

Indirect Rule, Civil Society and Ethnicity

The African Dilemma

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This paper¹ seeks to present an interpretation of post-independence African politics. My central argument is that sub-Saharan African countries faced a three-fold challenge in the post-independence period. These were, first, democratizing the state; second, deracializing civil society; and third, restructuring unequal external relations of dependency. Of these, the central and critical task was that of democratization. It was also the objective achieved with the least success. That fact goes a long way towards explaining why progress on the other two fronts, deracializing civil society and restructuring international relations, was not only incomplete but also reversible.

The Colonial State and Indirect Rule

The colonial state was of course in every instance a historical formation. And yet its structure everywhere came to share certain fundamental features. I will argue that this was so because everywhere the organisation and reorganisation of the colonial state was a response to a central and overriding question. That problem was generally referred to as the "native question". Briefly

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put, how can a tiny and foreign minority rule over an indigenous majority?

To this question, there were two broad answers: direct and indirect rule. Their main features, and the contrast between them, is best illustrated by the South African experience. Direct rule was the main mode of control attempted over "natives" in the 18th and early 19th century. It is a form of control best exemplified by the Cape experience. The basic features of indirect rule, on the other hand, emerged through the experience of Natal in the second half of the 19th century.

Direct rule was based on the presumption of a single legal order. That order was formulated in terms of received colonial ("modern") law. Its other side was the non-recognition of "native" institutions. The vision of direct rule was based on equality of rights in a multi-racial society. But the equality of civil rights did not mean a similar political equality, for political rights were grounded in the ownership of property. A propertied franchise separated the "civilized" from the "uncivilized". The resulting vision was best summed up in Cecil Rhodes' famous phrase, "equal rights for all civilized men".

The social pre-requisite of direct rule was rather drastic. It involved a comprehensive sway of market institutions: the appropriation of land, the destruction of communal autonomy, the defeat and dispersal of tribal populations. Given that background, direct rule meant the reintegration and domination of "natives" in the institutional context of semi-servile and semi-capitalist agrarian relations.

In contrast to this, indirect rule came to be the mode of domination over a "free" peasantry. Here, land remained a communal - "customary" - possession. The market was restricted to products of labour, only marginally incorporating land or labour itself. Peasant communities were reproduced within the context of a spatial and institutional autonomy. The tribal leadership was either reconstituted as the hierarchy of the local state, or freshly imposed where none had existed as in the 'stateless societies'. Here, political inequality went alongside civil inequality. Both were grounded in a legal dualism.

Alongside the received law was implemented a customary law which regulated non-market relations, in land, in personal (family) and in community affairs. In South Africa, the dominance of mining over agrarian capital in late 19th century posed afresh the question of reproduction of autonomous peasant

communities which would regularly supply male, adult, single migrant labour to the mines.

My larger point is two-fold. Indirect rule came to be the form of colonial rule. While its basic features were sketched in the colony of Natal over five decades in the second half of the 19th century, it was really elaborated by the British in equatorial Africa in the early part of the 20th century - by Lugard in Nigeria and Uganda, and Cameroun in Tanganyika - then emulated by the French after World War I, the Belgians in the 1930s and finally the Portuguese in the 1950s. Secondly, indirect rule was mediated rule. It meant that colonial rule was never experienced by the vast majority of the colonized as rule directly by others. Rather, the colonial experience for most "natives" was one of rule mediated through one's own. As Jan Smuts, the South African Prime Minister, emphasized in his Rhodes lecture at Oxford in 1929, "territorial segregation" would not solve the "native problem"; "institutional segregation" was needed. For the colonial order to be stabilized, the "native" would have to be ruled not just by his own but through "native institutions". Indirect rule was grounded less in racial than in ethnic structures. As its pioneers, the British theorized the colonial state as less of a territorial than a cultural construct.

The Colonial State: A Bifurcated Apparatus

The legal dualism characteristic of indirect rule juxtaposed received ("modern") law alongside customary law. "Modern law" regulated relations between "non-natives", and "non-native" relations with any "natives". Customary law, on the other hand, governed relations between "natives". Customary law was supposed to be tribal law. A tribe or an ethnic group was defined by colonial authorities as a group with its own distinctive law. Referred to as custom, this law was usually unwritten. Its source was the Native Authority, those in charge of managing the local state apparatus. And this Native Authority was supposedly the "traditional" tribal authority. In this arrangement, the source of the law was the very authority that administered the law! This meant the absence of a rule-bound authority. Despite the persistent fantasy of colonial powers, particularly Britain and France, that their major contribution to the colonized was to bring them the benefits of the rule of law, there could be no rule of law in such an arrangement. For customary justice was really administrative justice. It could be no other in a situation where

judicial and administrative authority was fused in the same person.

The functionary of the local state apparatus was everywhere called the "chief". One should not be misled by the nomenclature to think of this as a holdover from the pre-colonial era. The chief was not only a person who had the right to pass rules ("bye-laws") governing persons living under his domain, he also executed all laws, and was the administrator in "his" area, in which he settled all disputes. The authority of the chief thus fused in a single person all moments of power: judicial, legislative, executive and administrative. This authority was like a clenched fist, necessary because the chief stood at the inter-section of the market and the non-market economy.

The administrative justice and the administrative coercion that was the sum and substance of his authority lay behind a regime of extra-economic coercion, a regime that breathed life into a whole range of compulsions: forced crops, forced sales, forced contributions, forced removals.

My general point is this. Legal integration characteristic of direct rule defined a form of state based on the rule of law. It was a state form which framed civil society. In contrast, indirect rule was grounded in a legal dualism, central to which was the colonial construction of administrative justice, called "customary law". It was the anti-thesis of a rule of law. It was, rather, legal arbitrariness. Indirect rule was the form of the state that framed the social life of the "free" peasantry.

The Anti-Colonial Revolt

It is my basic contention that the form of rule shaped the form of revolt against it. This meant that ethnicity (tribalism) was simultaneously the form of colonial control over "natives" and the form of revolt against it. It defined the parameters of both the Native Authority in charge of the local state apparatus and the revolt against it. Indirect rule at once reinforced ethnically-bound institutions of control and exploded them from within. Ethnicity, in other words, was never just about identity. Its two contradictory moments involved both social control and social emancipation. This is why it makes sense neither just to embrace ethnicity uncritically nor simply to reject it onesidedly.

For everywhere the local apparatus of the colonial state was organised either ethnically or on a religious basis. But it is also true that one finds it difficult to recall a single major peasant

uprising over the colonial period that has not been either ethnic or religious in inspiration. This is so for a simple but basic reason: the anti-colonial struggle was first and foremost a struggle against the hierarchy of the local state, the tribally-organised Native Authority. This is why everywhere, although the cadres of the nationalist movement were recruited mainly from urban areas, the movement gained depth the more it was anchored in the struggle of the peasantry against the array of Native Authorities that shackled it.

But after independence, there was dramatic shift in the political focus of the nationalist leadership, from the local to the central state apparatus, from democratizing local state apparatuses to a dual preoccupation: deracializing civil society in the towns and restructuring unequal international relations. Let me explain.

History of Actually-Existing Civil Society

I want to understand civil society analytically, in its actual historical formation, and not programatically, as an agenda for change. Thus the focus on actually-existing civil society.

The history of civil society in colonial Africa is laced with racism. For civil society was first and foremost the society of the colons. Also, it was primarily a creation of the colonial state. The rights of free association and free publicity, and eventually of political representation, were rights of citizens under direct rule, not of subjects under indirect rule.

This is why the colonial state was a Janus-type affair. Its one side, the state that governed citizens, was bounded by the rule of law and an associated regime of rights. Its other side, the state that ruled over subjects, was a regime of extra-economic coercion and administrative justice. No wonder that the struggle of subjects was both against the "tribal" authorities in the local state and against civil society. The latter was particularly acute in the settler colonies, where it often took the form of an armed struggle. Its best known theoretician was Frantz Fanon. This then was the first historical moment in the development of civil society: the colonial state as the protector of the society of the colons.

The second moment in that development saw a marked shift in the relation civil society and the state. This was the moment of the anti-colonial struggle.

For the anti-colonial struggle was also a struggle of the embryonic middle and working classes for entry into civil society.

That entry, that expansion of civil society, was the result of an anti-state struggle. Its consequence was the creation of an indigenous civil society, a process set into motion with the post-war colonial reform. But this was a development of limited significance. It could not be otherwise, for any significant progress in the creation of an indigenous civil society required a change in the form of the state. It required a deracialized state.

Independence, the birth of a deracialized state, was the context of the third moment in this history. Independence deracialized the state, but not civil society. In fact, as we shall see, the independent state played a key role in the struggle to deracialize civil society.

The key policy instrument in that struggle was what is today called "affirmative action", what was then called "Africanisation". The politics of Africanisation was simultaneously unifying and fragmenting. Its first moment involved the dismantling of racially inherited privilege. The effect was to unify the victims of colonial racism. Its second moment, however, divided that same majority along lines that reflected the actual redistribution: regional, religious, ethnic, or even just family lines. The tendency of the literature on corruption in post-independence Africa has been to detach the two moments, and thereby to isolate and decontextualize the moment of redistribution through ahistorical analogies that describe it as the politics of patrimonialism or prebendalism or so on. The effect has been to caricature the practices under investigation and to make them unintelligible!

The second interesting aspect of the politics of affirmative action was its ideological side, reflected in the language of contest. The ideological shift is explained by the fact that, with independence, the defense of racial privilege could no longer be in the language of racism. Confronted by a deracialized state, racism not only receded into civil society, but defended itself in the language of individual rights and institutional autonomy. To indigenous ears, the vocabulary of rights rang hollow, a lullaby for perpetuating racial privilege. Indigenous demands were formulated in the language of nationalism and social justice. The result was a breach between the discourse on rights and that on power: with the language of rights appearing as a fig-leaf over privilege, and power as the guarantor of social justice and redress!

This is the context of the fourth moment in the history of civil society. This is the moment of the collapse of indigenous civil society into political society. It is the moment of the marriage

between technicism and nationalism. It is the time when social movements became demobilized and political movements statized.

Part of this overall development was the failure to democratize the state. To put it differently, the post-independence struggle tended towards deracialization, but not democratization. In the case of the "conservative" African states, this is self-evident. The hierarchy of the local state apparatus, from chiefs to Native Authorities administering "customary law", continued after independence as before it. In the "radical" African states, there seemed to be a marked change. In some instances, a constellation of tribally-defined customary laws was done away with as a single customary law transcending tribal boundaries was codified. But the result was to develop a single country-wide customary law, applicable to all peasants regardless of ethnic affiliation, functioning alongside a "modern" law for urban dwellers.

On the other hand, in as much as these "radical" regimes shared with colonial powers the conviction to effect a "revolution from above", they ended up intensifying the administrative nature of the customary justice. What had happened was a change in the title of the the functionaries of that justice, from chiefs to cadres. But it was a change in nomenclature without a change in the organisation of power. While the bifurcated state that was created with colonialism was deracialized, it was not democratized.

Conclusion: The Present

The context of the absorption of civil into political society in the post-independence period had been two-fold. On the one hand, there was a deep division in civil society, a division along racial lines, with the state the cutting edge of the struggle to deracialize civil society. But the role of the state was not confined to being the executor of the affirmative action programme. State policy in the immediate post-independence period as also the harbinger of a degree of social progress - particularly in the fields of education and health - for the colonized, remarkable by colonial standards. This was a direct outcome of the deracialization of the state.

This trajectory of social progress came to a close with adverse international economic trends in the late 1970s. The failure to democratize local state apparatuses meant a failure to mobilize a truly national effort to reform international relations of

dependency. On the contrary, adverse trends in the changing international context were more or less mechanically translated into a deepening fiscal crisis of the state. Eventually, it led to a widespread surrender to an international regime of financial discipline a la Structural Adjustment Programmes.

It is in this context that the middle and working classes rediscovered the language of rights. That rediscovery is central to the development of what are today referred to as "pro-democracy movements". A key feature of these movements is that they tend to be confined to urban civil society, with little base in rural areas. Except in South Africa, this means a movement anchored principally in the salaried middle classes, and even weaker unionised wage workers. Their weakness is reflected in their tendency to look at international powers for that final push to effect a reform of the state. They lack the necessary social base or perspective to forge an agenda for change that could address the concrete circumstances of the "free" peasantry. Needless to say, such an agenda would have to go beyond a civil society-bound demand for rights to a demand for a change in the very form of the "indirect rule" state that confronts the peasantry.

Rural protest continues to be framed in the language of ethnicity. Faced with a fused "indirect rule" authority and legal arbitrariness, the demands of peasant movements are often more participatory than representational. Its other side is that peasant demands are often more localized, concerned with a reform in the organisation of local state power, that that of civil society movements whose demands for political representation have a direct bearing on power in the central state. This is why it should not be surprising that, when faced with movements both urban and rural, "radical" regimes have found it easier to introduce reforms in that nature of the local state so as to checkmate civil society-based movements. Such has been the nature of reforms introduced by Sankara, the early Rawlings, and Museveni. The thrust of each has been towards localized reform that seeks to incorporate rural constituencies in a state strategy designed to check-mate civil society demands for political representation in the central state. The structure of protest continues to be shaped by that of the state: fractured, fragmented, localized and decentralized.