

BOOK REVIEW

Mahmood Mamdani, *Citizen and Subject: contemporary Africa and the legacy of late colonialism*. Princeton, New Jersey: Princeton University Press (1996). (xii + 353 pp.)

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At the end of the nineties, the scholarly pendulum in the social sciences that deal with such themes as democratization and development appears to be swinging back from a focus on civil society to a primary interest in the role of the state in these processes. Postmodernism, however, has 'brought the state back in' with a somewhat altered form: it is now seen as multifaceted, and as but one actor in a field of forces that shape societal relations. This approach has particularly come into vogue among Africanists, who in recent years have seen their hopes of civil society as a champion of democratization dramatically disappointed (e.g. Englebort 1997). Mamdani's *Citizen and Subject* is a widely acclaimed study that fits within this trend and is deserving of attention from outside as well as within the ranks of Africanists.

The book's interest for scholars of legal pluralism lies in its extensive discussion of customary law and native authorities as characteristic features of the colonial state that have left an imprint which is still visible. State law pluralism seems to have re-entered the ambit of legal anthropologists and sociologists (Santos 1992: 132). This field of law has in recent decades been somewhat of a stepsister to legal positivists as well as legal anthropologists, none of whom have considered it their duty to study state supported customary law (K. von Benda-Beckmann 1996: 748). This is regrettable because, as this book reveals, the shape of state recognized customary law can teach us a great deal about inter alia the way in which the law assists in the construction and deconstruction of power relations. Questions concerning which normative fields are included within or excluded from the state legal system, and in what form and for what reason some are included, are also in part decisive for the shape and content of the fields that remain outside.

Power is the raw material out of which Mamdani fashions his argument. His

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main thesis is that the colonial state in Africa was of a bifurcated nature, with different modes of rule for 'citizens', in the urban regions, and 'subjects', in the rural areas. Rule in the rural areas was by decentralized despotism, whilst it was of a much more democratic nature in the urban areas. In rural areas a customary world was forcibly created. This had three notable consequences: the African was 'containerized', not as a native but as a tribesperson; custom became the outcome of a struggle between various forces with the odds skewed heavily in favour of the state; and the fused nature of the customary power thus created caused the African colonial experience to be marked by a high degree of force. Although the postcolonial responses of African states varied, they often merely deracialized this system without dismantling its built-in urban-rural disparity. As a result, the institutional legacy of colonialism continues to form a major impediment to real democratization in Africa.

The structure of the book is helpful to the reader. In the introduction the author, following the Hitchcock adage of 'suspense, not surprise', sets out his main arguments and approaches. These are multifarious, and include ideas about historical writing on Africa in general, ethnicity, and South African exceptionalism. Of the two main sections of the book, "The Structure of Power" and "The Anatomy of Resistance", the first seems of more direct interest to the readers of the *Journal of Legal Pluralism* and will thus receive more attention.

How was power structured in colonial times? Mamdani illustrates how most colonial powers, after putting to the test various methods of 'controlling the natives', opted for a dual system of rule (Chapter 2). In a manichaeian analysis which evokes faint reminiscences of the work of Riggs, the author contrasts the dispersed power applicable to citizens with the fused power which Native Authorities had over subjects (Riggs 1964). The contrast between these two forms of power was characterized not only by this institutional divide, but also by differences in ideological and economic make-up. Ideologically, whilst civil power claimed to defend rights, fused power was aimed at enforcing custom. In the field of economics, civil power regulated market transactions and ensured the reproduction of market relations, whilst customary power was "located at the interstices of market and non-market relations, mediating the link through extra-economic coercion" (60).

This singling out of the customary sphere for control through a separate set of rules was exacerbated by what Mamdani considers to be one of the determinative features of the African experience: the colonizers' definition of the social status of the colonized in terms of tribes instead of race (Chapter 3). Racial majorities were thus turned into tribal minorities. By means of a detailed description of the genesis of tribalism in South Africa - here considered to be a generic rather than an exceptional form of the African state - the author demonstrates that this

choice was far from clear at the outset. Nevertheless, evidence from many other countries suggests that all colonizers in Africa eventually opted for this form of 'containerization'.

The state-recognized customary law that determined the contents of these containers was, naturally, subject to fierce contestation. Drawing from the experiences of many, mainly Anglophone, African countries Mamdani authoritatively sketches the conflict over the customary laws in the early days of colonization (Chapter 4). During this period of great social upheaval, due to the cash economy clashing with the kin-based order, the newly erected native courts could present themselves as an alternative source of power. Customary law, the author argues, consolidated the non-customary power of the colonial chiefs, and the enforcement of custom became a euphemism for the extension of colonial administration and development of the colonial economy.

In addition to the containerization and administrative enforcement of customary law, a third feature of the colonial experience was the degree of force employed by the customary authorities (Chapter 5). In this respect the colonial recognition of customary land tenure, put forward by Mamdani as a distinctive African feature, was significant. In the process of recognition, the colonizers caused three distortions: they introduced a very limited notion of communal rights that coincided with the western view of proprietary and exclusive ownership rights; they confused the hitherto often ritual powers of the chiefs with such proprietary rights; and they identified the community with the tribe, and thus excluded all migrants as strangers with no customary access to land. Consequently, a distinct sphere of activity emerged in which customary laws instead of the laws of the market were applicable. Extraction, whether of labour, crops or contributions, thus took place not through market forces but through force exerted under the banner of customary law. It is remarkable, Mamdani notes, that, while forced labour had long been statutorily abolished, this was not deemed to apply to compulsory labour imposed by the native authorities. The authority of these leaders "was like a clenched fist, because the chief stood at the intersection of the market economy and the non-market one" (23).

The institutional legacy of colonialism, the bifurcated state, did not disappear with independence in many African states. Post-independence responses were twofold. Conservative states opted for a minimalist reform, retained the dual system and thus deracialized but did not democratize the system of decentralized despotism. More radical states chose maximalist reforms, and detribalized and unified their legal systems. This, unfortunately, often led to a system of centralized despotism.

The second part of the book, "The Anatomy of Resistance", discusses how the

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colonial inheritance shaped protest against the state. Thus tribalism determined not only the form of rule but also the form of protest against it. Mamdani discusses various forms of postcolonial rural reform, arguing that tribalism was a major element. So, even in the more radical countries such as Uganda, in which administrative chieftaincy was dismantled, the motivating force behind reform was often a fear of rural-urban alliances on a tribal basis (Chapter 6). Local democratization was then not accompanied by a similar democratization at the national level. A similar development, with the past providing the blueprint for resistance, took place in the urban areas. The South African case is put forward to demonstrate that decentralized despotism leads not only to interethnic tensions within the rural community but also to urban-rural tensions in civil society (Chapter 7). A detailed account of the political tensions between townships and hostels demonstrates how rural patterns were recreated in the urban setting.

Mamdani's conclusion concerns nothing less than the future of democratization in Africa. As he announces at the beginning of his work:

[K]ey to a reform of the bifurcated state and to any theoretical analysis that would lead to such a reform must be an endeavor to link the urban and the rural - and thereby a series of related binary opposites such as rights and custom, representation and participation, centralization and decentralization, civil society and community - in ways that have yet to be done (34).

The two ways in which the rural has been linked to the urban so far have not proved functional in the process of democratization: the administrative link has turned out to be coercive whilst the political link has taken the form of 'non-coercive clientalism' (300). A third way is needed for 'subjects' to become 'citizens'.

Much of the above is, of course, not new. The stifling legacy of indirect rule in Africa, the notion of customary law as the skewed outcome of a dialogue between oppressors and oppressed, and the Janus-faced institution of traditional leadership, are theoretical notions that appear in literature on the state in Africa so frequently that they can be considered commonly accepted. Even so, the agility with which Mamdani presents these arguments, and the wide selection of often little known examples which he uses to substantiate them already make the book well worth reading. In addition, he takes these arguments further and adds new dimensions. The general theory of decentralized despotism and the post-independence responses it engendered, the coercive nature of the customary sphere, and the way in which deracialization, detribalization and democratization are interlinked are valuable theoretical insights.

It is just because this is such an excellent book that the reader misses the subjects that receive little attention. A few important insights from the past and certain pressing current issues could have been put more in the spotlight. One lacuna concerns the discussion of the relation between the colonial state and its subjects. Here the emphasis is somewhat strongly on the structure of the state and the motives of its representatives. The voices of the 'subjects', who after all provided the raw material out of which the customary law was constructed, are less clear. Chanock writes on the African input that marked the dialectic character of this relationship:

It is not simply that customary law has changed in both content and form during the colonial period. It is that the circumstances of its development made it a part of an idealisation of the past developed as an attempt to cope with social dislocation. It was defensive in spirit, defensive not only against the British rulers but against those Africans whose growing involvement in wage labour and market agriculture was leading them towards different interpretations of obligations and proprieties. (Chanock 1985: 4)

A pressing current issue that receives little attention is that of *the reason* why many states that are genuinely committed to the democratic cause have chosen and continue to choose continued state recognition of traditional leadership and customary law. Mamdani suggests that at independence many states lacked the capacity to replace Native Authorities with more democratic institutions, and that it was then considered merely a matter of time before this legacy would be addressed. This however does not explain the constitutional reaffirmation of these institutions in recent times by countries such as Namibia, Zimbabwe and South Africa (e.g. van Rouveroy van Nieuwaal and Ray 1996). No doubt these countries at present lack the full capacity necessary to support strong local government bodies. Their centrally-led governments may, moreover, have an interest in maintaining the type of decentralized despotism described by Mamdani. But there must be more to it than this. One explanation could be found in the fact that the chiefs, whatever their 'traditional' credentials, have a certain degree of political clout as voter-brokers for their 'subjects' (Van Kessel and Oomen 1997). Another explanation would place this development in the wider process of globalization and the paradoxical strengthening of local identities which it appears to engender. The legal debate on the recognition of cultural diversity in the form of minority and group rights fits within this trend.

Apart from these relatively fundamental points, there are a few instances in which an understandable desire to generalize has prevailed over the eye for detail and the differentiated approach that characterize this work. The

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Anglophone experience, for instance, is predominant but is stretched to typify the general colonial experience in Africa. Another example is the presentation of state recognition of communal land tenure as a typically African phenomenon (138). The examples of Indonesia and Surinam, whilst perhaps different in form, demonstrate that communal land tenure was not limited to Africa (De Moor and Rothermund 1995). Nevertheless, the case material presented on Africa takes account of a wide range of literature.

It may be concluded that *Citizen and Subject* is one of those rare books that offer enlightening new insights as well as thoroughly enjoyable reading. The fact that Mamdani was co-winner of the prestigious Herskovits Award for the best scholarly work in English in 1997 is indicative of the wide attention the book has received. If the state is to be brought back into studies of legal pluralism this would be the best way for it to be done: in a finely tuned analysis that is sure to continue to inspire long after the scholarly pendulum has swung back again.

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