

Preface

Assemblages of Interconnection

On the plane en route to Addis Ababa, Ethiopia, to attend my first African Union (AU) summit, I sat next to an American missionary about to launch a new church project in neighboring Kenya. Though excited about the newness of his contract, he was wary of the difficulties Americans encounter living in African cities. He was concerned that his way of life was different, and that he would have to shift his standards and become at one with his parishioners. Though he never used language that was explicitly shocking and derogatory, it was clear that he saw his role as bringing a much-needed form of humanitarian enlightenment to Africa. This was made palatable through the way he spoke of Africa's cycles of violence and poverty.

And then came the discussion of my work. After the usual niceties, he launched with a pointed interrogative: "Has the International Criminal Court [ICC] convicted Kenyatta and al-Bashir yet?" I paused, first out of shock from his presumption that I—another North American—was like him and in ideological conformity with his worldview. And though the charges against President Kenyatta and Deputy President Ruto have since been dropped by the ICC prosecutor's office, at the time I responded with resignation about not knowing how things would play out. And, also with resignation, I offered a familiar American trope, that "they were innocent until proven guilty." To that, he insisted that if I wanted to talk about innocence, I should focus on the innocent African victims who needed justice. Here the presumption was that the deceased and the survivors were innocent, and the African elite needed to be stopped, that blood was on their hands and wealth in their pockets. For him, convicting the sitting presidents of Kenya and Sudan would secure justice for the survivors of Africa.

I could not resist turning to similarly troubling issues at home: at the time, America's wars in Iraq and Afghanistan that have led to the death of thousands of innocent civilians. But to my interlocutor, America's war on terror was a just war—unlike what he saw as the irrational violence in Kenya and Sudan. He spoke with passion, and his assumptions about justice presumed that those two trials were key to ending impunity in Africa. As this soon-to-be resident of Kenya spoke, I could not help but think about the kind of life that he was preparing himself for and how important the discourse of justice abroad was for him in explaining America's place, his place, in improving the world's future. I also thought about what the latent sense of feel-good humanitarian discourses did that were popular among many of the northern missionaries, NGO workers, and journalists that I have met throughout Africa. While on the plane that day I began to think about the words that my intimate stranger used, the images and feelings associated with the words, and the way they danced in our imaginations and became entangled by other histories and consolidated our different feelings of justice.

According to his notion of justice, understood as the legal protection of those victimized by violence, it was not necessary to extrapolate further—at least not beyond what he had already. He and I knew what he meant, and yet so much was partial and unnecessary to spell out. The rest was expressed through sentimentalized expressions—tone of voice, word emphasis, facial expressions, hand motions, and bodily responses. These nonverbal cues reflected the type of affective bodily responses that accompanied the aspirational dreams of justice writ large, and through their passionate utterances they constituted our alliances. What was not as evident was how the feelings of what justice is were produced through particular educational knowledge domains and perpetrated through various emotional regimes that contribute to how feelings are embodied as legitimate.

A similar set of justice convictions also propelled through emotional discourses was predominant during the course of my fieldwork in Nigeria, Ethiopia, and Kenya between 2013 and 2017 and highlighted the ways that alliances were formed through sentimentally uttered discourses. In those cases, it was not the benevolent missionary but the African civil society activist whose affirmations of justice-as-law were rooted in much more than prosecutorial justice. While carrying out research, my team and I traveled from place to place, soliciting reactions to the ICC's indictments of African leaders while also following ICC cases, collaborating with thought leaders on various on-line platforms, and serving in a consultancy capacity on various research and

policy strategies. What unfolded over the course of this phase of study was my reckoning with the complexities of international criminal law through assemblages that necessarily involved the foregrounding of embodied affects in relation to their regimes and hegemonic knowledge forms. This became evident through the collection of contradictory responses about the perceived culpability of African leaders.

While many felt that various leaders of African states were corrupt and uncommitted to the life of the ordinary person, some still defended them because of their recognition of Europe's history of extraction and underdevelopment of Africa and the way that those histories are part of the contemporary plunder of the region. Others defended their leaders, insisting that the problems were structural—that although independence produced political freedom, it did not free African states of entrenched political, economic, moral, and religious formations that were part of the plunder of Africa's resources. Those who refused to defend African leaders for various failures often turned to international bodies such as NGOs or legal instruments as the only solution to Africa's postcolonial crises. Many no longer believed in the possibility of partisan politics solving Africa's structural inequalities. With the sense that long-standing leaders like Robert Mugabe and Jacob Zuma were pillaging Africa's resources, they instead resorted to the promise of the law—with its aspirational mantra of certainty, promises of objectivity, and predictability. One response that characterized this retreat to law in the midst of ambiguity and dismay is best illustrated through the emotional plea of a colleague from an East African country working for a prominent African NGO. In response to a presentation at a meeting that sought to depict the ICC as a political force characterized through a history of European colonial instrumentalizations, he immediately rose up in the audience and declared without hesitation, "I am a proud African. Yet, I have lived personally under a repressive regime, experienced the abuse of power, and have survived it."

Then he continued, "This debate [about the value of the ICC] has been poisoned by our leaders. We should not replicate this misrepresentation at this forum. We must speak to each other through the letter of the law. We must stop posturing and debate frankly."

Claiming an eyewitness and insider standpoint, my colleague was impassioned and compelling. He spoke with conviction and his voice trembled with frustration and anger. His statement reflected the conviction of someone who reveled in what his country has offered the contemporary world, but bitterness about its human rights failures. He was a member of its ethnic ma-

jority and enjoyed the benefits of that class, but he worked tirelessly to ensure that those he saw as less fortunate would have a fighting chance. This was the spirit of his conviction; this was his expectation of contemporary democracy in Africa, and international law was the tool to address such injustice. Yet he remained dismayed and carried it in his words and his body, through his utterances and work commitments. His leaders had not enabled democracy's promise in his lifetime, and his mission was to address that.

With legal justice as the solution for protecting Africans victimized by repressive regimes, it was not necessary for my colleague to extrapolate—at least not beyond what he had articulated already. We all knew what he meant by the role of African repressive regimes abusing their power; that statement alone, and its delivery, articulated through familiar tones of anger and deep disappointment, provided the opening for his claim that Africa needed legal solutions to political problems.

A third prominent public throughout the African continent are those who insist on using structural inequalities connected to the Africa-and-ICC debate and on both using the law and going beyond it. One public intellectual from a West African country spoke passionately about African attempts to extend the criminal jurisdiction of the African Court and create the African Court of Justice and Human and Peoples' Rights in relation to a perceived double standard inherent in international legal spheres. As he declared in a public forum in Addis Ababa, "The desire for Africa to prosecute international crimes goes back to the 1970s. It was not just a matter of African leaders evading justice. Africans were concerned with the fundamental legal basis and the justifications for prosecuting crimes against Africans."¹ He made a sentimentalized plea to remind us that, as he said, "[The] desire to prosecute international crimes predates the ICC and was motivated by the fact that Africa discovered that there were certain crimes that affected Africans (like Apartheid) but the rest of the world was not interested."²

This statement, articulated with passion and paradox, formed the basis for the speaker to talk about the inability of Africans to use criminal law to address mass atrocities that were arguably related to colonial plunder of Africa, as well as the paradoxes related to the contemporary deployment of international criminal law to arrest African leaders. It represented a profound set of claims against international injustices argued passionately by African peoples of all class backgrounds and experiences, for it reflected a desire to highlight the complexity of African concerns within the larger histories of plunder and injustice. For those whose life worlds were compromised by colonization and

whose temporalities and spatial orientations reflect *things African*, the ICC can look and feel like colonialism itself—what Hannah Appel called the “abdication of sovereignty” alongside the denial of colonial liability for violence on the African continent. From unsettled land dispossession to the absence of criminal liability for corporate violence, the political decisions that shape the ICC involve making sense of how one lives with the sequel of colonialism.”³

To all three interlocutors—the missionary from the United States, the civil society activist, and the public intellectual and scholar—law had the potential to provide a way out of the poisoned politics of the postcolonial state. Yet for others it has the potential to obscure political inequalities. They all spoke passionately and in animated ways about the importance of international legality for Africa’s future. For the first two, the senses of justice were connected to an organizing logic about liberal equality that tells us that everyone is entitled to rights and freedoms, and that the law exists to ensure that we get them. This justice narrative presumes that individual equality can be guaranteed judicially. The third interlocutor was concerned with how structural inequalities can exceed the juridical and how related justice discourses can often conceal those realities. In all cases, legal knowledge and its tools, affects, and particular discursive strategies that were appropriately legible to the context at hand served as key component parts of the connection between the actors.

In keeping with these sentiments argued in Africa and beyond, *Affective Justice* is about the way that such justice discourses are brought into being through the sum of their parts—technocratic knowledge, affects, and emotional regimes. It is concerned with how these assemblages of justice are felt, experienced, and institutionalized, such as the ICC or the newly forming African Court of Justice and Human Rights. For it was these related and complex sentiments that on July 17, 1998, led 120 of the world’s leaders to sign the Rome Statute to establish the International Criminal Court. At the heart of this justice discourse was a legacy and set of sentimental commitments against mass atrocity violence that is said to have continued from various twentieth-century trials, including the Nuremberg tribunal of the late 1940s. Part of this discourse was the insistence that various publics, constituting the international community, have a responsibility to protect those victimized by such violence. Also central to it is a vehemently articulated anti-impunity discourse that insists that no one (high-ranking leaders, politicians, presidents, rebels, or ordinary citizens) should be beyond the reach of the law.

Like the other examples I have opened with, these feelings about the importance of justice are enabled through the law and communicated with var-

ious narratives that perform a particular type of work. The ICC anti-impunity narrative insists not only that justice means individual perpetrators should be punished, but that a perpetrator's official capacity should not bar him or her from criminal investigation. Understanding justice not solely in relation to the visible application of the law at all costs, but also as negotiated assemblages of feelings about inequality and power, allows us to recognize how other narratives about the ICC in Africa reflect people's ambiguities about Africa in relation to other spheres of global power.

To understand the logic of the competing ICC responses, we must think about the effects of the past on bodies and on people's futures, and how those futures are mediated and institutionally represented as well as regulated and simultaneously itinerant. It requires that we explore how the past collides with the present to produce our bodies and our imaginaries, and it involves wrestling with the interplay between temporality and the role of sentimentalized narratives.⁴ These feelings of justice or injustice are complex and insist on including African independence and sovereignty aspirations alongside post-1960s histories of postcolonial despotisms, state failure, and embedded structural inequalities. In this regard, various African responses to the ICC and related postcolonial justice projects emerged within an acute temporal and spatial awareness of Africa's economic and political challenges in the world and the bodily responses to such inequalities. For while many hold various African leaders responsible for despotism and state failure, they also recognize the inequalities that pervade the African postcolonial state—such as the reality that many economic and political decisions about African states are actually made outside of the geographical boundaries of those states.

From agreements made during independence talks, to the role of economic speculation and investments, to structural adjustment, mineral extraction, and market competition with Chinese competitors and beyond, many see the way that modernity has prescribed a particular set of practices that already constrain the ability of the state to provide for its citizens. The stakeholders, informed by the recognition of some of these realities, also use particular affective narratives to make their claims. From their ambivalence about African leaders to their accusations of international institutions as extensions of histories of imperial plunder, the articulated narrative responses reflect a particular way of expressing the complexities of justice through a rethinking of the political. The narratives also produce expressions about who we are, what we stand for, what matters, and why; thus, they are vulnerable to be driven by our bodily affects. As expressive manifestations that involve particular enactments of feel-

ings, these affects are expressed, understood, and ultimately sentimentalized in particular ways—using specific narrative tropes and related strategies for enforcement and alliance.

These emotive narratives about justice are critical to this book, which takes as its point of departure an ongoing debate about whom the ICC is indicting and why—and how individuals in social movements are engaging and institutionalizing or contravening those developments. The book is about responses to judicial inequalities that do not always find expression in legal frameworks alone, as well as the social imaginaries that are shaped by perpetual campaigns for legal justice. Such campaigns are effective because of the techniques used to mobilize sentimentally shaped action.⁵ Time and time again, as we spoke with interlocutors on the African continent—politicians, academics, leaders, judges, investigators, diplomats, lawyers, children, survivors of violence, the homeless, and members of NGOs and of civil society, it was clear that international law—with its temporal and spatial particularities—was seen as both a beacon of possibility and the basis for the continued plunder and inequality in Africa. But with justice articulated through the support or rejection of the ICC or the support or rejection of an African court with criminal jurisdiction, it was also clear that the validity of my colleagues' positions at the meeting that day, and many meetings before and after it, were not rendered legitimate because of their experience or facts, but because of the profound affective performance and sentimentalism that accompanied their speech acts and the institutionalized forms that reinforced such narratives.

Affective Justice explores both the subjective and agentive processes and the structuring fields through which individuals respond to social injustice. By examining the role of sentimentalized justice narratives manifested in and through bodily expressions, verbal utterances, biomediated hashtag campaigns, international laws, and claims about justice, we can see how various affectively shaped social regimes determine what is acceptable and authoritative, and what is not. The book is about the strategies of international justice brokers and the sentimentalized imaginaries of many of the African interlocutors with whom I conducted my research.

Studying Affective Assemblages of Justice

How can transnational justice ethnographies explain the complex workings of postcolonial affects by what Bill Mazarella describes as preserving the traces of past encounters and bringing them into the present as potentials? How can

political and legal anthropology be used to study the affective body by exploring the “pragmatics of institutional practice”?⁶ How can the study of institutional practice shed light on the workings of affective resonances and their sentimentalized deployments of international legal tools? To answer these questions, I had to begin and end the research for this book in the middle of things—feelings about the joys and horrors of the African past, aspirations for a new future, conversations on planes, disputes at conferences, observations of international court cases, incomplete responses to images of violence, successful indictments after seven to eight years while survivors of violence still await assistance, heart-wrenching testimonies, and feel-good humanitarian gestures—all manifest in and through bodies but also inscribed and partially observable through institutional practices. The nature of these unsettling realities has led me to examine the manifestations of sentimentalized emotions that underlie rule of law assemblages. My goal is not only to study such assemblages ethnographically through their embodied practices, as many have done in the anthropology of affect literature. It is also to fill the gaps in the political and legal anthropology literature as well as the international law and politics literature with a study of entanglements that focuses on how various approaches to justice, communicated through sentimentalized strategies and engaged in institutional practices, are expressed and have effects in daily life.

Research for this book began in the midst of public debates about whether ICC justice was biased and involved the targeting of Africans alone. Questions of ICC bias and selectivity pervaded anti-ICC discourses and ranged from accusations that the court is racist to questions about how Africa’s “failed states” contributed to breeding grounds for wars, violence, and even more indictments by the ICC. These questions were sometimes met with public agreement and at other times with laudatory responses from a range of ICC actors, judges, stakeholders, academics, and civil society groups that all included a familiar refrain—that with its birth in the resolve to stop the arbitrariness of violence, and thereby protect victims, the ICC’s justice is a blind justice whose sole objective is to end impunity. Yet over the past four years of data collection at and in relation to international criminal trials at the ICC in The Hague, in civil society organizations, at AU summits and meetings in Addis Ababa, at postviolence sites in Kenya and Nigeria, at the African Court in Tanzania, the Extraordinary African Chambers in Senegal, and in the Assembly of State Party UN annual meetings, conference rooms, and workshop halls, it became clear to me that in order to understand the challenges of the ICC as an international justice institution, we must grapple with the paradoxes of

contemporary justice. And if, following Talal Asad, we see the public sphere not as an “empty place for carrying out debates” but as a space “constituted by the sensibilities—memories and aspirations, fears and hopes—of speakers and listeners,” actors and agents, then nowhere is there a better domain for exploring the making of justice than through affective practices and inquiries into their institutionalization, retractions, and, at times, waning popularity.⁷

In order to understand the ways that sentimentalized expressions of international justice are manifest in various globalizing publics, I assembled a research team to work on this project from 2012 to 2014 and then, with new funding, took on a new cluster of short fieldwork trips and ongoing and engaged consultancy project work from 2014 to 2018. Throughout 2012, my team spent eight months in phase 1 of the project in The Hague, exploring the many contours of ICC justice in its first ten years of existence. In an effort to understand the affective practices involved in the rise of the ICC’s rule of law movement, we trained a small group of interns and conducted interviews, archival work, media documentation, and trial observations.

In 2013 we spent six months in Addis Ababa, Ethiopia, at the African Union—the continent’s foremost Pan-Africanist organization concerned with fostering integration, collaboration, and a high standard of living for the citizens of Africa—where we interviewed AU staff, conducted participant observation at its events and summits, and set the terms for collaboration on a research project related to the emergence of the African Court. This was an important moment to work within the complexities of the AU, as the organization was also undergoing exceptional transformation. At that time, it was developing a new architecture of peace and security, forming a political structure, and developing new institutions and treaty agreements. A general reconceptualization of Africa’s responsibility for addressing growth, violence, and political turmoil was underway throughout the continent. Significant funding possibilities for civil society groups and talk of justice and strategy were underway. We documented the aspirations and strategies for building a renewed Pan-African movement and how those hopes were manifesting in the newly evolving debates about the extension of the criminal jurisdiction of the African Court as a way to take on transnational crimes in Africa, against Africans. Despite the pushback against the ICC, the faith in international legality—this time in Africa—as a way to address political violence remained interesting to us. It highlighted the way that legal hegemonies travel and take shape not only through institutions of power, but also through emotional frameworks of expectation or emotional regulation—a notion that I take up later in the book.

In 2013, we also set up a team of researchers in Kenya and Nigeria to work with survivors of violence, understand the complexities of postviolence contexts, and observe the postviolence rectification strategies underway. In Nairobi and its surrounding areas there were also significant mobilizations that involved judicial and nonjudicial approaches. I then traveled to northern Nigeria in 2014 to understand related fallout from postviolence attacks waged by Boko Haram, whose abductions of over two hundred girls from a boarding school led to a short-lived global protest mobilization to return the girls to their families. In both Nigeria and Kenya, our goal was to make sense of the meaning of justice for everyday people in two of the regions that are, for the ICC, sites of ongoing interest. To the AU, the ICC's interest reeked of the selective targeting of African cases—as many often exclaimed—and this discourse drove our inquiry and puzzlement.

The final phase of this project involved closer research collaborations (2014–2018) with the AU and African Court advocates. If my research team felt like classic anthropological interlopers during the first two phases, by this final phase the consultative practices became central to the form of participant observation that underlined this work. I became part of an advisory team involved in the expansion of the criminal jurisdiction of the African Court tasked with contemplating the new judicial architecture and helping to critically assess and reshape its design. Through the formation of the African Court Research Initiative, we provided technical assistance to the African Court, as the legal office labored to create a better and more responsive African Court protocol for the African continent. We worked with international law experts and as partners with various organizations to ponder the challenges ahead for an African Court with jurisdiction to adjudicate criminal cases. Some of this work was based in cities such as Arusha and The Hague, as well as in various consultancy and advisory settings in Addis Ababa. It involved working with scholars, lawyers, diplomats, advisors, and civil society groups to procure research data, assess negotiation documents, engage with and study the adoption of strategies, and do ongoing advisory work.

By the end of the last phase, we had spent over six years working at the heart of ICC and Africa issues—a rhizomatic process that could not be accomplished by just one person and whose scope reflects the face of new global ethnographies. During the analysis, we coded data and mapped particular emotional responses that shaped the data analysis. By focusing on various sentimental emotions coded as anger, fear, vengeance, pain, sympathy, and victorious joy, we attempted to make sense of the emotional contours of in-

ternational justice at the ICC, the AU, and in related spaces of international justice assemblages. We analyzed the manifestations of those affects and emotional expressions through our readings of particular speech acts that allowed us to reflect on the way that various emotional expressions were articulated and institutionalized through various discourses and campaigns. In the end, our observations collected during all three phases of this research helped to ground my understanding of the management of violence, the sentimental fortitude that governs it, the contestations over how it should be managed, and what social regimes, historical imbrications, and institutional forms are involved in the shaping of the narratives and feeling rules through which the legitimacy or illegitimacy of international justice is expressed. Ultimately, as *Affective Justice* outlines, recognizing the relevance of affects in shaping how justice is materialized is key to understanding how justice is made legible, institutionalized, disentangled, and also remade anew. This, I hope, will contribute to the much needed development of an anthropology of international justice of the twenty-first century.