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## **Affective Justice: The Racialized Imaginaries of International Justice**

*This article contributes to contemporary debates in the anthropology of international justice by exploring how narratives about the International Criminal Court have been applied, understood, and contested. It traces the way that justice is materialized and made legible as a domain of practice that is predicated on deeply embedded racialized logics, which are themselves obscured in the process. The article focuses on how bodies, psychologies, and social imaginaries come together to produce the terms on which justice is materialized, disaggregated, ruptured, and made legible again. This is demonstrated through the introduction of “affective justice” as a framework for understanding justice as a social practice. Through several ethnographic examples, this article illuminates how embodied affects at the micro level underpin emotional regimes that are expressed in a diversity of social practices, which then have a collective capacity to influence notions of justice at the macro level. The examples illuminate how international justice assemblages interact to constitute affective justice in three interrelated domains: technocratic practices, psycho-social embodied performances, and emotional regimes. When examined through anthropology of international justice lenses, each of these domains offers insights into how people draw upon racial imaginaries to produce and refashion justice through practice. [affect, emotion, law, race, International Criminal Court, international justice]*

In international law, the *duty to prosecute* serious international crimes was first established in a series of treaties recognizing specific atrocities as requiring legal intervention. In the contemporary period this duty has been prioritized to such a degree that institutions such as the International Committee of the Red Cross (deploying its Rule 158) have insisted that there is an obligation under customary international law for states to investigate and prosecute international crimes. The founding of the International Criminal Court (ICC, the Court) also reflects young activists’ preoccupation with prosecution as the chief mechanism for mitigating certain kinds of violent crimes. The Court came into force on July 1, 2002 through the Rome Statute of the International Criminal Court (Rome Statue). With a mission to prosecute crimes against humanity, war crimes, genocide and the crime of aggression, the Court has jurisdiction among 123 member-states to pursue crimes committed after that date.<sup>1</sup> One of several institutions engaged in the growth of the rule of law movement, the ICC is constituted through a multilateral treaty order that enables the jurisdictional reach of international legal institutions and their associated liberalist principles.

Under the Rome Statute, member-states are held responsible for protecting the lives of their citizens from mass atrocity violence. Within the mandate of the Court, the commitment to end impunity for those seen as evading justice is the primary mechanism by which this protection is brokered. The Court’s much-vaunted call for an end to impunity is reflected in a moral discourse that emphasizes supporting those victimized by violence through the pursuit of those most criminally responsible, including heads of state, with an insistence that *no one is above the law*. By attributing culpability to high-ranking leaders who may

have ordered yet not enacted violence, the ICC has perhaps done more than any other institution to generate both the contemporary rule of law movement in response to localized controversies and the subsequent critiques of this movement.<sup>2</sup> Despite its influence at the level of discourse, the ICC has struggled to pursue and conclude legal cases. From its inception in 2002 until fall 2018, the Court pursued only twenty-two cases across several states related to nine events. It has issued indictments for thirty-six individuals, including twenty-seven warrants of arrest and nine summonses to appear before the Court, all concerning Africans victimized by violence, African perpetrators, and African territories. The all-African composition of the Court's indictments over the first two decades of its operation has led to negative responses to the Court's work, with some critics calling out structural inequalities the ICC overlooks and, by extension, perpetuates.

To illustrate the emotional fallout, I highlight one high-profile debate that began in 2009 when the ICC prosecutor issued the arrest warrant for Sudanese president Omar al-Bashir (Rice 2009). This marked the first time that the United Nations Security Council (UNSC) had invoked its referral power (under Rome Statute Article 13(b)) of a particular situation to the ICC prosecutor.<sup>3</sup> The referral was predicated on the UNSC's determination that Sudan constituted a threat to international peace and security under Article 39 of the United Nations Charter, and that the prosecution of the perpetrators of the human rights violations in Darfur would help to restore stability in the region.<sup>4</sup> The government of Sudan objected to the exercise of this jurisdiction, arguing that both the UNSC and ICC violated the country's sovereignty given that Sudan had not ratified the Rome Statute (Jalloh et al. 2011, 8). Court agents can trigger jurisdiction through a state self-referral for investigation and possible prosecution under Article 13(a) of the Rome Statute. However, given that leaders are unlikely to genuinely investigate their own actions, jurisdiction can also be triggered through the prosecutor's *proprio motu* (one's own initiative) referral power (Article 13(c)), as well as through a referral by the UNSC (Article 13(b)). The latter has been controversial because it can involve referrals of parties that have not consented to the Rome Statute's jurisdiction; the ICC does not otherwise have universal jurisdiction and is meant to only act in those member-states that have signed and ratified the Rome Statute. For example, Iraq, Afghanistan, the United States, Russia, China, Sudan, and Syria are not under the jurisdiction of the ICC. Additionally, more than half of the states that are permanent members of the UNSC have refused to submit their states to the jurisdiction of the ICC. Since the ICC has only sought to reach beyond its jurisdiction in African cases, the Court has been subject to accusations of inequality, racism, and selectivity against African countries.

In immediate reaction to the arrest warrant for al-Bashir, the Sudanese government expelled more than a dozen humanitarian aid organizations and workers, leaving more than one million people without access to food, water, and healthcare services and further complicating the peace negotiations that were underway (Akhavan 2009, 648). In addition to the Sudanese government, the Arab League, the Organization for Islamic Conference, and some members of the UNSC (most notably China) also objected to the arrest warrant (Murungi 2012). For its part, the African Union (AU) responded by requesting that the UNSC defer the ICC prosecution against al-Bashir, arguing that a legal process would "undermine ongoing regional peace efforts in which Mr. al-Bashir was actively participating" (Kimani 2009). The UNSC showed minimal response to the AU's request, considering it only briefly before declining to act on it (Jalloh, Akande and du Plessis 2011, 8). The AU then called on its members to not cooperate with the ICC's order (Akande 2003, 618–650; 2008; 2009, 333–52; Jalloh et al. 2011).

The AU is the largest Pan-African organization with an expanding mandate to achieve greater unity, solidarity, political cooperation, and socio-economic integration for African peoples. State agents of the AU, initially strong supporters of the ICC, have recently adopted an oppositional stance that reveals the extent of discontent with the Court. In regard to al-Bashir's indictment, the AU insisted that the "search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace," and also reiterated a concern about a possible "misuse of indictments against African leaders" (Kimani 2009). As noted, the UNSC denied the request, resulting in the AU's 2011 decision not to cooperate with the arrest and surrender of al-Bashir to The Hague. Up until the Sudanese revolution, which led to the deposing of al-Bashir, he has traveled to various African ICC member-states without arrest.

Various members of the political-legal organs of the ICC, such as the presidency and the Office of the Prosecutor, respond to these controversies and challenges by consistently projecting the core logic of legal accountability as the sole appropriate and objective strategy for ending impunity. In particular, the ICC routinely individualizes collective violence through the projection of the figure of the victim in relation to the perpetrator. For example, the Gambian lead prosecutor for the ICC, Fatou Bensouda, has publicly asserted that the Rome Statute is her Bible. "It's not about politics but the law," Bensouda explained at a public forum in Albany, New York, in April 2012, as she was transitioning from deputy prosecutor to lead prosecutor of the Court. "I will use the law to uphold justice," she asserted. In emphasizing that the Court's mandate for justice centers on serving victims through legal accountability, she argued:

We should not be guided by the words and propaganda of a few influential individuals whose sole aim is to evade justice but, rather, we should focus on, and listen to the millions of victims who continue to suffer from massive crimes. The return on our investment for what others may today consider to be a huge cost for justice is effective deterrence and saving millions of victims' lives.<sup>5</sup>

Prosecutor Bensouda's performative plea for ICC justice was delivered in the name of "the victim." Deploying what I call a *sentimental legalism*, her narrative construction follows the logic of a liberalist legal discourse that functions through legal encapsulation of its subjects. It equates justice with the law and invokes a mission of protecting "victims" against powerful perpetrators who have enjoyed impunity for too long (Ross 2012; Simpson 2015). This discourse of "saving victims" by making high-ranking perpetrators individually responsible through judicial trials in effect links the notion of protection—and by extension the notion of prevention—to a very particular application of legal justice. It serves as a sympathizing strategy that neatly condenses the protection of victims with the rejection of impunity for perpetrators and reifies the legal tool of "holding perpetrators accountable" as the only appropriate mechanism for justice. It also tells a celebratory story of the rule of law operating through objectivity, predictability, and empowerment to end impunity and, ultimately, to curb political violence. As obvious and appealing as this may seem in the abstract, attempts to map this logic onto particular African contexts through legal actions have generated profound disagreement, dis-ease, and discord. These manifestations of ICC justice presume a color-blind racial indifference as a fundamental operating principle that renders senses of racial representation as irrelevant in the international law landscape. The consequence is that, for the ICC, the racial politics of African indictments are decentered from its public discourse.

I introduce the term *affective justice* to signify the embodied and regimented assemblages of practices by which people make sense of and project their understandings of justice. Law garners its authority through biopolitical affects that produce various forms of encapsulations. Through this process, its power is made real through various emotive appeals. Expressive practices reflect utterances that allow relevant components of justice assemblages to exercise their related capacities yet retain their component properties. This, in turn, produces new discursive domains and further concretizes preexisting forms of segmentation. Those victimized by violence are captured in sound bites and captions, and represent a hyper-embodiment of suffering that can be acted on by new technologies of protectionism. These figures are increasingly racially embodied as male, as black or brown, and/or as Muslim, and the responses to such racialized justice sensoria can look and feel a particular way. This is not because of something endemic to race or ethnicity or gender. Rather, because of the way that the symbolics of race are entrenched in structural inequalities, thereby operating within particular assemblages of cultural meaning making, power, and possibility. As a consequence, what we see is that the fiction of difference is reproduced according to particular modes of seeing, speaking, feeling, and engaging. Practices of *seeing race* (or presuming not to see it)—however unconscious or conscious—are central to shaping the affective landscapes within which the politics of the “victim” and the “perpetrator” is installed. These forms of representations demand certain priorities with regard to how they are protected and enforced.

What is the function of the African racialized body in relation to how international justice predicates on a logic of isolated “victims” and “perpetrators”? What racial imaginaries emerge and are perpetuated through the collective production of international justice? What does this tell both scholars and policymakers about the modes of seeing, speaking, feeling, and engaging that are required to sustain (or to resist) the dialectic of perpetrator/victim (survivor)? How are those modes shaping affects around international justice? And how might certain affects that are actualized through passionate utterances—such as expressions of anger—illuminate other frameworks for understanding violence and its causes, such as structural inequality? As we examine various international justice assemblages involving African constituencies, it becomes evident that the manifestation of justice (as possibility or reality) may look very different from intended (western) frameworks precisely because of underlying differences in structuring fields of power (i.e. how various colonial legacies shape how justice *feels* in particular spaces). These various and competing responses are rhizomatic, unstable, and critical to understanding sociality, justice and inequality in a globalizing world.

### **Situating Affective Justice through the Study of Affects and Emotions**

Notions of justice have been mapped against three broad categories of understanding: philosophical, analytic, and practice-oriented. The contributions of Jacques Derrida and John Rawls have been especially important to developing a coherent philosophical understanding of justice as a domain by which fairness is established through rights and duties and in relation to achieving justice through the law (see Derrida 1990, 919–1045; 1994; Rawls 1971, 1993, 1999). As an analytic category, justice has been understood as an expressive domain through which people organize their ideas about what is morally right and fair as well as what is ethical (Frege 1977; Frege, Black, and Geach 1952; Locke 1963a, 1966b; Malcolm 2001; Russell 2009; Wittgenstein 1953). When understood in terms of practice, justice is seen as being produced and challenged by the materiality of people’s actions through which meanings of justice are lived.

Socio-cultural anthropology has long been interested in the study of emotions (Abu-Lughod 1986; Geertz 1973; Lutz and White 1986; Mazzarella 2009; Obeyesekere 1985; Rosaldo 1989; Sahlins 1976; Scheper-Hughes 1993; Stewart 2007, 2017; Williams 1962). Over the past decade, research has shown that emotions are a significant affective factor that shapes the lives of individuals and thus the structure of society (Barreto 2010; Bertolino 2010; Clough and Halley 2007; Davies 2010). Despite the insights opened up by anthropologists theorizing emotion (Hollan 2011, 2012; Hollan and Throop 2008; Throop 2010), political legal approaches, in particular, have been slow to apply the study of complex macro global formations within which emotions circulate. Influential politico-legal anthropologists have explored how people make and remake their social worlds under conditions of conflict and instability, and much of this work examines notions of violence and social reconstruction through the daily texture of meaning making (Nordstrom 1997; Shaw 2007, 183–207). However, these anthropological studies do not take up the role of affects and emotions in mobilizing post-violence (and violence prevention) practices. Nor are they concerned with the larger global assemblages within which such socio-political practices circulate.

Legal anthropologists engaged in the study of transitional justice and international court institutions (even those who focus on emotive practices), miss the opportunity to move beyond frames that individualize emotions and embed them in legal solutions. Richard Wilson's *Incitement on Trial: Prosecuting International Speech Crimes* (2017) demonstrates this point. Wilson's analysis centers on the type of speech practices, what he calls *revenge speech* that can contribute to violent crime. He examines how various armed conflicts are driven by racial, ethnic, national, or religious hatred. By demonstrating the need to address the relationship between speech acts and crimes against humanity, including genocide, the optic of analysis is focused on how particular speech acts contribute to such crimes. It highlights the role of ordering in the perpetration of mass atrocity violence and argues that incitement should be seen as a form of complicity, in turn leading to criminal liability. In advocating a framework for monitoring political speech, the book rethinks criminal liability as a measure for culpability.

Other work by Wilson, such as his forthcoming chapter *The Anthropology of Justice After Atrocity*, also illustrates this focus on individualized criminal culpability. It is concerned with criminal liability, hate speech, and post-atrocity violence, and argues that not only have human rights become the central language of justice worldwide but also that the victims of a mass atrocity want legal accountability for such violence. By mapping a review of various approaches to the anthropology of international justice that reorient justice in broader terms, he argues that, given that survivors use human rights language to advocate for the legal accountability of political leaders who commit those crimes, analysts need to pay attention to the calls for legal accountability for perpetrators of violence. This kind of legal triumphalism—advocating for a framework for survivors of violence against various offending political elites—depends on the presumption of a “survivor/perpetrator” dyad.

As morally important as it is to support the cause of those victimized by violence, the survivor/perpetrator dyadic construct advocated in Wilson's approach actually works through affective and emotional practices that should not be disarticulated from what such emotions do in the world. To omit this analysis and emphasize only victims or survivors as the subject of inequality has resulted in a misunderstanding of what hate speech does to produce such constructs or how such speech acts operate within larger domains of power and inequality. By focusing on individualization and relegating analyses of the construction of perpetrators of violence to the margins, Wilson contributes to the (re)production

of a liberal and individuated moral universalism that disarticulates the conditions of its making.

A rapidly growing body of critical scholarship is exploring the particular ways in which emotions and affects work through regimes of expression and practice to construct particular social logics (Berg and Ramos-Zayas 2015; Englund 2015; Friedner 2015; Gribaldo 2014; Kravel-Tovi 2015; Magee 2015; Segal 2016),<sup>6</sup> although most studies remain at the micro level of the individual, as with Wilson's (forthcoming) concern with survivors and perpetrators. While this optic provides part of the story of hate speech leading to propelled violence in the contemporary period, it misses the ways in which the grammar of suffering disguises the structural conditions of its making. Focusing on hate speech without locating it within broader domains of emotional power makes it difficult to reckon with the complexities of today's justice. This article demonstrates that it is critical to understand that both survivors and perpetrators of violence exist within larger structures of inequality and, therefore, each is integral to sustaining the problem of power in particular ways. Contemporary forms of international legalisms are part of a larger tyranny of violence that does not stop with the individualization of criminal responsibility and the performance of justice in a courtroom trial. They exist within colonial inscriptions of plunder and extraction that structure the forms of violence within which they circulate. They are constitutive of the continuation of empire in the contemporary moment, and their expression through affective registers requires certain expressions of emotional and racialized bodies at the preclusion of other possibilities. Contemporary justice alliances manifest along the fault lines laid by global empire and white supremacy. By moving from the tendency to adopt the individualization of survivors and perpetrators that (neo)colonial imaginaries privilege—and pushing our analysis toward an investigation of how transnational assemblages of power are alternately fabricated and dismantled—I begin to illuminate features of international justice that have been widely neglected in the anthropology of justice.

Following Sara Ahmed's (2004a, 2004b, 2010) work on what emotions do in the world, I explore what people do with those emotions as well as how affects shape socio-political consciousness and how they are manifested and rendered visible. I bring this approach to socio-cultural theorizing of international justice by showing how affects reframe constituencies in relation to emotional manifestations. This has critical implications for understanding the way that justice-making practices are not only emotionally propelled but are also deployed affectively, and in that process contribute to the (re)construction and reification of racialized differences. As a constellation of complex sensations, feelings are actualized socially and provide possibilities for theorizing justice through contingency. The ICC, for example, exists within international legal assemblages that constitute networks of emergent properties irreducible to what Deleuze and Guattari (1987) refer to as "component parts." Within the context of national and international law assemblages, this way of orienting relationships in the context of whole units being seen as inextricable combinations of interrelated parts departs from the idea that social relations are structured hierarchically or are reducible to other things (also see De Landa 2006). This point of departure moves our thinking toward an anthropology of international justice that centers on how emotional expressions are deployed to continually construct racial difference. Through that process it is critical to include in our understandings of international justice the way that affective and emotional regimes are mobilized to produce the feelings that inspire not only justice but also hate and violence. To clarify the framework through which affective justice practices play out, I outline three domains—legal technocratic practices (biopolitical), psycho-social

embodied affects, and emotional regimes—that shape international criminal rule of law assemblages and invigorate the workings of affective justice.

### **Illuminating Affective Justice through Analysis of Technocratic Practices, Embodied Affects, and Emotional Regimes**

The first domain that underlies affective justice is that of legal technocratic practice, which is primarily concerned with the biopolitical management of life and death. Biopolitics is understood as exercising power over bodies, ranging from various techniques of subjugation to the control of people and constituencies (Foucault 1980, 140). It involves the management of the population as a political problem; by extension, it involves the legal basis on which bodies are managed and measured through particular legal technocratic classifications. Following Foucault, economic, political, psychological, and classificatory domains are all key to the ways that bodies and populations have disciplined citizens, and continue to do so (Foucault 1977, 252–53). In international legal assemblages, biopolitics is involved in the implementation of legal processes to manage bodies and to train stewards and publics to participate in the formal or informal implementation of legality. Legal technocratic classification is connected to biopolitical practices by combining relationships among biology, politics, law, economy and technocracy (Foucault 1981): in this article's case, as related to legal practices. It is a form of disciplinary power that exists across different scales to classify populations juridically as well as to manage life and render some deaths acceptable. These legal technocratic classifications for managing life and death are structured in relation to various scientific-legal rationalities that are at the heart of international justice landscapes. In ICC assemblages, as with other justice domains, the management of violence is also a biopolitical problem in which state leaders participate in the codification of laws in order to legally manage life and punish those who offend it. In the journey leading up to enactment of the Rome Statute, this process involved complex technocratic practices over many years—the drafting of the treaty, its negotiations, its ratification, and its legal promotion. It has produced the social fields in which regimes of international legal knowledge, like other justice domains, have taken shape and circulated through particular narratives.

This biopolitical process of making international criminal law is productive of a rationalizing regime in which notions of *victims/survivors* and *perpetrators* are popularized. As such, the process is also central to shaping the basis on which international legal morality, itself, is normalized. By extension, there is also a biopolitics of feeling about those victimized by violence that is established through narrative (Schuller 2017).

Central to such legal technocratic practices are the ways in which some justice practices (i.e., their ontologies and temporalities) displace other practices. This process of displacement is what I call *legal encapsulation*. This is an adaptation of Susan Harding's (2000) notion of *narrative encapsulation*, which involves the production of dominant narratives that displace others. I am interested in the discursive legal technocratic practices that, in the negotiation of justice, turn attention from structural equality and to the language of the law and the iconic victim of mass atrocity violence. This biopolitical production of law works through legal technocratic institutions, such as courts, and morally driven protections of victims. It leads to displacing the political basis on which injustice might be addressed with the celebratory belief in an international judicial order to save lives. In understanding how legal order operates, it is important to note what the biopolitical production of law displaces, and how it ignites affective responses to other conceptualizations of justice, such as redistributive justice or substantive equality.

The second domain, psycho-social embodied performances, represents the emergence of both a sensorial sphere and a consciousness about the physical body within which

particular affects rise up. Rooted in the philosophical ideas of seventeenth-century philosopher Benedictus de Spinoza (1985, 1990, 2000) and later expanded by French theorists Gilles Deleuze and Félix Guattari (1987) the concept of affect continues to energize social scientists and cultural theorists. Some describe affect as “part of the pre-subjective interface of the body with the sensory world it inhabits, a linkage registered at the level of the visceral, the proprioceptive, and other sites where memory lodges itself in the body” (see Hirschkind 2006, 85; also see Massumi 1995, 2015). Other definitions emphasize the intense processual forces of affect. For some it involves “an impingement or extrusion of a momentary or sometimes more sustained state of relation as well as the passage—and its duration—of forces or intensities” (Gregg and Seigworth (2010, 1). In keeping with the definition of affect as experienced through bodily impulses yet propelled by particular sustained social sensibilities, and in exploring affects alongside emotions, power is seen through the dynamic interplay between embodied feeling and sociality. Here occurs the conjuncture of emotional responses with perceived senses of justice that may be materialized through various sensory impressions. Powerful and productive sentiments of anger, pain, and hope percolate around controversies that emerge when people feel that justice is not delivered as promised; and, in turn, those feelings produce forms of refusal or ways of reassigning the effects of displacement. One of the central ways that these forms of reassignment occur as a result of perceived displacement from legal encapsulation is through what I call *reattributive practices*.

These competing discourses jockey for influence, or reattribution, over the application of justice in African contexts. Reattribution is a process of reassigning guilt through rhetorical strategies that appeal to subjective and supposedly universal emotions but that shift the ontological domain on which competing conceptions lie. In law, attribution refers to the determination of whether a particular act can be connected to another entity, such as a person, corporation, or government. It emerges from the concept of liability and relates to the determination of responsibility for wrongdoing. My use of reattribution, however, extends beyond an oversimplified tie to the legal parsing of wrongdoing. It relates to the affective dimension of justice making through the process of *actively refusing, directing, and redirecting meanings of justice* through sentimentalized discourses that, at times, shift how culpability is understood. The distinct discourses described above—frameworks aligned with the ICC or with its critics—represent competing emotional domains that drive the way people comprehend and engage with notions of culpability and justice. These differences are mapped across particular spatial and/or temporal landscapes and shape the emotional fields and embodied responses. Both temporality and spatiality form how everyday relationships are experienced and felt by highlighting the contours of affects that are shaped through the layered influences of history, culture, power, and individual agency (Berg and Ramos-Zayas 2015; Berlant 2004). Reattribution, then, contributes to the production of affective justice through its role in the entanglement of complex bodily, biopolitical, and socially regimented configurations.

The third domain—emotional regimes—involves the production and contestation of international criminal law assemblages. It interacts with the first two domains but takes shape through particular discursive tropes by which justice is understood. Following William Reddy, an emotional regime is a “set of normative emotions and the official rituals, practices, and emotions that express and inculcate them,” and they are a “necessary underpinning of any stable political regime” (2001, 129). I extend this concept to think about how *emotional regimes* shape social climates and underpin popular, contemporary notions of justice and people’s emotional engagement with them. Through certain kinds of representational practices, such responses circulate within sometimes related or competing networks of

meaning production. These practices are indexed by icons, words, utterances, color, and hashtags often circulated through technologically driven campaigns. Through the encoding of bodily meanings and experiences, certain archetypal figures (e.g., victims, perpetrators, freedom fighters, heroes, and heroines) serve to reinforce the discursive appropriateness of images or symbols. For example, both the ICC's oft-repeated mantras of "justice now" and "no one should be above the law" and the AU's "Silencing the Guns" campaign (created to address violence in Africa before 2020) function in similar ways: they appeal to the production of universalist imaginaries that seek to translate feeling into action. Appeals to sympathy and empathy mobilize the power to activate citizens and craft the human rights citizen-consumer as an actor who has choices about what to prefer and how to engage (Laqueur 2009; Nussbaum 2013; Valverde 2015; Wilson and Brown 2009;). Feelings operate through agencies that are embedded in particular historical inscriptions and are part of itinerant responses that are often collective but never fully predictable; they may or may not align with the emotional climate being produced by justice campaigns.

The public that resides in the emotional landscapes produced by the ICC and its allies can be glossed as the "international community," which includes celebrities, ordinary publics, and Africans on the continent and in "the diaspora." Through similar strategies, the publics that reside in the landscape produced by the formation of a new African Court of Justice and Human and Peoples' Rights can be glossed as the "new Pan-African movement" shaped by African leaders. In the contemporary period, these new publics are being constituted both in person, at sites of judicial activity, and online, where humanitarian and legalistic concepts circulate, producing particular feelings about justice that compel actors to participate in various ways. Their messages become effective because they represent contemporary institutionalized norms through which expressions of emotional convictions are consolidated and regulated. Spectacularized through legal rituals and grassroots mobilizations, various campaigns and their afterlives have shaped epistemological frameworks of justice and law as modes of power, social ordering, and knowledge production (Foucault 1977, 2002). These formations have led to the rise of a new class of mobile rule of law experts (e.g., judges, civil society activists, prosecutors, defense attorneys) who are engaged in the exchange of legal techniques and transnational practices. While this outcome is well understood, little attention is devoted to their alliance with aesthetic and affective production of rule of law feeling regimes, which render the calls to action by these experts viable and compelling.

These three interrelated domains—legal technocratic practices, psycho-social embodied affects, and emotional regimes—come together messily through the rule of law movement to constitute *affective justice*. As these domains enmesh, an alliance between the instrumentalization of the law and expressive embodiments of law's regimes propels an articulation of what justice is and clarifies meanings of justice. This approach advances a theory of emergence that will foreground various affective responses to injustice and its operationalization within particular socio-historical regimes. The center of the rule of law movement includes histories of proclamations, treaties, laws, and categories such as "victims" "survivors" "perpetrators" (and so forth), and discourses and feelings that shape the ethos that inspire the work of international justice. This inspires feelings of "righting past wrongs," which are at the heart of the international justice project. Divergences on how to do this exist, however, as well as how agents arrive at their conclusions.

Seeing justice through the workings of biopolitical processes, affective embodiments, and emotional regimes demonstrate that contemporary international justice mobilizations do not gain power through singular and formalized law-making processes. Rather, such mobilizations gain power through ephemeral imaginaries and embodied moral responses

to perceptions of injustice. Central to affective justice are the ways that affects, as embodied responses, constitute publics by dislodging identity categories from their classification domain and relocating them as lived experiences played out through particular feeling regimes. These regimes highlight what people do with emotions and are connected not only to affects and their inner subjectivity but also to the biopolitical strategies through which possibilities for life and death are managed. The key argument is that international legal domains (such as the ICC) gain their power through the production of affective justice regimes. Within the imaginary of the ICC, the two central regimes center on the “survivor/victim to be saved” and the “perpetrator to be stopped.” In Pan-Africanist modes, by contrast, justice regimes are often articulated through anticolonial reattributions, or what I refer to as *freedom fighter* narratives. For example, during Kenya’s anticolonial independence struggle in the 1950s, Jomo Kenyatta—the father of Uhuru Kenyatta (and Kenya’s president from 1964 until his death in 1978)—was indicted, charged, and imprisoned for both murder *and* also for his efforts to free Kenya from British colonial rule. Although he was convicted as a perpetrator of criminal violence, his track record as a revolutionary inspired reverence from large numbers of Kenyans who viewed him primarily as a freedom fighter for Kenya’s independence. Such sentiments have been deployed to push back against what supporters see as structural injustice, replacing the ICC’s individualization of criminal responsibility through the figure of an “African perpetrator” with iconic anticolonial narratives through which to undermine the sustaining presence of Western imperialism.

Though cast as politically oppositional in certain contexts, these various justice imaginaries—*victim/survivor*, *perpetrator*, or *freedom fighter*—each operates through emotionally infused icons that draw on deep-seated histories and psycho-social feelings that compel social action: bodily responses and social action. Freedom fighters become icons of justice, redemptive bodies that preserve the traces of past actions and bring them into the present as *potentials*.<sup>7</sup> ICC narratives gain strength through the dislocation of suffering and injustice and their relocation into the contemporary commons of “the international community.” As such, survivors of violence emerge as proxies through which law’s architecture is constantly retooled, resharpener, and remade as needed. The use of the term perpetrator reflects the production of a subject whose being highlights the moral force of the anti-impunity movement. This moral force works through the body emotionally and through the meanings people bring to justice practices. I show that these imaginaries are made real through technologies of feeling expressions and narrative devices that are used to expand, displace, and recover strategies to end injustice, thereby innovating new affective justice formations even as they build on old ones.

### **Affective Justice and Reattribution in Practice**

When the ICC was launched, advocates aspired to use international law as a beacon of emancipation and a solution to a perceived absence of justice across the African Continent. The thirty-two African states that worked through their constituencies to ratify the Rome Statute in 1998 initially embraced the rule of law movement as an extension of their commitment to Africa’s development. They did so publicly, with ceremonial acceptance and celebratory claims to membership. The memory of violence that unfolded in African regions in the 1980s and 1990s invigorated a moral conscience to act. To embrace the ICC, African stakeholders had to transcend residual feelings of indignation and anger from the inaction of international publics during the Rwandan genocide, the injustice of South African apartheid, and the multiple impacts of European imperialism across the continent. To accomplish this emotional transition, many actors across Africa took moral leadership from luminaries such as Bishop Desmond Tutu. His emphasis on “truth and reconciliation” in the South African

context privileged setting aside public manifestations of anger in response to injustice of “past wrongs” and forging pathways toward “forgiveness.” Forgiveness represented the emotional blooming of “truth,” which in Tutu’s cosmology emphasized the institutional, and not only the personal, dimensions of racialized violence (i.e. apartheid). The truth and reconciliation strategy involved highly public and often exaggerated displays of affects, including particular ways of articulating truth and of performing forgiveness in order to produce a “New South Africa” predicated on collective justice.

In Rwanda, the shocking images and stories of the mass slaughter of over half of a million Tutsis—black African bodies—and the inaction of international actors—represented by white leaders—contributed to the eventual establishment of two modes of justice: the practice of “traditional justice” known as *gachacha* (“sitting under the tree”) and the institutionalization of the International Criminal Tribunal for Rwanda to adjudicate those deemed most responsible for the violence. *Gachacha* involved its own cultural and performative logic by which people were expected to articulate suffering, admit to their crimes, and perform reconciliation. In either case, emotionally regimented conceptions of victims and perpetrators, as located within particular racialized bodies, were part of the reification of moral imaginaries in contemporary rule of law landscapes. A close analysis reveals how international and other justice forms operate through emotional constructs and carefully crafted campaigns. As noted above, legal encapsulation involves legalistic processes that make legible the subjects of the law. This is where legal technocratic international processes connect with micro-individual bodily affects and feeling expressions.

With international justice, it is the figures of the victim/survivor and perpetrator that are encapsulated within international legal frames.<sup>8</sup> The question becomes: How are these modes of seeing, engaging, and feeling moving through a biopolitical apparatus that is taking shape through assemblages of justice feelings? It is important to recognize that the ICC engages in justice making in precarious arrays of infinitely de-territorialized interrelationships and through a wide variety of actors who possess differential forms of power and privilege. Thus, international justice cannot be sacrosanct or a stand-alone space for justice making. Rather, sets of relations—for example, in international trials that involve prosecution and defense attorneys, spectators, perpetrators of violence, security guards, and so forth—are discrete parts within an assemblage that exists in a contingent “patchwork” of relationships. Following Deleuze and Guattari, this patchwork contains antigenealogical and irreducible components that interact with each other while maintaining their properties (De Landa, 2006). Applied to international legal spaces, the composite parts (e.g., adjudicatory power) involve authorial language, hierarchical relations, and temporal and spatial scales, as well as interactions that, while messy, present themselves as objective and honoring legal certainty. Thus, contemporary rule of law assemblages function through particular and often mundane affective regulatory mechanisms that are spread through a variety of institutions and discursive channels, including campaigns, indexes, slogans, and social media such as Twitter and Facebook.

Through the circulation of feeling expressions within these new spaces, affective justice reflects embodiments of feelings that are created through discursive practices. These Contestations involve the vying for control of meanings of justice through which to challenge social norms and produce new ones. Thus, justice seen through the remit of the ICC is about the way that people come to understand, challenge, and influence legal orders through their behaviors, interjections, and interactions. The practices involved are infinite: examples include treaty drafting and ratification, adjudication to trial attendance, language negotiations, joking practices, refusals, rejections, withdrawals, noncooperation declarations, and counter-campaigns. Embodied feelings and emotional expressions connect these practices,

drive such acts, circulate them globally, and clarify the central role of affective justice in the making of international criminal law.

### **Anti-Impunity and the Legal Encapsulation of Victims/Survivors**

The anti-impunity movement was driven by a commitment to ending impunity and the foundational ICC dictum that no one is above the law. This movement emerged against a backdrop in which state actors were seen by their publics as exercising impunity at will. In the twentieth century, members of the movement responded to widespread human rights abuses, such as rape or torture, by demanding that institutional mechanisms be deployed to hold leaders legally accountable for criminal actions. As just noted, this call to end impunity was to ensure that no leader would be above the law. Therein grew the rule of law movement for a legal infrastructure to support legal accountability. However, anti-impunity movement organizers encountered an inherent problem: despite the ICC's institutionalization, it does not have the privileges afforded sovereign states, such as enforcement power, a police force or military, or the assumed loyalty of a citizenry. It exists through cooperation among member-states and is, therefore, dependent on the moral commitments of constituents to accomplish its vision. It also does not have universal jurisdiction, meaning that only those states that ratify the Rome Treaty (or that are referred by a UNSC intervention) are obligated to follow its jurisdiction and rulings. Because of this absence of traditional mechanisms of force and political legitimacy, as well as its limited forms of legal authority, the ICC relies on emotionally driven appeals to gain cooperation, legitimacy, and effectiveness. The demonstration of affects through emotional performances are central to the power of international justice and the emergence of twenty-first-century justice institutions. These include the ICC, AU, and the growth of human rights NGOs (Deleuze and Guattari 1987; Foucault 1980, 1998, 2009; Heller 1996).

Various NGOs articulate their work through anti-impunity sentiments; have established offices both at home and abroad; and want to universalize this discourse by drawing linkages among "victims everywhere" and presenting a universal legal remedy. As projected by the images on the homepage of the Coalition for the International Criminal Court website, the global justice movement is discursively built on images of the "most vulnerable": black and brown women, elders, and children. This contemporary imagery and the discourses invoked in international law circles can be traced in large part to the influential worldview of Ben Ferencz, the former investigator of Nazi war crimes for the Nuremberg trials, who himself fled persecution as a small child and identifies himself as motivated by affiliation with the victim population. Popularly billed as "the only living prosecutor from the war-crime trials that followed the Holocaust," his "victim-oriented" prejudicial-accountability stance has contributed to the mobilization of an assemblage of justice NGOs, such as Human Rights Watch, Amnesty International, and the Coalition for the International Criminal Court (Green 2014). Ferencz's collaborators worked with governments and built citizen support for a 1998 Rome conference to create the International Criminal Court, which led to the signing of the Rome Treaty. This occasion marked the institutionalization of a movement for which the narrative of anti-impunity and duty to prosecute reached far and wide. This narrative was propelled by many who themselves suffered abuses at the hands of violent government regimes and became influential advocates of international criminal justice. Proponents included Thomas Buergenthal, a former judge of the International Court of Justice (ICJ) and president of the Inter-American Court of Human Rights, Juan Mendez, Special Advisor to the Prosecutor of the ICC, President of the International Center for Transnational Justice ((CTJ) and Professor of Human Rights at American University; and in Africa activists like Netsanet Belay, a civil society worker and the Africa Director, Research and Advocacy,

at Amnesty International, who spent over two years in prison in Ethiopia as a prisoner of conscience. These political figures and human rights activists—working through the courts and the law, with large NGOs, or with human rights institutions—engaged in affective justice strategies that shaped a “duty to prosecute” narrative during the 1980s and 1990s, and molded the moral authority and power associated with appeals for those victimized by violence at the hands of their governments.

A radical impact of this narrative, which became popularized at the Nuremberg tribunals, was the emergence of the principle of individual criminal responsibility for certain serious violations applicable in crimes against the peace, war crimes, crimes against humanity, and violations in armed conflict. This led to the reclassification of criminal culpability in the post-1990s treaty construction period and the assignment of guilt to individual leaders. Central to the notion of anti-impunity for those indicted for mass atrocities was a form of reattribution of guilt articulated through an emotionally charged dictum, uttered publicly and privately in both formal and informal contexts: no one is above the law. This dictum is often articulated with absolutist declarations that everyone—from powerful state leaders to impoverished members of rebel groups—must be held equally accountable to the standards of prosecutorial justice.

In the post-Nuremberg era, advocates refined and disseminated passionate convictions that the rule of law cannot be questioned or overturned, and they deployed a related *you're either with us or against us* justice narrative to condemn any public critique. Justice is understood as being exercisable through legal methods and through the call to action *to protect victims wherever they are*.<sup>9</sup> A call to action is a particular regimented strategy through legal accountability. It reconfigures the spatial authority of international justice by supporting the reformulation of the sovereignty principle through claims of moral responsibility beyond borders. By insisting that international publics have a responsibility to protect victims everywhere, advocates' use of such narratives highlight the domains of affective justice. Introducing sentiments of “saving” alongside the moral responsibility of “acting” (where action is legal action), anti-impunity advocates established the building blocks to produce a legal solution out of a twentieth-century socio-political process. This solution, sentimentalized through the concepts of saving and holding accountable, represents liberal legality.

A key icon of international justice over the past fifteen years, Ferencz has been called on to open and close key ICC events and to speak at receptions. He also delivered the Office of the Prosecutor's closing argument for the ICC's first trial, that of Thomas Lubanga, with a statement that included invocations of “ending impunity” through the legal pursuit of individuals responsible for what is often articulated as the worst crimes against humanity. The enactment of justice through the enfolding of those victimized by violence into international legal action reflects *legal encapsulation* in its most hegemonic form: a biopolitical and legal technocratic practice. It is most vividly seen in the anti-impunity movement and use of the international law to “save the victim” from “perpetrator” impunity (Constable 2005).

Consistent patterns of controversy and conflict within justice narratives force a reexamination of the making of international justice frameworks to understand what justice projects do, how they do it, and in what way the desires and fantasies of their narratives emerge. When peoples' aspirations produce counternarratives, vocabularies, and legal institutions, including new geographies, within which to recalibrate justice practices, it is important to understand how particular affects make such aspirations possible and how they circulate to constitute new alliances that are regulated according to legal technocratic and social practice regimes and embodied in racialized terms.

### **Pushing Back and Reorienting the Terms of Justice**

In response to the perceived bias of the Court in emphasizing African indictments, some prominent individuals, including African leaders such as Rwandan president Paul Kagame, have offered passionate pleas against the Court. As he declared, “The ICC has been put in place only for African countries, only for poor countries. . . . Every year that passes, I am proved right . . . . Rwanda cannot be part of colonialism, slavery and imperialism” (quote in Kimani 2009, 1).

This comment, made in 2009, reflects the perspective of many in the African Continent who have begun to perceive the ICC not as the mechanism for a more hopeful future but rather as a force that seeks to continue a long and tragic history of exploitation, racism, and external control. In his opening statement at the thirteenth Ordinary Session of the Conference of the Committee of Intelligence in 2016, Kagame continued his critique:

Accountability for crimes is a principle that the African Union endorses, without ambiguity. But politicizing justice, and deploying it more or less exclusively against one continent, or pursuing it selectively for whatever reason, is not the answer . . . . It is a form of ‘lawfare’ where international law is abused to keep Africa in a subordinate position in the global order. (Mbaraga 2016)

This notion of the ICC as lawfare—the use of law to engage in social, political, or military battles—implies the deployment of law and its institutions to defeat African authorities through displacing perceived sources of violence.

Parallel responses of anger against such invocations of lawfare have included direct accusations of racist and imperial motivations (see Comaroff and Comaroff 2006). For example, at the end of an AU session in 2013, the Ethiopian prime minister and chairman of the African Union, Hailemariam Desalegn, argued that the “process [that the] ICC is conducting in Africa has a flaw; the intention was to avoid any kind of impunity, ill governance, and crime. But now the process has degenerated into some kind of ‘race hunting.’” (Laing 2013).

For many, the ICC has come to embody evidence that colonialism still exists, now in a new form. Critics of the ICC can, in turn, simplify the character of the critics, papering over their own public contradictions. For example, President Kagame has an international reputation as a leader preaching reconciliation, who as a child escaped during the killing of ethnic Tutsis, and who is now seen as having led Rwandans to rise above age-old divisions and the horror of genocide. Despite this, he is also popularly seen (especially by expatriots) as having exploited Rwanda’s tragic history to produce a Tutsi-dominated authoritarian regime with a track record of suppressing opposition and covering up its own violence (interviews on hand with author). As a strategy for managing this internal contradiction, he and others have attributed the violence to alternative sources.

Various members of the African Union who have pushed back against anti-impunity assertions of justice have insisted instead on the relevance of history and politics in reattributions of culpability and, thus, deliverance of justice. While the memory of the Holocaust haunts the historical imagination of various anti-impunity ICC supporters, it is not necessarily seen as central to the historical imaginary among those engaged in Pan-African mobilizations. Instead, some of those angered by mass atrocity violence in African countries look to African colonial and neocolonial tragedies for a counter set of affects, including long years of apartheid violence in South Africa and the genocide in Rwanda. As I have noted, one alternative involves blaming European colonialism to invoke sentimentalized narratives in support of the villager displaced by colonial settlers or the anticolonial freedom

fighter. The imposition of legal experiments in Africa to constitute the colonial state and its contemporary modes of governance and sociality were constitutive of mass displacement and devastation of earlier practices. This involved imperial domination of Africa's ancestral lands; displacement of the peoples on those lands; and the restructuring of social organizations, forms of governance, languages, and taxonomies that were foreign and lacked popular legitimacy (Burgis 2015; Cross 2018; Mamdani 2001; Shaw 1995). Much of Africa's relationship to legal justice was one that enabled such pillage. Though it would be wrong to draw direct or facile linkages, it is clear that the continuity of violence and the plunder of Africa's lands and peoples are related to residual colonial inscriptions (Shaw 1995).

Nevertheless, the relationship between colonial injustice and contemporary violence is complex, rhizomatic, and entangled. This is why a wide variety of African responses to institutions can be observed, such as to the ICC. Some involve NGO and legal social networks, including those engaged in anti-impunity advocacy. Others involve groups that are rethinking the causes and remedies of structural injustice. Here, sentimentalized narratives foreground structural injustice as a corruption of the justice principle. Sentimentalized expressions of the perceived racism of the ICC, as an institution, engender the anger of various African leadership constituencies. It is the presumption that justice must be extracted from structural injustice that has caused some African actors to argue for political rather than legal solutions. Echoing other "angry" performances, Yoweri Museveni, the president of Uganda, expressed his dismay with the ICC's indictment of Kenya's president-elect Uhuru Kenyatta and the international pressure to influence Kenya's elections against him. As Museveni said during Kenyatta's inauguration in 2013:

I want to salute the Kenyan voters on one other issue: the rejection of the blackmail by the International Criminal Court and those who seek to abuse this institution for their own agenda. . . . I was one of those that supported the ICC because I abhor impunity. However, the usual opinionated and arrogant actors using their careless and shallow analysis have now distorted the purpose of that institution. . . . In Uganda's case between 1966 and 1986 we lost about 800,000 people. How did we handle that sad history? Have you ever heard us asking the ICC or the United Nations to come and help us deal with that sad chapter of our history?<sup>10</sup>

These sentiments, communicated to African constituencies and delivered in tones of anger and irony, reflect the perception that the rule of law movement has little space for considering the longer histories of inequality that underlie the structures of violence on the African continent. They also encapsulate the resonant feeling of resentment against the United States as a contemporary empire. This is especially seen as being relevant with France and England—former colonial hegemony—which continue to maintain a patronizing relationship with former African colonies that is expressed, among other ways, through deep ties to military training, the use of force, and threats of regime change through international legality. This has occurred not only in military interventions (with NGO funding to move forward anti-impunity work) but also with judicial control through international courts. The predominance of African cases before the ICC is causing many African heads of state, lawmakers, and regional constituencies to feel that the colonial management of Africa has returned in the form of international institutions such as the ICC. Articulations of critique and dissent, even by African warlords, can gain strength and legitimacy because of a perception of underlying hypocrisy.

International law insists on an original presumption that justice should be universally protected and pursued for all, not just for Africans. The perception of a double standard in practice has led to the assertion by many Pan-Africanists concerned that Western, liberal, sentimental legalism—embodied by the anti-impunity movement—only serves to erase politics. This was especially the case following the spring 2019 ICC Trial Chamber’s refusal to accept the prosecutor’s request for authorization to begin an investigation into whether crimes were committed in Afghanistan by the US military. This lack of activity on investigating US complicity in violence, and instead sustaining a focus on African perpetrators of violence, has produced a perception of the centrality of politics in legal decision making. Such a perception that there are double standards has produced sentiments around injustice in the application of international criminal law. As a result, popular global governance mechanisms such as the ICC are increasingly seen as a tool for maintaining Western power. Some who are protesting the encapsulation of justice are working to redefine it by retelling history and reattributing culpability.

Within this dialectic, though, many contradictions and complexities persist. For example, critics inside and outside Africa recognize that it is contradictory for both Prime Minister Hailemariam Desalegn and President Museveni to speak against the ICC while they have been accused of crushing anti-opposition movements, leading to the deaths of thousands of their citizens in Ethiopia and Uganda, respectively (MacDougal 2016). Citizens of various African countries approach these complexities in ways that both demonstrate ambivalence toward their leaders and recognize deep structural inequality that gives rise to corrupt and authoritarian leaders.

A new generation of African professionals and progressive activists understands that the imposition of colonial structures of rule had a crucial determinative effect on the postcolonial conundrum (Mamdani 2001). They point to the myriad ways that, throughout postcolonial Africa, structural inequalities have produced and still produce the conditions under which extreme forms of material violence take shape. Within this broader critique, there is a range of positions regarding how to attribute culpability in relation to the unraveling of formal colonialism and how to reckon African complicity in mass atrocity violence and the perpetual emergence of neocolonial structures (Grovogui, 2015).

Beyond who should be held accountable for mass violence, the implementation of the Rome Statute and the subsequent events related to the ICC’s Africa indictments have heightened additional debates and emotionally fueled arguments about the ability of international human rights law to provide *real* justice to victims, as they themselves define it, let alone to resolve *political* violence in Africa through *judicial* solutions. Many have come to resist anti-impunity arguments that the ICC’s forms of “legal justice” are the best way to pursue *real* justice, rejecting the Court as a mode of “justice activism” and citing profound structural inequalities as the *true* basis for African violence.

The imaginaries surrounding justice are directly related to racialized social and historical landscapes. Senses-of-justice landscapes are constituted through feelings, expressions of racial injustice, and/or through narrativized or aesthetic assignments of racial relevance. Through these productions, racial imaginaries are born within what Achille Mbembe, quoting W. E. B. Dubois, referred to as “the normalization of human racial typologies in which blackness has been stigmatized” (Mbembe 2017, 32). Racialized imaginaries that are part of the construction of victims and perpetrators are often presumed to be outside the realm of these practices of construction, and seen as objective and nonprejudicial with precedents external to sociocultural, political, and precognitive scrutiny. The paradoxical presence of racial difference set alongside race-blind legal discourses surfaces in the “hidden zones of the unconscious,” in which race is both a site of reality and “truth of appearances”

(Mbembe 2017, 32). For the body is a site for the unfolding of injustice. In other words, the embeddedness of history in future socio-political effects is experienced through the iconic body, which is constructed through sentimentalized affect (also see Massumi, 2015, 90). Consequences of race are, therefore, a function of modernity in which trans-Atlantic slavery led to the violation of particular black bodies, and later colonialism solidified the ways that those bodies would become governed. Colonial subjugation predicated on the logic of salvation, broadcasting the still potent narrative that black bodies must be alternately rescued from their predicaments and held accountable for their complicities in (post)colonial violence. Thus, accusations by African leaders of ICC racial selectivity are not simply a fictional and strategic invocation of an imaginary category. They are also a resurrection of the consequences of the fictive horror of scientifically constructed difference still felt to be shaping contemporary life in bodily, visceral and structurally relevant ways. This imbrication of bodies, histories, economies, discourses, and affects shapes the institutional practices by which larger socio-political concerns such as racial targeting—i.e. that the ICC is an extension of a colonial disciplinary apparatus—are used to reframe new justice narratives about contemporary events and actors.

Key to the reattribution work playing out in affective justice domains is to recognize how reassignments of meanings allow for dialectics of both subjugation and emancipatory possibilities. A sentimentalized Pan-Africanist discourse is now being employed to reorient the terms of justice as emancipatory, but this too is a construct through which to achieve “structural justice.” Some have insisted on a reorientation around how international justice for victims of violence is articulated.<sup>11</sup> This reorientation, which focuses on unequal political economic formations in African countries, encapsulates alternate affective icons. Justice imagery is not just unfolded through the classic figure of the victim, as Wilson suggests, but also recast through anticolonial freedom fighter imaginaries that invoke feelings of colonial displacement and the fallout from structural violence. These are packaged and disseminated through counter-campaigning strategies and affective performances that insist on firmly linking legal solutions to a broader dismantling of neocolonial structures of oppression that Africans encounter at every level, from the rural villager to the cosmopolitan head of state (Brants 2011). Through the power of reattribution, emerging forms of embodied practice are being developed as counterpoints to ICC’s international justice and are circulating through discursive regimes legible to the socio-political context within which their meanings have emerged.

### **Conclusion: The Work of Affective Justice in the Making of International Justice**

The concept of affective justice posits that biopolitical, affective, and emotionally regimented articulations of bodily processes are critical links connecting the precognitive body to the making and unmaking of socio-legal and political institutions. This site of translation can be examined through observations of how affects are legally, discursively, and performatively materialized. As the individual feels and expresses, social practices shape what ultimately counts as justice. By introducing a language for clarifying the assemblages of precognitive, socio-political, cultural, and moral processes through which justice is produced, affective justice consolidates components of justice making that are enmeshed bodily and give rise to emotional expressions that, in turn, confer power to particular justice imaginaries. By tracing these processes we are able to illuminate how the iconic figures that drive justice conceptualizations are predicated on racialized ways of seeing that have deep roots in the white supremacy of empire. Affective justice encompasses how bodies, psychologies, and biopolitical social practices come together to (re)produce the racialized terms on which justice is formed, rendered legible, and resisted. The lived material, the

sentient body, the social body, and the body politic—coproducing and intersecting—are each mobilized through biosocial and social forms. Justice is a product of competing practices that are shaped and expressed materially and psycho-socially. Constitutive formations of justice are represented within social feeling regimes and emotive performances that provide clues to how social relationships are deployed to enact what justice becomes.

Central to today's affective justice are meta-formations of international criminal justice assemblages and zones of engagement that structure subjects and shape their responses to perceived injustice. These formations do not exist through a universalizing global domain in which fairness and equality are understood to constitute international justice everywhere. Rather, international justice gains power through affects that are grounded in the deep-seated histories and inequalities whose dispositions are already inscribed in people's psyches and emotional worlds. When attempts to rectify injustice are dislodged from sites of suffering to sites of remediation, they can become aligned with already meaningful moral commitments. It is through practices that are imbricated with histories of injustice that international institutions gain their power and that law gains its force to act in the world. The same is also accomplished through the presence of inaction, as in the absence of international interventions into structural injustices caused by colonialism or apartheid.

In anti-impunity social movements in today's international justice circuits, the phrases "victim to be saved" and the "perpetrator to be stopped" constitute the emotional basis upon which affective justice can occur. By using an aesthetic imagery of bodies to be saved, the humanitarian and international justice movement has birthed a professional human rights class seeking to activate and crystallize an international citizenry around the idea that "ending impunity" is the preeminent deterrence for violence and suffering. This narrative moves beyond the direct experience of suffering and into a disembodied, mediated experience where justice needs an exemplary "victim." However, iconic figures like survivors, victims, perpetrators, and freedom fighters only provide an understanding of the emotive force that shapes institutional, historical, and moral orders through which international justice and Pan-African "emotional regimes" gain their force. By framing international justice through affective forms of complexity, we see how sentiments are spread through feelings, narratives, institutions, and laws, and how these contribute to the contours of emotional expression in particular ways. In legal studies, interrogating affects can be a generative way to make sense of what the inner body, combined with biopolitical and social regimes can tell us about the impact of various legal rituals (e.g. trials, testimonies, and political settlements) along with the affective biopolitics that shape them. In the context of violence and its remedies, studying the deployment of affects can help policymakers, lawmakers, and scholars understand which emotions are likely to mobilize support; which discursive strategies and imaginaries are visualized; and why and to what effects (consciously intended and unintended).

While justice is knowable by social and humanistic scholars through its materialized forms, such as anger and joy, the subjective experience of international justice involves a constellation of components. Affective justice is neither an essential form of justice that can be applied universally to different contexts and people, nor is it a form of expression that binds particular social groups but not others. It is a product of complex micro practices embedded in structures of inequality that find expression in social-meaning making. Affective justice, through its focus on social practices fueled through emotional manifestations, presents an approach that considers: legal technocratic knowledge production, biopolitical domains, the role of affects and their emotional expressions, and the representational regimes that arise through interpretive and institutional practices. Describing the component

parts of international rule of law assemblages allows for an exploration of how power and moral obligations shape the structuring alliances that produce international justice today.

Affective justice, as a conceptual framework for clarifying international justice assemblages, resonates at the individual (subjective) and collective (social) consciousness levels. It is the performative dimension of socio-legal claims to justice, or what Marianne Constable, quoting Stanley Cavell, has termed “passionate utterances” (Constable 2014, 11). It is also the embodied responses that operate through particular regimes of feeling that shape what Justin Richland (2013) has referred to as law as both ideation and materiality. This segmentation occurs in myriad ways, such as in constructions of racial difference through which particular bodily inscriptions are made meaningful.

Just as the emergent rule of law movement seeks to reattribute impunity with persistent justice feelings, so too do Pan-African justice advocates seek to reattribute justice’s affects. The concept of *retribution* offers a way to understand how those engaged in African international rule of law circles are rethinking justice by dismantling its meanings. I propose that international justice today can be understood as marked by sets of socio-emotional and bodily interactions that circulate in dislocated multiplicities. For those in the field, this requires thinking differently about the relevance of mechanisms, such as treaties and preambles and law and legality. It opens up new possibilities for understanding how legal architectures are historically confronted, challenged, and (perhaps) dismantled. When political actors project their feelings onto sites of legal action, they are jockeying for power to establish the core assumptions that underlie beliefs about why something like violence erupts and how it could be mitigated. Multiple traumas over generations elicit a broad and deep range of emotional responses that show how international law has been complicit in the making of African injustice. Public emotional refusals of ICC justice are attempts to produce and express sentiments that neutralize criminal responsibility and reroute it to other domains of culpability. For some, this is because African leaders are often targeted by proponents of international justice for their potential complicity in violence while powerful Western leaders are not pursued in the same way. The dialectical relationship between the figure of the African perpetrator indicted by the ICC and the Western perpetrator who is not makes such narratives both insidious and compelling. Some African populations, however, engage in the reassignment of justice against ICC norms while simultaneously struggling with their anger against African leadership for unleashing tyranny and violence against their populations and their part in enabling the economic extraction and plunder of African resources.

Affective justice includes a psycho-social practice, a way to assemble categories, and a way for people’s relationships to these categories to be rendered visible—or invisible—through actions. Justice is formed through expressions, representations, discourses, and feeling regimes that shape the way that it is embodied and expressed by people. It is constituted by complex assemblages of practices that are communicated through convergent, itinerant and even divergent components. This process of justice making operates within contested spaces in which people engage in forms of refusals and recalibrations, even as they engage in the deployment of the legal technocratic knowledge to establish new visions of legality. Recognizing this process of embodied responses is critical not only for understanding how international justice is shaped by juridical processes but also for understanding how embodied social and racialized imaginaries undergird daily life. The convergence of historically formed social locations, personal commitments, experiences, and affective practices that shape people’s relationships to institutions like the ICC and the AU offers a starting place to analyze how emotions are regimented through particular structuring devices. This is the direction for charting an anthropology of international justice and a framework that

encompasses micro-and macro-processes and assemblages constituted through justice as everyday practice. This then becomes a site imbricated within various fields of affective and institutional power refracted through racialized imaginaries.

### Notes

1. United Nations, Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, July 17, 1998 [hereinafter Rome Statute], art. 5; online at <http://untreaty.un.org/cod/icc/statute/romefra.htm>.
2. Rome Statute, Arts. 28, 25(3)(d), and 33.
3. ICC, Decision on the Prosecution Application Under Article 58(7) of the Statute, *Harun* (ICC-02/05-01/07-1), Pre-Trial Chamber I, April 27, 2007.
4. ICC, *Harun* (ICC-02/05-01/07-1), Pre-Trial Chamber I, 2007.
5. Fatou Bensouda, Albany Law School, April 12, 2012. Author fieldnotes from speech. Also see “Africa and International Law: Taking Stock and Moving Forward.” <https://albanylawdiversity.wordpress.com/2012/04/07/conference-features-kenyas-chief-justice-internal-prosecutor-april-12-14-at-albany-law-school/>
6. Exemplary studies include Berg and Ramos-Zayas’s 2015 work on the interrelationship between emotion and the socio-cultural production of sensual moods; Segal’s 2016 analysis of the expected performance of wifely strength through the suppression of emotions by Palestinian women married to Palestinian men jailed in Israel; and Gribaldo’s 2014 look at violence and victimhood in Italy, in which she examines the expectation of particular forms of performative speech.
7. Hannah Appel, in lecture commentary to author, UCLA, October 2016.
8. For earlier work on discourse and its operationalization, see Goffman (1974) and Luhmann (1995).
9. Benjamin Ferencz, interview with author, 2014.
10. Fieldnotes on file with author.
11. Thanks to Erin Baines for her clarification of the key point.

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