elite that established the state: [the] secular labor movement. . . . The labor, the secular, the colonizer, the Ashkenazi were all one." In other words, in the name of Judaization, the Ashkenazism taught the Mizrahim to despise Arabs—that is, themselves—and Mizrahim came away despising not only themselves but also secularism and Ashkenazi society. "From here," Zreik writes, "comes the Mizrahi Jews' hate of Palestinians and of Ashkenazi."[120]

Mizrahim, among others, took shelter under the theology of Rabbi Abraham Isaac Kook. Kook was a transformational figure in the history of Zionism. Starting in the 1920s, he effectively enabled religious Jews to abandon their skepticism toward Zionism and join forces with the secularists at its helm. Kook argued that religion and nationality were inseparable in Judaism. Zionist organizations might have been formally atheistic, but ultimately the movement could not help being Jewish, nor a part of God's plan. Atheist

Zionists either would come around, or else they would be supplanted by God-fearing ones. Kookian theology therefore licensed religious Jews' collaboration in the building of a Jewish state and society here and now and provided an ideological basis on which religious Jews could contend for leadership of the Zionist movement. Religious Zionists could cast the "socialist pioneer Jews" as unconscious "tools" of a divine project of redemption, which would be completed by those who best understood God's will for the Jews.[121]

The 1967 War provided an opportunity for Israel's Jews of Arab origin—of whom there were roughly a million at the time—to put Kookist theology into practice. In particular, by opening to Israeli settlement spaces inhabited by Arabs, the war created an opportunity for Arabic-speaking Jews to take the lead in a national project. As Yehouda Shenhav, a political theorist at Tel Aviv University, puts it, "The War of 1967 gave independence, status and promotion to an entire generation of Arab Jews, who celebrated the reopening of the space. It enabled a redefinition of the Mizrachi identity in Israel, not as a direct antithesis to the Ashkenazi identity, but as an option for integration in the newly opened space." More concretely,

> 1967 opened up possibilities for professional, social and cultural prosperity. These were the Arabic teachers, the translators, the military officers and the Civil Administration employees, the security organization officers—especially the Intelligence Corps or the Mossad—the curriculum inspectors in the education ministry, the bankers, the lawyers, the agricultural advisers and the Arabic-speaking workers of the broadcasting authority and Israel Radio . . . [they] became 'experts' on Arab affairs.

There was a similar shift in the army: "Middle-class and elite male, secular Ashkenazi Jews, once the very core of the combat units, have vacated that slot in favor of Mizrachi Jews" and other religious Zionists. In the Occupied Territories, the Arab Jews returned home. Not only that, now they were the masters.[122]

Religious enthusiasm for settlement, on the part of Mizrahim and others, was channeled in part through Gush Emunim, a militant movement that emerged in the wake of the Yom Kippur War of 1973.[123] The war had called

Israel's military superiority into question, making Gush's work urgent. Gush issued a master plan to import hundreds of thousands of Jewish settlers into the West Bank and colonize its strategic mountain strongholds. From 1974 to 1977, Gush concentrated on establishing settlements without government approval, arguing that the state ban against establishing settlements was illegitimate.[124] Nearly 20,000 armed Jews attended a West Bank "picnic" on Israeli Independence Day in 1976, marching from one part of Samaria to another.[125]

In 1977 Likud came to power, scrapped the settlement ban, and began a massive initiative to move a million Jews into the West Bank within twenty years. "Mizrachi Jews, Ultra-Orthodox and immigrants moved to the settlements, many to improve their economic standing."[126] Roughly 20 percent of West Bank settlers were members of Gush, and they inevitably played key roles in local governance, which allowed them considerable autonomy and power. Starting in 1978, each settlement was turned into a paramilitary community, as hundreds of settlers were released from regular army units, supplied sophisticated arms and equipment, and charged with policing their areas. A year later West Bank settlements had their own fully staffed local government structure, consisting of five regional councils with the power to levy taxes and supply services.[127]

From the outset, Gush refused any negotiation over the fate of the Occupied Territories. In 1978, when Israel evacuated the Sinai settlement of Yamit in accordance with the Camp David Accords, Moshe Levinger, a Gush leader and former student of Kook's, declared that Zionism had been infected by the "virus of peace" and led thousands of settlers back to Yamit.[128] Gush also embraced terrorism. On April 27, 1984, twenty-five members were arrested and charged with attempts to blow up six buses full of Palestinian passengers. The trial that followed revealed further details of Gush's terror campaign in the Occupied Territories: an attempted assassination of three Palestinian mayors in June 1980, explosives planted in Hebron-area mosques, a July 1983 attack on the Muslim college in Hebron that killed three students and injured many more, and, finally, a mission to blow up the mosque at the Dome of the Rock.[129]

The revelation of Gush's violence was a blow to the organization; the movement divided over whether it should take more moderate positions and petered out by the time of the 1992 elections. But its influence lingered, and

there were still thousands of Mizrahim and increasing numbers of immigrants from the former Soviet Union looking for opportunities to make their way on the frontier and earn their place in Israeli society by doing the work of God and the state. The settler population of the Occupied Territories exploded. In 1984 they numbered an estimated 46,000; by 1993, their numbers had increased to roughly 200,000; and by 2002 there were nearly 400,000. At that point, about 42 percent of land in the West Bank, excluding Palestinian East Jerusalem, was under settler control.[130] As of December 2015, more than 800,000 Israeli Jews resided over the 1949 Armistice Lines, including in east-Jerusalem neighborhoods, constituting approximately 13 percent of Israel's Jewish population.[131] A coalition of Arab and Russian Jews, many zealously religious and others primarily interested in access to land and the economic benefits the state offers settlers, is gaining its voice in Israeli politics through settlement, helping to ensure the ongoing power of Likud and Shas, right-wing parties committed to Israel's continued existence as a Jewish state, if not a democratic one.

Contesting the Nation-State

The creation of the state of Israel in 1948 began a process that fractured the Palestinian people into three groups who have taken decades to recognize their collective interest in contesting the Israeli regime. One of these groups became refugees outside historical Palestine. The second comprised those who remained within the borders of the new state of Israel and became its second-class citizens. The third group, residents of the West Bank and Gaza, became citizens of Jordan and Egypt in 1948. In 1967 they were colonized by Israel and have lived under occupation ever since.

There is no single and universally accepted political terminology to identify these three groups—one expelled, one incorporated, one colonized and occupied. I became acutely aware of this when I first visited the Occupied Territories and Israel in May 2006. Face-to-face encounters taught me a political lesson: not only did Palestinians often use different identities than those employed by states and official agencies, but also different groups of Palestinians did not always agree on how to identify each other. The most disputed group is the Palestinians who remained within the 1948 boundaries of the

state of Israel and became its citizens. Whereas Israeli officialdom and Israeli Jews referred to them as Arab Israelis or Israeli Arabs, most of those I met in Haifa referred to themselves as Palestinian citizens of Israel.

The difference was evidence of the eradication of Palestinian consciousness in Israel and its subsequent resurgence. From the standpoint of the state, there is no such thing as a Palestinian—one may no more register as a member of the Palestinian nation than the Israeli. And, indeed, there was no such thing, until Jewish settlers brought their own exclusionary politicized identities to the region in the early twentieth century.

The development of a Palestinian consciousness straddling these three groups has been an outcome of a protracted process whose focus and center of gravity have shifted radically over time: from exile to home and from an all-or-nothing demand for Israel's disintegration to a demand for involvement in the Israeli political process. Organizationally, this has involved a threefold transition. At first, displaced Palestinians looked to Arab "frontline" states to be their protectors and liberators. After these Arab states were defeated in 1967, Palestinians turned to the nascent and exile-led Palestine Liberation Organization (PLO), an armed-resistance movement. After Israel crushed the PLO in the 1982 Lebanon War, Palestinians finally looked inward.

The First Intifada (Uprising), in the late 1980s, solidified the internalization of Palestinian leadership and reflected a definitive rejection of the failed armed resistance the external leadership liked to talk about. The Second Intifada, beginning in 2000, brought together Palestinians in Israel and the Occupied Territories under a single movement. Both Intifadas responded to the failings of the official Palestinian liberation movement, under the aegis of the Palestine Liberation Organization. The second, in particular, reflected frustration over the PLO's capitulation to Zionism at the Oslo Accords of 1993 and the onward rush of settlement that followed it.

Oslo clarified the circumstances in which Palestinians find themselves. There is no longer a possibility of a two-state solution, and the Second Intifada made clear that Palestinians recognize this, whether they are in Israel or in the Occupied Territories. Their coalition reflects a sense that both inhabit the role of the national minority. In the wake of the Second Intifada, Palestinian activists have put Zionism's feet to the fire, demanding that the Jewish state live up to its democratic self-image. This new reform movement does not try to wipe Israel off the map, as some Palestinian movements have.

It asks Israel to account for itself—to be a democracy, to foreswear the nation-state as a key dogma of political modernity and become a state committed to all its citizens.

The First Intifada and Bantustanization at Oslo

In 1982 Israel went to war in Lebanon, the purpose of which was in fact total war against the Palestinians. The Lebanon War was the brainchild of Ariel Sharon, then the defense minister. According to Rashid Khalidi, Sharon's immediate goal was "to expel the PLO and Syrian forces from Lebanon and create a pliable allied government in Beirut." But the strategic objective was larger. Sharon thought that by "destroying the PLO militarily and eliminating its power in Lebanon," he "would also put an end to the strength of Palestinian nationalism in the Occupied West Bank, Gaza Strip, and East Jerusalem." To this end, the IDF deployed "well over 120,000 troops" for over ten weeks. It was "the country's largest mobilization since the 1973 war." Outgunned and overwhelmed, the PLO withdrew to Tunis.[132]

But while the PLO was defeated, Sharon's strategic objective was unrealized. Instead, the war intended to suppress Palestinian nationalism only stoked it further. And with the exiled armed resistance smashed, the moment was ripe for political mobilization at home. It came on December 9, 1987, with the beginning of the First Intifada. A popular uprising against Zionist settlement, the Intifada spread rapidly from Gaza to the West Bank. The First Intifada shared many features with the Soweto uprising of 1976. In both cases, predominantly young men and women protested, declaring no confidence in the generation of their parents, which seemed to have combined largely rhetorical calls for armed struggle with a day-to-day accommodation of the regime of apartheid and occupation. As in South Africa, in occupied Palestine, protestors threw stones at armed police, security agents, and troops. Like South African troops in the 1980s, Israeli troops responded with excessive force, beating, breaking bones, and shooting live ammunition and rubber bullets, which also turned out to be lethal. In both cases, collective punishment was imposed—from curfews to home demolitions to detentions of thousands without judicial procedure. Another parallel lies in the relationship between the activists on the ground and the organized liberation movement. The Intifada gave rise to a unified internal leadership, which

consulted with the exile leadership but made its own decisions that were then "ratified" by leaders on the outside.

One of the Israelis responsible for the security response to the First Intifada was Yitzhak Rabin. As minister of defense, he developed what was known as the "bone-breaking policy," aimed at violently putting down the uprising. In 1993, as prime minister, Rabin would sit across the table from PLO leader Yasir Arafat at the Oslo negotiations. By then, Rabin had lost his reputation in Israel as a tough cop, largely because the previous year he made common cause with Israel's Palestinian parties in order to establish a government. It was more a pragmatic move than an idealistic one; although Palestinians had made Rabin's government, he invited no Palestinian members of the Knesset (MKs) into his cabinet. This was the first time that an Israeli government had relied on support from Palestinian MKs to form a governing coalition, and the Israeli right responded harshly, casting Rabin's as an illegitimate "minority" government. Even if Palestinians had the right to vote and to run for office, the Israeli establishment had never considered it legitimate for Palestinians to participate in power. Rabin's assassination by a young Jewish religious nationalist on November 4, 1995, followed months of public campaigns by religious groups, including influential rabbis, who personally cursed Rabin along with the government he led and discussed the necessity of sentencing Rabin to death under halachic law.[133]

The offense must have been simply relying on Palestinians, because Rabin's handling of the Occupied Territories was little different than that of his Likud predecessors. At Oslo, Rabin refused to pledge that there would be no more settlement building, a reflection of the two-party consensus in Israel.[134] After Oslo, both Labor and Likud governments went ahead with new settlement construction and the expansion of existing settlements.

The First Intifada taught Rabin and those around him that they could not manage the Occupied Territories without a pliant intermediary. At Oslo that turned out to be Arafat.[135] The two sides signed a Declaration of Principles, which provided, in Khalidi's words, "a highly restricted form of self-rule in a fragment of the Occupied Territories and without control of land, water, borders or much else." This was "a barely modified version of the . . . autonomy plan" Israeli Prime Minister Menachem Begin had proposed in the late 1970s, to no avail. Rather than provide autonomy, the agreement ensured

"the loss of land, resources and freedom of movement suffered by the Palestinians since 1993."[136]

Arafat made two crucial compromises at Oslo. First, he tacitly accepted settlements in the West Bank. Second, he explicitly accepted Israel's stranglehold over the economy and sovereignty of the occupied territories, even going as far as to agree that this stranglehold would persist in a future Palestinian state. Arafat essentially agreed to leave in place a plethora of post-1967 Israeli controls over the West Bank and Gaza, restricting everything from fishing to digging wells. Israel was also allowed to maintain its authority over mineral resources in the Dead Sea, even though it would be in the territory of a future Palestinian state. Furthermore, Israel was allowed to maintain security at Israeli settlements, which sat atop all the crucial aquifers of the West Bank. That meant there would be no substantial expansion of either Palestinian agriculture or water-dependent industry. Through "security cooperation"—guaranteeing security not only for the state of Israel but also for the settlements on the West Bank—Israel remained in command of all borders between the Occupied Territories (the future state) and the outside world. This not only ensured that Israel would control the borders of a nominally independent state for security purposes, but also meant that Israel would supervise the flow of goods into and out of the territories. On top of it all, Israel was granted the right to establish a customs union that would collect duties on all imports to the Occupied Territories and future state from outside Israel, duties that were supposed to be passed on to the Palestinian client.[137]

This client, per the Oslo agreement, would be an entity known as the Palestinian National Authority. In effect the PNA (also referred to as the Palestinian Authority or PA) was to be the local administrator in the Occupied Territories and "independent" Palestine, on behalf of the Israeli government. The similarity to native administration in the South African Bantustans is striking. Arafat was elected the PNA's first president in 1996.

The client role of the PLO-dominated Palestinian Authority became even more transparent with the second Oslo Accord in 1995. Known as the "Interim Agreement on the West Bank and Gaza Strip," Oslo II

> carved both regions into an infamous patchwork of areas—A, B, and C—with over 60 percent of the territory, Area C, under complete,

> direct, and unfettered Israeli control. The Palestinian Authority was granted administrative and security control in the 18% that constituted Area A, and administrative control in the 22 percent of Area B while Israel remained in charge of security there. Together, Areas A and B comprised 40 percent of the territory but housed some 87 percent of the Palestinian population. Area C included all but one of the Jewish settlements. Israel also kept full power over entering and leaving all parts of Palestine and held exclusive control of the population register (meaning that it decided who had residency rights and who could live where).[138]

Oslo's compromises extended beyond the Palestinians in the West Bank and Gaza. Claiming to be "the sole representative of the Palestinian people" no matter their residence, the PLO gave away the right of return of the 1948 refugees. Arafat breathed not a word about the predicament of Palestinian citizens of Israel, not even the internally displaced people ("present absentees") among them.[139] His acceptance of these terms distinguished him and the PLO from the ANC, which rebuffed attempts to draw it into administering a Bantustan-type government in South Africa. At Oslo, Arafat and his associates forfeited their moral and political claim to leadership of Palestinians. While the PLO congratulated itself on coauthoring a breakthrough in pursuit of a two-state solution, the organization became, at best, a sectional representative of those living in the Occupied Territories. And even this position it immediately abrogated by accepting Israel's offer of client status.

The Second Intifada and the Crisis of the Two-State Solution

When Labor returned to power in Israel in 1999 under Ehud Barak's leadership, it sought to implement a revision of the Oslo Accords that would reaffirm the PLO's commitment to managing a protectorate in the Occupied Territories. Barak's package was delivered at Camp David in 2000, although it was "never published" and was "only reconstructed by participants after the event." According to Khalidi, Barak's key demands were, first, "permanent Israeli control of the Jordan River Valley, and Palestine's air space"; second, "Israel's continued control over West Bank water resources"; third, "annexation of areas that would have divided the West Bank into several isolated

blocks"; and fourth, "exclusive sovereignty . . . over the entire Haram al-Sharif [Temple Mount] and most of the rest of the Old City."[140]

Camp David 2000 was the last gasp of the Oslo premise: trading territories for peace. Unlike the 1993 and 1995 summits, the follow-up produced no agreement. A few months after it concluded, new events would confirm that territories-for-peace was a dead letter. These events became known as the Second Intifada. By bringing to prominence the plight of Palestinians inside Israel, the Second Intifada laid to rest the idea that the Palestinian question could be solved by forming a separate Arab polity in the Occupied Territories.

Unlike the First Intifada, which was almost exclusively confined to the Occupied territories, the Second Intifada began in the womb of Israel with demonstrations following Ariel Sharon's visit to Al-Aqsa Mosque on September 28, 2000. The next month, when Israeli troops killed thirteen young Palestinian demonstrators at Al-Aqsa, most of the dead were Palestinian Israelis.[141] Whereas West Bank Palestinians called for an independent and sovereign state in the Occupied Territories, Palestinian citizens of Israel were demanding something a separate state wouldn't solve: democracy, meaning nothing less than the de-Zionization of Israel. Israeli Palestinians had arrived at a popular agenda calling for a radical reform of the state—its reconstitution as "a state of all its citizens."

In the aftermath of the Second Intifada, Israel appointed a commission to report on what had happened. The focus of the Or Commission was on forces "radicalizing" the Palestinian minority, but not those radicalizing the Jewish majority. It was tasked with outlining precursors to violence that had developed among the Palestinian minority, but not with exploring Israeli provocations, such as Sharon's appearance at Al-Aqsa. Yet the report could not escape certain truths. It detailed the history of discrimination against Palestinians in Israel, particularly in the area of land ownership and use, documenting an array of discriminatory practices against both citizens and present absentees. The commission confirmed that, although discrimination on the basis of national, religious, or ethnic identity is forbidden under Israeli law, "Arab citizens live in a reality in which they are discriminated against" by the state. The report pointed to ten instances of police killings of Palestinian citizens that should be investigated and severely criticized police for using rubber bullets and snipers against unarmed demonstrators within Is-

rael. Rubber bullets were "both deadly and highly inaccurate," the report noted, and the use of snipers against unarmed demonstrators within the territory of Israel "was unprecedented and constituted a dangerous development in the relations between the state and its Palestinian citizens." The commission traced this development not only to a "lack of adequate political protection in Palestinian communities" but also to an attitude among many in the police that Palestinian Israelis are "enemies of the state, rather than its citizens." In a revealing recommendation, the commission suggested that the use of rubber bullets, and presumably snipers, "may be allowed in dealing with non-citizen protestors in territories that are under belligerent occupation, but not in dealing with citizens inside the sovereign territory of the state." [142]

In other words, the problem with Israeli government behavior was not in the deployment of violence against the oppressed—it was the use of violence against citizens. Still, the commission was offering a potent political message: the state, it said, had blurred the distinction between citizen and noncitizen Palestinians. Its recommendation for restoring that distinction was to ensure full equality between Jewish and Palestinian citizens, which would mean a single, undifferentiated Israeli citizenship.

When it came to implementing that recommendation, the task was handed to an interministerial governmental committee headed by Justice Minister Yosef Lapid. The Lapid Committee paid lip service to the Or Commission's recommendation of equality between Jewish and Palestinian citizens, but its proposals fell far short of achieving this. The Lapid Committee was focused on placating Palestinian Israelis by seeking urban renewal in their communities. There was no mention of "just allocation of land resources to the Palestinian citizens," as Yoav Peled notes.[143] Instead the Lapid Committee envisioned continuing discrimination in land allocation. The committee also said that equal citizenship would have to "be conditional on the establishment of national service for the Palestinian citizens," an impossibility without massive reforms to the armed services.[144]

The refusal to take seriously the Or Commission's seemingly modest proposal that Israel actually do what it claims it does—treat Jewish and Palestinian citizens equally—demonstrates just how radical that idea really is. Equal citizenship threatens fundamentally the Zionist foundation of the state of Israel. A state in which non-Jews have the same rights as Jews would still

be a home for Jews, even a majority population of Jews. But it would not be a Jewish state.

A Jewish State, or a State of All Its Citizens?

The question that the Lapid Committee refused to answer was whether Israel was a Jewish state or a state of all its citizens. Of course, this refusal was a kind of answer in its own right.

The notion of achieving political equality within Israel had been brewing for a few years but was brought to the forefront by the Second Intifada. It was a major goal of Balad (National Democratic Alliance), a political party led at the time of the Second Intifada by Azmi Bishara, a Palestinian MK. The demand that Israel be "a state of all its citizens" was central to Balad's platform in the 1996 elections.[145] On May 21, 2001, Bishara proposed a new basic law aimed at achieving this. The stated purpose of the bill, entitled Basic Law: Arab Minority as a National Minority, was "to enshrine in basic law the status of the Arab minority in Israel as a national minority entitled to collective rights and complete civil equality." The new minister of justice, Meir Sheetrit, objected that Israel is "a Jewish and democratic state"—a habitual refrain; Israel constantly trumpets itself as the only democracy in the Middle East, ignoring the deeply antidemocratic "gerrymander" wrought by ethnic cleansing and nationality law. He noted that the bill would raise "problems" with "maintaining special institutions" such as "the Hebrew language academy, . . . the Jewish Agency, and the like." These are the institutions that, by serving only Jews, preserve Israel as a state with two kinds of citizens: Jewish citizens with rights to the "national home," and non-Jewish (that is, Palestinian) citizens with no such rights. The Knesset rejected the bill by a vote of sixty to nine, with one abstention.[146]

In the months that followed, Bishara presented another bill countering the false claim that Israel is a democratic state. It did so by asking the Knesset to rewrite that assertion in its basic law and instead affirm that Israel is "a state of all its citizens." It was a sign that the Second Intifada had shifted the terms of debate: no longer were Israeli Palestinian leaders questioning Israel's right to exist. Instead they were arguing that Israel did not have to worry about its right to exist—but it did have to worry about all of its citizens, including the non-Jewish minority. Even more than the first bill, this one played with fire. Section 7A of Israel's Basic Law gives the Central Elections Committee the

power to ban any political party whose goals and actions so much as imply "the negation of the existence of the State of Israel as the state of the Jewish people."[147] Whereas Bishara's first bill sought equal rights for the national minority, now he was asking the Knesset explicitly to negate the existence of the national minority by also negating that of the national majority—by rejecting the idea that Israel is the state of the Jewish people.

In response, the Knesset did precisely the opposite. It amended Section 7A so that denying Israel's existence "as a Jewish and democratic state" would now be grounds for a ban. That means that political parties now are prevented not only from questioning Israel's existence as a Jewish state but also from criticizing its undemocratic character.[148] The amendment is, in effect, a requirement that every citizen of Israel, Jew or Palestinian, join the Zionist consensus.

Following the passage of the amendment, Attorney General Elyakim Rubenstein recommended that Bishara and his party be disqualified from running in elections. The proposal received widespread support, including from the liberal *Ha'aretz,* which published an editorial approving of new limits on the right to democratic participation effected in the name of confirming that Israel is a democratic state.[149] It was a signal that Israeli Jews were closing ranks. The journalist Uzi Benziman registered an isolated voice of dissent:

> No one in the Arab sector accepts the Jewish nature of the state. Not one Arab is a Zionist. The Israeli Arabs are citizens of the state as a result of chance fate, which left them within its borders after the War of Independence. They did not come to the state; the state came to them. . . . The Israeli Arabs will continue to pester the Jewish majority because they are aware of the fundamental contradiction between the definition of Israel as a Jewish state and its declaration that Israel is a democratic state.[150]

The Central Elections Committee voted to disqualify Bishara and his party. In the ensuing debate, *Ha'aretz* changed its mind. Israeli human rights organizations and leftist groups like Peace Now and Peace Bloc also opposed the move to disqualify Arab candidates, not because they were interested in preserving an Arab presence in the Knesset but because they feared that

opponents would use the committee's authority to disqualify Jewish leftists as well. Ultimately the Supreme Court overruled the decision to disqualify Bishara and his party. The majority of the court argued that Bishara's objective of securing equal rights for all citizens did not negate the existence of the Jewish state.[151] For whatever reason, the court appears to have ruled on the basis of Bishara's first bill, not on his second, which absolutely seeks to negate Israel's existence as a Jewish state. Bishara was eventually removed anyway, not only from the Knesset but also from the country. After Bishara visited Lebanon and Syria in the wake of the 2006 Lebanon War, Israeli prosecutors charged him with treason and espionage. Stripped of parliamentary immunity, he fled Israel and found asylum in Qatar.

It took a little more than a decade before another bill was presented in the Knesset calling for a redefinition of the state of Israel, this time as an unqualified "nation-state of the Jewish people." In 2018 a small Knesset majority affirmed post-Intifada retrenchment by passing Basic Law: Israel as the Nation-State of the Jewish People. Much criticism surrounded the bill. The Association for Civil Rights in Israel, for instance, decried the retreat from Israel's identification as a democratic state. ACRI committed itself to fighting for equal civil rights for all individual citizens of Israel, albeit "within a 'nation-state' framework."[152] The declaration was in line with the stand taken by Bishara in the original bill he had introduced in the Knesset, calling for affirmation of Palestinian citizens' rights as members of a "national minority"—that is, a protected minority within the framework of a nation-state. Bishara's second bill, however, had raised a more fundamental question: How could Israel claim both to be a Jewish state and a democracy that respects the equal rights of citizens? The answer, the Knesset agreed, was that it couldn't. So it stopped pretending otherwise.

Another view on the "Jewish State" bill comes from Raef Zreik. Zreik notes that the day the nation-state basic law "takes effect will be . . . the day in which apartheid is . . . institutionalized. It will be the day in which consciousness finally catches up with reality, and, as we know, political action begins when people become aware of their situation." Why institutionalize apartheid when Israel is already a de facto apartheid state? Zreik's answer: "This need to institutionalize separation has arisen" because Palestinian citizens of Israel have become more widely conscious of their position and sought to change it. So long as Israeli Palestinians lived on the margins, as

they had for decades, there was "no need for institutionalized separation." The need appeared as "their presence in parliament, as well as in political and in economic life" became "more pronounced" and they "managed to deploy the law in their struggle," achieving "some important but very limited gains."[153]

The emergence of Palestinians as a public force in Israel began in the aftermath of the 1967 war and subsequent reforms, which opened hitherto exclusively Jewish institutions such as Histadrut and major political parties to the membership of Palestinian citizens. Palestinians could now contend for leadership positions, whether as union officials or as candidates on party lists.[154] There followed, according to Bishara, "the development of a new Arab middle class and intelligentsia."

This middle class became "the repository of Palestinian nationalist consciousness," which was "rediscovered . . . through their encounter with the West Bank and Gaza," itself enabled by the occupation. This group was "torn between demanding equality in Israeli civil society and demanding an independent national identity," Bishara writes. "We began to demand equality in Israel and to demand a Palestinian state in West Bank and Gaza."

> I . . . was elected into the Knesset to address this issue: the cultural marginalization of Israeli Arabs from their own identity and their civil marginalization from full citizenship. I want Israel to become a society that officially recognizes itself as a state which contains two cultures, one a Jewish majority culture, the other a Palestinian national minority living inside a Jewish majority, sharing citizenship. The state itself may have the cultural character of the majority, but its relationship to citizens should be regulated by citizenship and not by their religious identity. I want Israel to become a state of its citizens. . . . With an increase in individual rights . . . the growing Palestinian middle class intelligentsia wanted something more than an economic trickle-down; it wanted to share in the shaping of their own lives, not simply to respond to what others had planned for them. They were told, in response, that they had been given economic opportunities in return for political quiet. And they realized: we are not really citizens, we are tolerated guests.

Amid growing political consciousness came another realization: Jewish settlements were expanding, leading, Bishara writes, to

> the development of Bantustan regions that approximate the development of a system of apartheid for West Bank Palestinians. . . . in the sense that one land area is occupied by two groups, one of which has sovereignty, political rights, the freedom of movement, while the other group does not. As this apartheid system develops, the conflict for Israeli Arabs will become even more complex, because it will mean that we will be asking for political equality in Israel while Israel is oppressing our people in the West Bank; in effect, we will be asking for equality with oppressors of our own people.[155]

Zreik, too, identifies the settlers in the West Bank and East Jerusalem as the forcing issue—the reason Israel was faced with the demand that it declare itself a state for all its citizens and responded by instead declaring itself a Jewish state, and not necessarily a democratic one. The permanence of the settlers "requires a conceptualization of their continued presence in terms of a formal regime of separation"—of apartheid. The new basic law merges the State of Israel and Eretz Israel. Zreik concludes, "There is no room for another people to exercise its right to self-determination not just in the State of Israel, but in the entire 'Land of Israel.' In other words, there can be no national minority inside the State of Israel, and at the same time, there can be no Palestinian people entitled to national rights in the Occupied Territories either."

The basic law officially puts the two-state solution to rest and makes the one-state solution, hitherto a right-wing tendency in the Zionist movement, the official position of the state of Israel. This shift has historic significance. Zreik says the two-state solution had created

> the illusion of separating the two peoples into two political entities, thus leaving the Palestinians outside of Israeli political consciousness . . . beyond the border, with their own national anthem. . . . At one time, Israelis could tell themselves: They, the Palestinians, 'over there,' are on the way to their own independent state. They may be separate, true, but they will be independent. No longer: Apartheid

> is not mere separation, it is separation within unity, within one sovereign political framework.

That, fully and finally, is what Israel has now. For the Palestinians in the Occupied territories, it leaves two options: expulsion as non-citizens or incorporation as citizens. "Expulsion," Zreik writes, "is not a publicly acceptable option," while "annexation of the Occupied Territories with full citizenship to their Palestinian residents is impossible. . . . The first option cannot be proposed because of the gentiles, and the second—because of the Jews. So, we remain with two national groups in one political space. . . . This must be the basis for any future political project by the democratic Left in this country."[156]

Bishara enunciated such a project with his second bill. His first proposal asked that Israel be reimagined as Israel-Palestine, a national home for two peoples in which Palestinians would have the right of return. This legislation had its eyes on the past—the redressing of grievances that could no longer be ignored in the age of occupation and apartheid. When he went a step further and called for a redefinition of the state of Israel as a state of all its citizens, not Jews and Palestinians but simply whoever lived there, he was reimaging Israel with eyes on the future: no longer a nation-state with a national majority and national minority—even a minority with protected rights—but an actually democratic state without nations. As of 2018 the Israeli government is not willing to abide such a future and has made clear it will be Jewish rather than democratic.

Possible Futures

Can a multinational society, organized as a nation-state that divides its population into a permanent national majority and minority, be democratic? Can the principle of the state, which calls for equal treatment of all citizens under rule of law, be reconciled with the principle of the nation, which preserves sovereignty for the nation—the permanent political majority? These are the questions at stake in the debate over how Israel identifies itself. When the Knesset affirmed that Israel is neither a democratic state nor a state of all its citizens, it acknowledged that the answer is no. In Israel, where the Jewish

home is equated with the state, the possession of rights is predicated on being acknowledged as a Jew.

The alternative is a radical dissociation between nation and state, culture and politics. In this alternative world, the state is not the property of any nation; the nation is not sovereign. *Nations* are not sovereign; the state is no more binational or multinational than it is committed to a single national majority. The state is home to no nation. Home is society, where multiple nations with multiple histories can coexist. The state, meanwhile, is not a coming together of nations but a coming together of citizens who share a vision for a common future. Instead of safeguarding a permanent majority, the state would govern by majorities assembled through the political process. In the nation-state, the majority is a constraint on the democratic process. In the state with no nation, the majority is an outcome of the democratic process. Under such conditions, neither the majority nor the minority is a permanent construct. Both mutate as determined by democratic action.

In Israel, realizing this democratic vision will require reform, which in turn rests on critique. Critical thinking about Zionism can help to displace Zionism. That critique is embedded in the Zionist movement itself, which has long inspired reflection and doubt.

Critique and Reform

Zionism has been subject to two strands of internal critique, one ethical and one political. The ethical critique disassociated itself first from Zionist politics in Palestine and then from Zionism as an ideology. Some, like Judah Magnes, Hebrew University's first chancellor and a founder of the reformist Brit Shalom organization, identified with a non-state Zionism. He sought a Jewish homeland in Palestine but argued that it would be found in Jewish society there; it did not necessitate a state. In a 1929 letter to Chaim Weizmann, Magnes declared that a Jewish home "built upon bayonets and oppression is not worth having, even if it succeeds, whereas the very attempt to build it up peacefully, cooperatively, with understanding, education, and good will is worth a great deal, even though the attempt should fail." Magnes went on to ask, "Do we want to conquer Palestine now as Joshua did in his day—with fire and sword?"

As the settler project unfolded, the encounter with Palestinians provided a learning experience for many. Hans Kohn, the political theorist and Brit

Shalom member, moved to Palestine in 1925 but eventually returned to the Diaspora and renounced Zionism. For Kohn, the clashes of August 1929 were "eye-opening." A then-unprecedented event in Jewish-Arab relations in Palestine, the clashes followed years of increasing Jewish immigration and nation-building on Britain's watch. The immediate spark was a Jewish demonstration at the Wailing Wall. When the dust settled, hundreds of Jews and Arabs were dead. In the wake of the violence, the British government recommended restraint on Jewish immigration and reforms to exclusionary Jewish land policies. Kohn looked inward. The British could try to put the brakes on settlement, but the source of the problem lay in Zionism itself. What was needed was "a reappraisal of 'the moral and spiritual foundations of Zionism' and a search for a 'new solution' to the Arab Question."

This is precisely the opposite of what the World Zionist Organization called for. Following the 1929 encounters, Karen Hayesod, the overseas fundraising arm of the WZO, asked eminent Jews to write letters in support of the Jewish claim to unfettered control over the Wailing Wall. Sigmund Freud declined, as did Albert Einstein. In response to the request, Einstein wrote to Weizmann that, should Zionism "be unable to find a way to honest cooperation and honest pacts with Arabs, we shall have learned nothing from our 2,000 years of suffering and will deserve our fate." At a 1938 event, Einstein announced that, on his view, "the essential nature of Judaism resists the idea of a Jewish state with borders, an army, and a measure of temporal power." He affirmed that he would "much rather see reasonable agreement with Arabs on the basis of living together in peace than the establishment of a Jewish state," adding that he feared the "inner damage Judaism will sustain—especially from the development of a narrow nationalism in our ranks."[157]

Alongside that ethical critique is political critique, associated with Hannah Arendt. Arendt looked for an alternative to assimilationist liberalism, which rejected all group identities bar one: the nation in the nation-state. With respect to the deficits of liberalism, Arendt famously proclaimed, "When one is attacked as a Jew one must respond not as a German or a Frenchman or a world citizen, nor as an upholder of the rights of Man, but as a Jew."[158] As for nationalism, the effort to equate the nation with a single majority group was a denial of what Arendt saw as essential social heterogeneity. She traced the roots of Europe's nationalist crises to the tendency of secularism to flatten the social landscape, thereby leading to a continuous bleeding of the body

politique, including the mass production of refugees. Any state "founded on a homogeneous idea of the nation is bound to expel those who do not belong to the nation and so to reproduce the structural relation between the nation-state and the production of stateless persons," she wrote. At the same time, "for any state to have legitimacy, it must accept and protect the heterogeneity of its population."[159] The nation-state, Arendt concluded, was an exclusionary device. To think outside its boundaries, one needed to distinguish between individual freedom and group sovereignty.

But while Arendt provided a trenchant critique of liberal assimilationism and the nation-state, she failed to break free of racist assumptions that underlie the nation-state model and suggest an alternative to it. In particular, Arendt could only think of heterogeneity within Eurocentric and Orientalist limits. Thus, in a letter to Karl Jaspers, she observed of the Jerusalem court trying the Nazi Adolf Eichmann, "My first impression. On top, the judges, the best of German Jewry. Below them the prosecuting attorneys, Galicians, but still Europeans." The police force, however, "gives me the creeps, speaks only Hebrew and looks Arabic. Some downright brutal types among them. They would follow any order." Worse still, "outside the doors, the oriental mob, as if one were in Istanbul or some other half-Asiatic country. In addition, and very visible in Jerusalem, the peies [sidelocked] and caftan Jews, who make life impossible for all the reasonable people here."[160] Though a critic of homogenizing nationalism, Arendt seemed to have embraced that frame.

In this she was much like Zionist historians, As Raz-Krakotzkin has noted. In their endeavor to formulate a political program for the salvation of Jews, Zionists rewrote Jewish history in a secular mode that devalued Jewish religious and cultural life—with all its diversity—and elevated in its place a view of Jewishness that reduced to political cohesion. Thus, Raz-Krakotzkin writes, In Zionist historiography the "term 'exile' was used, as an exclusively political term, to describe the period when there was no Jewish sovereignty in Palestine," thereby detaching "the idea of exile from its theological framework and from the destruction of the Temple." For instance, the historian and eventual Israeli minister of education Ben-Zion Dinur argued that exile did not begin with the destruction of the Second Temple but with the Arab "conquest" of the land in the seventh century.[161] On this thesis, what made one a Jew was not faith, practice, or social life but membership in a political community. Faith, practice, and social life were at best irrelevant and at worst an

impediment to the nation as a political entity. This attitude both reinforces and is reinforced by the disdain for diversity Arendt expressed.

A second aspect of the nationalist vision that Arendt seemed unable to question was the presumption of permanent and prepolitical national majorities and minorities. In this she was again akin to mainstream Zionists but also shared the view of internal critics like Magnes. Neither camp could bring itself to contemplate a political arrangement in which a Jewish minority could live in a society with a non-Jewish majority. While mainstream Zionists called for policies that would create a Jewish numerical majority where it did not exist, Magnes called for a binational state in which he assumed there would be a Jewish majority, even though Jews constituted a small minority in Palestine at the time. Arendt strongly disagreed with Magnes's program—not because it was (bi)nationalist but because she refused to join him in denying the existence of an Arab majority, which she understood as permanent and permanently threatening to Palestinian Jews. "Dr. Magnes's bi-national state would leave the Jews in the position of a permanent minority within a larger Arab empire," she worried.[162]

Later Palestinian critics of Zionism resurrected binationalism. Edward Said was most prominent among this group. It is not surprising that as the possibility of a two-state solution became obviously untenable, Palestinians would turn to binationalism. But, as before, this proposal contained the seed of its own undoing, for binationalism presumes nationalism. Rather than rethink the nationalist limits of the one state–versus–two state choice, binationalists accept these limits.

Radical critique of political Zionism uses the language not of binationalism but of de-Zionization. This was the goal of Matzpen (Compass), a socialist group established by Hebrew University students in 1962. Affirming that the war of 1948 had in fact been an act of ethnic cleansing, Matzpen organizer Michel Warschawski called for "a forum for dialogue with Palestinian activists" as a prelude to "'de-Zionization' of Israel, and its integration into the Arab Middle East."[163] Warschawski went on to form a small anti-Zionist party, also called Matzpen. During the First Intifada, the party joined forces with the Palestinian opposition to occupation and championed the cause of Arab-Jewish equality within Israel.[164]

The notion of de-Zionization is coequal with that of a state of all its citizens. Like the Israeli Palestinian Balad party, Matzpen argued for an end to

the Law of Return, for the right of return must be extended to all Palestinians who fled the state in 1947–1948. Both parties also sought an end to oppressive measures against Israeli Palestinians, including the expropriation of their land.[165] The call for de-Zionization is a recognition that, in a democracy, the majority cannot be culturally or biologically determined—it cannot be racial, ethnic, or religious. A democratic majority has to be a political majority, an outcome of the political process and not its unchanging starting and ending point. Only a democratic process of majority formation can give every minority the assurance that it can one day hope to persuade enough of those outside its ranks to forge a new majority. Indeed, there cannot be a permanent majority or minority in a democratic state.

Boycott, Divestment, and Sanctions

Over the past decade, Palestinian politics has moved from an engagement predominantly internal to one predominantly external. The internal engagement called for a state of all its citizens as a counter to the Zionist project for a Jewish state. The external engagement takes the form of an international boycott of the Israeli state *and society*. The international boycott, divestment, and sanctions movement, known as BDS, was launched in 2005 by 170 Palestinian unions, political parties, refugee networks, women's organizations, professional associations, popular resistance committees, and other civil society bodies and was "inspired by the South African anti-apartheid movement." BDS does not express preference for any type of state, nor does it promote one state or two. BDS describes its demands as "limit(ed) to civil rights and obligations under international law." The movement demands that Israel "end its occupation and colonization of all Arab lands and dismantle the Wall," "recognize the fundamental rights of the Arab-Palestinian citizens of Israel to full equality," and "respect, protect and promote the rights of Palestinian refugees to return to their homes and properties as stipulated" by the United Nations in Resolution 194.[166]

Ironically, though predictably, US politicians have been highly skeptical of BDS, attempting to undermine it through federal and state-level legislation and through lawsuits. The irony lies in claims that BDS is illegitimate and antisemitic, despite the fact that the US government is the author of the most comprehensive and protracted international boycott regime in history—the sanctions aimed at governments that have incurred its displeasure for one

reason or another. This regime, quite unlike BDS, aims to change the political attitudes of publics abroad, in order to produce regime change. The US-led international sanctions regime involves blanket boycotts as well as microtargeting of individuals in government and outside. The United States supports certain social movements while criminalizing others. The purpose here is not to press states to change their behavior, but to induce publics to change their states by showing them that they would be better off without their states as presently constituted. BDS, by contrast, considers itself apolitical, meaning that it is agnostic on what kind of state Israel should be.

This is not to suggest that BDS is ignoring the big issues. If BDS's demands were met, the Israeli state would be de-Zionized. The occupation would end, all Israelis would enjoy equal citizenship, and everyone with a historic connection to the land would have a right to return. What is more, the sovereign role of the Jewish national institutions would be over, and with that their explicit commitment to keep all Palestinians, including Palestinian citizens of Israel, out of "redeemed" lands. To the extent that BDS calls for the de-Zionization of the state of Israel, there is reason to give it enthusiastic support.

But BDS could learn something from the US focus on society. Whereas US sanctions aim at fostering political change by modifying public attitudes, BDS makes no direct effort to change Israelis' political sensibilities. Within Israel, BDS offers only moral critique and the pressure that comes with it. It does not attempt to show Israeli Jews that there is a non-Zionist alternative to Israel in which they would be safe and prosperous—that Israeli Jews would be better off with regime change. BDS neither works systematically with anti-Zionist forces within Israel nor makes efforts to cultivate more such forces. To change minds en masse will require something else: a political mobilization that includes BDS but goes beyond it by presenting to Israeli Jews a livable future beyond Zionism. The South African moment provides a model for such a mobilization.

Through a South African Lens

When it comes to unofficial international boycotts, the best known in recent history was the campaign directed at apartheid South Africa. I took part in that campaign and in 1993 got to travel to South Africa to meet counterparts in local community organizations, trade unions and political parties.

Critically, it is the South African moment I look to as a model for BDS or some larger movement encompassing it—not the anti-apartheid boycott.

The anti-apartheid boycott made the mistake of collapsing state, regime, and society into a seamless whole. It made insufficient effort to align with domestic anti-apartheid forces, presuming instead that the whole of South Africa had to be boycotted. When I visited South Africa, I saw how grievous this error was. I was shocked to find that even anti-apartheid civil society groups retained an apartheid mindset that divided Africa in two: South Africa as civilized and the rest of Africa as backward. What this suggested was that the boycott movement had left a minimal imprint on society. We were helping to put pressure on the government but were doing nothing to identify and link up with decolonizing forces in the social sphere. Had we focused more carefully on distinguishing pro- and anti-apartheid forces within South African society, we might have become part of the epistemic revolution necessary to transform the terrain of political identity. Instead, even opponents of apartheid policy retained elements of its colonial-modern worldview, which, as we have seen, have justified the continuation of a violent and antidemocratic tribalism in post-apartheid South Africa.

What I came to understand was that indiscriminate boycotts do not work. The strategy of isolating the state internationally must be aligned with a domestic strategy to isolate the pro-state forces in civil society while backing those that would dismantle it. The challenge for BDS is to not make the same mistake in the context of Israel / Palestine. Currently BDS supports indiscriminate boycotts of Israeli companies and civil society organizations, which makes it seem as though BDS's target is Israeli Jews rather than Zionists. Instead activists must work to foster anti-Zionist politics within Israel. To this end, BDS needs to discriminate between Zionist and anti-Zionist Israeli civil society, and it needs to appeal to the Israeli middle ground, which is neither Zionist nor anti-Zionist but rather nonpolitical. Nonpolitical Israelis do not care very much about the Zionist project, but they have trouble seeing beyond it. They know that Israel is good to them; what they don't realize yet is that a nonnational state could also be good to them. To turn these nonpolitical Israeli Jews into anti-Zionists will demand that BDS "dirty its hands." The movement would have to give up the claim to be apolitical and be willing instead to embrace action of the kind that the South African anti-apartheid movement did in the 1970s and 1980s. BDS, or some other movement incor-

porating it, would have to work to break down the barriers of identity that are at the heart of Israel's apartheid society—to bridge and "sublate" the differences, to use a Hegelian word.

As in South Africa, in Israel this means overcoming two categories of divisions. The first is the division among victims of the nation-state. In South Africa, the population was divided among township dwellers and Bantustan residents, a barrier overcome by migrant laborers with the aid of radical white student organizers. The victimized population was also divided racially and tribally. The racial barrier was overcome by the Black Consciousness Movement, while the tribal barrier remains. Among the Palestinians there is a tripartite division of victims: those living in the diaspora, the Occupied Territories, and Israel proper. Each of these groups has been further differentiated. The diaspora includes those in the refugee camps and those beyond; residents of the Occupied Territories are split between the West Bank and Gaza; and colonized citizens of Israel include Arabs, Druze, and Bedouin. Each micro group is subject to a different political regime, which seeks in each case to produce a specific subjectivity.

The second category of division is that between the victims and beneficiaries of apartheid. The forces of the South African moment, unfolding over the two decades after the 1973 Durban Strikes, first forged a multiracial unity of all those oppressed by apartheid, in the process focusing the movement on domestic agitation and leaving behind the exiled armed liberators. Then, under the aegis of the United Democratic Front, victims joined with beneficiaries who likewise sought the end of apartheid. As an umbrella anti-apartheid organization, the UDF embraced all anti-apartheid groups, white and black. In doing so, it invited whites to be born again as migrants, no longer settlers.

Today the first phase of the Palestinian moment is very much underway, if not entirely completed. The exile-based PLO is no longer in command. Its call for an armed struggle to evict the settlers from historic Palestine is definitively nonviable; there is no military route to de-Zionization and de-Judaization. In response, the Intifadas have shifted the gravitational center of resistance from exile to home. The Intifadas further brought Palestinian citizens of Israel into contact with Palestinians in the Occupied Territories, bridging divisions in the identities of the colonized. Divisions do remain, but the sense of a unity of Zionism's victims is increasing.

The second phase—winning over Zionism's beneficiaries—will be harder. In South Africa in the late 1980s, settlers were on their heels, faced with a crisis that tested the state and showed no sign of abating. What is more, with the Cold War winding down, the South African state was losing the strategic significance that inspired the US government to support it. Neither of these circumstances obtains in Israel. Israel remains central to American strategy in the Middle East, and the Zionist state and settler society retain the initiative. Israel's military superiority and barrier walls put the crisis far away. Those Zionists who do see the crisis in their daily lives are not elites but the settler vanguard: Mizrahim and religious zealots, driven by economic need and divine providence to confront the crisis, while the rest of the state ignores it. Israeli society remains insulated from political pressure. That said, we cannot forget the ground shifted from under the apartheid state when Afrikaners, who provided most of the foot soldiers for apartheid's machinery of repression, opened up to an alternative to the apartheid order. If there is a group in Israel that parallels Afrikaners, it is the Mizrahim. The point of the Afrikaners example is not to hazard a prediction but to keep in mind that no political identity is permanent.

None of this is to say that BDS is unimportant. Its effort to undercut support for Zionism overseas is essential precisely because the lack of pressure on the Israeli government stems in part from unwavering outside patronage, especially that of the United States. But whereas BDS can contribute to Israel's international isolation, something else is needed if a non-Zionist alternative is to bloom in Israel itself. That something else is an epistemic revolution that will open the way to a political one. Phase two of the Palestinian moment will come when it is not just the oppressed who seek political change but also the beneficiaries of oppression. Getting there will require a new kind of political consciousness within Israel, a consciousness based on the recognition that the flourishing of Jews and Jewish life does not require Zionism.

6

DECOLONIZING THE POLITICAL COMMUNITY

We live in an era of civil wars and genocide, both occurring mainly in former colonial countries. This extreme violence has marked the period after independence more than the colonial era. The violence has not focused on the social question. The violence was not revolutionary: the oppressed social classes have not risen up against the rich. The lines of division were political rather than social. On one side were those who claimed the independent state as the patrimony of the nation; on the other were those politically excluded. The division was internal, not between inside and out. But while this violence exploded after independence—in Sudan, Rwanda, Congo, Somalia, Angola, Mozambique, Algeria, and elsewhere—its genesis lay in the colonial period.

To recognize this is to deepen our understanding of the political challenge at independence. It is to acknowledge that the political effect of colonialism was not limited to the loss of external independence, to the drawing of external borders that demarcated the colony from the outside. More importantly colonial governance drew borders inside the colony. These boundaries separated races and created homelands for ethnic groups, turning them into administratively demarcated tribes.

Writers on African affairs often bemoan the artificial nature of boundaries drawn by colonial powers—artificial in that they cut across cultural communities. This criticism reinforces colonial modernist ideology by suggesting that internal boundaries between ethnic groups territorialized as tribes were somehow natural. Yet the ethnic nations these writers cherish

did not necessarily exist as territorialized groups before colonialism. Ethnic political communities were created by colonizers drawing lines between culturally distinct peoples and subjecting them to law said to be customary. The tribal governance that activists seek to protect reflects the politicization of cultural identity. These are not the political communities of precolonial times. The challenge facing anti-colonialists, then, is to reimagine political community without colonial categories and reform polities on this basis.

This is the challenge of decolonizing the political: stripping away the nation, or the tribe as nation, as a locus of political identification and commitment. My principle objective has been to elucidate this challenge. In place of the nation, I have argued, we might imagine a new political community, one that would acknowledge changes that marked the colonial period and engage these productively. To decolonize the political does not mean that the effects of colonization go ignored. As we have seen, such ignorance tends to ensure the continuation of those effects. For instance, this ignorance has left human rights advocates in the strange position of defending the colonial relic of tribal governance.

My second objective has been to show that the extreme violence characteristic of the post-independence era is testimony to the failure to meet this challenge, a failure that owes much to widespread understanding of this violence as criminal. Such violence needs to be understood as political rather than merely criminal. To recognize extreme violence as political is to recognize that it is mobilized by constituencies organized around issues, not by perpetrators. Perpetrators are living weapons deployed by the constituency—the permanent majority known as the nation. Key to engaging these constituencies is a political process rather than a confrontation on the battlefield or in the courtroom. Battle is the route to ethnic cleansing, while the tribunal at most ejects perpetrators from the political process while leaving unchastened the constituency they served. Neither armed conflict nor criminalization can decolonize the political. Indeed, both prolong the political effects of postcolonial modernity by pretending to solve the problems it creates.

In this final chapter, I historicize the criminal and political models whereby we might respond to extreme violence and underline the theoretical import of the case studies in the book. I begin with what the two models have accomplished and what it would mean to follow one or the other in the future.

The criminal model emerges as a means of preserving the privileges of the nation under the nation-state paradigm. By severing violence from the political constituencies it serves, the criminal model leaves those constituencies undisturbed. They can continue to pursue their goals—the aggrandizement of the nation—without reckoning with the extreme violence that is the source of their privileges. On this view, violence is an aberration. Once its perpetrators are punished, the status quo ante, marked by the nation-state, is restored.

The political model, by contrast, asks us to see violence as an act of constructing the political community. Rather than aberrational, it is essential. Violence is a means of defining who is a member and who is not—where the boundaries of the community lie. As such, political violence tells us that something is amiss in the political community: someone who wants membership is being denied; someone who is a member wants to expel others. Political violence contests boundaries of membership in both these ways. If we take seriously the political model, we come to the realization that the solution to political violence can never be criminalization, for criminalization ignores the problems of membership that political violence otherwise reveals. But nor are we condemned to endless violence over the boundaries of membership. There is another way to negotiate these boundaries: the political process.

The obstacle to the political process is the nation-state. By establishing the nation as the permanent majority, the nation-state renders the political process moot. In states calling themselves democracies, members of the permanent minority may vote, but they cannot exercise sovereignty. The achievement of their goals can come only as a gift from the permanent majority. Only by decoupling the nation from the state can there be democracy, a scenario in which shifting coalitions of interest, constructed through persuasion, hold sway. As it is, power in nation-states lies always with those who identify with the nation, not with coalitions that assemble through a political process. A brief review of my case studies shows as much.

This review also helps us think forward. History can be a guide to theory, and the two together can illuminate a reform agenda. The decoupling of state from nation begins with a retelling of the history of the modern nation-state. In this retelling, the seemingly permanent categories of settler and native, majority and minority, are made provisional. They are exposed as products

of modernity's obsession with civilization and progress. As the agents of political modernity, empire and the nation-state realized this obsession by assigning civilization to the nation and backwardness to others, groups delineated by their appearance (configured and instrumentalized in law as race) and by their history and culture (configured as ethnicity and instrumentalized in law as tribe). Identification with the nation entails nothing more or less than identification with the civilizing mission of modernity, discarded under indirect rule colonialism and then reembraced under postcolonialism. Fortunately, this identification can be undermined. It was, to an extent, in South Africa. Closer attention to history can help to undermine it further in South Africa, and elsewhere—in the United States, Israel / Palestine, Sudan / South Sudan, and beyond.

Norbert Elias writes of a Chinese visitor to Europe during the Middle Ages, who remarked on how "civilized" Europeans used miniature weapons to eat at the table. This visitor noted on the basis of his observations that the warrior class appeared to set the model of European culture.[1] That view may be reductionist, but something in it rings true. Europeans have spent hundreds of years spreading civilization with the power of arms. They have everywhere dominated the people they called natives in the name of civilization, unless, as in Israel, they called themselves natives. The lesson has sunk in, leading those violently subjugated to seek sanctuary in nation-states of their own. That is what Ashkenazi Jews did in Palestine and what so-called Arab settlers did in Sudan and what so-called natives did in South Sudan. Tribal leaders in North America and South Africa have not sought their own nation-states, for they lack the power to do so. But they, too, have learned civilization, turning to racism and tribalism to sustain residual colonial privileges.

It is long since time that the modernist ideology of civilization was universally discredited, and, to that end, the nation-state form that enacts this ideology. Replacing the nation-state with the mere state—a legal sovereign, with equal treatment of citizens—does not mean there is no more diversity in the world. It means that diversity is no longer politicized. The nation is not the group; it is the term modernity—European, colonial, postcolonial—uses to describe the group deemed civilized, and the state is the legal apparatus it uses to achieve its ends. History makes abundantly clear that culture is not nationhood. Nationhood is the instrumentalizing of culture for purposes of domination. We can have culture without nations, we can have states without nations, but we can only have democracy without the nation-state.

Political Violence

A central question in political theory is what constitutes politics. What is the political? What does it mean for something to be politicized? How is the political produced? How and why does a political formation come to have a particular shape and membership? At a minimum, we can think of politics as a negotiation over the boundaries of membership in a communal formation.

A corollary is that politics is produced through historical processes—specifically, historical contests over membership, which have often taken the form of violence. To understand the production of the political as a historical process, then, we need to grasp the relationship between political violence and political order. In particular, we need to understand the relationship between political violence and the formation of states. But this effort is stymied when we think of violence in the public domain as criminal rather than political. When violence perpetrated on behalf of the state or against the state is framed as irrational, antisocial, or pathological, its political content is ignored—its role in building and contesting boundaries of political membership goes unseen.

The criminal model, associated with Nuremberg and its successors in the human rights realm, is invested in this depoliticization of violence. Criminalization configures state-related violence as excess, something that occurs outside the realm of politics. State agents perpetrate atrocities for which they alone are responsible; anti-state agents perpetrate terrorism, for which they, again, are responsible. Neither is seen as engaged in building or contesting the boundaries of the political community. Instead, both state and anti-state agents are subjected to trial and punishment, with the goal of curbing or eliminating criminality and thereby demonstrating the continuing viability of the political community—viability manifest in the triumph of the rule of the law and the revealed capacity of the state to secure the moral good of justice for victims. The criminal model, therefore, perpetuates the status quo ante by overcoming the aberration of violence and restoring normalcy.

The criminal model enjoins us to view state violence as righteous, since it is authorized by law. Only unofficial violence is evil, especially when it disrupts law and order and presents a normative challenge to "our values." This explains why at Nuremberg it was so important that only individual Germans, not the German state, be held accountable and that they be subject to what

appeared to be a legal process. Since the state itself is blameless, the Third Reich could no more be held criminally responsible for its acts than could the Allies who had spent years bombing civilians and were then in the process of the largest ethnic cleansing effort in history, resulting in the deaths of half a million Germans. And since accountability took the form of a tribunal on the basis of laws said to be universal, the Allies could present themselves as upholding values shared by all people, in particular the rule of law.

The state is thus served by the criminal model in two ways. First, the criminal model absolves the state of responsibility for violence. Second, the criminal model treats all violence committed by nonstates as criminal and therefore lacking in political content. This involves a conflation of two different kinds of violence: on the one hand, violence that transgresses the law and thus can be punished by enforcers of the law; on the other, violence that challenges the law itself as unfair and unjust, thus requiring reflection on the justness of the law. Criminal justice is the appropriate response in the former case, where the fairness of the rule is not at issue. In the second case, the transgression of the law is better described as an act of disobedience—whether civil or not—than as a crime. As such, it is a political rather than a criminal act. But criminalization moots the political agenda, insulating the state from calls for reform.

The political model, by contrast, acknowledges that, far from a transgression of the normal state of things, violence is itself normal. It is not excess; it is one of the ways in which politics is done. This is not to say that political violence is to be celebrated but rather that it is inevitable; it is how we got here. Because political violence seeks to define or redefine the boundaries of the political community, it is foundational in the making of such communities. Instead of simply preventing violence by punishing the violator, we can try to learn from the violence, for it has the capacity to teach something: that the political order is provoking grievances, which might be productively engaged through reform. Political violence points over and over to layers of exclusion—racial, ethnic, religious—that call for a new political order that would include the victims of the previous era. The relationship between political violence and political reform is dialectical: political violence can be prevented through reform and can pave the way to reform.

At this point the question that naturally arises is whether the political model, no less than the criminal, condemns us to endless violence. Whereas

the criminal model, by failing to address grievances, ensures that they will continue, the political model seems poised to produce cycles of violence and reform. As long as the state form continues to be pegged to the nation, new grievances will arise over time as people learn to think differently about their place in the political community. Not only that, but yesterday's victim is likely to seek benefits and become tomorrow's perpetrator: once the victim's grievance is satisfied through his elevation to membership in the political community, he will be in a position to prevent others' access, even as he retains the narrative of victimhood. The new member, still perceiving himself as a victim, becomes invested in protecting his membership even at the expense of others' membership. We see this dynamic play out in each of the examples covered in the previous chapters. In the United States, South Africa, and South Sudan, peoples victimized under colonization seek to maintain the exclusionary benefits of tribal membership. In Israel, the victim of the Jewish question became the perpetrator of the Palestinian question.

Yet this very cyclical dynamic may also point the way forward. Each of these cases shows that the identities of victim and perpetrator are not, as the criminal model would have it, frozen. If reform only addresses the victim, it will essentially do the work of the criminal model, reinforcing the political order that provoked grievance in the first place. We see this vividly in the case of denazification. The major political reform that followed the Holocaust was the founding of the state of Israel. But this reform addressed only the needs of Jewish victims, while leaving in place the structures of the nation-state, structures that victimized the Jews and that Israeli Jews then embraced in the course of victimizing non-Jews in Palestine.

True reform addresses all those who have survived the violence: victim, perpetrator, bystander, beneficiary. Only when all of these groups are understood as survivors will we be prepared to lay responsibility where it belongs: with the political institutions that provoke grievance. Reimagined as survivors, enemies can become adversaries, no longer at war but instead able to work out differences through the political process. But why is this sort of reform so hard to achieve, leaving us with persistent political violence? Victim's justice is part of the problem. It is the flip side of victor's justice. Their common ground is revenge, and their common inclination is to exclude the perpetrator from the political community, preventing the collective reidentification of the survivors.

Yet the problem runs even deeper than victim's justice, which is, after all, just a tool. I submit that the deeper problem is the structural tension baked into the nation-state. The nation-state itself prevents the subordination of violence to nonviolent political action, for it renders effective nonviolent political action impossible in many cases. This is because the nation-state is inherently undemocratic and opposed to the rule of law, whereas democracy and the rule of law are the essential tools of nonviolent reform. Rather than ensure that all residents of the sovereign territory have access to the nonviolent political process, the nation-state serves the national majority while excluding and marginalizing minorities from the political process. The relationship between state and nation produces a vicious cycle, whereby the nation imagines the state as its protector and aggrandizer, the state fulfills this role, and the nation's investment in the state's bestowals of privilege only intensifies. The nation-state is born to serve the nation, and in doing so makes itself indispensable to the nation, disabling the minority's reform efforts. The result is that the minority can only pursue reform through violence.

The conclusion, then, is that the potential to escape interminable political violence lies in decoupling state from nation. The termination of juridical apartheid in South Africa provides a sense of direction here. So do the various unrealized visions I have described: those of American Indian statehood, homegrown German antifascism, the New Sudan, and Israel as a state of all its citizens. Each chapter shows how the construction and maintenance of the nation-state—the project born of the embrace of political modernity—has relied upon and fostered violence and points to decolonization of the political as the solution. Denazification is properly a form of decolonizing the political, for Nazism pursued modernity to its bloodiest end. Again, this decolonization is not simply independence from outside rule. It is an act of thinking, of imagination. It means dreaming up a political community that undoes the organic link between state and nation that has gelled over the past five centuries.

Exactly what this new kind of state might look like is hard to say, but we can be certain that it will not predicate political membership—the right of citizenship—on national membership. The right of citizenship is the mother of all rights, yet all nation-states, postcolonial and otherwise, ensure that access to it is controversial, thereby fostering membership-oriented grievances.

Access to the benefits of citizenship is contentious not only in Israel, South Sudan, and other postcolonies where simmering violence edges toward and spills into civil war, but also in North America, Europe, Australia, and New Zealand, where immigration is the political problem of the day.

The literature on citizenship tends to ignore the role of the nation-state in provoking controversies surrounding citizenship. Political theorists debate whether citizenship is a matter of civic or ethnic belonging, a shared creed or a shared heritage, jus soli or jus sanguinis. But both sides of this debate presume the nation will be joined to the state. The difference between the two camps lies only in whether the borders of the nation are perceived as hard or soft. The ethnic notion, often identified as German, bases national identity on descent. This is a hard model of belonging, in which peoples are segregated from birth by walls of difference that cannot easily be overcome. The civic notion, identified as French, understands the nation as aggressively assimilationist: the state defines and promotes the national creed, and those who embrace that creed, including immigrants, become members of the nation. Clearly, given the histories of nation-states on both sides of this divide, neither option presents any kind of solution to persistent violence over the problem of political belonging.

Imagining political community beyond the nation-state is therefore an urgent task. But it is not getting easier, in part because the true nature of political violence is only becoming more occluded. My sense of political violence as productive is not unique; it is merely passé. I am participating in a long tradition within political theory of looking to the objectives of violence: where the objectives are political, the violence should be defined as political rather than criminal. But this convention has been set aside by the prevailing human rights community, which resuscitated the discredited Nuremberg model amid the euphoria that followed the end of the Cold War. With the question of politics settled once and for all—the end of history was upon us, we were told—violence could no longer be political in nature. And, indeed, the criminal model makes perfect sense to the neoliberal mind that announced the end of history, for the criminal model represents all violence as an outcome of individual agency. The combination of neoliberal and human rights ideology is difficult to displace, not least because it is now instantiated in institutions like the International Criminal Court and the paradigm of the War on Terror. With so much weight behind criminalization, the political

model, and its critique of political modernity and the nation-state, easily fades from view.

Nuremberg after the Cold War: Continuing Victor's Justice and the Subversion of Sovereignty

The failure of denazification signaled the demise of Nuremberg as a model response to extreme violence. In 1949 Ethiopia called on the United Nations to hold Italian fascists accountable for crimes there, but this was the last invocation of Nuremberg-style justice for decades.[2] Until the end of the Cold War, it was virtually unimaginable for a national or international tribunal to hold state officials criminally accountable for human rights violations.[3] From the standpoint of the development of international law, Nuremberg was considered a big step backward. As the Austrian jurist and legal philosopher Hans Kelsen put it, summarizing the dominant view in the immediate aftermath of the tribunals, "If the principles applied in the Nuremberg trials were to become a precedent, then, after the next war, the government of the victorious states would try the members of the governments of vanquished states for having committed crimes determined unilaterally and with retroactive force by the former. Let us hope that there is no such precedent."[4]

Yet that is exactly what happened after the end of the Cold War. In the words of Danilo Zolo, international law since the Cold War is a "dual-standard system" whereby justice "made to measure" for the major powers operates alongside a separate justice for the defeated and the downtrodden.[5] In this brave new world, in the words of Radhabinod Pal, the Indian judge at the Tokyo Tribunal, "only a lost war is a crime."[6] Four Nuremberg-style international tribunals have been set up since the end of the Cold War: the International Criminal Tribunal for the former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), the Supreme Iraqi Criminal Tribunal (2005–2006), and the Extraordinary Chambers in the Courts of Cambodia (2006–). In these cases, as in Nuremberg, the courts tried only one side to the conflict, and there were no neutral judges.[7]

These tribunals operate largely on the same principles as Nuremberg, with one significant exception: they do not invoke crimes against peace. At Nuremberg, aggressive war was designated "the supreme international crime"; conviction of crime against peace could result in a death sentence. There is no

great mystery as to why crimes against peace are no longer charged and tried by the descendants of Nuremberg. Today the major powers are no less given to aggressive war than in the past, albeit rebranded as "humanitarian intervention." Counting aggression itself a war crime no longer serves the purposes of history's winners. Crimes against peace also are pointedly omitted from the Rome Statute, which governs the International Criminal Court (ICC).

The ICC, established in 2002, seemingly inscribes many other principles of Nuremberg in international law, although in truth—and like the Nuremberg Tribunals—it is a political body doing the bidding of the great powers. Today, these are the veto-holding powers on the UN Security Council. Per the Rome Statute, the Security Council sets ICC's agenda. As the Indian delegate to the Rome Convention argued in 2002, the Security Council's authority guarantees that the ICC will never bring a case against any of the veto-holding powers.[8] In practice the court has confirmed these fears and more, extending impunity not just to the veto-holders but also to their protégés and clients, the outstanding case being Israel.

The ICC should be seen both as building on the provisions of Nuremberg and as diluting them, a combination that has led to its further politicization. As noted, the Rome Statute prevents the ICC charging the crime of aggression. The statute acknowledges that crime, but only nominally, for it bars the court from exercising jurisdiction over the crime of aggression "until the assembly of nations which have ratified the Statute has adopted an amendment to the Statute itself defining the crime of aggression." No such amendment has been adopted; should it be, it would be meaningless, for all it would do is add another weapon to the arsenal of the Security Council's permanent members. The ICC cannot carry out investigations into the responsibility of individuals for the crime of aggression without the consent of the Security Council, which must pass a resolution declaring that aggression has occurred. What is more, the Security Council can shut down any ICC investigation it wishes to. Article 16 of the Rome Statute confers upon the Security Council "the power to have an initiative of the Court prosecutor suspended for a year, and do so every year ad infinitum, if a resolution based on the provisions of chapter VII of the UN Charter deems it to be inopportune."[9]

The ICC positively drips with bad faith. Its claim to dispense criminal justice in the absence of a political order is a smokescreen. How could it be

otherwise? The enforcement of criminal justice logically presupposes a juridical authority that is unthinkable in the absence of a political authority. Criminal justice and rule of law simply cannot exist without a framing political order. The ICC's claim to do justice in the absence of the state—or where the state has been destroyed, or is being constructed in a transitional process—merely clarifies that it is operating as an arm of other states, to which it provides political cover. These states are either ruling as colonial powers or acting in the name of an international law to which they themselves are not subject. One way or the other, the ICC masks their control in the international arena, depoliticizing it by claiming to enact law.

Clearly this way of "doing justice" cannot solve political problems that generate political crimes. Indeed, one should not assume that the powers that do this kind of justice are interested in solving actual political problems. The criminal process provides interested powers a way into the very engine of politics of a country or a region, thus putting those powers in a privileged position to influence developments. These powers therefore have an interest in permanently maintaining the political problems in question. Permanent "trouble" creates the conditions for powerful states' ongoing involvement in the troubled regions or countries. This explains why, in certain cases, these same powers may seek to generate new problems, justifying their ongoing intervention.

There is here a lesson for weak states victimized by the major powers through the ICC and other international bodies such as the International Monetary Fund: without political reform, they will not have rule of law, and without rule of law they will not have sovereignty. States that cannot manage and contain violence through political reform will remain subjugated by foreign interests. Achieving sovereignty does require reform at the global level, but this will not be enough. Reform at the national and local level is equally necessary. This is one of the central messages of the political model.

Political Modernity in the Postcolonial World

This book has proposed a new framework for understanding the emergence and scope of political violence and, based on that framework, political re-

form accounting for a community of survivors. The objective is to create more inclusive political communities by attending to the layers of exclusion—racial, ethnic, religious—that are a necessary outcome of the nation-state form shaped by political modernity. By defining majorities and minorities permanently, the nation-state puts paid to any democratic notion of politics. From a democratic point of view, majorities and minorities cannot precede the democratic process; rather, they must be its outcome. In that case, neither majority nor minority can be permanent.

How can this political reform, encompassing all survivors, be achieved? First by understanding the problem—as illustrated by colonialism in the United States, Israel / Palestine, Sudan / South Sudan, and South Africa—and then by taking stock of efforts to work through the problem. My cases studies on this score are denazification and the South African moment. Below I briefly summarize the manner in which political modernity continues to hold sway in the United States, Israel / Palestine, and Sudan / South Sudan. Then I turn to the lessons from South Africa and Germany that can inform decolonization of the political.

The US Colonial Model

What is in a name? Specifically, what is in the name bestowed on natives? Should natives in America be called Native Americans or something else, like Indians? Each name evokes a different historical narrative. The term Native American evokes a narrative in which the United States represents the continuation of the political community that preceded it in the territory it claims. To call the colonized peoples of the United States "Native Americans" is to configure them as original inhabitants of the polity. But, of course, Indians were not the original inhabitants of the United States. They were original inhabitants of the land, not the polity. The Constitution's use of the term "Indian" reflects the fact that the peoples deemed native in US territory were never Americans. Indeed, in the prevailing US narrative, it is not possible that peoples in US territory prior to the founding were Americans. The United States claims to repudiate and displace the political community that preceded it. The country sees itself as a rupture in history, something entirely new—not a conqueror, but the successor to a conqueror, which was the Crown. This is a self-exculpating story. The United States is an ongoing conquest—of "Indians," not "Native Americans."

The Basic Law of Israel makes a claim similar to that of the Constitution. Zionists claim to be taking possession of the ancient land without continuing the preexisting polity. Again, the land may be the same but the polity is not, which is why neither Indians in the United States nor Palestinians in Israel could become citizens of the new polity by birth. They had to be "naturalized"—returned to the state of nature—to then apply to become citizens. This does not mean that the subjectivity of the settler in Israel and the United States is identical, for in Israel settlers do claim a continuity, evoking Biblical history in order to assert nativity. But Israel maintains the US model by repudiating what it considers an interim history—that of Palestine—and replacing it with a new polity on the same land. Because, on this view, there was never a Palestine, the Law of Return extends to Jews only, not to Palestinians. For the same reason, Palestinian citizens of Israel are not called Israeli Palestinians (or Palestinian Israelis) but Israeli Arabs.

This history of creating new polities atop preexisting societies is, I have argued, what distinguishes settlers from immigrants. Unlike immigrants, settlers seek to create a separate political community in which they enjoy an exclusive hold on political power. When settlers got political power, in Israel as in the United States, they renamed the world. In the United States, the settler became the immigrant, denying his conquest. In Israel the settler became native, assuring that the Palestinian was a squatter who had first to be civilized and then to be naturalized to become a citizen.

In both the United States and Israel, settler migrations stretching over decades drew on an expanding range of sources, necessitating continual redefinition of the nation. In the case of the United States, the nation transitioned from Anglo-Saxon to white, and the definition of whiteness expanded to include marginal groups like the Italians, the Irish, and the Jews. The period since the Civil War has witnessed a see-saw struggle between efforts toward, on the one hand, emancipation and, on the other, renewed subjugation of servile labor through Jim Crow and the "New Jim Crow." But the unmistakable tendency is for African Americans to find their way into the nation. These transformations have become a source of pride for the United States, which celebrates its ability to embrace minorities, in particular women and the descendants of enslaved Africans. But while we may of course laud these shifts, the native minority lingers, slipping into invisibility. In the Israeli case, the sources that nourish Jewish society have gone beyond the Ashkanazim

to include Sephardim, Ethiopians, and Mizrahim. As in the United States, the terms of assimilation were set by the original European settler population. Thus Mizrahim had to discard the language and culture they shared with Palestinians; they could keep only their religion, because it is what they shared with the original settlers. This became their entry point into Israeli nationalism, leading to the growth of a religious Zionist movement.

Israeli and American settlers have offered similar, if always malleable, solutions to the problem of the native. As in the United States, where Indians are subject to rule by congressional decree, Palestinians in Israel were subject to rule by decree during the two decades of military administration. Palestinians in the Occupied Territory remain under military administration. In both countries, natives have rights of political participation, the right to vote and to run for office, but they remain marginal to political power. Their civil rights were always provisional and so were often suspended. In both countries, the state has sought to manage the native as both a security risk at an individual level and a demographic risk as a minority. Individual natives have been surveilled and shackled, prevented from moving about, subjected to the dictatorship of overseers. As groups, their numbers have been kept low, so that the state could appropriate their land and turn it over to settlers. And in both cases, the natives have been subject to land laws that aim to turn over property to settlers.

Only in 2018 did Israel depart from the American model. That year it formally announced itself as a Jewish state, rather than a Jewish and democratic state. In doing so it embraced its longstanding character as an apartheid state. That this declaration came in Israel testifies to a growing settler self-consciousness in the face of a robust struggle against Israeli occupation and Zionist exclusivism in historic Palestine. That the United States has made no similar statement about itself, is testimony to the nation-state's double success: the majority's amnesia regarding the historical process of conquest, alongside many Indians' acceptance that reservations are their tribal homelands and that these homelands are governed in customary fashion.

Israel is hardly alone in adopting the US colonial model. We saw that Hitler also learned ethnographic governance from the United States, which pioneered the ranking of types of citizenship. Until 1924, American Indians were considered "nationals" but not citizens. An even more tortured legal category was created for Puerto Ricans, defined as "foreign to the United

States in a domestic sense." These categories were, in spirit if not terminology, identical to that which the Nazis created for the Czechs: "second-class citizens entitled to the protection of the state, but not to full political rights."[10] America taught Hitler to admire the melting pot by ensuring that assimilation had firm racial limits. This racist limitation has continued to define the American social experience, emerging in sharper and softer focus—sharper today than in some time, under the presidency of Donald Trump.

By the Second World War, the kind of racialized and ethnicized governance that America invented was standard practice in the colonies. South Africa was the last to formalize ethnographic governance, after the war, under the heading of apartheid. Colonial powers had come to define civil rights for the master race and customary rights for so-called tribes considered indigenous to the colonial districts or homelands assigned to them. Not surprisingly, independence opened the door to a bitter contest surrounding the meaning of indigeneity and the boundaries of the nation, leading to postcolonial civil wars that pitted one politicized tribe against another. The response of standard scholarship has been to point to this violence as proof of state failure in the face of societies riddled with primordial tribal factionalism, and the standard remedy has been to restore stateness—that is, the form of the nation-state. It is this restoration that is heralded in the literature as transitional justice, but the remedy only ensures a compounded failure.

The Two Sudans

In Sudan there were no settlers, but Arabs were created as surrogates, and the "African" South was turned into a native enclave protected from Arab influence. The larger Sudan inherited the political order left behind by British colonialism. Crafted as an antidote to the Mahdiyya, then reinforced in the aftermath of the Southern-led mutiny of the 1920s, this political order supplemented race with tribe as an essential category of colonial administration and law, closing off the South from the rest of Sudan and turning each tribe into a separate administrative territory.

Rather than repudiate this administrative and political legacy, South Sudan embraced the principle of granting each tribe a separate homeland when it became independent in 2011. The fallout came with the civil war beginning in 2013. Thereafter came seventeen failed attempts at a ceasefire. The eighteenth one, finalized in February 2020, managed to stick. It builds in the tribal

principle of administration by allocating the presidency and five vice presidencies to each of six major tribes. Clusters of ministries are each assigned to a vice president, and a commission has been appointed to carve out every inch of the country into so many tribal homelands.

The result will be the death knell of South Sudanese citizenship, in the sense that state-level citizenship will be irrelevant. All that matters from here is which tribe one belongs to, within the false state of South Sudan. With each homeland the preserve of a majority tribe, all residents of the homeland belonging to other tribes (that is, all minorities) will be subject to discriminatory practices when it comes to accessing land and competing for public office or public employment. This project will make every citizen of South Sudan the member of a permanent majority in the appropriate tribal homeland and at the same time a member of a minority, not only in other tribal homelands, but also in a country of permanent minorities.

The fate of South Sudan reinforces our larger reflection on decolonizing the political. We must assess critically both the internal character of the colonial state and the role of external prescriptions, including and especially those packaged as transitional justice. South Sudan is a product of its own embrace of the nation-state model. It is also an outcome of a Western-led program of secession that aimed to secure Western interests in oil extraction and the War on Terror, but which was cynically presented as securing self-determination for South Sudan. The false state was shepherded into being by the United Nations along with the Troika of the United States, Britain, and Norway, as Western activists cheered from the sidelines and congratulated themselves on enabling the ethnic cleansing project that birthed the state and continues there. Whereas in South Africa the end of the Cold War made room for internal forces to arrive at a political resolution, the end of the Cold War turned South Sudan into war booty. The winning side chaperoned South Sudan through a hasty "transition" process that merely turned the supposedly independent state into a dependency of the United Nations, which abandoned its charge in 2013 when the makeshift political arrangement harkening back to colonial tribalization exploded.

It is worth recalling that Franz Neumann and Herbert Marcuse argued against what they considered a superficial approach to denazification combining "regime decapitation" followed by "a superimposition of democratic structures" on the German polity. "The social foundations for such a

[democratic] system did not yet exist" in Germany, they argued. They called for a deeper, more disruptive and revolutionary approach born of internal forces.[11] Many wonder if such internal forces in South Sudan, represented by John Garang and his supporters, were deliberately squelched. After all, Garang's New Sudan vision was very much at odds with the realpolitik goals of the United States and the equally narrowly focused aims of the men who went on to become South Sudan's leading politicians.

A two-sided reckoning, internal and external, in the two Sudans would entail the kind of decolonization that has been attempted in South Africa. It would mean declaring independence from external forces—decolonization as it is typically understood. But even more so it would entail reckoning with the colonial legacy of local governance, including the privileging of tribes as political agents. It would mean scrapping the eighteenth agreement and replacing it with a governing structure that does not distinguish citizens by tribal identity. Ultimately it does not matter so much whether Sudan is one, two, or more states. As long as the people of Sudan are organized in the image of the nation-state, they will never know peace and equality.

Decolonization: Lessons from Germany and South Africa

What kind of life can there be in the aftermath of political catastrophe? I have explored two options: denazification in Germany and the end of apartheid in South Africa.

The German debate focused on the relationship between culture and politics, which was at the same time a discussion on the nation and the state. Was Nazism to be blamed on German culture or on a deviant political class? A state gone awry? The American claim that Germany was defeated, not liberated, on May 8, 1945, suggested that the problem lay in the nation rather than the state; all Germans, not just their leaders, were responsible for National Socialism and the atrocities it perpetrated. Both strands of US responses—one associated with Treasury Secretary Henry Morgenthau, the other with Secretary of War Henry Stimson—reached this conclusion. Morgenthau called for an institutional version of victims' justice, a form of revenge that would return Germany to the pre-industrial

age. Stimson favored a more individualized, neoliberal version of victim's justice, calling on the Allies to identify, charge, convict, and punish each perpetrator.

Stimson's program won out, then failed. Morgenthau's would have, too, for neither recognized that Nazism was a *nation-state* project; neither exclusively cultural nor exclusively political, but both. Nazism mobilized the national majority around specific political issues. Denazification would thus have to be a political project. A program that recognized this was proposed by Neumann, Marcuse, and other leftist intellectuals. To be durable, the German reckoning with the past would have to be internal. They called for a widespread program that would dismantle German monopolies implicated in the Nazi project and at the same time promote democratization alongside denazification, relying on German antifascists supported by the Allies. This was a decoupling of state from nation, advancing the possibility of a state of no nation. A program much like the one proposed by Neumann and Marcuse got off the ground in the East but was never begun in the West. That program became a casualty of the Cold War on both sides. With internal activists marginalized, the criminal model preferred by the victors defined the way forward.

It is where internal social forces and processes took the lead that we witness the messiness of social action, with political will diminishing or expanding the space for political work. Such an example is provided by the end of juridical apartheid in South Africa. To understand what made this possible, I looked to the process by which the anti-apartheid movement broke free of subjectivities nurtured by and under apartheid to produce an alternative politics. The South African moment involved a triple shift: from demanding an end to apartheid to offering an alternative to apartheid; from majoritarianism—representing the oppressed black majority—to representing the whole people; and from resisting within the terms set by apartheid to redefining the very terms of how South Africa should be governed. Key to the South African example is the recognition that the search for justice will be successful only if it is preceded by the pursuit of a new political order. Forces internal to South Africa made (incomplete) gains toward justice at the Convention for a Democratic South Africa (CODESA) in the early 1990s, but they were able to do so because they had already undermined apartheid's political order through the revision of racialized political identities and the mobilization of the dispossessed.

We can draw a number of important lessons from the anti-apartheid struggle. The first was expressed by Wynand Malan, the Afrikaner member of the Truth and Reconciliation Commission who suggested in his minority report that reconciliation cannot be between perpetrators and victims; it can only be between survivors. Only survivors can shape a common future. This first lesson points to a second: no political identity is permanent. Afrikaners fought British imperialism but then became junior partners in the British-led 1924 Pact government that went on to implement apartheid. Later they joined the altogether-different coalition that pushed to dismantle juridical apartheid. Black Consciousness under Steve Biko dismantled the fences separating three colonized races: African, Indian, and Coloured. The anti-apartheid movement internalized novel political identity when it redefined its target from whites to white power, the state that reproduced white privilege. The new South Africa's flag, national anthem, and official narratives incorporate stories and symbols representing the once-separate histories of Boer and native. All of this defies the structural logic of apartheid. Thabo Mbeki memorialized that defiance in his speech "I Am an African," when he introduced the new post-apartheid constitution in parliament. The transition to a new political order was evident in the very language used to describe that order. His language did not suggest a turning of the tables, whereby the last would become first and the first become last; there was no talk of black rule replacing white. Rather, Mbeki spoke of an entirely new political order, new rules and expectations. His speech reflected the shift from majoritarian anti-apartheid politics toward nonracial democracy, which had won over crucial South African constituencies, white and black. That is why, when it came to the 1994 election, no more than a minuscule minority of the black population was willing to line up behind the Pan Africanist Congress's strident call for a continuation of the armed struggle under the slogan "One Settler One Bullet!"

The third lesson we can draw from the South African case is that the nation can give up the state. The permanent majority can give up its status and live another day. This was the lesson that white South Africans learned. Faced with the military stalemate surrounding apartheid and with a perceptible decline in white student and intellectual support for the apartheid project, first white civil society and then the state began seeking alternative ways of securing a homeland which did not involve their own monopoly over political power. This was not necessarily a product of moral revelation; there were

pragmatic reasons to rethink the nation-state. The effort to maintain apartheid increasingly seemed detrimental to the durability of white presence in the state. The counterintuitive conclusion derived from the stalemate was that the continuing project of securing power was likely to jeopardize white claims to a homeland, whereas those claims could actually be secured by giving up the state project.

A fourth lesson concerns the relationship between war and politics. Clausewitz underlined the continuity between them but ignored the differences. The battlefield—and the courts—are zero-sum arenas. One side's gain comes at equal expense to the other. Political engagement, in contrast, is a negotiation. In the context of compromise, both sides get something they want and forego something else. That politics is a continuation of war by other means is a half-truth. The very change of means testifies to the other half of the truth: when politics displaces war, enemies become adversaries.

The final lesson concerns the place of the political in decolonization. Anticolonial thought is both too much and too little invested in the political dimensions of decolonization. The excessive investment is reflected in the naïve assumption that throwing off the yoke of foreign control is the first and key step in progress toward social justice. On this view, ousting the colonizer and declaring independence is the revolutionary act that inevitably precipitates social equality. Nothing of the sort happened in South Africa, where political change came about via compromises that maintained white privilege. Now we are left with critics who focus on the absence of social justice in South Africa while refusing to recognize the significance of the political reform that did occur. The end of legal apartheid and the introduction of nonracial democracy have not solved every problem in South Africa, but they have at last given South Africans the tools to solve those problems. Reform of the political order is a necessary step in the struggle for social justice. That struggle is ongoing, not least because, while the central state's racial architecture of exclusion has been addressed, the ethnic architecture of exclusion in the local state—referred to as tribe—remains largely untouched. The key to detribalization is democratizing the law apartheid sanctioned as customary.

The maintenance of tribe speaks to a powerful and illuminating irony. It is in many ways the language of human rights that ensures the maintenance of tribe. With the tribal system reproduced under colonialism now wrongly

assumed to be an African tradition, mistaken liberals argue for the preservation of tribe as a way to protect native custom. These human rights proponents are not alone. They share the blame with homegrown conservatives: white rural landholders and tribal chieftains, who have sought to preserve tribalism for their own economic gain. But this bizarre coalition of interests should give us pause and suggest the urgency of further political reform. It also signals a parallel with the maintenance of tribe in North America, where racist notions of tribal membership introduced by settlers are now protected by human rights and Indian rights activists claiming to preserve indigenous traditions.

The same human rights mentality permeated the Truth and Reconciliation Commission (TRC), again undermining reform. Those who blame CODESA for its failure to pursue social justice might spare some of their fire for the TRC. CODESA made compromises, true, but the TRC gave away the farm while gaining nothing in return. The TRC actively undermined deracialization of society by focusing on individual perpetrators in the state while silencing discussion of apartheid's beneficiaries in society. By setting aside the everyday violence of apartheid, the TRC configured violence as excess, not as the norm on which the social project of apartheid was founded. It held individual officials accountable for violence that infringed apartheid law, but not for violence that was enabled by apartheid law. In doing so, it upheld the law that undergirded apartheid and secured apartheid as a form of the rule of law. Under these conditions, can white South Africans be blamed for failing to recognize that they were, as a group, beneficiaries of a violent colonial system that constantly oppressed nonwhites? The TRC told white South Africans not to think about their privilege. It told them that the problem of apartheid was not systematic privilege for the national majority, and deprivation of the rest, but the excessive zeal of a few bad apples. By shunning the hard political challenge of separating petty from major beneficiaries of apartheid—as Neumann and Marcuse had proposed with regard to the beneficiaries of Nazism—the TRC left whites as a political bloc whose shared anxieties assured the political supremacy of white capital and landed interests.

It is a good thing that the TRC was not the full extent of the post-apartheid transition. Its zero-sum logic—victim or perpetrator, innocent or guilty—might have prolonged the conflict that CODESA brought to an end. Zero-sum logic ill fits the context of a civil war. A civil war can end in a renegoti-

ated union or in ethnic cleansing: separate states for separate peoples. The logic of Nuremberg and the TRC drives parties in the civil war to seek military victory lest they be the outcast and ensures the separation of yesterday's perpetrators and victims into separate political communities that reify the nation-state.

For all its flaws, CODESA was sensitive to the context of the South African situation. This is another reason to look to the South African moment and not to human rights in our efforts to decolonize the political. Context is considered a distraction from establishing the universality of human rights, which insists on the same victor's / victim's justice in every circumstance. CODESA, by contrast, emerged from the understanding that there was no victor in South Africa. There were enemies who might become adversaries, if only they were enabled to participate together in the same political order. While the TRC pointed fingers at a handful of apartheid's collaborators, CODESA pointed to a new day.

Lessons for Israel / Palestine

The Jewish predicament in Germany and, by extension, Palestine, has been the subject of sustained deliberation by German Jewish intellectuals, Hannah Arendt most prominent among them. Arendt traced the interwar crisis in Europe to the structurally explosive character of the nation-state. The nation and the state were committed to achieving contradictory goals, she argued: if the state was pledged to ensure a rule of law, and thereby to protect the whole population, regardless of its pluralism, nationalists pledged to use the state to homogenize the population in the national image, even if that meant expelling minorities. Arendt concluded that the nation-state was an exclusionary device.[12]

This critique led her to the fringes of Zionism, but no farther. Neither the Zionist mainstream nor its internal critics could bring themselves to contemplate a situation where Jews would live alongside a non-Jewish majority in Palestine, on the basis of democracy. It is for this reason that she rejected the idea of a binational state, which, in her words "would leave the Jews in the position of a permanent minority within a larger Arab empire."[13] Much as Arendt criticized nationalism, she was also steeped in it, unable to envision a state that was not a nation-state. This was in many ways the same tragic mindset that brought Zionists to Palestine in the first place: at once

cast out by the modernist logic of the nation-state and committed to it as a refuge.

Other critics of Zionism such as Judah Magnes and Edward Said rallied behind the pursuit of binationalism under the aegis of a single state. But such a form also fails to question the nationalist premise. It is not binationalism but de-Zionization that provides a thoroughgoing critique of Zionism. The call for de-Zionization by Matzpen, Azmi Bishara, and others is a recognition that, in a democracy, the majority cannot be defined in racial, ethnic, or religious terms. A democratic majority has to be a political majority, an outcome of the political process and not its starting point. This is implicit in the emerging push among Palestinians for Israel to become a state of all its citizens.

South Africa offers lessons for de-Zionization. Currently the most prominent Palestinian liberation project is the boycott, divestment, and sanctions movement (BDS), which consciously emulates the South African anti-apartheid boycott. But the anti-apartheid boycott was one dimension of the anti-apartheid movement, and not the main one at that. The South African moment was most of all a political engagement, one that went beyond earlier efforts to form crossracial coalitions and instead mobilized a *nonracial* one. This movement did not simply make moral arguments about the wrongness of South African apartheid, as earlier activists had. It demonstrated what the alternative to that moral wrong looked like: diverse people working toward a united political future. Political organizing of this sort is beyond the scope of BDS as presently constituted. BDS's argument, though compelling, is limited to moral and legal domains. The movement abstains from political involvement. In effect, BDS asks bystanders to stand up and be counted as witnesses to moral horror, but it has yet to bring together Jewish and Palestinian opponents of Zionism in envisioning and creating a postnational future. This is a worthy challenge. Political society in Israel is not only diverse, including a range of opinion between the few who oppose Israeli apartheid and the many who support or sanction it, it is also rapidly shifting as Israeli apartheid hardens and the state strengthens its support of settlers in the West Bank. Instead of a politics that is responsive to the changing political conditions of Israeli society, BDS offers the comfort of an unflinching and unchanging moral stand.

The approach has been remarkably successful in rallying international opinion against Israeli apartheid. But, so long as it abstains from politics, BDS cannot provide leadership to those who live under apartheid and have no choice but to look for allies, even the most temporary ones, in day-to-day struggles to survive and prevail. As the South African struggle showed, this requires a politics that refuses to accept the battle lines drawn by the adversary and is dedicated to isolating that adversary by providing its constituency with alternatives. To be sure, the forces of the South African moment made moral arguments against racism, dispossession, police violence, unequal education, injustice of every kind. But they also offered a political vision that would incorporate the vast majority of apartheid's beneficiaries, the counterparts of "small Nazis" in postwar Germany, so that they learned not to fear what might come. Whites in South Africa had to be persuaded that, while political reform might come at the expense of their monopoly on the state, it would not come at the expense of their lives and their thriving. Moralizing language alone does not achieve this. It asks people to recognize the wrongs committed in their name, but, to be effective, it must be wedded to a positive program of political change.

With the passage of the Jewish-state bill, the time is right for a Hegelian synthesis that will join BDS's focus on external pressure with the internal focus of Bishara, his Balad party, and the growing cohort of Palestinians demanding a nonnational Israel. The bill alienated not only non-Jewish Israelis, including Palestinians officially classified as Arabs, Druze, and Bedouin, but also Jews uncomfortable with the state's unequivocal commitment to apartheid and its retreat even from the rhetoric of democracy. Their discomfort is no doubt heightened by Israel's rightward policy moves, backed by the Trump administration. The Zionist far-right no longer hides its maximalism; its desire for a second Naqba, targeting Palestinians in Israel proper and in the Occupied Territories, is plain as day. As the state becomes more and more the domain of religious zealots and secular racists, an increasing number of Jews are already asking the moral questions BDS wants them to. These are the Jews who can be mobilized in a political struggle, as long as they are persuaded that they do not need to fear what the post-Zionist state will mean for themselves. They need a credible alternative to a Zionism that claims that its unjust and inhumane ways are the price that must be paid to

protect Jews in a tough neighborhood. The Palestinian moment will arrive when enough Israeli Jews are confident that they will be counted among Zionism's survivors.

The South African lesson for Palestine and Israel is that historic Palestine can be a homeland for Jews, but not for Jews only. The Palestinian challenge—the challenge for the democratic left as a whole—is to persuade the Jewish population of Israel and the world that the long-term security of a Jewish homeland in historic Palestine requires the dismantling of the Jewish state, much as the long-term security of a white homeland in South Africa required the dismantling of South Africa as a white state. This challenge may seem insurmountable at present, for two reasons. First because neither official America nor official Israel is yet convinced that a military solution will not work in Israel; second, because Jews in Israel are not yet convinced that they have an option other than Zionism. To convince them is a political project, not a military, legal, or moral one. Success requires the conviction that, when it comes to the realm of politics, nothing can be ruled out as impossible.

Africans know this well: just look at what happened in 1994. That year brought to Africa two political earthquakes that defied expectation: the end of apartheid in South Africa and of the genocide in Rwanda. Ten years earlier, if you had told African intellectuals and activists that a decade hence there would be reconciliation in one of these countries and a genocide in another, the vast majority would have failed to identify the countries correctly. Why? Because in 1984 the South African army had occupied most key black townships, while Rwanda was the site of an attempted reconciliation. In ten years everything changed.

A lot could change in Israel in ten years, too, especially if de-Zionizing forces continue to build strength in Israel proper, the Occupied Territories, and the Palestinian diaspora. Of course, Israel is not South Africa. Unlike in South Africa, most of the national minority was expelled from Palestine. As Mwalimu Julius Nyerere, former president of Tanzania, told an Egyptian magazine in 1984, "The South Africans are in their own country. But the Palestinian plight is more terrible and unjust; they have been deprived of their own country, they are a nation without a land of their own."[14] So the road ahead is tough. There is a lot of ground to make up. Still, difficult things have been achieved before.

Neither Settlers nor Natives

Throughout this book, I have put forward some ideas on what decolonization of the political could mean in terms of practical policies. In the United States this would involve full and equal individual rights for all citizens, whether they live within or outside Indian reservations. It would involve the abolition of reservations and their replacement with a constitutionally defined form of autonomy, akin to that of individual states of the Union. This autonomy would mean an end to Congressional rule by decree, and its corollary, the exclusion of autonomous Indian communities from representation in both houses of Congress. These communities would be empowered to make local laws in place of the federally sanctioned, Bureau of Indian Affairs–supervised regime of customary laws. Finally, decolonization of the political would incorporate reparations for the wrongs done over centuries, a measure of social justice for Indians and for descendants of enslaved Africans as well as for Mexicans and Puerto Ricans forcibly incorporated into the United States. Only the state, not charitable individuals, can pay these reparations, for it is the state that sanctioned wrongs necessitating restitution.

In Israel, the de-Zionized state would protect and uphold the rights of all its citizens, replacing national institutions ensuring Jewish privilege with state structures that treat citizens equally. Critically, all refugees would have the right to return. Here, too, a measure of social justice is essential: reparations for those whose land has been expropriated since the formation of the state. Finally, in South Africa and South Sudan, decolonizing the political requires the depoliticization of tribal identity. This means that tribal affiliation is unrecognized in law and has no effect on who receives state benefits or suffers legal constraints. As elsewhere, reparations for the historically disadvantaged and excluded should come from the state.

But I do not want to be prescriptive concerning what postnational states should do. The core challenge is to explore a form of the state other than that of the nation-state, one that will make possible a democratic and inclusive order and a way out of the cycle of civil wars. To avoid a prescriptive approach, the starting point of this exploration needs to be an analysis of actual historical experience and an understanding of political theory that illuminates the historical ground. I do not propose decolonization of the political because it is the sure route to the good society that political theory

aims to articulate. I do so because a historically anchored theory shows how the manufacture of the nation-state under political modernity has undermined the promises of democracy and inclusion. In theory, modernity promises the light of civilization and progress everywhere. In actual historical experience, modernity—European, colonial, and postcolonial—looks like nothing so much as the ongoing violence and oppression wrought by states conjoined with nations.

To rethink the political community created under modernity demands a change in historical perspective. This is the prerequisite to theorizing our lived predicament, a process that begins with epistemic change: a new narrative of how this predicament came to pass. In chapter 1, I offered a version of a new autobiography of the United States, as the first settler colony rather than the first new nation. From this autobiography flows a very different way of thinking about the political identities that Americans occupy: not natives and immigrants but natives and settlers. That first dyad makes it seem as though Europeans and others moved to the continent to take part in the society that already existed there. But nothing could be further from the truth. Europeans destroyed that society and replaced it with their own. Then they built a state to do European society's bidding. Understanding this precedes the decolonization of the United States, the erasure of settlers and natives as opposed identities and their replacement with the singular identity of survivors.

In Israel, the new autobiography incorporates the Jewish question in Europe and the historical connection of Palestinians to Eretz Israel. This historical narrative need not ignore the historical connection of Jews to the land, it just acknowledges that this connection is not exclusive. Zionism reduces the legacy of Jews in Palestine to one of sovereignty, whereas the historical reality is larger than that. It includes Jews who gladly lived there without sovereignty; Zionism erases them, as it has forms of Jewishness that do not comport with the official Ashkenazi line. At the same time, that official line must be excavated and reconsidered, so that its origins are traced to an accommodation with political modernity, not Jewish nativity in Palestine. De-Zionization begins with the recognition by Israeli Jews that Zionism invites anti-Jewishness into their lives—the nationalist hatred that sought and achieved their removal from Europe. There is no reason that Jews should be natives or settlers in historic Palestine. In the absence of Zionism, Jews can be immigrants there, welcome residents in a historic homeland.

Decolonizing the political in Sudan and South Sudan also begins with a new history from the inside that rethinks the relation between the external and the internal. Sudan and South Sudan are colonized by the political order Britain created for and imposed on them. Today, Sudanese and South Sudanese impose this order on themselves. The identities born of these orders seem permanent, but they become malleable when they are recognized as historical objects. South Africans have done this historical work. They have denaturalized the racialized political identities produced by their long colonial subjugation. Nativity, however, remains a source of strife. The next step is to denaturalize tribe. This is another project that demands new history.

There are powerful forces aligned against the kind of historical endeavor I am proposing. The universalism of the human rights campaign demotes history to mere context, irrelevant to criminal justice. Neoliberalism, the handmaiden of human rights, depoliticizes everything. In the neoliberal view, the only group identity that is presumed to exist—and, indeed, is naturalized—is that of the nation. And then there is modernist political theory, which naturalizes and universalizes the nation and assumptions of progress regardless of the specific histories of the various peoples and places political thinkers write about.

But neoliberalism, for all its seeming domination, does not get the last laugh. For now, modernity does, whether in its European, colonial, or postcolonial form. For five hundred years, modernity has defined every political project as the elevation of the civilized, with the nation defined as civilized. To be the nation, in this scheme, is to be justified in privileging oneself. This vision has proven durable through centuries of political transformation.

Recognizing this history gives us the power to change perspectives and reality. The history of political modernity tells those of us who identify with the nation that we have been coopted. The nation is not inherent in us. It overwhelmed us. Political modernity led us to believe we could not live without the nation-state, lest we not only be denied its privileges but also find ourselves dispossessed in the way of the permanent minority. The nation made the immigrant a settler and the settler a perpetrator. The nation made the local a native and the native a perpetrator, too. In this new history, everyone is colonized—settler and native, perpetrator and victim, majority and minority. Once we learn this history, we might prefer to be survivors instead.

NOTES

Introduction

1. "That church can have no right to be tolerated by the magistrate, which is so constituted . . . that all those who enter into it do thereby ipso facto pass into the protection and service of another prince," Locke wrote. *Espitola de Tolerantia / A Letter on Toleration,* ed. R. Klibansky and J. W. Gough (Oxford: Clarendon Press, 1968), 65, 133.

2. Scott Sowerby, *Making Toleration: The Repealers and the Glorious Revolution* (Cambridge, MA: Harvard University Press, 2013), 256.

3. Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001).

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16. Quoted in G. Edward White, *The Marshall Court and Cultural Change, 1815–1835,* vols. 3–4 of *The Oliver Wendell Holmes Devise History of the Supreme Court* (New York: Macmillan, 1988), 712–713, cited in Williams, *Like a Loaded Weapon,* 226–227.

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22. Ex parte Crow Dog, 109 U.S. 556 (1883), 568–569.

23. Harring, *Crow Dog's Case,* 100–101.

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2. Nuremberg: The Failure of Denazification

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2. Quotations in preceding three paragraphs in Whitman, *Hitler's American Model,* 16, 43, 67–68, 80.

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5. Morgenthau, *Germany Is Our Problem* (New York: Harper and Brothers, 1945), 117. Compare James Stewart Martin, *All Honorable Men* (Boston: Little Brown, 1950), describing Ford works, United Rayon, and I. G. Farben, as a "trio of untouched plants" (82). Martin writes, "old Frankfurt . . . had been almost leveled to the ground, while I. G. Farben office building, one of the largest in the world, stood untouched" (57).

6. John Kenneth Galbraith, *A Life in Our Times: Memoirs* (Boston: Houghton Mifflin, 1981), 200–201, 226.

7. Karl Jaspers, 1962 afterword to *Die Schuldfrage,* 1946 [The Question of German Guilt], cited in Jeffrey K. Olick, *In the House of the Hangman: The Agonies of German Defeat, 1943–1949* (Chicago: University of Chicago Press, 2005), 113.

8. Danilo Zolo, *Victors' Justice: From Nuremberg to Baghdad* (London: Verso, 2009), 143.

9. Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), 106–107, 111–112.

10. Quoted in Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (Boston: Houghton Mifflin, 1998), 112. George Washington Williams, a veteran of the American Civil War, arrived in Congo in 1890 as a journalist. After interviewing Congolese about their experience under the regime of King Leopold of Belgium, Williams wrote the king an open letter that Adam Hochschild has described as "a milestone in the literature of human rights" (102). Williams also reported his findings to the US secretary of state.

11. "The Trial of German Major War Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg, Germany," October 1, 1946, part 22, 468. Quotations appear in the section "The Law Relating to War Crimes and Crimes Against Humanity,"

available through the Avalon Project, Lillian Goldman Law Library, Yale Law School, https://avalon.law.yale.edu/imt/judlawre.asp.

12. Olick, *In the House of the Hangman,* 108, 109.

13. James McMillan, *Five Men at Nuremberg* (London: Harrap, 1985), 55.

14. Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nazi War Crimes Trials Changed the Course of History* (New York: Palgrave Macmillan, 2007), 14.

15. Radhabinod Pal, *International Military Tribunal for the Far East: Dissentient Judgment of Justice Pal* (Tokyo: Kokusho-Kankokai, 1999), 62, 700.

16. Ehrenfreund, *Nuremberg Legacy,* 56–57.

17. Cited in Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, MA: Harvard University Press, 2005), 225, 231.

18. Zolo, *Victors' Justice,* 144–145.

19. McMillan, *Five Men at Nuremberg,* 56, 57.

20. Cited in Martin Middlebrook, *The Battle of Hamburg: Allied Bomber Forces against a German City in 1943* (London: Allen Lane, 1980), 276.

21. Michael Beschloss, *The Conquerors: Roosevelt, Truman and the Destruction of Hitler's Germany 1941–1945* (New York: Simon and Schuster, 2002), 190.

22. McMillan, *Five Men at Nuremberg,* 58.

23. Sven Lindqvist, *A History of Bombing* (New York: New Press, 2001).

24. Aimé Césaire, *Discourse on Colonialism,* trans. Joan Pinkham (New York: Monthly Review Press, 2000), 36.

25. Césaire argues "that no one colonizes innocently, that no one colonizes with impunity either; that a nation which colonizes, that a civilization which justifies colonization—and therefore force—is already a sick civilization, a civilization which is morally diseased, which irresistibly, progressing from one consequence to another, one denial to another, calls for its Hitler, I mean its punishment." Césaire, *Discourse on Colonialism,* 39.

26. Matthew J. Gibney and Randall Hansen, eds., *Immigration and Asylum: From 1900 to the Present* (Santa Barbara, CA: ABC-CLIO, 2005), 197, 198.

27. The Berlin (Potsdam) Conference, Protocol of the Proceedings, August l, 1945, available through the Avalon Project, Lillian Goldman Law Library, Yale Law School, https://avalon.law.yale.edu/20th_century/decade17.asp.

28. Paul Robert Magocsi, *Historical Atlas of East Central Europe* (Seattle: University of Washington Press, 1993), 164–168. See also Anna Porter, *The Ghosts of Europe* (Vancouver: Douglas and McIntyre, 2010).

29. R. M. Douglas, *Orderly and Humane: The Expulsion of the Germans after the Second World War* (New Haven: Yale University Press, 2012), 85.

30. R. M. Douglas, "The Expulsion of the Germans: The Largest Forced Migration in History," *Huffington Post,* August 25, 2012, https://www.huffingtonpost.com/rm-douglas/expulsion-germans-forced-migration_b_1625437.html. The West German government put the number of expelled Germans much higher. Many German civilians were sent to internment and labor camps where they were used as forced labor, justified as part of German reparations to countries in Eastern Europe. Gibney and Hansen, *Immigration and Asylum,* 196–198, see also 140.

31. Douglas, *Orderly and Humane;* Douglas, "The Expulsion of the Germans." See also Alfred de Zayas, "Forced Population Transfer," in *Max Planck Encyclopedia of Public International Law* (New York: Oxford University Press, 2008), with reference to Articles 6b and 6c of the Nuremberg indictment and the relevant parts of the judgment concerning the forced transfer of Poles and Frenchmen by the Nazis.

32. Zolo, *Victors' Justice,* 144.

33. Olick, *In the House of the Hangman,* 164–165.

34. Jan-Werner Müller, *Another Country: German Intellectuals, Unification, and National Identity* (New Haven: Yale University Press, 2000), 27–28.

35. Andreas Huyssen, email to author, May 11, 2020.

36. Müller, *Another Country,* 25.

37. Thomas Mann, "Deutschland und die Deutschen," *Addresses Delivered at the Library of Congress,* cited in Olick, *In the House of the Hangman,* 146, 148.

38. Olick, *In the House of the Hangman,* 96, 166–167, 202; Müller, *Another Country,* 30, 31, 38, 48; "Letter on Humanism," in Martin Heidegger, *Basic Writings,* ed. David Farrell Krell (New York: Harper and Row, 1977; repr. Harper Perennial, 2008), 291, 297.

39. Olick, *In the House of the Hangman,* 270–271.

40. Volker R. Berghahn, "Writing the History of Business in the Third Reich: Past Achievements and Future Directions," in *Business and Industry in Nazi Germany,* ed. Francis R. Nicosia and Jonathan Huener (New York: Berghan Books, 2004), 141.

41. Ehrenfreund, *Nuremberg Legacy,* 23, 25.

42. Peter Hayes, *Industry and Ideology: IG Farben in the Nazi Era,* 2nd ed. (New York: Cambridge University Press, 2001), xxi–xxii.

43. Telford Taylor, *Final Report to the Secretary of the Army on the Nuremberg War Crimes Trials under Control Council Law* (Washington, DC: US Government Printing Office, 1949), 199.

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45. Ehrenfreund, *Nuremberg Legacy,* 7, 10.

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58. Frederick Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (New York: Bloomsbury, 2011), 226.

59. Noland Norgaard, "Eisenhower Claims 50 Years Needed to Re-Educate Nazis," *Oregon Statesman,* October 13, 1945.

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62. Biddiscombe, *Denazification of Germany,* 65; Olick, *In the House of the Hangman,* 129.

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74. Taylor, *Exorcising Hitler,* 327.

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58. Luk Jo, testimony before the AU Commission, Addis Ababa, June 10, 2014, author notes.

59. Thabo Mbeki, testimony before the AU Commission, Addis Ababa, September 4, 2014, author notes.

60. Philip Gourevitch, *We Wish to Inform You that Tomorrow We Will Be Killed with Our Families: Stories From Rwanda* (New York: Farrar, Straus, and Giroux, 1998); Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002); Hannah Arendt, *The Origins of Totalitarianism* (New York: Schocken, 1951); Sven Lindqvist, *"Exterminate All the Brutes": One Man's Odyssey into the Heart of Darkness and the Origins of European Genocide,* trans. Joan Tate (New York: New Press, 1996).

61. Johnson, *Waging Peace in Sudan,* 18–21.

62. Anonymous member of parliament, testimony before the AU Commission, July 25, 2014, author notes.

63. Isaah Dow, testimony before the AU Commission, Juba, July 24, 2014, author notes.

5. The Israel / Palestine Question

1. Merav Levy, "Minister Livni: Israel Can Be Home for Its Arab Citizens, but Not a National Home," *News First Class Online,* December 18, 2003, cited in Nimer Sultany, "Israel and the Palestinian Minority 2003," Second Annual Political Monitoring Report, Mada al-Carmel, Arab Centre for Applied Social Research, Haifa, October 2004, 102 (hereafter Sultany, "Israel and the Palestinian Minority 2003").

2. Baruch Kimmerling, *The Invention and Decline of Israeliness: State, Society and the Military* (Berkeley: University of California Press, 2001), 193, 193, 26, and 193.

3. Historians periodize the aliyot in a variety of ways, some delineating five or more distinct waves of immigration. This sort of periodization, focused on tracking numbers of migrants in a given time, has the effect of erasing the political distinctions among the different migrant groups. By contrast, the periodization used here foregrounds this distinctiveness. The first aliyah comprised European Jews who sought to integrate in Palestine. The second and third aliyot comprised settlers, nation-builders and state-builders respectively.

4. Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1997), 59, 96, 242–243. Khalidi relies on Justin McCarthy, *The Population of Palestine: Population History and Statistics of the Late Ottoman Period and the Mandate* (New York: Columbia University Press, 1990), 10, for an estimate of the total population of Palestine based on the Ottoman count. The high estimate of 85,000 for the Jewish population is based on Neville Mandel, *The Arabs and Zionism before World War I* (Berkeley: University of California Press, 1976), xxiv. According to Khalidi, Mandel's estimate was "formerly the commonly accepted figure" (96n29). McCarthy (17–24), explains why Mandel's estimate is likely wrong and why relying on Ottoman counts ensures greater accuracy.

5. Ella Shohat, "Rupture and Return: Zionist Discourse and the Study of Arab Jews," in *PostZionism: A Reader,* ed. Laurence J. Silberstein (New Brunswick, NJ: Rutgers University Press, 2008), 240. For a study of the first aliyah, see Gershon Shafir, *Land, Labor, and the Origins of the Israeli-Palestinian Conflict, 1882–1914,* rev. ed. (Berkeley: University of California Press, 1996).

6. Kimmerling, *Invention and Decline of Israeliness,* 194.

7. Abdul Latif Tibawi, *British Interests in Palestine, 1800–1901: A Study of Religious and Educational Enterprise* (Oxford: Oxford University Press, 1961), cited in Khalidi, *Palestinian Identity,* 120.

8. "Mandate for Palestine," League of Nations, August 12, 1922, https://unispal.un.org/DPA/DPR/unispal.nsf/0/2FCA2C68106F11AB05256BCF007BF3CB.

9. Najeh Jarrar, *Palestinian Refugee Camps in the West Bank: Attitudes towards Repatriation and Integration* (Ramallah: SHAML, Palestinian Diaspora and Refugee Centre, 2002), 165.

10. *The General Monthly Bulletin of Current Statistics, XII,* Government of Palestine, Department of Statistics (1947), gave the last official figure for British mandate Palestine: the total settled population was 1,908,775, of whom 1,157,423 were Muslim, 589,341 were Jewish, 46,162 were Christian, and 15,849 were listed as "Other." For more see Janet Abu-Lughod, "The Demographic Transformation of Palestine," in *Transformation of Palestine,* ed. Ibrahim Abu-Lughod (Evanston, IL: Northwestern University Press, 1971), 155–156.

11. Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (London: Zed Books, 2003), 68.

12. Shafir, *Land, Labor,* 1, 20, 49, 59, 128, 187–88, 198; Shlomo Avineri, *The Making of Modern Zionism: The Intellectual Origins of the Jewish State* (New York: Basic Books, 1981), 20, 210.

13. Khalidi, *Palestinian Identity,* 99–100, 141.

14. Khalidi, *Palestinian Identity,* 104–105.

15. Daphna Sharfman, *Living without a Constitution: Civil Rights in Israel* (Armonk, NY: M. E. Sharp, 1993), 4.

16. D. Ben Gurion, *Watches* (Tel Aviv: Davar, 1935), 170 [in Hebrew], cited in Sharfman, *Living without a Constitution,* 19.

17. Vladimir Jabotinsky, "On Race" (1913), in Zeev Jabotinsky, *Ktavim* [Works], vol. 9 (self-published: Jerusalem and Tel Aviv, 1947) [in Hebrew], cited in Avineri, *Making of Modern Zionism,* 174–175, 193.

18. Vladimir Jabotinsky, "O Zheleznoi Stene" ["On the Iron Wall"], *Razsviet* (1923) [in Russian], excerpted in Uri Davis, *Apartheid Israel: Possibilities for the Struggle Within* (London: Zed, 2003), 199–200, and in Ian Lustick, "To Build and to Be Built By: Israel and the Hidden Logic of the Iron Wall," *Israel Studies* 1, no. 1 (1996): 196–223, 200.

19. Shabtai Teveth, *Moshe Dayan,* trans. Leah Zinder and David Zinder (London: Weidenfeld and Nicolson, 1972), 240, cited in Kimmerling, *Invention and Decline of Israeliness,* 208.

20. Rashid Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (Boston: Beacon Press, 2006), 107, 109.

21. Writing after the 1967 War, Deutscher argued that the thesis of "two rival nationalisms" equated the nationalism of "the people in colonial or semi-colonial countries, fighting for their independence" with the "nationalism of conquerors and oppressors." Isaac Deutscher, "The Non-Jewish Jew," in *The Non-Jewish Jew and Other Essays* (London: Oxford University Press, 1968), collected in *Prophets Outcast: A Century of Dissident Jewish Writing about Zionism and Israel,* ed. Adam Shatz (New York: Nation Books, 2004), 177.

22. Kimmerling, *Invention and Decline of Israeliness,* 39.

23. Lila Abu-Lughod and Ahmad H. Sa'di, "Introduction: The Claims of Memory," in *Nakba: Palestine, 1948, and the Claims of Memory,* ed. Sa'di and Abu-Lughod (New York: Columbia University Press, 2007), 3.

24. Hussein and McKay, *Access Denied,* 67.

25. Gil Anidjar, email to author, July 7, 2018. Elsewhere Anidjar writes, "Europe—so-called 'Christian Europe'—divides itself, from the beginning, between an enemy within and an enemy without." If "Islam is the 'external enemy' . . . and Judaism is the 'internal enemy,' the question that remains, covert and untreated, is indeed the question of a relation, the relation between Europe and the Jew, the Arab." Gil Anidjar, *The Jew, The Arab: A History of the Enemy* (Stanford: Stanford University Press, 2003), xviii, xxii.

26. Raef Zreik, "Notes on the Value of Theory: Reading in the Law of Return—A Polemic," *Law and Ethics of Human Rights* 2, no. 1 (2008): 343–386, 369.

27. Amnon Ratz-Krakotzkin, "Jewish Peoplehood, 'Jewish Politics,' and Political Responsibility: Arendt on Zionism and Partitions," *College Literature* 38, no. 1 (2011): 57–74, 57–58.

28. For more on Brit Shalom, see Hagit Lavsky, "German Zionists and the Emergence of Brit Shalom," in *Essential Papers on Zionism,* ed. Jehuda Reinharz and Anita Shapira (New York: New York University Press, 1996). This volume also contains valuable resources on other Zionist tendencies discussed here.

29. Ruth Gavison, "The Jews' Right to Statehood: A Defense," *Azure* 15, no. 3 (2003): 70–108, 80.

30. Israel Nationality Law (1952), available through United Nations High Commissioner for Refugees, https://www.refworld.org/docid/3ae6b4ec20.html.

31. On "present absentees," see Nur Masalha, *The Politics of Denial: Israel and the Palestinian Refugee Problem* (London: Pluto Press, 2003), 142–172.

32. Mazen Masri, *The Dynamics of Exclusionary Constitutionalism: Israel as a Jewish and Democratic State* (London: Bloomsbury, 2017), Kindle locs. 2681–2682, 2685–2689, 2693–2699, 3425–3427. See also Yair Bauml, "Israel's Military Rule over Its Palestinian Citizens (1948–1968)," in *Israel and Its Palestinian Citizens: Ethnic Privileges in the Jewish State,* ed. Nadim N. Rouhana and Sahar S. Huneidi (Cambridge: Cambridge University Press, 2016), 111.

33. *Knesset Debates,* vol. 6, July 3–August 10, 1950, 2035–2037, cited in Davis, *Apartheid Israel,* 201–203.

34. Ella Shohat, *On the Arab-Jew, Palestine, and Other Displacements: Selected Writings* (London: Pluto Press, 2017), 54; Yehouda Shenhav, *The Arab Jews: A Postcolonial Reading of Nationalism, Religion and Ethnicity* (Stanford: Stanford University Press, 2006), 8–9, 12, 17.

35. Shenhav, *Arab Jews,* 31, 43.

36. Shohat, *On the Arab-Jew,* 5; Shenhav, *Arab Jews,* 8.

37. Laurence J. Silberstein, *The Postzionism Debates: Knowledge and Power in Israeli Culture* (New York: Routledge, 1999), 78.

38. Masri, *Dynamics of Exclusionary Constitutionalism,* Kindle locs. 3162–3163, 3173–3175, 3251–3255, 3419–3422.

39. Quoted in S. Swirski, *Orientals and Ashkenzim in Israel: The Ethnic Division of Labor* (Haifa: Critical and Research Notebooks, 1981), 52 [in Hebrew].

40. Resolutions of the First Zionist Congress, Basel, August 30, 1897, reproduced in Nahum Sokolow, *History of Zionism, 1600–1918* (New York: Longmans, Green and Co., 1919), xxiv.

41. Akiva Orr, *The UnJewish State: The Politics of Jewish Identity in Israel* (London: Ithaca Press, 1983), 7–9.

42. Sharfman, *Living without a Constitution,* 70.

43. According to Daphna Sharfman, "Jewish law does not allow a Jew the option of 'accepting' Jewish law, for his very identity is determined by his subordination to the law. . . . The idea of moral autonomy is foreign to Jewish law, to which obedience is central." Sharfman, *Living without a Constitution,* 73. As Uri Davis notes, "The problems for Jewish identity, as for any other tribal identity, begin with secularization. The only viable answer to the question 'Who is a (secular) Jew' is: 'anyone who says that he or she is a Jew.'" Any attempt to formulate an objective answer to the question inevitably "collapsed into formulations that echo the Nazi definition of 'who is a Jew?' For the Nazi state and the Nazi occupation authorities a 'Jew' was defined as any person with 'Jewish blood' in their family up to three generations back." Davis, *Apartheid Israel,* 182.

44. Sharfman, *Living without a Constitution,* 79.

45. Quoted in Tom Segev, *1949: The First Israelis* (New York: Free Press, 1986), xviii.

46. Kimmerling, *Invention and Decline of Israeliness,* 221n39.

47. Genesis 16:1–16, 21:8–21.

48. Orr, *UnJewish State,* 19–21, 24.

49. Kimmerling, *Invention and Decline of Israeliness,* 200n57.

50. Orr, *UnJewish State,* 96.

51. HCJ 58 / 68 *Shalit v. Minister of the Interior,* cited in Kimmerling, *Invention and Decline of Israeliness,* 200, 200n57.

52. Sharfman, *Living without a Constitution,* 77, 87; Kimmerling, *Invention and Decline of Israeliness,* 143.

53. On *Tsiorulin,* see Davis, *Apartheid Israel,* 72.

54. United Nations Special Committee on Palestine, "Report to the General Assembly," A / 364, September 3, 1947, https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3.

55. "Palestine Refugees," United Nations Relief and Works Agency for Palestine Refugees in the Near East, https://www.unrwa.org/palestine-refugees.

56. "Media Release: 68th Independence Day—8.5 Million Residents in the State of Israel," Central Bureau of Statistics, Israel, May 9, 2013, cited in Masri, *Dynamics of Exclusionary Constitutionalism,* Kindle locs. 3603–3605.

57. Inbal Arbiv, "Netanyahu Discloses: Yesterday I Signed Order Adding NIS 700 Million to Build the Fence," *News First Class Online,* December 17, 2003, cited in Sultany, "Israel and the Palestinian Minority 2003," 101.

58. David Ben-Gurion, speech to senior members of Mapai, December 3, 1947, quoted in Ilan Pappé, *The Ethnic Cleansing of Palestine* (Oxford: Oneworld Publications, 2006), 48.

59. Gavison, "The Jews' Right to Statehood," 1.

60. Sharif Kanaana, *Still on Vacation! The Eviction of the Palestinians in 1948* (1992; Jerusalem: SHAML, Palestinian Diaspora and Refugee Centre, 2000), 51–53; Hadeel Assali, email to author, June 28, 2020.

61. Lana Tatour, "The Culturalisation of Indigeneity: The Palestinian-Bedouin of the Naqab and Indigenous Rights," *International Journal of Human Rights* 23, no. 10 (2019): 1569–1593, 1573.

62. For a representative selection of Zionist writing on the issue, see Joseph Schectman, *The Arab Refugee Problem* (New York: Philosophical Library, 1952); Jon Kimche and David Kimche, *Both Sides of the Hill: Britain and the Palestine War* (London: Secker and Warburg, 1960); Leo Kohn, "The Arab Refugees," *Spectator* (London), no. 6938, 1961; Natanel Lorch, *The Edge of the Sword* (New York: G. P. Putnam's, 1961); and Marie Syrken, "The Arab Refugees: A Zionist View," *Commentary* 14, no. 1, 1966. For critical responses, see Walid Khalidi, "Why Did the Palestinians Leave?" *Middle East Forum,* July 1959, 21–24; Walid Khalidi, "Plan Dalet: The Zionist Masterplan for the Conquest of Palestine, 1948," *Middle East Forum,* November 1961, 21–28; Walid Khalidi, ed., *From Heaven to Conquest: Readings in Zionism and the Palestinian Problem until 1948* (Beirut: Institute of Palestinian Studies, 1971); Erskine Childers, "The Other Exodus," *Spectator,* May 12, 1961; Kanaana, *Still on Vacation!* 16–24.

63. Benny Morris, "Operation Dani and the Palestinian Exodus from Lydda and Ramle in 1948," *Middle East Journal* 40, no. 1 (1986): 82–109; Benny Morris, "The Causes and Character of the Arab Exodus from Palestine: The Israeli Defense Forces Intelligence Branch Analysis of June 1948," *Middle Eastern Studies* 22, no. 1 (1986): 5–19; Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947–1949* (Cambridge: Cambridge University Press, 1988).

64. Winston Churchill, testimony before the Palestine Royal Commission, December 3, 1937, quoted in Norman G. Finkelstein, *Beyond Chutzpah: On the Misuse of Anti-Semitism and the Abuse of History* (Berkeley: University of California Press, 2005), 9–10.

65. Hannah Arendt, "Zionism Reconsidered," in Arendt, *The Jewish Writings,* ed. Jerome Kohn and Ron H. Feldman (New York: Schocken, 2007), 343.

66. For discussion of the Palestinian transfer policy, see *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought, 1882–1948* (Washington, DC: Institute for Palestine Studies, 1992). Quote on 194.

67. Ilan Pappé, *The Making of the Arab-Israeli Conflict, 1947–51* (New York: I. B. Taurus, 1994), 91–98, cited in Jarrar, *Palestinian Refugee Camps,* 63–64. See also, Pappé, *Ethnic Cleansing of Palestine*.

68. Quoted in Segev, *1949: The First Israelis,* 6.

69. David Kretzmer, *The Legal Status of Arabs in Israel* (Boulder, CO: Westview Press, 1990), 4.

70. David Kretzmer puts the number of present absentees at about 75,000; Kretzmer, *The Legal Status of Arabs in Israel,* 57–60. Ian Lustick counts slightly more—81,000; Ian Lustic, *Arabs in the Jewish State: Israel's Control of a National Minority* (Austin: University of Texas Press, 1980), 173–174.

71. Quoted in Segev, *1949: The First Israelis,* 46–47.

72. Sharfman, *Living without a Constitution,* 47–49, 50–51.

73. Prime Minister Ben Gurion to the Knesset, February 20, 1963, cited in Hussein and McKay, *Access Denied,* 80.

74. "The protocol of the meeting of the Arab Affairs Committee, 30 January, 1958," Labor Party Archive, Beit Berl, Israel, file 7 / 32, cited in Ahmad Sa'di, *Thorough Surveillance: The Genesis of Israeli Policies of Population Management, Surveillance and Political Control Towards the Palestinian Minority* (Manchester, UK: Manchester University Press, 2013), 35–36.

75. Sa'di, *Thorough Surveillance,* 35–36, 55–56.

76. Relly Sa'ar, "A Yitzhak Cohen By Any Other Name," *Ha'aretz* English ed., December 6, 2001, cited in Nimer Sultany, "Citizens without Citizenship," First Annual Political Monitoring Report, Mada al-Carmel, Arab Centre for Applied Social Research, Haifa, 2003, 88–89 (hereafter Sultany, "Citizens without Citizenship"). See also Kretzmer, *Legal Status of Arabs in Israel,* 142–145, 151–152.

77. Yossi Melman, "GSS Demanded Equality. So It Made the Demand," *Ha'aretz,* "Arab Portraits" Supplement, May 25, 2004; Nimer Sultany, "Israel and the Palestinian Minority 2004," Third Annual Political Monitoring Report, Mada al-Carmel, Arab Centre for Applied Social Research, Haifa, July 2005, 54 (hereafter Sultany, "Israel and the Palestinian Minority 2004"). See also Sultany, "Israel and the Palestinian Minority 2003," 54, 94–95.

78. Amnon Rubinstein, *The Constitutional Law of the State of Israel,* 3rd ed. (Tel Aviv: Schocken, 1980), 121, [in Hebrew], cited in Kretzmer, *Legal Status of Arabs in Israel,* 168.

79. Ben-Menashe v. Minister of Interior (1969) 24 P.D. I 105; Schick v. Attorney General (1972) 27 P.D. II 3; both cited in Kretzmer, *Legal Status of Arabs in Israel,* 47n22.

80. Tamarin v. State of Israel (1970) 26 P.D. I 197, cited in Kretzmer, *Legal Status of Arabs in Israel,* 47n23.

81. Kretzmer, *Legal Status of Arabs in Israel,* 42.

82. Sultany, "Citizens without Citizenship," 104.

83. Robert Fisk, "The Land of Palestine, Part Eight: The Custodian of Absentee Property," *Times* (London), December 24, 1980.

84. Gabriel Piterberg, "Erasures," in *Prophets Outcast: A Century of Dissident Jewish Writing about Zionism and Israel,* ed. Adam Shatz (New York: Nation Books, 2004), 157–158.

85. HCJ 261 / 90 Eid Hussein Tabari v. Custodian of Absentee Property. The case related to land the claimant, a present absentee, had lost to the Custodian in 1956. Hussein and McKay, *Access Denied,* 75.

86. Michael Dumper, *Islam and Israel* (Washington, DC: Institute for Palestine Studies, 1994), 29, 34, 35, cited in Hussein and McKay, *Access Denied,* 77–80.

87. Alexandre Kedar, "The Legal Transformation of Ethnic Geography," *International Law and Politics* 33, no. 4 (2001): 923–1000, 947, 933, 952, 950, 955, 957–958, 962, 983, 995, 971, 976, 980.

88. Hani Sayed, "The Fictions of the 'Illegal' Occupation in the West Bank and Gaza," *Oregon Review of International Law* 16 (2014): 79–347, 90, 92, 122.

89. Alexandre Kedar, "Israeli Law and the Redemption of Arab Land, 1948–1969" (SJD diss., Harvard Law School, 1996); Aref Abu-Rabia, "The Bedouin Refugees in the Negev," *Refuge* 14, no. 6 (1994); the website of the Association of Unrecognized Villages, www.assoc40.org; all cited in Amal Jamal, "The Palestinian IDPs in Israel and the Predicament of Return: Between Imagining the Impossible and Enabling the Imaginative," in *Exile and Return: Predicaments of Palestinians and Jews,* ed. Ann M. Lesch and Ian S. Lustick (Philadelphia: University of Pennsylvania Press, 2005), 138.

90. Kretzmer, *Legal Status of Arabs in Israel,* 51–52. See also A. Shmueli, "Village Population of the Hilly Upper Galilee 1967–77," *Artzot Hagalil* (Lands of the Galilee) [in Hebrew] (Jerusalem: Ministry of Defence, 1983), 708; and R. Rekhes, *The Arabs of Israel and Land Expropriations in the Galilee,* Tel Aviv Surveys, University of Tel Aviv, Shiloh Institute, 1977; both cited in Hussein and McKay, *Access Denied,* 87.

91. Yehouda Shenhav, *Beyond the Two-State Solution, A Jewish Political Essay* (Malden, MA: Polity Press, 2012), 110.

92. Sultany, "Israel and the Palestinian Minority 2003," 36–37.

93. Penny Maddrell, *The Beduin of the Negev* (London: Minority Rights Group, 1990), 6, cited in Hussein and McKay, *Access Denied,* 112, see also 263, 128–131, 263.

94. Rassem Khamaisi, *Planning and Housing Policy in the Arab Sector of Israel* (Tel Aviv: International Centre for Peace in the Middle East, 1990), 57–58; Oren Yiftachel, *Planning a Mixed Region in Israel* (Aldershot, UK: Avebury, 1992), 143; Oren Yiftachel, "'Ethnocracy': The Politics of Judaizing Israel / Palestine," *Constellations* 6, no. 3 (1994): 364–390; Ghazo Falah, "Israeli State Policy toward Bedouin Sedentarization in the Negev," *Journal of Palestine Studies* 18, no. 2, iss. 70 (1989): 71–91, 80; all cited in Hussein and McKay, *Access Denied,* 200, 111, 115, 117, 121, 123–125, 89. For activities in 2001, see Hussein and McKay, *Access Denied,* 84.

95. Tatour, "Culturalisation of Indigeneity," 1574.

96. "Adalah's Objections to Discriminatory 'Kaminitz Bill' for Harsh Enforcement of Planning & Building Law in Israel," Adalah: The Legal Center for Arab Minority Rights in Israel, March 30, 2017, https://www.adalah.org/en/content/view/9068.

97. Jamal, "The Palestinian IDPs in Israel," 144. See also Hussein and McKay, *Access Denied,* 256.

98. Hussein and McKay, *Access Denied,* 258–259.

99. The Association for Support and Defence of Bedouin Rights in Israel, Report on Legal Activities 1989–90; "Build Up, Don't Tear Down," editorial, *Ha'aretz,* April 7, 1998; both cited in Hussein and McKay, *Access Denied,* 270, 234.

100. Two extracts from *Al-Ittihad* and *Al-Sunnara,* August 7, 2001, translated and reported in *HRA Weekly Press Review,* August 16, 2001, Nazareth, cited in Hussein and McKay, *Access Denied,* 234–235, 270.

101. Hussein and McKay, *Access Denied,* 255, 267.

102. Fawzi Abu To'ameh, "Caesarea Separated from Jisr," *Ynet,* May 25, 2003; *Al HaSharon,* May 23, 2003, cited in Sultany, "Israel and the Palestinian Minority 2003," 104.

103. John Hope Simpson, *Palestine: Report on Immigration, Land Settlement and Development* (London: His Majesty's Stationery Office, 1930), 54, cited in Hussein and McKay, *Access Denied,* 68. The full Hope Simpson report is available at https://www.jewishvirtuallibrary.org/hope-simpson-report.

104. "Response on Behalf of the JNF to Petitions for Order Nisi and Temporary Injunction," December 9, 2004, H. C. 9010 / 04 and 9205 / 04, cited in Sultany, "Israel and the Palestinian Minority 2004," 51.

105. The law in question is the World Zionist Organization / Jewish Agency for Israel (Status) Law, 1952, https://knesset.gov.il/review/data/eng/law/kns2_wzo_eng.pdf. The law was incorporated in substance in 1954 via a covenant signed by the WZO / JA and the Israeli government. Quoted text is from formal letters exchanged between the government and the WZO / JA Executive, dated July 26, 1954, available in Hebrew in *Reshumot* (Official Gazette) 386, December 2, 1954, 189, cited in Uri Davis and Walter Lehn, "And the Fund Still Lives: The Role of the Jewish National Fund in the Determination of Israel's Land Policies," *Journal of Palestine Studies* 7, no. 4 (1978): 3–33, 14.

106. Kretzmer, *The Legal Status of Arabs in Israel,* 95.

107. See Hussein and McKay, *Access Denied,* 154.

108. *Knesset Debates,* vol. 13, November 3, 1952–March 1953, 24, cited in Davis, *Apartheid Israel,* 51–52.

109. Shaul Avigur, Yitzhak Ben-Zvi, Eliezer Galili, and Yehuda Slutsky, *The History of the Hagana* (Tel Aviv: Am oved, 1954), vol. 1, book 1 [in Hebrew], cited in Kimmerling, *The Invention and Decline of Israeliness,* 210n4.

110. Shlomo Aronson, "Israel's Nuclear Program: The Six Day War and Its Ramifications," King's College London Mediterranean Studies, 1999, 18.

111. Finkelstein, *Beyond Chutzpah,* 47–48.

112. Kretzmer, *Legal Status of Arabs in Israel,* 99–107.

113. Davis, *Apartheid Israel,* 104.

114. Quoted in Shohat, *On the Arab-Jew,* 39–42. See also Segev, *1949: The First Israelis,* 155–161; Albert Memmi, *Who Is an Arab Jew?* (Jerusalem: Academic Committee on the

Middle East, 1975); Sami Smooha, *Israel: Pluralism and Conflict* (Berkeley: University of California Press, 1978); Shlomo Swirski, *Israel: The Oriental Majority* (London: Zed Books, 1989).

115. Amnon Ratz-Krakotzkin, "Exile, History, and the Nationalization of Jewish Memory: Some Reflections on the Zionist Notion of History and Return," *Journal of Levantine Studies* 3, no. 2 (2013): 37–70, 60.

116. Abba Eban, *Voice of Israel* (1958; New York: Horizon Press, 1969), 76, cited in Sammy Smooha, *Israel: Pluralism and Conflict* (Berkeley: University of California Press, 1978), 88.

117. Noam Chomsky and Ilan Pappé, *On Palestine* (Chicago: Haymarket, 2015), 28.

118. Shohat, "Rupture and Return," 248–249.

119. Gershon Shafir, "Israeli Society: A Counterview," *Israeli Studies* 1, no. 2 (1996): 189–213, 189, cited in Pnina Motzafi-Haller, "A Mizrahi Call for a More Democratic Israel," in *PostZionism: A Reader,* ed. Laurence J. Silberstein (New Brunswick, NJ: Rutgers University Press, 2008), 279–280; Shenhav, *Arab Jews,* 77.

120. Raef Zreik, email to author, April 13, 2018.

121. Orr, *UnJewish State,* 7. See also Aviezer Ravitzky, *Messianism, Zionism, and Jewish Religious Radicalism* (Chicago: University of Chicago Press, 1996); Ehud Luz, *Parallels Meet: Religion and Nationalism in the Early Zionist Movement* (Philadelphia: Jewish Publication Society, 1988); Manachem Friedman, "The State of Israel as a Theological Dilemma," in *The Israeli State and Society,* ed. Baruch Kimmerling (Albany: State University of New York Press, 1989); Avineri, *Making of Modern Zionism;* and Shlomo Avineri, "The Zionist and the Jewish Religious Tradition: The Dialectics of Redemption and Secularization," in *Zionism and Religion,* ed. S. Almog, J. Reinharz, and A. Shapira, 9–20 (Jerusalem: Zalman Schazar Center, 1994) [in Hebrew]; all cited in Kimmerling, *Invention and Decline of Israeliness,* 122, 163–215.

122. Shenhav, *Beyond the Two-State Solution,* 50, 51, 73.

123. Karen Armstrong, *The Battle for God* (New York: Alfred A. Knopf, 2000), 261–263, 281–287, 345–349; Kimmerling, *Invention and Decline of Israeliness,* 122–124, 231–232.

124. E. Sprinzak, *Every Man Whatsoever Is Right in His Own Eyes* (Tel Aviv: Sifriat Poalim, 1986), 123–126, cited in Sharfman, *Living without a Constitution,* 88.

125. Armstrong, *Battle for God,* 306.

126. Shenhav, *Beyond the Two-State Solution,* 148, 146–147.

127. Kimmerling, *Invention and Decline of Israeliness,* 48.

128. Armstrong, *Battle for God,* 66–72, 287.

129. Sharfman, *Living without a Constitution,* 88–89.

130. Saeb Erakat, "Saving the Two-State Solution," *New York Times,* December 20, 2002. Some writers, even critics of Zionism like Baruch Kimmerling, use lower figures: "By 2000, about 180,000 Jews, spread over 140 settlements, had colonized the West Bank and the Gaza Strip, totaling about 12 per cent of the total population of those areas." Kimmerling, *Invention and Decline of Israeliness,* 47.

131. "The Up to Date Number of Jews in Judea and Samaria, Not Counting Jerusalem," Arutz Sheva, Israel International News.com, n.d., http://www.israelnationalnews.com/Articles/Article.aspx/18210#.VpK885scTIU.

132. Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917–2017* (New York: Metropolitan Press, 2020), 142–143.

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