

## **Maputo : The State of Structural Adjustment**

Maputo, mid-2000s. The feeling of the end of an era permeates the city and its public spaces, especially in the messages of the main media outlets—a couple of television channels and news shows, a few newspapers and leaflets distributed by fax—whose claims and predictions are echoed in myriad conversations amongst elites and others in the know. The last few years have brought a series of politico-economic transformations to the nation-state. Ten years following the end of the civil war the country continues on a path of national reconciliation, healing of social and communal wounds, economic and political liberalization, and the rebuilding of ruined infrastructure. While national elites still keep their grip on the direction and outcome of these processes, more than 60 percent of the national budget derives from various forms of foreign aid and international loans. Donors and financial institutions oversee the continuity of the peace process, the juridical reform of the state, and the reconstitution of the economy. In this context of reform of the party-state system and the deregulation of markets and political associations, “civil society” is a central concept or slogan that is constantly reiterated in the public sphere.

Maputo, 2003–4. The city, yesterday ravaged by war and scarcity, and filled with semi-ruined buildings, is now thriving, overflowing with capital from private foreign investment, national elites’ shares of privatized companies and land, donors’ aid, and illegal trafficking of various kinds. Many new banks are being opened. An official stock market begins functioning, while operations at the city port are conceded to a European company for the next fifteen years. Corporations and investment consultancy agencies begin to operate from their bases in the posh areas on the coast. Legal and illegal markets intermingle and feed each other. As the majority of

economic activity is located within the so-called informal economy, it could be argued that this sector is effectively the formal economy of the nation.

In 2003, the newly developed urban areas that host the elite and middle classes seem but a satellite of Lisbon, with Brazilian inflections. Portuguese television and radio are ever present and widely followed. These Lusophone spaces mean that on any given day at street cafes and offices the daily intricacies of Portugal's politics and soccer are being discussed, amid references to European politics and society. Brazilian novellas, music, and films are more influential and present than African cultural productions, with the exception of South Africa, a regional power that is the other central political and economic reference.

An aura of violence permeates the public sphere. Crime is on the rise and the downtown areas have become increasingly insecure. The legal monopoly on violence has become privatized, and British and South African private security firms proliferate. The recent political and economic transformations have also been marred by political crime. State officers investigating details of large privatizations of banks have died in suspicious accidents. The country's main investigative journalist, who had researched alleged misdeeds and dubious business conducted by relatives of the president and other supposed front men and collaborators, had been machine-gunned by unknown men while driving his car in the affluent downtown area.

Law and justice are objects of everyday conversations. City dwellers in the middle-class areas publicly, yet discreetly, debate issues of legality and illegality in the country's current moral economy. According to the word on the street, the country, despite a public commitment to the ideological stances of early postindependence, appears to be on a rapid downward spiral produced by the whirlwind of politico-economic changes. There is still secrecy and censorship,

and the circulation of information and alleged rumor is closely monitored; the transition from decades of centralized rule and intense social control is deep but slow.

A different temporality intersects with the transformations of this present. In conversations in homes, offices, and cafes and on sidewalks, a past epoch often emerges: “In Samora’s time . . . ,” a person would say, followed by a litany addressing the current moment of dubious arrangements, decayed ethics, impoverishment, and abandonment of independent morals and national sovereignty. The reference to the deceased revolutionary leader is the marker of a previous, seemingly long-gone era of higher moral and living standards, despite its vicissitudes of authoritarian rule and war.

The sense of an end of an epoch, a certain listless nostalgic affect, blankets the social mood, as the people confront changes in the economy, a boom in growth rates, a hyperkinetic displacement of political personnel, and feverish preparations for a new general election in the year to come. As the ruling party’s old guard takes charge yet again, everything seems in disarray, suspended, as though all might be transformed as political structures are reconstituted, economic flows redirected, and a new, younger, generation assumes positions in the state apparatus. Yet most people in the urban middle classes seem to think that despite all this, nothing will really change.

The 10,000-meticais banknote carries the portrait of the president, placed below the coat of arms of the Republic, with its AK-47 rifle juxtaposed with a plow. Alongside the iconography of the bill representing labor, natural resources, and power plants, the leader’s visage metaphorically backs the value of money. A political economy is summarized in that small note, telling the story of the succession of power from the time of revolution and the people’s republic,

with its planned centralized economy, to the current time of privatizations, postwar structural adjustment, foreign aid, capitalization, and investments in the new liberal democratic republic. The president has led the country for the last eighteen years, since the accidental, untimely death of the first revolutionary leader in 1986.

The juridical reform of the state transforms history itself into an object of socioeconomic development. Like the nation-state, immersed within historical transformations and political transitions, the capital city and its social meanings are also undergoing a process of reconstruction. The downtown streets still bear the names of revolutionary leaders from Mozambique, Africa, and other regions of the world. Yet investment flows into the urban space, especially the city center, and in posh residential areas, old buildings are refurbished and new buildings, villas, compounds, and entertainment venues emerge. Bars, clubs, and theaters cater to the national elite, who mingle with the large expat community of diplomats and development consultants. Branches of European and South African banks open in central points. New churches also proliferate throughout the town. A globally powerful Brazilian evangelical church, which broadcasts its shows late at night on national TV, has built a megachurch on one of the most elegant avenues near the coast. A particular icon, the AK-47, is disseminated throughout the urban space, linking past and present. The rifle appears on the national flag, recalling the revolutionary times of the People's republic. It can be seen in the hands of young soldiers from the national army, which, since the democratic transition and under the tutelage of foreign security forces, is composed of FRELIMO and RENAMO soldiers; the same rifle is carried by the innumerable guards working for private security organizations, many of them ex-combatants in the civil war. Also, while famed French architect Eiffel had designed the train station of

colonial Lourenço Marques as well as a cast-iron house in the downtown area, today in a nearby market, as part of a European development agency project, local artisans sell to the many tourists small replicas of the Eiffel Tower made with pieces of AK-47 rifles destroyed during the disarmament period after the peace accords.

The end of an era was also palpable in an interview I conducted with a foreign consultant working on state reform, a Scandinavian lawyer who was in charge of programs at one of the European development agencies funding the reform of the judiciary and who was advising on new legislation and citizenship rights. Her status within the development community and her views on the political context and reform of the state are representative of those of a wide array of foreign advisers with whom I spoke. We spoke for a few hours at her office inside the high modernist fortress that served as an embassy in the elegant tree-lined suburban area that hosted many diplomatic organizations. Abundant sunlight coming through the large windows illuminated the office and large desk, which were in a seemingly organized state of chaos, with many reports and files piled up all over the place. The law and development expert gave me a candid assessment of the national context in the current, delicate moment.

She spoke about general, rampant “corruption,” as foreign aid money was, she claimed, channeled toward private accounts. (This reminded me of my conversation with a young lawyer working at a ministry office, who had told me how his uncle, employed at a high level in the national bank, spoke about the accusations of corruption in the language of a previous ideology: “We are implementing the primitive accumulation of capital . . .”) Yet, she affirmed, the bloc of main foreign donors was not deterred by this. At the last meeting of the cabinet of ministers with the board of donors, the prime minister asked for a budget of \$600 million and obtained instead

an offer of \$720 million. Hence, the government can assert that, although it receives plenty of critiques, it has the full support of the international community, which sees no wrongdoing.

She was quite frank in affirming that the country's postwar peace process and structural adjustment were successes, and this situation gave the government elites plenty of space to negotiate and demand support from donors—for instance, for funding the sumptuary infrastructures being built to host a summit of the African Union. The government was forcefully “demanding” increasingly higher donations to rebuild the city and for other projects from “furious” donors, who had to acquiesce to these demands in order to preserve the functioning of the country without substantially changing its governmental structures.

Our conversation turned to the upcoming national elections and she expressed similar arguments to others I had heard from highly placed foreign development consultants and foreign legal experts. She seemed certain about the doomed near future of the ruling bloc. “FRELIMO already knows that they are going to lose both the local elections next year and the general ones the following year. But we are concerned because they will not abandon power smoothly. Moreover, RENAMO does not have any sound political program or administrative structures in place with properly trained people. The population does not vote. They are fed up with politics. You cannot win elections anymore solely appealing to a rhetoric of struggle for independence. There is a whole new generation now, born and raised in the postcolonial era. There might possibly be many social conflicts after the elections.”

In 2000 and 2003 I interviewed tens of state officers and foreign development consultants during many hours passed at the premises of official units, with their endless delays. Those were days spent at offices filled up with stalled documentation, operating at different speeds

depending on the alternatively slower or more rushed demands and rhythms belonging to the logic of either state units or donor agencies. At one of those offices, housing a unit located between the judicial and executive branches, my dialogue with a young lawyer signaled in the direction of yet another power, operating behind those two: “The state is XXX [he named a Scandinavian development agency]. . . . I used to be under contract with UNDP [United Nations Development Programme] and now we operate with contracts from this agency, which funds our unit. My colleague employed at the unit working on land reform has a contract with XXX [a multilateral agency based in Europe]. . . . Yet we are national officers. When I worked for UNDP, the fine print in my contract stated very explicitly that ‘contracted personnel are not UN functionaries.’”

While different areas of juridical and economic reform of the state are allocated to various state agencies, under the coordination of the World Bank, the dynamics of many projects that take the law as their object of development are as follows. Funds are made available, for instance, by a European development agency operating in the field of reform of the country’s constitutional and legal regimes as well as the justice sector. The consultants—researchers based in the country and high-ranking officers periodically traveling from their headquarters to supervise the implementation of projects—function as brokers to secure funding from the main agency, later finding state offices as counterparts where these projects can be based. Multilateral agencies apply for funding provided by an individual European donor, proposing projects targeted at particular sectors or working with individual units within the government. Different groups of experts will work on various kinds of reform legislation, subcontracting various local consultants to draft the legislation, including national officers.

In 2003–4, independent European consultants working on temporary contracts for a multilateral agency based in Geneva wanted to study the former People’s Tribunals, a very sensitive issue within the new democratic regime in Mozambique. The consultants approached a state unit that was working on questions of legal pluralism (customary law and “community justice”) in order to jointly apply for funds from the Geneva agency for a project on community courts, their capacities and needs (training, infrastructure, funding). The Geneva organization did not work on questions of justice per se, so the consultants organized the project around how conflicts over land were handled. When the project was presented, the donor agency’s office in Maputo pointed out that the vast majority of disputes over land were not adjudicated at the community courts but rather at other customary spaces such as chieftaincies or elders’ councils. The team of experts then adjusted the program slightly and resubmitted it to the donor agency.

In Maputo in April and May of 2003 I met with a few senior state officers who had held low-level positions in the previous colonial administration until 1975, and who continued working at their posts in the judiciary during the new postcolonial dispensation. Similarly, in the current state of structural adjustment, agents can work for both the state and the donors at the same time. I was present at meetings in which a prominent representative from the ruling party in charge of different projects pertaining to the juridical reform of the state—among them the new legislation on the status of community courts—offered very high ranking officers in the judiciary to work as consultants on these projects, to draft the new laws. The contract would be funded by two European agencies that supported the reform of the sector.

A month later I interviewed a lawyer who had a degree in administration and was an adviser to the National Assembly on a project to reform sectors of the executive branch that was

designed and funded by USAID. She was technically under contract with that American agency. Different party blocs in the National Assembly had agreed that she would organize the agenda and the schedule for transforming certain aspects of the executive. She had a long and varied résumé as a state officer, spanning the beginning of Socialism to the current neoliberal times. Soon after independence, she had visited areas controlled by RENAMO, meeting with customary authorities. At the time I interviewed her she was also in charge of USAID / National Assembly projects in rural areas, especially some conducted in connection with the largest corporate metallurgic project in the country. An expert in rural development, she affirmed that based on her experience, she was “against traditional authority,” which she defined as utterly “antidemocratic,” while at the same time acknowledging that it necessarily “had to be accommodated somehow within the new democratic system.”

Several experts I interviewed in 2003 (Mozambican lawyers, foreign development consultants, judges, and state officers) underscored the ways in which structural adjustment and the privatization of the public sector were transforming the national juridical structures. The opening of the economy to foreign investment had brought about a homogenization of contract forms and a proliferation of new types of regulation more suitable to the Anglo-Saxon legal traditions of investors and companies from South Africa and Europe. The economic boom related to finance and enclaves of production carried with it the effects of international legal regulations on business that progressively influenced the rest of the judiciary and legal apparatus.

In mid-2003 I met a former key organic intellectual of the party-state system, who still supported the government, yet from a very critical perspective. He emphasized the influence of foreign actors on national governance and Mozambique’s situation as a political and economic

satellite. He traced relations between war, politics, and the economy, explaining how the main lines of the current democratic system had been designed in the context of the peace accords. He claimed that what was needed was the connection between state and society that had existed during the heyday of Socialism but that had been severed by structural adjustment programs. Although he described in detail the complexities of articulations between ethnic cleavages and political identities throughout the country. He affirmed that the “international community” carries a lot of authority and weight with respect to major governmental decisions. He affirmed that the RENAMO opposition was not prepared to govern, so the donors turned a blind eye to a lot of bad governmental practices implemented by FRELIMO. He predicted that the ruling party would win the next elections by a very small margin or that they would rig the election as in the past, but that this would not “produce any sort of violent response because the political process and security are controlled by South Africa, and then they would send troops, as they recently did in Lesotho.”

Around the time of this interview, I met with a young associate general attorney of the Republic at her office downtown, where she directed the Anti-corruption State Office. She had been trained in Lisbon and Marseille and had attended several seminars and workshops in the United States. She was naturally wary of me at first, not knowing “who hired me”; later, we talked at length and more openly about the joint economic and juridical reforms of the state.

The first part of the interview was devoted to the centrality of the law in the process of restructuring the economy. She affirmed that juridical reform was under way but said that it had not gotten to the most important part yet, which was to replace the whole system of continental Roman law with Anglo-Saxon common law. She explained that, in an indirect way, the process

of economic reform and the opening of the public sector to business produced a transformation of the legal system, from Roman law (the Portuguese system), which she described as slow, complex, and too rigid because of being so formalist and formulaic, to common law, which she defined as faster, simpler, and more expeditious. “Corporations want flexibility in arbitrage, negotiations, and mediations.”

In the years 2000–2005, a decade after the first general elections held in the postwar transition, innumerable workshops and symposia on the juridical reform of the state and the transformation of the judiciary and national legal regimes were held in Maputo. Among the many I attended as an observer and sometimes as a participant in conversations with teams from state units, a large event organized by the Supreme Court and a European development agency working on justice reform stands out for its relevance, its effects, and its cast of participants.

The three-day event held at the end of May 2003 had as its main object the design of a “vision” for the justice sector specific to Mozambique, and it took place at an office of the Supreme Court outside the city and at a luxury hotel downtown. Speakers included foreign consultants subcontracted by the European agency who were visiting the country for a few days, experts from the agency who were based in Maputo, high-ranking officers from the judiciary and legislative powers, and teams of Mozambican lawyers and consultants from different ministries and agencies. The event illustrated some of the dynamics of negotiation, agreement, and opposition in relation to political orientation and funding within the state of structural adjustment. The discussion concerned justice reform in Mozambique and presented the law as an object of development. The debates addressed the dismantling of Socialist institutions of justice, constitutional separation of powers, and financialization of the law.

The president of the Supreme Court introduced the event by saying that the task was to discuss the destiny of “a broader field of legality” that would include both the judiciary and other sectors of the state. He referred to Mozambique’s new global context of reference for the state reform, presenting the country’s new, modernized legal system as more akin to Brazil’s and quite different from Portugal’s and the rest of the systems in Lusophone Africa. He was at pains to emphasize the need for the judiciary to be autonomous from the executive branch, fundamentally in terms of financial independence, so that the sector’s budget could be managed without interference from the Ministry of Justice.

The other main actor at the workshop was a Scandinavian NGO, whose legal consultants were contracted by the main agency funding and advising the reform of this sector. When I spoke with the main consultant in the delegation, he confirmed that they were working on similar projects of reform of the judiciary in Niger, Tanzania, and Guatemala, and they had previously advised on the reorganization of prison and police sectors in postwar Serbia. Yet, despite their global reach, they advocated “unique, singular” projects in each country.

At these sessions, the emphasis was on the joint issues of “independence” and “transparency,” which were decomposed into three main aspects: the need to see it as a field encompassing many spaces and practices; the relevance of centralizing its control within the executive branch; and an individualistic approach geared toward each citizen’s access to justice as a good, or a commodified service.

The main consultant from the NGO spoke in English, with simultaneous translation. During his presentation he constantly pointed to diagrams and schemes on a board and to PowerPoint images that offered detailed representations of the executive and judiciary sectors as

well as the intricate steps and sections of the processual “vision” being discussed. He introduced himself merely as a “coach” of the process of reform of the judiciary. He relished his job as “provocateur,” able to stir up the debate and lead it in certain directions. Although it was evident that he and his team of (European and South American) young lawyers constantly traveled around the world to promote and evaluate similar reform projects, he insisted on the fact that the process should yield a program tailored toward such a “unique” country and the “special” audience in attendance. The key concept he proposed was that of “flow,” which would enable the inclusion of all subsectors operating within the justice sector: police, prisons, courts, and so on. Although he described the justice sector as a “strange animal encompassing functions belonging to the three constitutional powers,” “the process of reform,” he affirmed, “must be coordinated by the Ministry of Justice, with other sectors only adding a few points.” This would strengthen the “right spirit of independence of the sector.”

Then slowly, but very clearly, he developed the concept of justice understood as a service. He expanded on different aspects of this, asking rhetorically who is served by the system of justice, who the consumers are, what the characteristics of the manager/purveyor of justice should be. He referred to the ongoing decentralization process, which would facilitate the development of new management tools to make the system more “accountable to its customers.”

Developing his ideas through schemes that he drew on a board, he described different “business areas” within the state apparatus, evoking justice as one such business and aiming at defining the “clients” of the judiciary sector. He affirmed that a certain “ambition” was needed to produce the document that was expected as the final product of the exercise, which should

describe “the real world—that is, what kind of society you want to have and the place of the law as a means of measurement.”

In agreement with the corporate logics of the moment, when the discussion turned toward the “values” that the judiciary should enforce, the European consultant emphasized “celerity.” At the end he reinvoked the main theme of the workshop: “A vision is a dream. Today you might not yet see how to achieve it, but we will define a time horizon, and our technicians will strategize on how to arrive at that point.”

The consultant was followed by a Supreme Court Justice. This man, son of a Portuguese settler who had worked in the administration of colonial concessionary companies, had been a young member of the brigades of popular justice a couple of years after independence and had later occupied low-ranking positions in the postcolonial judiciary system. In 2003, he echoed some of the perspectives advanced by the representative of the international donors. He first emphasized “independence,” which he then restricted to the “act of judgment,” a sign of, he said, “independence of powers from absolutism,” which should result in independence of the judiciary from the executive branch. This remark, which was evidently meant for the donors managing the reform, who promoted a discourse of transparency regarding “corruption,” was followed by an economic approach toward the law. “Transparency,” the judge affirmed, helped “fair justice to arrive to the consumer at a lower political and financial cost.”

Toward the end the main FRELIMO representative working on reform at the National Assembly, spoke, implicitly rebutting the views of donors: “We have to design a sustainable system for the next twenty-five years, independently from each person’s dream. It is not possible to think of a decentralized system of justice in a country where 60 percent of the budget comes

from foreign aid. It is therefore necessary to coordinate this reform of the sector within the broader context of a constitutional reform.”

The session ended with a second, shorter intervention by the Supreme Court Justice. It represented a mix of the usual post-Socialist nostalgic rhetoric (“in Samora Machel’s time”) with current pragmatism. He ended by quoting a speech from 1975 by Samora Machel: “We must create popular power to serve the masses

At the end of the day, the consultants led a debate on the “logic of justice” that was informed by a technocratic discourse that seemed to be miming the self-evidence and cleanness of justice as a service. The discussion increasingly took on animist contours, almost depicting “justice” as a live entity with volition, needs, and desires.

The workshop ended with the main foreign expert addressing a new, emergent, crucial theme: the consideration of “legal pluralism” that already existed in the country, previously banned and now essentialized and reified as a given datum, as if its historical construction could be ignored.

### **The State of Structural Adjustment**

In postwar Mozambique, the juridico-economic assemblage of neoliberalism can be defined as a state of structural adjustment, which represents the political status of a society at a

given moment, as in the original notion of the concept of “state.”<sup>1</sup> This moment is composed of various overlapping temporalities that together prolong a politico-economic model based on emergency measures that were initially presented only as temporary. The state of structural adjustment can thus best be conceived as a dynamic field of opposing forces: a strategic condition of power organized around logics of debt, accumulation, privatization, and entangled processes of inclusion and exclusion. This politico-economic machinery of governance fuses national state units and transnational agencies, making public and private interests indistinct. Analysis thus needs to be situated in relation to the crucial role that the law plays, through the juridical reform of the state and the regulation of the social in terms of market logics. In the case of Mozambique, as well as many other African states, the legal recognition of customary law is crucial to the formation of new dynamics of citizenship.

The dynamics of the state of structural adjustment goes beyond the “privatization of the state” in postcolonial Africa.<sup>2</sup> Beyond the strictly economic aspects of neoliberalism, it

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<sup>1</sup> Mozambique adopted structural adjustment programs in 1987, under stern conditions and impositions from the IMF, in a situation of open warfare and calamity. See the program developed by the Mozambican government under advice from the World Bank, *Action Plan for the Reduction of Absolute Poverty, 2006–2009* (final version approved by the Council of Ministers, Maputo, 2 May 2006), esp. secs. V and VIII (on macroeconomics and fiscality and governance/economic development), available at the World Bank website, <http://www.worldbank.org/en/country/mozambique>. On structural adjustment in Mozambique, see the various publications by Joseph Hanlon, such as *Mozambique: Who Calls the Shots?* On Africa in general, see Mkandawire and Soludo, *Our Continent, Our Future*.

<sup>2</sup> See Hibou, *Privatizing the State*. On Mozambique’s economy and structural adjustment, see Luis Landau’s assessment report *Rebuilding the Mozambique Economy*. See Silva Francisco, “Economic Development from 1960s to 2000.”

references a general economy of governance in which markets, flows of finance capital, investment, and enclave extractive economies, as well as aid money, loans, and debt, play a crucial role in state governance. The state of structural adjustment is marked by the denationalization of key public state sectors, such as the crucial process of the privatization of fiscality, whereby tax collection, customs, and even security and surveillance issues related to them are transferred into the hands of foreign corporations. The privatization of areas of a given state apparatus is but one aspect of a larger political condition that involves a continuum of micro- and macroeconomic dynamics. Its political features cannot be reduced to the alterations of the markets, as shown, for instance, by the way the juridical demarcation of the customary is also a technology of rule inserted within a general economy, with deep political effects at both central and local levels.

The state of structural adjustment implies an accelerated temporality, enhanced by the speed of flows of financialization and indebtedness. It also means the shortening of the horizons of development, as socioeconomic planning envisions briefer temporal frames.

Within this state, foreign donor agencies fund entire areas and units of state governance. For instance, donors mandate (“recommend”) a juridical reform of the state aimed at privatization, decentralization, and deregulation of structures of governance and the public sector of the economy in order to produce both a democratization of governmental structures and a liberalization of the economy. This juridical reform is led by an array of foreign agencies under the logistical, organizational, and ideological aegis of the World Bank. These agencies support the research and drafting of legislation, governmental policy, and official documentation, through funds allocated to ministries and judiciary units and logistical support. They also

organize and fund specific projects (e.g., on municipal governance, training of judges and functionaries, “empowerment of civil society”).

Within this context the law becomes an object of development programming. The design of new legislation illustrates the confluence of different agents within flows of governance that do not conform to normative categorizations of the state as a unified apparatus. Foreign actors participate in the drafting of new laws that reform the national economy or state governance. This mandate emerges within rounds of negotiation on budgets and loans between officers representing the nation-state and consultants from transnational agencies, generating recommendations and conditions attached to the disbursement of loans or the funding of basic state functions and key development projects. Within a confluence of diverse interests, foreign consultants working together with high-ranking state officers subcontracted by donor agencies draft projects of constitutional reform and national legislation to be passed by the legislative body.

Relations between foreign agencies, consultants, and national actors are highly fluid, demonstrating the difficulty of maintaining clear distinctions between the foreign and the national. In the process of research, discussion, and drafting of law projects and policy programs, national state officers occupying positions in government act as paid consultants to foreign donor agencies, within the framework of specific projects and budgets. National intellectuals and technocrats who consulted for the development of projects (e.g., land legislation, privatizations, or judiciary reform), or advocated in favor of particular policies vis-à-vis government agencies, are later employed in a state unit funded by a foreign agency to implement programs in related areas. Often, national functionaries who participated in consultations go on to work at

international finance institutions, monitoring their home country or engaging in negotiations with former colleagues. Formal national governmental units might include a combination of national state employees and national or foreign consultants, who might act independently or be employed by a foreign development agency. Sometimes a national state officer might resign from his or her post at a state unit, only to be hired back later in the same position by a foreign organization, performing similar duties yet now formally a consultant paid a higher salary by the donor agency. The status of intellectual ownership of research funded by donor agencies, conducted by national experts alone or in collaboration with foreign consultants, is ambiguous. The bureaucratic sector of the “state apparatus” encompasses several overlapping layers, where civil servants perform various public and private roles at the same time, profiting from their posts and functions and channeling funds to political bosses who control the flow of personnel and resources from legal and illegal funds, national budgets, and foreign aid.

Within the current joint private-public governance, different regions of the national territory are informally allocated to various foreign governmental agencies. These agencies implicitly divide the performance of different tasks of governance or the funding of local states among themselves. A whole province or sector (education, health, reform of the judiciary) can be informally allocated to a country or development agency. Governmental functions such as primary health care, education, and infrastructural projects are undertaken by units belonging to donor agencies or by foreign or national nongovernmental organizations linked to an international umbrella organization. These NGOs are supported through foreign funding given directly by states or by agencies funded by states.

While foreign development agencies grant soft loans or gifts of aid money to fund the

juridical reform of the state or the functioning of certain key governmental areas, sometimes pressure on negotiations is applied so that key, hugely profitable economic sectors are, following a concessionary logic, allocated to public or private corporations from the country of the agency advising and supporting state reforms. Across Africa, the transfer of assets from the public economic sector to private hands has been ongoing since the end of the Cold War and the era of the developmentalist state. Transfer includes the privatization of state companies, communications, security, the concession and alienation of state-owned land, and the exploitation of energy and natural resources. Moreover, in some cases, private companies manage the national treasury and pay the interest on national debt. In others, charitable foundations funded with state money or with foreign aid channeled through state agencies undertake infrastructure or welfare projects. A host of private intermediate actors linked both to corporate economic interests in security or natural resources and to high-ranking political officers exert pressure on policy makers or legislators or negotiate on behalf of these closely interconnected sets of interests, very much in the manner of Western “lobbying.”

This state of affairs is directly fueled by structural adjustment programs, whether under the rubric of funding from finance institutions, the conditionality attached to loans for the transformation of public bureaucracy, or as a result of new dynamics opened up by the privatization and decentralization processes. Yet the state of structural adjustment is shaped by more complex processes than just the privatization of economic assets. The postcolonial state has been formed by the alternation between private and public sovereignty, between autocracy and democracy. This *longue durée* perspective reveals the similarities between current dynamics and those of early, precarious colonial formations and concession companies. The fragmentation of

the national territory occurred under logics of temporality, speculation, and indebtedness that are comparable to those of current structural adjustment programs and the “retreat” of state practices articulated with the work of NGOs.

The conjoined private and public nature of early colonial enterprises is not merely replicated at present in a supposedly “neocolonial” era. Emergent processes shaped by neoliberal ideology that locate the rule of law at the center of an economic governmentality mix an alienation of public resources with processes of entitlement devolved to entelechies of individuals and “communities.” Cases such as Mozambican resemble the forms of a latter-day protectorate mingle with the recasting of the power of local elites.

The framework of the Mozambican democratic regime stems from the effects and consequences of a devastating civil war, and the democratic, liberal order emerged under the looming threat of a return to conflict. The legitimacy of official law has been overdetermined by the massive violence of the past. Moreover, a political imaginary based on the possible return to a state of civil war reveals the weakness of the state’s claim to a monopoly on violence against the territory. While the literature on collapsed and failed states takes into account the place of war and conflict in shaping contemporary African politics, it approaches it within a negative dialectics that opposes violence to social order. A case like Mozambique illustrates the other side of violence, its positivity within the logic of a political system. War, along with dismantling a state, destroying its material infrastructures, and decimating its population, is also the foundation of a democratic politics. The legacies of violence from civil wars and the muddled political logics they generate can be better understood by analyzing the political pragmatics of disorder

and the reproduction of crisis as a mode of governance than by interpreting them as the failure and collapse of an allegedly weak state's sovereignty.

Under the tutelage of international financial and security agencies, the juridical reform that propelled Mozambique's transition from Marxism-Leninism and civil war to liberal democracy produced a confluence between post-Socialist dynamics and neoliberal programming, showing the particularity of the Mozambican case within the overall context of structural adjustment states. Even though the consecration of private property rights is a key aspect of transition from Socialist regimes, the confluence of national elites and transnational actors produces transformations in political structures and channeling of resources that go beyond the "privatization" of the state apparatus.

In 2004–5, 60 percent of the Mozambican national budget was based on foreign aid money, in the form of loans or gifts. Hence, governance was deeply embedded within practices of conditionality, and yet this did not imply an absolute weakening of the power of the post-Socialist elites, who found new ways of thriving politically and economically in the new adjusted economy. Post-Socialist dynamics blended with neoliberal policy. Consider the case of the foreign donors' promotion and funding of "civil society" as a fundamental aspect of transition to liberal rule of law, when in practice many of the nascent institutions that fell under this rubric in the mid-2000s had their origin in the structures of the party-state system.

Mozambique privatized a majority of its economic public sector and many former state agencies and functions, yet of crucial political significance is the fact that national elites still control privatized areas and functions in agreement and collaboration with transnational political and economic elites. High-ranking state officers or individuals connected to elites are in

positions enabling them to grant and renew contracts, oversee their enactment, or cancel them. Parallel markets that blend legal and illegal activities and capital flows proliferate, mixed with governmental structures and open business markets. Urban security is privatized, managed by companies owned by high-ranking military officers or ministers or by foreign companies with ties to elites. Initially, the demobilization of the FRELIMO and RENAMO armies provided personnel to private armies and police platoons.

Land around Maputo and other main urban centers, as well as in coastal areas, was privatized and transferred to governmental elites or was organized under joint ventures with foreign investors for economic exploitation or tourism. The process of transfer of urban land in the mid-2000s was private and opaque, given that there was a juridical void in terms of new land legislation promoting privatization, still in the process of being discussed and designed. Legally, all land continued to belong to the state; hence, only “rights of use” could be granted, although for terms up to many decades.

Within a general privatization of key state functions since the late 1990s, custom services and tax estimation and collection were transferred to foreign security agencies, and private companies patrol maritime borders. Private corporations enforced security and regulations through private armies hired from security companies, while Asian and South African companies exploited maritime resources. Foreign affairs agencies and diplomatic representation underwent a process of privatizations and outsourcing as well, with businessmen in other countries acting as honorary consuls, charging fees and conducting business on behalf of the Mozambican state.

Private companies from the United Kingdom and South Africa took over telecommunications and also provided computing systems and communication infrastructure for

government and development programs. European state companies obtained the concession on water circulation in main urban centers. Timber and cotton concessions have been given to private investors, some of them close to the ruling elites. The dynamics of labor and production in some of these concessions in the north is strongly reminiscent of older colonial modalities of enclave extraction and population control.

The precariousness of state agencies led to the privatization of development and infrastructure projects, which were handled by national and foreign NGOs. Donor aid and development projects were often channeled through organizations linked to government elites.

Thus, since the late 1990s, the transition to a market economy in Mozambique was more complex than the mere retreat of the state, apparently materialized in the end of state subsidies, the sale of public assets, and structural adjustment policies of decentralization and deregulation. New forms of legislation were not aimed at merely reinforcing and freeing markets or engineering the state's relinquishing of all control or articulation between state and markets. National and foreign capital entered a political process of articulation and cooperation in joint investments. Thus, with respect to the state's role in the national economy, the general socioeconomic context revealed continuities between the Socialist system and the new logics of market rule. For instance, in the North the 1990s witnessed a resurgence of a colonial-style concessionary cotton industry.

Some analysts argue that neoliberal reforms in Mozambique have reshaped the state's influence on the economy without entailing a withdrawal of the state. As evidence of this, they cite the sale of state assets involving official institutions, the fact that state officers regulate the activity of the private sector, facilitating the work of corporations and joint ventures, and cases

where government officers and party members became owners or managers of privatized companies. Yet these examples don't necessarily provide clear evidence for the continuity of the state's influence, even under modified circumstances.

Rather, the Mozambican case, with its interrelation of public and private actors, suggests that the crucial point for analyzing the role of the "state" in the neoliberal moment is the ideological orientation of the public sector materialized in concrete economic policy. The most relevant question is not whether the state participates as a partner in economic ventures but rather the key fact that within neoliberal logics it is not an ideology of general interest that orients the public sector. In this new environment, the logic of the market has colonized state practice, presenting the fiction of the unified single state apparatus acting as an individual subject of rights among others.

Within its broad program of privatizations, praised by the World Bank and other multilateral organizations as one of the most successful in Africa, the state still maintains control, or a majoritarian percentage, in many enterprises. But the orientation of the public sector in a regulated economy is very different from its orientation in a neoliberal economy. In the former, economic assets are owned and managed by the state, their activity geared toward a general public interest, not profit and capitalist accumulation. In this economy, the surplus can be allocated by the state to nonprofitable sectors and welfare. Under neoliberal state logics, public investment is determined according to the rules of market investment and profit. These economic dynamics also show that the state of structural adjustment represents an amalgam of previous Socialist structures and policies with a new neoliberal politico-economic logic.

As a legal-economic assemblage, the state of structural adjustment also entails an attempt to reconstitute state sovereignty and its juridical foundations through the legal framework of articulation with private capital. The fact that the state participates in the economy does not imply the reproduction of a state apparatus or the continuity of the state. Rather, the ideological ruse of the state as yet one more individual subject of interest conceals a fundamental conversion of the nature of the state itself.

Superficially, Mozambican post-Socialist dynamics might appear to be a manifestation of what has been called an African “shadow” state.<sup>3</sup> Relying on international recognition of political sovereignty, this state, based on autocratic patrimonial relations, is able to weaken official state agencies and manipulate access to formal and informal markets. The shadow state functions beside, yet intersects with, official bureaucratic agencies. This analytic approach may help dismantle liberal juridical assumptions by showing the interplay of legality and illegality at the core of state agencies, yet it still assumes the existence of a bounded, unified state apparatus based on jurisdiction, with which “shadow” networks interact.

By focusing on the actions of political actors within the nation-state boundaries, it fails to examine how these structures of governance are based on global flows of capital and information that present the image of a fluid transnational structure of governance not limited by national boundaries. Attention to the actual nature of capital flows, illegal activities, or prebendalism shows the continuity between public and private, as well as foreign and national, actors. It also highlights the fragmentation within governmental sectors and agencies, as well as a

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<sup>3</sup> Reno, *Warfare in Independent Africa*; Reno, *Warlord Politics and African States*; Chabal and Daloz, *Africa Works*.

detritorialization of economic enclaves and extraction and export that reinforces the image of a continuum of political networks, which exceed the unity of a state apparatus.

This political condition of a continuum of sovereignties generates the figure of a state that is not an apparatus but rather a relation. It evokes the original meaning of the state as a condition, a strategic situation of power.<sup>4</sup> This fluid state of things produces a variegated field of citizenships, a realm where political technologies of governance encounter different claims of entitlement and belonging.

### **<A>Down by Law</A>**

Neoliberal governmentality subordinates the political to the functioning of a market economy, in which markets should regulate the state. The art of government is presented thus as the creation of managerial frameworks designed to maximize private profit and subsume all social practice and imagination.

The figure of the law is central to neoliberal governmentality, yet its meaning is recast in a new, different light.<sup>5</sup> Whereas within the rule-of-law paradigm of an earlier, nineteenth-century liberalism, the juridical functioned both as the foundation of state sovereignty and as a limit to the power of the state apparatus, in neoliberal governmentality the “Law,” as a multiple

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<sup>4</sup> My conceptualization of the political field in contemporary Africa references this early etymological sense of the state apparatus. On the early modern conception of the state as condition, or “status” (from *res publica* to commonwealth to *lo stato del principe*), see the important genealogy traced by Skinner, “Genealogy of the Modern State.” Asad quotes this conception in “Where Are the Margins of the State?,” in Das and Poole, *Anthropology in the Margins of the State*, 279–89. On the territorial dimension of the state apparatus in Africa, see Boone, *Political Topographies of the African State*.

<sup>5</sup> Rose and Valverde, “Governed by Law?”

assemblage of juridical and paralegal fields, is deployed rather as a method of “conducting the subjects’ conduct”<sup>6</sup> through a juridico-economic regulatory logic of the “framework” and the rules of a market economy understood as a rational game.

A key paradox of the political project of neoliberalism<sup>7</sup> is that its proliferation of state legislation, which reformulates the relation between state and markets, is presented as a decentralization of the state and deregulation of markets.

Studies of neoliberalism have emphasized the centrality of the production of paralegal expert knowledges, geared toward the normalization of various social fields. The assemblage pivots on the articulation between rules and norms, giving rise to a normalizing society in which political demands and identities become juridical matter and in which discourses on law, rights, and justice constitute the hegemonic frame for the field of social contestation. This assemblage thus promotes a reconfiguration of the meaning and content of the law, one that equates rule of law with a system of rights deeply dependent on economic freedom and a logic in terms of which distinct fields of social practice come to be seen as managerial problems amenable to regulation by technical disciplines.

Neoliberalism replaces the abstraction of moral universals and equivalences of the law with the immanent technicality of the social norms produced by particular societies. Neoliberal governance is marked by an economic prevalence of norms over rules. While the law excludes and penalizes transgressions, normalization avoids the dichotomy between legality and illegality. Normativity is equated with normality, and norms are immanent in the questions of order or

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<sup>6</sup> Foucault, *Birth of Biopolitics*.

<sup>7</sup> Wacquant, “Crafting the Neoliberal State”; Rose, *Powers of Freedom*; Barry, Osborne, and Rose, *Foucault and Political Reason*.

morality that they regulate, purportedly emerging out of a community's evaluation of its own ethical standards. Norms are set and evaluated in reference to positive knowledges—hence their enactment appears to be more technical than political. There is not a single point that marks the final achievement of normalization. Rather, regulation oscillates among a range of mediations by expert discourse and practice. In distinction to juridical models of sovereignty, normalization underwrites the neoliberal discourse of transfer of entitlements and responsibility from the state to society, or community.

However, it is important to note that governmentality as a modality of power's exercise does not supersede the juridico-political, but rather, both law and norm coexist in neoliberal juridico-economic formations. Legislation proliferates at the same time as—or, indeed, as a result of—normalization.<sup>8</sup> Different social fields are still policed by the juridical punishment of illegality and transgression, and the law becomes the principal technique for normalization.

The ethnography of the Mozambican state shows that instead of the alleged overcoming of law by norm, neoliberal governmentality generates a “normalization” of the law, through which expert discourses permeate legal procedures, and juridical technologies become enmeshed with paralegal technical disciplines in the production of normative regulatory mechanisms. In the neoliberal reform of the state and society under the logic of market exchange, the law moves from transcendence to immanence, and its supposed unity disseminates into myriad sites of normalization and evaluation. Formally, the law retains the discourse of equivalence, judgment, and punishment, but in actuality it operates by measuring quantities and deviations according to a calibration of normalcy and pathology. Far from being considered an abstract principle, the law

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<sup>8</sup> Foucault, *Security, Territory, Population*.

is deployed as a technocratic domain of particularities, immanent in the social; the law does not concern morality and punishment but rather displays an economistic rationality in calibrating the demand and supply of social transgressions.<sup>9</sup>

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<sup>9</sup> On norm and normalization in Foucault's work, see Ewald, "Norms, Discipline, and the Law."





