

Fluctuating formality: homeownership, inheritance, and the official economy in urban South Africa*

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One of Malinowski's legacies was a sensitivity to the ways institutions unevenly shape lives and relationships. Taking his lead, this article develops an approach to the formal economy, combining, sharpening, and extending theories of state and market infrastructures in political and economic anthropology. Focusing on urban South Africa, it examines property inheritance among the black majority previously excluded from property rights. As a lens on the formal economy, this moves beyond production to consider how social reproduction – passing on property – weaves through disjointed state processes. The article argues that the formal economy is sustained by particular performances of its scripts: different actors connect fragments of process in their own projects, with little commitment to the official logics that notionally make systems. In a setting where state responsibility over inheritance has expanded, formality's advancing frontiers throw its fluctuating character into relief: institutions' apparently coherent abstractions are given force in piecemeal fashion.

A shorthand for inclusion in a regulated system, being in the 'formal sector' once meant having a job. As employment shrinks and financialization gathers pace, value is extracted from labour under a wider rubric of 'economic activities' as part of 'financial inclusion.' The connections between work and the formal system are increasingly centred on efforts to repay bank loans at the 'bottom of the pyramid'. De facto workers are dressed up as entrepreneurs, responsible for risk and beyond the reach of labour regulation (Dolan & Rajak 2016; Meagher 2018).

Yet, long before recent discussion of the decline of formal work (e.g. Ferguson & Li 2018), the formal economy required a broader perspective. Even in the heyday of formal employment, much state mediation of economic life actually happened beyond the world of production, in processes of social reproduction. And today, despite predictions of a neoliberal withering of the state, there has been an uneven increase in regulation (Graeber 2015, see esp. the introduction). In some countries, including South Africa

*This is a revised version of the Malinowski Memorial Lecture given at the London School of Economics, 17 May 2018.

(James 2014) and other Global Southern giants such as Brazil (Hall 2008), welfare grants are one way that economic life is formalized. Beyond these, as people cobble together sources of income and security, the very administration of what people own is part of the struggle to make a living. Inheritance is a particular battleground. Quarrelling family members depend for their futures on who gets what when kin pass on. Networks of formalized economic activity, then, extend well beyond employment, and even borrowing from banks. The corollary, of course, is that exclusion and inequality require a similarly wide-angle view.

Taking urban South Africa as a case study,¹ this article develops an approach to the formal economy that extends anthropology's insights about state and market infrastructures into people's concerns with homes, kinship, and providing for the next generation. Foregrounding homes and bureaucratic offices challenges a commonly reified notion of 'the economy'. As Timothy Mitchell notes, 'two aspects of what came to be excluded as standing outside the sphere of the economy [were] the state and the household': the former as the 'site of the modes of planning and regulation that take the economy as their object'; the latter as containing 'forms of productive activity, exchange and consumption that do not involve the system of money' (1998: 92-3).

Since Hart (1973) drew attention to the *informal* economy, it has been the focus of sustained anthropological and broader ethnographic interest (e.g. MacGaffey 1991; Meagher 2010; Roitman 2004). Romanticized or denounced as the counterpoint to organized production and state regulation, it has been depicted as pre-capitalist, as a reserve army of labour, as the future of fragmenting capitalism, or as exciting entrepreneurialism (Fernandez-Kelly 2006). The notion of informality threw 'the economy' into relief as formal: a realm of regulatory bureaucracy and policy, monetized measurement and commensuration, officially recognized resources and occupations. Yet the formal economy is far less reflected upon in anthropology. There are dangers in assuming that we already know enough about formalized arrangements to understand what they are and what they amount to. How – and how far – do the concepts and categories of the formal economy come to shape people's self-understandings and relationships? How do the rules and practices of state institutions mediate economic life? How ordered are the resulting arrangements?

Abstracted models of human experience often frame formality as the law in its own rule-based terms. Abstractions make good foundational stories: the liberal individual, equal before the law and principles of justice (e.g. Rawls 1971); the rational market actor, hedged in by property and contract regulation (e.g. North 1990) – both detached from existing commitments. We might respond by seeking the underlying informal arrangements and relationships. But comparing formal law to informal practice (or, in labour settings, management rules to worker strategies, e.g. Burawoy 1979) tells us little about how the abstractions of formality – the roles and categories – are given concrete reality.

As ethnographers, we should question what the detachment means, and ask what rewiring through formal process looks like. This means attending not just to how formal rules are underpinned by informal practice, but also to how the two actually constitute each other. Doing so illuminates 'a differentiation *within* informality': states selectively suspend formal oversight and 'state power is reproduced through the capacity to construct and reconstruct categories of legitimacy and illegitimacy' (Roy 2005: 149, original emphasis). Conversely, though, differences between *formalized* practices are not simply subsumed within – made commensurate by – a powerful state logic. At issue

are the multiple processes of formalization and informalization that interpenetrate in particular settings (Guyer 2004).

Where formalization accelerates, official abstractions and categories are rendered especially visible. Post-apartheid South Africa offers one such expanding frontier. Here, legal-administrative segregation had previously excluded black people from swathes of legal protection and from all but the most coercive forms of government. A new constitutional order incorporated everyone into a single system of rights and deracialized bureaucratic processes, albeit jostling with a relatively broad conception of legal pluralism in which common and customary law have theoretically equal status (see Rautenbach 2010). Official institutions can represent new opportunities, create new understandings and misunderstandings, and lay bare to officials themselves quite how far the state falls short in relation to popular norms and the complexity of economic life. State and non-state actors are ambivalent: they bemoan formality's rigidity and its categorical constraints, yet also the lack of capacity to enforce those categories.

Urban homeownership and inheritance offer particular insight into these dynamics. The property market expanded rapidly after the end of apartheid's total exclusion of black people from it. Black township dwellers who now own their apartheid-era rental homes – following a process of title allocation experienced as redress – plan and accumulate on the basis of their new formal assets. Houses dwarf other possessions in worth, drawing in the state as protector and arbiter of disputes, even among people who might otherwise keep their distance from official processes. Yet those residents also complain that the form of individualization represented by the property system is an alien imposition that threatens the extended family.² The result of this ambivalence is fluctuating formality.

As suggested above, and evident in what follows, political economic context is fundamental. But this article has a different, complementary focus. Fluctuating formality describes the inconsistent, situational power of institutional rules, roles, and categories, in which apparently coherent abstractions are upheld and given force in piecemeal fashion. Formality is sustained by the ways its scripts are performed: a distinct and recognized formal register, supported by rituals and paperwork, and in which different participants connect fragments of process in their own projects. An influential body of scholarship, discussed below, depicts 'the economy' as brought into being through performances of measurement, calculation, and expert knowledge, which in turn frame economic rationality. But the performances I analyse do not create subjectivities in formality's own image. Often, people lack any deep commitment to the official logics that notionally make systems. Formality and its classifications are sustained by different agendas, hidden behind terminology and paperwork, meaning that official process may in practice have little to do with regulation or measurement. Formality in these terms is flexible, as it establishes the grounds for various kinds of limited commitment. Trust in it is rooted in what can be achieved through its scripts. Conversely, formality's vulnerability to manipulation and evasion can come from people's abilities to switch between modalities at a moment's notice. The formal/informal distinction is routinely insisted upon and enacted, but often fragile, fraught, and negotiated.

Rather than attempting to provide the final word on 'formality', what follows shows how 'it' breaks down under analysis. I take this as a starting point for the reconceptualization of fluctuating commitments to fragments of officialdom:

abstractions, stipulations, and symbols. I begin by introducing what this means in South Africa, and how different anthropological perspectives inform an approach to formality. I then turn to urban inheritance, drawing our attention to social reproduction, and the state and the home in an expanding system of formal property. Indeed, I suggest, the formal economy invites us to reconsider the state itself.

The formal economy and its margins in South Africa

South Africa's economy has long been dominated by a self-consciously formal sector. Under apartheid, for the black majority, this largely meant employment. In the classic Marxist model, black male labour migrants were brought in as 'cheap labour-power' (Wolpe 1972). Low wages in the gold mines could be justified as excluding the costs of raising children, retirement, and dependants, all off-stage in rural homes defined as external to a white South Africa.

The model was schematic. Nevertheless, during apartheid, labour contracts were most black South Africans' pre-eminent connection to formalized capitalism. Even settled urban black workers were disqualified on grounds of race from owning urban property (Crankshaw 2005), from bank loans (James 2014), and overwhelmingly from the formal deceased estates process (Bolt & Masha 2019). When apartheid ended, this majority were drawn into the formal economy in a far broader sense: access to credit, the right to own urban assets, and the dream of accumulating wealth. Where they were previously deliberately excluded, and made economic arrangements beyond the remit of formal government, new economic possibilities now opened up: those of property protected by the state.

Yet state oversight and the reach of formalized market arrangements have been highly uneven, and popular attitudes to both remain ambivalent. The very terms of inclusion are often highly inequitable. This is captured by the concept of 'adverse incorporation', which has been persuasively applied to South Africa (du Toit 2004) and reminds us that a fixation on barriers and exclusion can mask other structural iniquities. Moreover, the apartheid legacy has left a population suspicious of state enforcement. Steinberg (2008) has described the provisional and partial nature of South Africans' consent to being governed. Officials like police are only sometimes allowed in, and under fickle conditions. Beyond, the population appears more or less 'illegible' (Hoag 2010) to a state that has been 'constitutionally disinterested in and incapable of knowledge about the vast majority of its subjects' (Breckenridge 2014: 214). However, formality has its attractions as a counterpoint to the pressures of personal relationships (Bähre 2020) and the flux of precarious lives (E. Hull 2012).

Even inside apparently formal waged workforces, regulatory spotlights are fragmentary, and given a degree of coherence through people's own projects. Workplace documents and the relatively scripted encounters surrounding them become stepping stones towards the provisional stability that comes from particular kinds of official recognition. State and non-state actors have an interest in the predictability formality appears to produce. However, uncertainty results from the awareness that different agendas and projects lie hidden behind formalized documents and interactions (see Bolt 2017). This perspective, which I have previously developed to make sense of the notion of the 'formal worker' on South African commercial farms, offers a point of departure for a much broader approach to the formal economy on its expanding frontiers. Understanding how people and processes

are incorporated into the formal economy means grasping how formality itself is incorporated.

Formal structure and formal economy in anthropology

What does it mean to be drawn into formality? This would have been a recognizable question for Malinowski. In South Africa, history has not been kind to him. In the 1920s and 1930s, he was tasked with conceptualizing social change, an exercise in 'practical' anthropology (see, e.g., Malinowski 1939). He described the effects of becoming part of a formalized industrial political economy: new roles, self-understandings, and encounters with government and policing. Economy was bound up with law and technical administration. But Malinowski framed this as the zone of 'culture contact', premised on an overdrawn distinction with African culture outside it. This reified culture, fixing it in time. Malinowski was held to pander to colonial authorities. And his ideas would later bear uncomfortable resemblance to the apartheid regime's claims: that racial difference was a fact of life justifying legal separation. Malinowski's opponents, such as Radcliffe-Brown, set the tone for anti-apartheid anthropology (Niehaus 2017). South Africa's differences were not between those within a system, and those beyond it in 'other' societies. Instead, this diverse population of colonizers and colonized should be regarded as a single, interdependent, integrated society with internally structuring dynamics (see Gluckman 1947).

Malinowski's depiction of South Africa would not now be endorsed. But elsewhere, in his detailed ethnographic investigation of economic life (e.g. 1922), he offered a more useful starting point. Bloch (1977), in his Malinowski Lecture, noted that Malinowski saw beyond tightly specified categories and roles. Structural functionalists had more elaborate theories about structure. But this was because they dwelt on those moments when rules are most sharply stipulated and enforced, and they abstracted from these. Malinowski was interested in the pragmatic unevenness of institutionalization. Had he taken this earlier analytical emphasis, sensitive to life beyond and around formal rules, he might have cast social change in South Africa in a rather different light. Indeed, in a sense, the Manchester School would bring together Malinowski's and Radcliffe-Brown's approaches in their research on themes like wage labour in Southern Africa. They emphasized webs of social relations. But they were attuned to the interplay between a relatively restrictive social situation and connections to a more complex world beyond the scene; incorporation was situational and contextual (see, e.g., Epstein 1958; J.C. Mitchell 1956).

This framing draws attention to the limits of the formal economy. The implications of those limits are evident in recent seminal scholarship exploring how markets are constituted through forms of measurement and calculation. The economy, as a modern concept, appears as the result of attempts to measure (T. Mitchell 1998; 2008). Networks of calculation (Çalışkan & Callon 2009) may in turn be inflected by economists' models (see, e.g., Callon 1998). Such an approach – echoing Polanyi's (2001 [1944]) famous depiction of market societies – attempts to reveal the rules of the market as the principles of life on the ground. But its scope is so restrictive that it leaves out much of what we would conventionally call the formal economy. Examples come from highly systematized and financialized markets, because they are easier to trace (e.g. Callon, Millo & Muniesa 2007). Even here, there is uncertainty about the reach of measurement and calculation – including how far these actually create economic subjectivities. Anthropologists point out the non-calculative, unmeasured dimensions:

the affect and ethics (Bear 2015), the centrality of convincing stories (Leins 2018), and the range of meanings attributed even to electronic monetary transfers (Maurer 2015).

So, how might we understand the formal economy beyond an insistence on measurement? Most people in the world do not live in information-saturated credit infrastructures. We lose the perspective to see how *their* attempts to make a living are partly incorporated into formalized economic practices, at the intersection of bureaucratic regulation and monetization.

If a restrictive version of the formal economy portrays connections as too orderly and too definitively asserted – measurement and judgement are either there, or they are not – relegation to the *informal* economy is also often presented too starkly. Such a focus is important. Across the world, people appear surplus to the needs of capital. Says Li, '[I]f some portion of the relative surplus population died tomorrow, the rate of profit would remain the same, and the GDP in the affected countries would increase' (2017: 1251). Recent research on Africa has shown crisis and marginality to deny people the plannable foundations for a predictable future (Mbembe & Roitman 1995; Vigh 2008). Youth cultivate an openness to possibility, however tenuous (Di Nunzio 2019; Johnson-Hanks 2005). In South Africa, where employment was relatively high, decline has been dramatic since the 1970s. Ferguson (2013) describes a scramble for any chance to be dependent and thus protected.

Yet the limits of the formal economy are rarely as stark as suggested by a focus on measurement or, conversely, on crisis among the excluded. People who appear excluded by unemployment are often in the margins of the formal, not simply beyond its scope – and not just through adverse financial incorporation (in South Africa, as Ferguson [2013] shows, social welfare grants are key to rural subsistence). African anthropology's pioneering explorations of crisis and unpredictability have tellingly been paralleled by fresh approaches to bureaucracy in everyday life (Bierschenk & Olivier de Sardan 2014; Zenker & Hoehne 2018). These take administrative and regulatory practice seriously in their own terms, in contrast to earlier theorization of kleptocracy, patronage, and private interests (e.g. Bayart 1993; Chabal & Daloz 1999). We need to understand how navigating precariousness is intertwined with the categories and processes of official regulation; and, taking a cue from Malinowski, how such institutionalization is uneven.

Bourdieu's (2005) approach to the economy as an institutionalized field is more open to variation – and potentially more accommodating of the margins and the expanding frontiers. The economy has categories: prices, commodities, labour, assets. What Bourdieu describes broadly constitutes the market, with formal administration at its core. In fact, he sees the economic field – more than any other – as shaped by the state, its modes of thinking and categorizing, and its political and bureaucratic interventions. But people come to be socialized into this field: they have to learn the rules of the game, and the practical reasoning through which people navigate demands investigation. Such a framing encourages us to bring together people's attempts to create possibilities – successful or otherwise – with the formalization of economic lives.

We can go further, however. A register of formality may operate *as though* it makes clear measurements. But, as ethnographies of state institutions demonstrate, such a register can foster ambiguity while enabling different actors to pursue their particular projects, shielded by ritual and convention. Bureaucratic rationality is less a simple description than a story with rhetorical force; rigid bureaucratic language and ritual are a 'mask' for slippery and changeable meaning (Herzfeld 1992). Documents

connect system and functionaries by 'diffusing' individual agency and responsibility into institutional process (M. Hull 2003).

These insights need taking out of the office. Disparate projects are 'sutured' together in what we perceive as a system: the stitching can be stronger or weaker, the pieces clearly aligned or confusingly mismatched, and the result given shape by legitimating narrative (Bear, Ho, Tsing & Yanagisako 2015). Whether amidst neoliberal restructuring in India (Bear 2015), government support to Ecuador's sharing economy (Nelms 2015), or reform of South Africa's debt economy (James 2014), officials and expert practitioners in dialogue with other people massage the contradictions between rules and life. But they also sustain the everyday reality of the state's categories to achieve their own diverse ends.

The formal economy is distinguished by the way it is self-consciously maintained, and the fragility of its everyday grounding in performance. The foundations may not be measurement or deeply held subjectivities, as very different projects, agendas, and understandings hide behind shared categories. Formality produces performative scripts that work, because its fixity is taken for granted – not necessarily because people care what its premises really mean. Insistence on official categories has ordering and disordering effects. Developing this perspective, I turn now to the expanding frontier of formalized property inheritance in Johannesburg.

Deceased estates as formal economy in South Africa

Formalized inheritance has been neglected in writing on capitalism, occluded by production – something recently addressed by Piketty (2014). Understanding the state mediation of economic lives requires paying attention to how legal and official categories are sustained in social reproduction. In this broader view, the pronouncements of legislators, bureaucrats, and ordinary people are as important as policy-makers, economists, and the scientific managers of labour in defining the economic field. Inheritance has a distinguished history in anthropology, taking its cue from Goody (1976; see Hann 2008). But norms of inheritance take on a new life as plans about *deceased estates*, legal bureaucracy's own category. Here, formal classifications and processes become a bottleneck in people's lives.

In South Africa, deceased estates constitute an explicit system. Historically, a central issue concerned its administrative boundaries: how far should black people be included? Since the pre-apartheid colonial era, European law had been primarily for white people understood as individualized citizens, while black people were supposed to have collective customs and traditional authorities: the 'citizen' versus 'subject' of Mamdani's (1996) well-known formulation. Matters were rarely so neat or settled, however. Customary disputes have been mediated by various authority figures, from kin to schoolteachers (White 2015). Customary land entitlements have often prioritized family claims over chiefly allocation (Beinart, Delius & Hay 2017: 15–16), while circumstances determined the relative prominence of collective prerogatives or individual inheritance (James 1988). Moreover, black people kept appearing in the formal inheritance system, incorporated into groupings other than those of 'race' and 'tribe': as soldiers, for example, or will makers, or Christian spouses partly overlapping with the new 'elite' (Lentz 2015).

After the end of apartheid in 1994, the question of the system's reach was resolved through massive expansion. Change was not immediate: only in the early 2000s did Constitutional Court decisions declare racially separate legal codes unacceptable.

Moreover, overburdened and under-resourced, the reach of the state in inheritance has been – and remains – tenuous. Two-thirds of cases – mostly concentrated in rural areas – are never reported. In Johannesburg, a local Master of the High Court (the authority for deceased estates) was established to absorb the overflow from nearby Pretoria, the official seat of government and the busiest office. Situated close to the township agglomeration of Soweto, it was soon processing more than 30,000 estates each year – double Pretoria's load. As I describe later, the rapid proliferation of small estates led to the institutionalization of what was effectively a separate track for the newly incorporated.

Some change preceded the new dispensation. In the late apartheid era, another formal system – that of black urban housing – altered dramatically, setting the stage for an unwieldy collision with the reformed deceased estates infrastructure. For most of apartheid, black people were denied the right to own urban property, instead renting in racially defined townships built to accommodate the workforce. Beginning in the late 1970s, and gathering steam in the 1980s, reforms were passed with the intention of creating black asset-holders with a stake in the system – similar to Thatcher's contemporaneous plans in the United Kingdom. Renting households were offered long leases, then outright ownership. By the time of apartheid's demise, the state, unable to maintain the housing stock, offered local authorities monetary incentives to decide on rightful owners as quickly as possible (Emdon 1993).

This transformation, itself intended to systematize ownership while simultaneously transferring it from public into private hands, exposed weak points in an originally chaotic system. Attempts at formality were undermined. Municipal records were often out of date. The hearings to determine owners appear often to have been perfunctory. Many residents now claim they were unaware that their houses had been allocated to a specific person. Others sent a kin member as a representative, and only years later realized that this delegate had been granted sole title.

Many township dwellers claim a basic incompatibility between individualized legal ownership and the ideal of the 'family house'. In apartheid's draconian system, 'family permits' listed approved occupants. As urban government disintegrated, a sense of collective entitlement developed informally – even as permits retained significance as a form of recognition. According to this view of the home, the oldest or youngest son is the obvious candidate to succeed to authority and oversight responsibilities as custodian, but access is shared among patrilineal siblings. Resembling the rural homestead, the family house is where the ancestors are. Urban kinship arrangements are often fragmentary, and marriage unstable, following a history of labour migration and 'influx' policing, and enduring precariousness. Yet invoking kinship ideals – materialized by the family house – is all the more important amidst insecurity (Spiegel 2018). Sibling entitlement is defended in an acute housing shortage (cf. James 1988 for a rural comparison). Siblings and their children return 'home' as needed, if marriages or other domestic arrangements dissolve, or if they fall on hard times (see Bolt & Masha 2019).

In an era of precariousness and unemployment, many families have little else. Not just a home, nor yet only an asset, the family house can bring in rent from tenants in backyard rooms. Rentals exist under the state's radar, but things change when owners or tenants die. Death brings surprises about who actually owned the house, and questions about who will have access. Today, an increasing number of people report deceased estates because it matters into whose name that all-important property is transferred.

What kind of formal economic field has been produced? Families previously defined as poor have assets. Township houses are no longer separated from the real estate market. Auctioneers and estate agents report booming township housing markets. (In sharp contrast, some former white lower-income neighbourhoods – into which black people have started moving – have become ‘grey zones’ where banks refuse to provide mortgages.) But this formal economic field is characterized by confusion and ambiguity. People have not simply learned their way into the official rules. Other norms compete. Houses are kept off the market since they are materializations of kinship. Physical possession of title deeds, rather than registration, is often held to denote ownership. So even popularly legitimate sales lack formal transfer, and are virtually impossible to secure if one party dies. Some houses have been sold or inherited multiple times without any state validation, over decades. The inheritance process itself assumes full incorporation into a documentary regime that signifies an asset market. Property must be valued in monetary terms. But many houses have never been sold before. If there is disagreement between heirs, houses are indeed sold – ‘liquidated’ – and the proceeds divided. But this is often used by officials as a threat, pressurizing families to agree. Selling is rarely an option any party wants. Formal economic practices constitute a field of measurement and official categories – of monetization and bureaucratization – but uncertainty is palpable. Formality is, at one level, an abstract system, but one that only survives because of people’s partial and selective mobilizations of it. How, then, is formality actually sustained in this arena of inherited property?

Formality and the state

State institutions, of course, strive for formality. Substantial work goes into upholding the unambiguous status of the legal system. At the Johannesburg Master’s Office, officials are concerned to depict the parameters as clear. One official – an Assistant Master at the coalface of bureaucratic decision-making – explained: ‘I don’t think we can deal with something that is ambiguous . . . You come to us, your circumstances must fit within those rules’. Among these legally trained officials, regulation is presented as having the ontological status of truth. The law is to be obeyed, and alternatives are deviations. It is important for them to sustain ‘the state as a structural effect’ (T. Mitchell 1991: 94) – the result of practices that ensure that people do not confuse ‘state’ with ‘society’.

Classifying is key to narratives of bureaucracy (see Herzfeld 1992). Yet Master’s officials are fully aware that their control is fragile, and that they have virtually no coercive power beyond the confines of their own building. If they issue summonses, these rely on a respect for authority that cannot be counted on. Even within the building, there is incomplete control. The paperwork is approved with date-stamps that can be forged at a stationery shop down the road. Officials guard their own stamps jealously, finesse distinctive styles of stamping, and cultivate elaborate signatures. But only by luck do such expressions of individuality prevent fraud – when someone notes that her or his own imprint has been incorrectly reproduced. And the all-important files routinely go missing in a building with insufficient space or staffing, and with members of the public wandering the corridors. The decorum surrounding stamps and signatures is a key part of the performative register that sustains formality. As I describe below, this is a matter partly of the ritual of bureaucratic encounter, and partly of the promise of control afforded by official documentation. But it all rests on shaky ground.

Faced with pervasive uncertainty and social complexity, bureaucracies may accommodate themselves to ambiguity as a way to match ordered rules with messy reality. Political scientist Best argues: 'The persistence of ambiguity and its potential role as a kind of interpretative lubricant in an uncertain world suggests that we need to pay a little more attention to the slippages and gaps in these meaning-making processes' (2012: 101). Best sees ambiguity as a bureaucratic strategy in a world of accelerating complexity. Yet it is often less deliberate, and frequently characterizes the experience of trying to regulate surrounded by old-fashioned mismatches between legal and popular practice.

In the Master's Office, this mismatch is obvious to the younger bureaucrats who have taken over from their white Afrikaner predecessors, and they are far from indifferent. Many see succession law as needing an upgrade. They sympathize with clients; lose their lunch breaks to offer open-ended discussion rather than narrow process; dwell on uncertainty; and draw out the intricacies of people's circumstances. Despite their categorical statements about the legal system, they acknowledge the huge gaps between what many people think should happen with their wealth, and what is stipulated by Roman Dutch and English common law. This is evident where the law promotes individual owners, and inheritance first by the surviving spouse – who is often considered an outsider in the patrilineage. Outrage crosses class lines, and I encountered it as much from university law students learning about inheritance as from aggrieved relatives.

Officials' own positions are ambiguous: sympathetic to the outrage, but also committed to the legal emphasis on protecting women. Stuck in between, they have crafted their professional roles into something between mediator, adviser, and judge, reportedly raising eyebrows in the High Court. Explaining the intricacies of regulation means setting out the letter of the law and the authority of the bureaucrat, defending the rules in didactic tones, even admonishing elders in front of their kin.

At the same time, to anchor a shared script, officials are forced to reach for non-official terms. The idea of the 'family house', despite its lack of any legal weight, has become central to how they negotiate everyday administration. They acknowledge its everyday reality, and understand why families want to find ways to protect it through the system. There are, indeed, ways that this can be done. Family indignation often focuses on the diversion of a house into a nuclear branch of the wider kin group. Officials, however, may see further significance in the story: that the original process of transfer in the 1990s was sufficiently murky to be challenged. A solution then presents itself. Families can be recommended legal assistance on the off-chance that the deeds might be reversed by one generation, ownership legally divided among all siblings, and the ideal of the family house made a reality. Explaining the law's logic reasserts formality's place. An appeal to other shared concepts enables a return to a ritualized script anchored in official terminology whose relevance has now been demonstrated.

Formality's ambiguity here takes on particular significance for the large stratum of black urbanites to whom formal homeownership was deliberately extended after apartheid. Many renters-turned-freeholders own little more than their home. If their estates are valued under a threshold of R250,000,³ they follow a simplified administrative track. This is necessary because, last reviewed in the apartheid 1960s when the system excluded the black majority, the 'mainstream' system is extraordinarily cumbersome. But the result is sharply stratified, with reduced oversight for today's poor

majority. Here, at the expanding frontier of the system, but where most people have been incorporated, uncertainty is especially pronounced.

A restricted system is able to appear somewhat coherent by abrogating substantial responsibility but organizing around core formal roles and rituals. A meeting to determine next of kin is called. Squeezed into an Assistant Master's office, chairs brought in from the waiting space outside, an assortment of spouse, children, parents, and siblings debate what will happen. This culminates when someone is given a letter as 'Master's Representative'. To members of the public, that all-critical 'Letter of Authority' equates to ownership. While this conviction has no legal backing, in practice these Microsoft Word-template pieces of paper enable their holders to transfer any assets, as they deem fit, with no further oversight. So revered are they that they provoke the most acrimonious disputes, and a holder may simply move into the house on the strength of the letter rather than formally transferring it.

The status of formal documentation here is vehemently upheld, although for reasons that differ from those of officials. And the officials know it. It is their job to catch the cases of fraud, the non-reporting of inconvenient heirs, or attempts to bully or disinherit the vulnerable. But they lack information: about the dynamics underlying the performances of kinship; about what Master's Representatives do with those Letters of Authority. Documents do build on other documents, in chains (Latour 2009). Relatives reporting an estate must complete a 'next of kin affidavit', a template formalizing a narrative about family connections. But only in 2013 were the computer systems of different Master's Offices linked up and integrated with the Department of Home Affairs database. The capacity to check older information remains especially unreliable. Moreover, morgues and the police reportedly do not pass on information about deaths, and such non-reporting goes unpunished. Conversely, even death certificates can be procured fraudulently – there have been cases of officially deceased people making complaints. Faced with all this, Master's officials have no choice but to assume, until convinced otherwise, that people are lying about their struggles to meet unwieldy requirements – claims that relatives have lost touch, are too far to come in person, or even died long ago.

So, state officials sustain formality. But they do so in a whole range of modalities: as judges; sympathetic listeners; didactic guides; advisers on how to make the law work for people. They suture together the system through their efforts. All of this is anchored in categories that script interaction and provide an illusion of predictability, although such categories may themselves require grounding in the recognition of other norms. Members of the public submit themselves for assessment; Assistant Masters provide it. But a good Assistant Master is one who diagnoses *beyond* official categories. Whom is that man trying to disinherit with a Letter of Authority? Where are the relatives in that fight over a family house? Is that outrage an appeal against past injustice or only a regrettable misunderstanding of the law?

Formality beyond the state

How do people – the claimants to these houses – sustain formality through their own plans? It was to understand this that I found myself sitting in a cluttered office behind a maths classroom in a secondary school in Soweto. Across from me sat Mr Mthembu (a pseudonym), the thirty-something head of department who was keeping out the winter chill with a red bomber jacket.

Mr Mthembu launched straight in, familiar with my research from a previous meeting. Inheritance was on his mind because his father had recently died. A man with rural origins but who had lived his life in town, Mr Mthembu's father had done well. His substantial property was also matched by his substantial progeny: eight children, although only three within marriage. The result was an approach to inheritance that can only be described as plural – an intertwining of patrilineal norms and formal rules. By law, half his estate went to his community-of-property wife. He had reinterpreted that principle, using its force to support his own reasoning: all major assets should be split between his three in-marriage sons – without going anywhere near formal administration. The eldest received his cattle, tractor, and everything on a farm he had bought. Mr Mthembu, as middle son, inherited the township family house. The younger brother got the goats. In a striking reversal of stereotype, no one even claimed the original rural home, now superseded as family epicentre by the Soweto house. The other five children were kept out. 'A wife doesn't give to a child outside the marriage', Mr Mthembu reasoned. 'It reminds her of what her husband has done'. But he persuaded them, invoking the power of the state, that they would lose a costly battle if they approached the authorities.

Law here was a starting point, and it provided a useful threat to use against troublesome illegitimate relatives. But it was fleshed out by quite different 'vernacular' interpretations. This went further. Mr Mthembu's father also had cash savings, and it was for these only that a will was being pressed into service. All eight children inherited, distinguishing the flow of cash from entitlement to 'his property'. Each boy would receive 15 percent, and each girl 10 per cent, bypassing the intestate rule of gender equality. Here, due process was followed, with the family reporting the will and this part of the estate to the Master's Office. A lawyer would have been involved. But for Mr Mthembu, the lawyer's real significance was 'reading the will' at home. Not a practice grounded in South African law or in historical norms, this instead resembles plots from television popular culture. It also mitigates suspicion. Written wills are potentially secret. Undergirded by individual freedom of testation, they can disinherit those who assume entitlement – still more galling when discovered during impersonal bureaucratic procedures. Some homeowners contemplating inheritance plans speak instead of 'verbal wills': the legally unrecognized process of discussing wishes with family.

Moving down one generation, Mr Mthembu's own plans equally relied on and evaded formal institutional practices. He was just beginning to contemplate a will through his insurance company, because he had recently become father to a son, because he would soon embark on marriage plans with his partner – a fellow maths teacher holding a class next door – and because he had recently taken out a mortgage for a house. This plan, however, focused on making provision for his nuclear family in the new abode. His father's dwelling was relegated to earning him rent, rather than its 'proper' use as a hub for living and ancestral members of the extended family. Yet it retained special status as a 'family thing', held by the patriline and transferred among its members, outside state purview.

Mr Mthembu's story, from one perspective, was about intricate planning. Inheritance plans, when there are assets, often reveal creative combinations of law, patrilineal norms, and improvised custom. But consider this from the point of view of those five children born out of wedlock. They faced not only being disinherited, but also the profound uncertainty of being selectively incorporated into the legal process. When

they protested, Mr Mthembu warned them: 'You can go to court, but this is what will happen.' Court was in reality deemed irrelevant since almost no one goes there. Such examples are typical. The world of deceased estates in South Africa is full of people with only partial understanding of the law and, for those disinherited, little recourse to it. Then again, given the state's minimal capacity to enforce, in practice it barely matters.

Borrowing the state's authority is a way to get one step up in South Africa's unequal economic landscape. People have a clear interest in choosing where they want the state to come in, invoking, submitting to, or avoiding it. They thus maintain the distinction between formal and informal: the state used as threat; the family house defended by culture but for specific opportunistic ends.

Rethinking the state in the economy

Formality is often sustained even when it fails to measure or categorize accurately, as people's own projects uphold selective fragments of state administration while they undermine or sidestep others. Where the frontiers of formality are fast expanding, as in post-apartheid South Africa, what are the implications of the resulting uncertainty for thinking about the state itself in the formal economy?

Here I return to Bourdieu (2015), for whom the state is central to social and economic order. We live through a lexicon of officially sanctioned categories – income, housing, deceased estates – that define value and set the terms of its unequal distribution while structuring distinct fields like the economy. We and our formal economy, Bourdieu contends, are immersed in 'state thinking'. Bourdieu's approach helps us think about how formality is inserted into everyday economic practices, and how inequality operates through it. In South Africa, social difference is institutionalized through employment, grant eligibility, debts, assets, insurance, title deeds, and Letters of Authority. But how far can we generalize Bourdieu's version of state and social order? The French context is a peculiar one from which to theorize, even in comparison to Britain next door: the product of absolutist monarchy that shaped Republican administration (see Wood 2002). In South Africa, the state's reach is more restricted. The language of administration predominates: sectors, regulatory frameworks, documentation. Yet restricted enforcement and uncertainty in the system suggest that such administrative procedures have limited influence.

Is this just what we expect of postcolonial states? Colonial populations were lumped together and treated as collectivities, their course determined by separate 'culture' and 'tradition'. Such states were premised on maintaining difference – Mamdani's (1996) citizen versus subject. In South Africa, racially defined government has indeed had a powerful legacy even after the end of apartheid, and notions of custom and culture are commonly invoked precisely to depict black urban South Africans as distant from the system. But there is a real risk of over-emphasizing exclusion in those terms. Black urban South Africans are, after all, deeply imbricated in state administration and state categories through inheritance and through their houses.

What lies beyond formalized practice, popularly cast as African tradition, is less clear-cut than citizen/subject-type distinctions suggest – less 'outside' than it looks. Custom is invoked for the notion of the unsaleable family house, with its emphasis on collective ownership like the rural homestead. But it is also the result of earlier state planning. The houses were off the market because their residents were denied ownership rights. And the very idea of the family house remains inseparable from

the apartheid-era family permit that is popularly seen to prove its existence. Today, these permits are brought to mediation meetings at the Master's Office, representing the truth of history against questionable title deeds. Legal status confronts an earlier era of formality woven into experiences of custom and culture. If people have to learn to navigate the economic field, for most of them that field has only recently expanded, and is entangled with a previous system of administration – another state-dominated field that they had to learn. Today, people uphold fragments of past and present formality in their own projects, combining various symbols of officialdom with state and non-state actors as their audiences.

Even with today's shared formal arrangements, a country like South Africa presents basic challenges for social theory from the Global North. The status of the law – and of the very notion of a system – is fragile, even as people are incorporated into it. Von Holdt (2012) has outlined the limits of Bourdieu's conception of the social order, in which state dominance sets the terms of a remarkably bloodless and uncontested structure of inequality. Everyone knows their place; the categories and principles of the economic field are set and stable. The edges of South Africa's order, by contrast, are jagged. People readily subscribe to alternative moral orders, enforced through physical coercion. The police respond with their own readiness to inflict harm in defence of a fragile status quo. The social order is not so flimsy, of course: South Africa is the most unequal major economy in the world by Gini coefficient, and there is no sign of this changing. But everyone knows how much overt violence – from automatic weapons to high walls with electric fencing – it takes to hold that order in place.

As the ultimate arbiter of formality, state practices are supposed to be backed by the threat of coercion. In South Africa, violence is overt and formality fragile because order is so unpredictable. And the formal system just does not reliably connect up. When it comes to property inheritance, the police only unevenly enforce the Master's stipulations, while they are reported to enforce fraudulent or unverified evictions. The failsafe in inheritance disputes is supposed to be the civil court. But most people lack the money, time, or inclination to sit through interminable postponements in front of intimidating judges. And if they do, there is no guarantee that any enforcement of judgment will follow.

Instead, officialdom appeals to the populace by offering its services. A Johannesburg magistrate advertises his commitment to wind up 168,000 ailing apartheid-era estates, dating as far back as the late 1970s. Officials from the Master's Office and the Deeds Office appear in township meetings, intended to align citizen expectations with the law, and to produce a public sphere for property issues. The Deputy Master – a senior administrator – fields questions on wills and inheritance on television, responding from a chat-show couch to phone-ins and Facebook messages. While most people use formal categories and processes because they work for particular ends – with little interest in their meanings or logics – officials try to bring state thinking into being, through public education about the advantages of the law. As formality's reach expands through partial and opportunistic adherence, 'the state' itself attempts to blur with 'society' to gain deeper legitimacy for its dictates.

People live through and outside formality – indeed, they play both sides. They may do much of their own enforcement, but they also know how effective a title deed can be when brought to the authorities – as a threat, even if policing is unpredictable in practice. Formality in economic affairs is invited in, on provisional terms. Master's officials are clear that people report estates when family fights are well underway.

Residents of Soweto say the same. It is when ‘the uncles’ – senior men in a family – can no longer contain the disagreement about who gets what that one side approaches the Master’s Office, hoping that their own case will be buttressed. Approaching the state is one option among several, which include summarily throwing people out onto the street or, when all seems lost, literally burning the house down – reportedly a relatively common solution. For South Africa’s black majority, an uneasy relationship with the formal system revolves around how far to let that system in.

Complicating Bourdieu’s ‘state thinking’, South Africans on formality’s expanding frontier want formal recognition, but also often believe the state has little business prying in their affairs. South African state administration itself lacks the power to stabilize a symbolic order, and even underlying overt coercion is uneven and lacks predictability. Officials try to *persuade* people into state thinking. But their work is characterized by doubts: about limited control, popular notions of fairness vis-à-vis formal rules, and vulnerability to the opportunistic navigation of formal and non-formal modalities.

Conclusion

Formality’s categories and distinctions may seem reliably detached – an abstract system – but their on-the-ground traction is the negotiated result of different people’s agendas and projects. A fundamental challenge for an anthropology of the formal economy is to understand how – and how far – different agendas sustain a shared sense of order, and how the goals of state institutions and their representatives interact with those of other people in their economic lives.

The beginnings of an answer emerge from recent perspectives emphasizing everyday performance. These frame the (implicitly formal) economy in terms of networks of measurement and calculation, in which economists’ abstract models are realized in the world by being enacted as the rules of the game. Formality comes to appear as economic rationality, as measurement and calculation create subjectivities in their own image.

This article has argued that the results of formalization are far more fragmented and uneven. Formality has real effects on economic lives, but it is less categorical, less certain, and less able to create subjectivities and rationalities than it appears. Not only are official measurements often questionable in their own terms; their primary efficacy may be in stabilizing rituals and scripts that maintain the impression of a coherent and distinct formal register. The postcolonial, post-apartheid example of South Africa offers an especially stark case of the expanding frontiers of regulation. It throws into relief the fragile and fragmented grounds of formality in economic life.

Fluctuating formality produces enduring flexibility, but also far-reaching uncertainty. In much scholarship on state administration, bureaucracy either reads the population (e.g. Scott, Tehranian & Mathias 2002) or knows relatively little (e.g. Breckenridge 2014; on the tension between the perspectives, see Stoler & Cooper 1997). What goes missing in this dichotomy is officials’ acute awareness – as administrators and de facto experts – that categories and rules are not enough to capture the complexity inside (or outside) formal institutions.

The paradox is that officials and populace also maintain the performance of certainty required to sustain the formal economy as a field. Officials have to insist on the fundamental truth of the law – how else do ‘state effects’ survive? But their categories are doing as much rhetorical work as actually establishing durable, predictable relationships between economic lives and state thinking. Those officials defend the reality of being

inside or outside the system. And other people for their own reasons support them in this, anchoring formal process in symbols and performances – the language and the paperwork – downplaying the unknowns lurking behind them. State thinking has limited reach, and overt coercion is unpredictable. Yet people, in a context of staggering inequality and precariousness, borrow the state's authority in an attempt to secure their own life chances without worrying too much about the legal meaning of this or that document or process.

Bloch's (1977) defence of Malinowski was that he could look beyond the dominant ritualized moments and pronouncements of structure to see how those related to the practical exigencies of getting things done. An approach to how things get done through the formal economy must look beyond production, or even finance, to include a broader spectrum of regulatory arenas: reproduction, the household, assets, and inheritance. State administration represents an unusually self-conscious and insistent claim of structure. It is precisely because of such insistence that we should attend to the uncertainty and fluctuation that formality hides and the intersecting agendas that sustain it.

Acknowledgements

For helpful comments, the author thanks Laura Bear, Neville Bolt, Tom Boylston, Amit Desai, Matthew Engelke, Claudia Gastrow, Jessica Jacobson, Deborah James, Jessica Johnson, Rebecca Jones, Hans Steinmüller, and former Editor Elizabeth Hallam and two anonymous reviewers for the *JRAI*. A stint at the Stellenbosch Institute of Advanced Study in 2019 was wonderful for developing ideas, and the author thanks STIAS and members of our research group, 'The New Middle Class in Africa in Comparative Perspective'. Research was funded by ESRC Future Research Leaders grant ES/N003071/1.

NOTES

¹ The analysis draws on a year's ethnographic research (2017) on the nexus of property, inheritance, and the state in Johannesburg. This included shadowing deceased estates officials, property valuers, wealth management practitioners, and lawyers; attending court hearings; and sitting in on a large number of inheritance-related meetings and mediations in government offices, NGO consultation rooms, community advice offices, and the Central Johannesburg Magistrates' Court. I conducted approximately fifty formal interviews and a larger number of informal interviews with those making plans to pass on property or in the midst of disputes, and with civil society organizers, community mediators, lawyers, and officials across government departments. Collaboration with legal NGO ProBono.Org meant preparing policy recommendations and discussing research findings at a 180-strong community event in Soweto. My ethnographic perspective is shaped by immersion in inheritance administration and disputes, and in policy and legal debates. This article presents generalized findings in the present tense to capture the enduring character of dynamics described. But, necessarily based on a snapshot, it does not address events since the fieldwork such as restrictions in public services caused by COVID-19.

² Notwithstanding the historically shifting interplay of rural houses/households, lineages, and individual heirs (see James 1988).

³ Approximately £15,000 in 2017.

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Formalité fluctuante : propriété immobilière, héritage et économie officielle dans l'Afrique du Sud urbaine

Résumé

Les travaux de Malinowski nous ont rendus sensibles à la manière inégale dont les institutions modèlent les vies et les relations. À sa suite, cet article développe une approche de l'économie formelle qui combine, affine et élargit les théories des infrastructures d'État et de marché en anthropologie politique et économique. Dans le contexte de l'Afrique du Sud urbaine, il examine la question de l'héritage de biens immobiliers au sein de la majorité noire, autrefois exclue du droit à la propriété. En se concentrant sur l'économie formelle, il va au-delà de la production pour examiner la manière dont la reproduction sociale (la transmission de la propriété) s'insinue à travers des processus d'État disjoints. L'article fait valoir que l'économie formelle est entretenue par des interprétations particulières de ses scénarios : différents acteurs relient des fragments de processus dans leur propre projet, sans beaucoup s'intéresser à la logique officielle théoriquement à l'origine des systèmes. Dans un contexte où les responsabilités de l'État sur la transmission de l'héritage se sont élargies, l'avancement des frontières du formalisme met en évidence le caractère fluctuant de celui-ci : les abstractions apparemment cohérentes des institutions prennent effet de manière décousue.

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