

## 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

### *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.<sup>8</sup> 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.<sup>9</sup>

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 re-think 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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, post-colonial 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> 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, unreputed 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.<sup>18</sup> 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.<sup>19</sup> 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.