



Beyond equivalence

The gift of justice in Mozambique
(1976, 2004)

Juan Obarrio
Johns Hopkins University, USA

Abstract

This article examines questions of gift-giving and debt in order to illuminate differences between an enforcement of the law understood as search for equivalences and enactments of justice expressive of more open-ended transactions. These theoretical elaborations are sustained by ethnographic examples taken from local courts in Nampula province in post-war Mozambique. The article shows how a broad range of practices identified as ‘customary’ engage with the space of ‘official law’, in a specific postcolonial juridico-political space which encompasses multiple spheres and a particular circulation of value. In quotidian instances of local conflict resolution aimed at resolving a myriad of petty violent conflicts, circuits are opened beyond the doctrine of accounting in official law and its ideology of equivalence. These circuits, in their blending of temporalities and normativities, do not form a closed circle of reciprocity, but show how debt is constitutive of social relatedness and enables a re-constitution of local sociability in the aftermath of violence through the circulation of the *gift of justice*.

Key Words

custom • debt–equivalence–gift • law • justice • Mozambique • violence

It was 1976, one year after independence, when a conflict like so many others erupted in the *povoacao* or small settlement that would become a ‘collective’ communal village under FRELIMO’s socialist rule. During a fight over a woman, a man wounded another man in the leg with a large butcher’s knife. Following the confrontation, friends and relatives of both men gathered outside the local FRELIMO Secretary’s home. The Secretary was away when they arrived and the group was ushered in by his sons and some official aides. The wounded man’s supporters wanted to take measures in order to inflict an equivalent injury on the aggressor. Two men started calculating the depth and length of the wound by applying a rope to it, ostensibly hurting the injured man even more. Only after the return of the official party officer did the situation become calmer, and both parties agreed on a less violent resolution. An equivalence to the offense was

found through a payment in kind: vegetables, grains and oil. To arrive at this solution, the Secretary embellished the new FRELIMO policy regarding conflict resolution with his own understanding of local custom and sensibilities. The outcome was a practice of negotiation and reconciliation through which an exchange of equivalences was produced, solving the matter of the offense through a circulation of counter-gifts.

Today, in the post-socialist era, daily and cyclic ceremonies still structure the quotidian time in regions like Nampula province. These practices, which crisscross urban and rural areas alike, involve rites of passage or exchanges with the realm of the sacred, in the form of spirits or ancestors. These practices impinge on the space and time of the law and the dispensing of justice, even in state institutions like the community courts which date from the socialist period. Rather than thinking of 'law' and 'custom' as separate domains, I am interested in exploring how the modalities, dispositions, discourses and practices that could be summarized under the broad label of 'custom' enter the space of the law, producing an inflection on its enactment. I am particularly interested in considering how these narratives of everyday sociality and fragments of political discourse, linked to the local state and to memories of the war and its rituals, create the framework for a particular form of circulation. What is it that circulates and enables a re-constitution of local sociability in the aftermath of the violence of war? In the quotidian transactions undertaken in these local communities to resolve a myriad of petty conflicts and deadly violence, circuits are opened beyond the doctrine of accounting in official law and its ideology of equivalence. These circuits, in their blending of temporalities and normativities, do not form a closed circle of reciprocity, enabling the circulation of something we might call the *gift of justice*.¹

During fieldwork in 2004, a young state officer in the provincial capital clarified for me some central features of the conception of justice pervasive in this locality: 'A *milando* (conflict) never gets absolutely solved. There is always something that remains; the offense is not repaid in full. That small leftover must be *pardoned*.' It is as if the offense bears a certain interest, and the legal logic of equivalence and repayment can never encompass the whole of the original event. Its subsequent ramifications open up the circuit of a debt. Through it, they might open up the possibility of sociability itself. 'A *milando* never gets spoiled.' That is, a conflict between two people defies the passage of time, it does not get consumed throughout time; it does not rot. 'The one who commits an offence forgets, but the offended one does not.' This memory runs parallel to the remainder, which cannot be subsumed by the measure of equivalences and the potential exchange. Alongside the leftover of the offense that has to be forgiven, a memory persists that generates a need, a disposition, the potential for a shared living-on-together. This remainder can be an individual remembrance of an offense that, paradoxically, both precludes and produces friendship, or the collective memory of a war that, much as in the community court, generates the need for pardon and reconciliation. This remainder constitutes the elusive, circulating matter of a *present*² with which the possibility of a desirable future is constructed; a time that is built upon quotidian infrastructures.

At present in a context of post-socialist transition and neoliberal juridical reform at the national level, two contradictory temporal vectors define the dynamics of the politics of everyday life and its legal underpinnings for the vast majority of the population in Mozambique. While older, previously banned forms of life and local power are re-emerging, as in the case of 'traditional' chieftaincies, other types of authority, originated

in the heyday of the party-state system, show a deep resilience, despite having been excluded from the formal state apparatus. In semi-urban areas, the former Socialist Secretaries as well as the old 'People's Courts' are still at work, combining oral traditions and written registers, 'customary' law and state codes. Currently re-labeled 'Community Courts', they enforce a type of amalgamated law that mixes official state law with 'customary' law and kinship rules.³ Various stylizations of 'customary law' constitute the frame for the resolution of conflicts whose underlying grammar is kinship structures. In turn, the intervention of a state authority will bring about other considerations related to governmental dispositions – codes, some legislation – and the maintenance of a social order within the neighborhood, something imbued with the vague ethico-political remainders of a socialist communality. Sometimes, a consultation with the secretary of the neighborhood takes place. On other occasions, the community court can refer a case to the formal 'official' state district court. Hence, the juridical chain includes structures that belong to the formal state apparatus and others, which have been excluded through the reforms of the democratic transition.⁴ It is in these ghostly yet all too real institutions that life – that scheme of debts and equivalences, that blending of corporeality, affect and reason – is at stake. It is here that *life* becomes juridical matter: the object of competing jurisdictions and traditions.

While a conception of fair justice as repayment of an offence is an almost universal trope, in this locality it takes on an inflection produced by a vernacular social idiom that depicts relatedness in terms of indebtedment. The 'customary' emerges, thus, once again as an assemblage of loose rules and categories that prescribe a mode of repayment of inherited debts: a contingent circuit for the distribution of gifts (of justice and hospitality). Violence constantly both threatens and sustains this process. It does so under the guises of the violence of domesticity, the menace of invisible factors, the haunting memories of a war, or the force of law that prescribes physical punishments. Life itself becomes the material foundation for the force of law and the circulation: an absolute expansion of the law onto all life-forms, towards what could be labeled the 'intimacy of the state'.

In northern Mozambique, among the social structures of Makwha people in Nampula province, kinship relationships can be envisioned as a logic of debt linking the various members of a family or a clan: for instance a person is indebted to his or her spouse; a father or mother towards his or her son and vice versa; there is also the crucial relation of mutual obligation between a person and his or her maternal uncle.⁵ By virtue of that 'naturally acquired' social bond, the subject is socially included in a set of norms on duties and prohibitions that precludes taboos and allows engagements with everyday forms of the production and consumption of life in a myriad of ways: economic transactions and power dynamics under the forms of micropolitics, sexuality, gift giving and indebtedment or religious ritual. Beyond bequests, loans and other forms of circulation of things, life itself, as the essential object of any acquired debt, is the infrastructure through which all these variants of the social bond, all of them different versions of indebtedment, take place. Life is the object of such indebtedment (the obligations acquired by means of kinship bonds, the physical aggression that requires punishment, or the malicious dealing with property or money itself, theft, indebtedment or mere destruction) which connects the intrinsic economic value present in the object under dispute with the moral value of norms, duties and punishment dictated by the law. Life itself constitutes here the universal equivalent.

'Customary' law, understood as the ethereal archive of these normativities, is thus a compendium of strategies of indebtedment and orientations towards repayment. A whole economy of intimate life becomes the thread that connects 'customary' law and 'civil' law, that is, the restricted space of the court with a broader assemblage of state and non-state agencies that process the quotidian micro events of transgression and offence in the neighborhood. Thus, 'life', its most secluded aspects, folded within physical and affective practices of health, sexuality, love, hatred or violence, is processed by the law as a narrative that frames indebtedment, connecting the space of the court with the extended cultural landscape of the region. In this way 'customary' law and 'civil' law blend, as do local normativities and a broader field of politics. When life enters the space of the court, the quotidian dynamics of kinship or the privacy of the subject are replaced by the intimacy of the state. For instance, today, any day, at one of the former People's Tribunals . . .

The battered wooden door of the bare court-room opens. Enter a divorce case: 'Is this your wife by law?' asks the Deputy President of the court. This peculiar grammatical construction signals the sanctioning by the state, through procedures implying an official norm, of a marriage. The woman, who is in a very advanced state of pregnancy, gives her version of the case, speaking for several minutes without any interruption. The divorce case revolves, as is so often the case, around issues of filiation. The husband wanted to have a child and therefore took his wife to a healer. But then, apparently, he suddenly changed his mind. And when she got pregnant, he wanted her to have an abortion. 'The doctor at the hospital told me that he contaminated me with a disease'. Now the man is living at his uncle's home. The woman claims he took with him 50,000 Mt (about two US dollars) that he has not yet returned. The divorce case includes, therefore, a component of actual debt, which at various points during the argument seems to alternatively be the source or a mere effect of the attempt at separation.

An invisible force is invoked, as yet another source of proof, of evidence, of explanation: 'The spirit of the previous house in which we used to live did not allow her to get pregnant. But when we later moved to our next house, the new spirit made the pregnancy possible.' 'But the accusation about the abortion is based on lies. 'There was no attempt at making her have an abortion', adds the man. 'And the clothes that I took with me were mine'. The woman claims the man tore apart some of her clothes and stole others. The man has fallen silent, showing signs of feeling suddenly beleaguered. The President asks him about his kin: 'Do you have a family?', and more specifically: 'Do you have an uncle?' Then 'this case is going to be continued next week. You will have to call your uncle in order to attend and participate in all these discussions.' Another judge says: 'Now you can go, and go to the hospital, in order to heal this illness through public health; or, otherwise, heal it in a traditional way. Do something about this disease . . . Now you can go.'

A crucial aspect of these juridical practices, one which enables the intimate to become public, thereby transforming the state into an amplification of 'customary' social relations, is the fact that the realm of the 'community' – domesticity, a private space – is also a realm of mutual engagement in relations of surveillance and control. The family knows the life of each individual in detail. Relatives have opinions and, more than that, they have a power of decision on their kin's lives. A wedding, for instance, is not an isolated social fact but a node in a network of social relations. Through rumor, threat,

and the moral authority of the maternal uncle, the families from both sides have 'customary jurisdiction' on the unfolding of the relation and even on the offspring.

Friendship and close links between neighbors also might evolve into relations of kinship. Locations in space also provide the basis for familial or political affinity. A case of adultery illustrates the exchangeable nature of these bonds and the ways in which, in their flexible choreography, they organize everyday sociability across grief, hurt and subsequent salvage. The two men involved in the case are indistinctly labeled brothers or friends. The aggrieved husband relates how he had spoken with his wife's lover about the pain and damage he had suffered. The two men used to be close friends. The lover offered to pay him some money back. 'I do not want money', said the husband, 'but our friendship has ended'. They are both military men, comrades in arms. The two couples got married roughly at the same time; the men are both from Zambezia, each married to women from Nampula. They *consider themselves in-laws*. In a few minutes time, the court will attempt to provide a solution to the quarrel. But before that, a new question of debt and offence arises. Now speaks a woman who has kept silent all along, sitting in a dark corner at the back. She is the wife of the accused lover, and enraged words come out of her twisted mouth: 'This man owes us'. She refers to the husband of the first woman – the one who initially made the complaint – as somebody who is in fact guilty, because his wife has seduced her husband. New folds of the conflict emerge, in which the juridical questions of debt and reparation are entwined in a new way with the grammar of kinship and obligation – the husband's duty to control his wife, his debt to the aggrieved woman and her family. Judge Ernesto attempts to *take measures* and declares: 'The friendship does not necessarily end here, but neighborliness must end. You two must live separated from each other by at least a kilometer'.

Time and again, kinship rearranges itself as a circuit for the exchanges of a moral economy, a device to secure the future interests of a debt. Indeed, as seen through the prism of the court, the 'customary' appears as a machinery that channels the circulation of owed values and the exchange of gifts that re-establish a disrupted order. The tribunal – harnessing 'customary' rules and relations – provides justice following a system of equivalences or double-entry bookkeeping (debt and repayment) in which the force of law finds its foundation at the instant in which the state codifies the private life of the subjects.

The former People's Tribunal thus achieves a remarkable deed. In it, two types of ethics blend, which locate the individual into a space larger than herself, propelling her into the realm of the collective. The subject is obliged both to the moral demands of family structures and kinship rules of indebtedment as well as to a resilient collective ethos that persists from the recent socialist past and which prescribes a commonality, a sense of the politics of the everyday as lived under the sign of a shared order in which the subjects-citizens cooperate. Both disparate historico-ideological realms merge in the space of the court, which becomes a closed circuit for the circulation of two versions of a donation of the aspiration to justice, which exceeds the mere law of equivalences. As a sign of the postcolonial condition, the community court shows entanglements of disjoined temporalities and remainders of past political imaginaries somehow still in effect after their source has vanished. The temporality of the 'customary' thus becomes entwined with the time of socialism and the current velocity of liberal-democratic transformations towards the rule of law. The court, then, appears as a legal space that receives

the 'community', in this case, families and clans. Countering decades of revolutionary orientation that shaped its meaning and logic, the 'community court' has become a sphere through which the state approaches the 'customary' and, in articulating with it, enhances its own legitimacy.

And yet, at improbable instances, the tables – such as the old, damaged wooden tables at which the judges sit – are turned. At that ineffable moment, history, politics, the law, are turned backwards, and the court itself becomes a mere extension of kinship structures; the state apparatus is transformed into a box of resonance for the 'customary'. At the same time, while donations, objects, money, commodities and debts circulate, the element that actually becomes the foundation of the social lies elsewhere. The calculability of the law of equivalence does not seem to encompass it. This ever-unfolding ever-circulating present, which both implies the mandate to reciprocate in excess but also constantly reconstructs relatedness by means of creating short-circuits in the cycles of indebtedment, can be thought of as *the gift of justice*.

What creates sociability in northern Mozambique, then, is a leftover that circulates, a remainder – or spirit of the gift – that escapes the absolute closure of the economic circuits of debt and exchange or the social circuits of due respect and repayment of offences. The fact that a remainder evades the suture of the circle, the fact that the debt – monetary or moral – is never paid in full, brings about the potential for the social to be produced and reproduced. Without debt and its opening of new circuits there exists no social relatedness. The remainder leaves open the possibility for time to continue.⁶ It is a sign of the constant reconstitution of the social. It is the sign that history is still open-ended, and it unfolds through the circulation of that residue, or spirit: the sheer matter of local quotidian sociality

The circuits that channel the exchange of social value, those which were disrupted by the sheer violence of the war, are not absolutely closed. In this context, the gift of justice – under the various forms of those remainders of exchange – generates short-circuits. The movement of exchange does not engender absolute reciprocity, the debt remains unpaid, the gift does not recognize an exact equivalence (as in the law). This is evident at the local or interpersonal level, and even more so at the national (even trans-national) level, where the dialectical programs – social planning, development, legal reform, truth and reconciliation – cannot sublimate all differences either.

Contemporary political programs aim at closing the gap and suturing the openness of the fragmented social field. The post nationalist/post-socialist project, as well as the trans-national/neoliberal one, attempt to implement programs of social engineering to close the circle, to control the flow of temporality, to give and take time, accelerate it or slow it down, through a juridical reform of the state, for instance. Their failure is evident and yet, in the contingent unfolding of those programs, in the passage of time, the remainder is produced and circulates, as the basis for everyday sociality in the margins, a sociality that somehow still endures, continues, and remains.

Notes

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- 1 My arguments are inspired by a series of theoretical readings on law and gift, debt and value, equivalence and state dialectics. On debt, gift, contract and social relatedness, see Mauss (1990[1954]), the essays on Mauss in Schrift (1997) and Sahlins (1972); on gift and sacredness see Godelier (1999). On legal relation, morality of debt, guilt and punishment, see Nietzsche (1996[1887]) and the development of some of his arguments in terms of kinship, economic exchange and capital in Deleuze and Guattari (2004). On law, capitalistic economy and equivalence see Pashoukanis (1980[1924]). On justice as gift, as different from law and its relation to violence, see Derrida (1994). For a compendium of anthropological theories of value see Graeber (2001) and the historico-ethnographic study of value in west Africa by Guyer (2004).
- 2 On gift as presence/present, see Derrida (1992).
- 3 On the colonial state's reshaping and 'modernization' of locality and the 'customary' see Mamdani (1996).
- 4 On Mozambique legal history and reform see Santos et al. (2006) and Obarrio (2007). For a discussion of 'traditional authority' under the democratic transition see also West and Kloeck-Jenson (1999).
- 5 On Makhuwa kinship, see Geffray (1990), also Medeiros (199-) and Macaire (1996). On recent general theorizations and revisions of kinship theory see Strathern (1992) and Carsten (2000).
- 6 On dialectics and remains (as well as a deconstruction of the progression from kinship to civil society and the state) see Derrida (1990).

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JUAN OBARRIO is Assistant Professor in anthropology at Johns Hopkins University. He holds a PhD from Columbia University. He has conducted research on political violence, culture and monetary crisis in Argentina, as well as extensive field research in Mozambique on issues of post war law, justice and state reform. Forthcoming publications include 'Remains: To Be Seen. Third Encounter between "State" and "Customary" in Northern Mozambique' (*Cultural Anthropology*, 2010) and 'Traditional Justice as Rule of Law in Africa: An Anthropological Perspective' in *Peacebuilding and Rule of Law in Africa, Just Peace?* (Chandra Sriram, ed., 2010). Address: Department of Anthropology, Johns Hopkins University, 100 West University Parkway #4A, Baltimore, MD 21210, USA. [email: jmo@jhu.edu]
